

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1480 Session of
1997

INTRODUCED BY RUBLEY, DALEY, BUNT, C. WILLIAMS, YOUNGBLOOD,
E. Z. TAYLOR, BARD, HENNESSEY AND MCGILL, MAY 7, 1997

REFERRED TO COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT,
MAY 7, 1997

AN ACT

1 Amending Title 54 (Names) of the Pennsylvania Consolidated
2 Statutes, adding and changing definitions; making
3 classifications; and providing for registrability and
4 application for registration, duration and renewal, for
5 cancellation for damages for fraudulent registration, for
6 infringement, for injury to business or reputation and for
7 remedies.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Sections 1102, 1103, 1111, 1112, 1114, 1116,
11 1121, 1123, 1124 and 1125 of Title 54 of the Pennsylvania
12 Consolidated Statutes are amended to read:

13 § 1102. Definitions.

14 The following words and phrases when used in this chapter
15 shall have, unless the context clearly indicates otherwise, the
16 meanings given to them in this section:

17 "Abandoned." A mark shall be deemed to be "abandoned" when
18 either of the following occurs:

19 (1) When its use has been discontinued with intent not
20 to resume such use. Intent not to resume may be inferred from

1 circumstances. Nonuse for two consecutive years shall
2 constitute prima facie evidence of abandonment.

3 (2) When any course of conduct of the owner, including
4 acts of omission as well as commission, causes the mark to
5 lose its significance as a mark.

6 ["Adopted and used." A trademark shall be deemed to be
7 "adopted and used" in this Commonwealth when it is placed in any
8 manner on the goods or their containers or the displays
9 associated therewith or on the tags or labels affixed thereto,
10 and such goods are sold or otherwise distributed in this
11 Commonwealth. A service mark shall be deemed to be "adopted and
12 used" in this Commonwealth when it is used or displayed in the
13 sale or advertising of services and the services are rendered in
14 this Commonwealth.]

15 "Applicant." Any person filing an application for
16 registration of a mark under this chapter, or the legal
17 representatives, successors or assigns of such person.

18 "Dilution." The lessening of the capacity of a famous mark
19 to identify and distinguish goods or services, regardless of the
20 presence or absence of a competition between the owner of the
21 famous mark and other parties or likelihood of confusion,
22 mistake or deception.

23 "Mark." Includes any trademark or service mark entitled to
24 registration under this chapter whether registered or not.

25 "Person." This word or any other word or term used to
26 designate the applicant or other party entitled to a benefit or
27 privilege or rendered liable under the provisions of this
28 chapter to include a juristic person as well as a natural
29 person. The term "juristic person" includes a firm, partnership,
30 corporation, union, association or other organization capable of

1 suing and being sued in a court of law.

2 "Registrant." Any person who registers a mark under this
3 chapter, or the legal representatives, successors or assigns of
4 such person.

5 "Service mark." [A mark used in the sale or advertising of
6 services to identify the services of one person and distinguish
7 them from the services of others and includes, without
8 limitation, the marks, names, symbols, titles, designations,
9 slogans, character names and distinctive features of radio or
10 other advertising used in commerce.] Any word, name, symbol or
11 devise or any combination thereof used by a person, to identify
12 and distinguish the services of one person, including a unique
13 service, from the services of others and to indicate the source
14 of the services, even if that source is unknown. Titles,
15 character names used by a person and other distinctive features
16 of radio or television programs may be registered as service
17 marks notwithstanding that they, or the programs, may advertise
18 the goods of the sponsor.

19 "Trademark." Any word, name, symbol or device, or any
20 combination thereof, [adopted and] used by a person to identify
21 [goods produced, manufactured or sold by the person,] and [to]
22 distinguish [them] the goods of such person, including a unique
23 product, from [goods produced,] those manufactured or sold by
24 others and to indicate the source of the goods, even if that
25 source is unknown.

26 "Trade name." A word, name, symbol, device or any
27 combination thereof used by a person to identify the business,
28 vocation or occupation of the person and distinguish it from the
29 business, vocation or occupation of others.

30 "Use." The bona fide use of a mark in the ordinary course of

1 trade and not merely to reserve a right in a mark. For the
2 purposes of this chapter, a mark shall be deemed to be in use:

3 (1) On goods when it is placed in any manner on the
4 goods or other containers or the displays associated
5 therewith or on the tags or labels affixed thereto, or if the
6 nature of the goods makes such placement impracticable, then
7 on documents associated with the goods or other sale and the
8 goods are sold or transported in commerce in this
9 Commonwealth.

10 (2) On services when it is used or displayed in the sale
11 or advertising of services and the services are rendered in
12 this Commonwealth.

13 § 1103. Classification.

14 The [following] general classes of goods and services [are]
15 established by the United States Patent and Trademark Office in
16 accordance with the International Classification System are to
17 be utilized for the purpose of administering this chapter. [The
18 department may, by regulation, amend the classification
19 established by this section if such amendment does not limit or
20 extend the rights of any applicant or registrant.] An
21 application for registration of a mark shall be limited to a
22 single general class of goods or services. Nothing in this
23 chapter shall be construed as limiting the registration of a
24 mark to one general class. [The classes are as follows:

25 GOODS

26 (1) Chemical products used in industry, science,
27 photography, agriculture, horticulture, forestry; artificial
28 and synthetic resins; plastics in the form of powders,
29 liquids or pastes, for industrial use; manures (natural and
30 artificial); fire extinguishing compositions; tempering

1 substances and chemical preparations for soldering; chemical
2 substances for preserving foodstuffs; tanning substances;
3 adhesive substances used in industry.

4 (2) Paints, varnishes, lacquers; preservatives against
5 rust and against deterioration of wood; coloring matters,
6 dyestuffs; mordants; natural resins; metals in foil and
7 powder form for painters and decorators.

8 (3) Bleaching preparations and other substances for
9 laundry use; cleaning, polishing, scouring and abrasive
10 preparations; soaps; perfumery, essential oils, cosmetics,
11 hair lotions; dentifrices.

12 (4) Industrial oils and greases (other than edible oils
13 and fats and essential oils); lubricants; dust laying and
14 absorbing compositions; fuels (including motor spirit) and
15 illuminants; candles, tapers, night-lights and wicks.

16 (5) Pharmaceutical, veterinary and sanitary substances;
17 infants' and invalids' foods; plasters, material for
18 bandaging; material for stopping teeth, dental wax;
19 disinfectants; preparations for killing weeds and destroying
20 vermin.

21 (6) Unwrought and partly wrought common metals and their
22 alloys; anchors, anvils, bells, rolled and cast building
23 materials; rails and other metallic materials for railway
24 tracks; chains (except driving chains for vehicles); cables
25 and wires (nonelectric); locksmiths' work; metallic pipes and
26 tubes; safes and cash boxes; steel balls; horseshoes; nails
27 and screws; other goods in nonprecious metal not included in
28 other classes; ores.

29 (7) Machines and machine tools; motors (except for land
30 vehicles); machine couplings and belting (except for land

vehicles); large size agricultural implements; incubators.

(8) Hand tools and instruments; cutlery, forks and spoons; side arms.

(9) Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), lifesaving and teaching apparatus and instruments; coin or counter-fed apparatus; talking machines; cash registers; calculating machines; fire extinguishing apparatus.

(10) Surgical, medical, dental and veterinary instruments and apparatus (including artificial limbs, eyes and teeth).

(11) Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

(12) Vehicles; apparatus for locomotion by land, air or water.

(13) Firearms; ammunition and projectiles; explosive substances; fireworks.

(14) Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons); jewelry, precious stones, horological and other chronometric instruments.

(15) Musical instruments (other than talking machines and wireless apparatus).

(16) Paper and paper articles, cardboard and cardboard articles; printed matter, newspapers and periodicals, books; bookbinding material; photographs; stationery, adhesive materials (stationery); artists' materials; paint brushes;

1 typewriters and office requisites (other than furniture);
2 instructional and teaching material (other than apparatus);
3 playing cards; printers' type and cliches (stereotype).

4 (17) Gutta-percha, India rubber, balata and substitutes,
5 articles made from these substances and not included in other
6 classes; plastics in the form of sheets, blocks and rods,
7 being for use in manufacture; materials for packing, stopping
8 or insulating; asbestos, mica and their products; hose pipes
9 (nonmetallic).

10 (18) Leather and imitations of leather and articles made
11 from these materials and not included in other classes;
12 skins, hides; trunks and travelling bags; umbrellas, parasols
13 and walking sticks; whips, harness and saddlery.

14 (19) Building materials, natural and artificial stone,
15 cement, lime, mortar, plaster and gravel; pipes of
16 earthenware or cement; road-making materials; asphalt, pitch
17 and bitumen; portable buildings; stone monuments; chimney
18 pots.

19 (20) Furniture, mirrors, picture frames; articles (not
20 included in other classes) of wood, cork, reeds, cane,
21 wicker, horn, bone, ivory, whalebone, shell, amber, mother-
22 of-pearl, meerschaum, celluloid, substitutes for all these
23 materials, or of plastics.

24 (21) Small domestic utensils and containers (not of
25 precious metal or coated therewith); combs and sponges;
26 brushes (other than paint brushes); brush-making materials;
27 instruments and material for cleaning purposes; steel wool;
28 glassware, porcelain and earthenware, not included in other
29 classes.

30 (22) Ropes, string, nets, tents, awnings, tarpaulins,

1 sails, sacks; padding and stuffing materials (hair, capoc,
2 feathers, seaweed, etc.); raw fibrous textile materials.

3 (23) Yarns, threads.

4 (24) Tissues (piece goods); bed and table covers;
5 textile articles not included in other classes.

6 (25) Clothing, including boots, shoes and slippers.

7 (26) Lace and embroidery, ribbons and braid; buttons,
8 press buttons, hooks and eyes, pins and needles; artificial
9 flowers.

10 (27) Carpets, rugs, mats and matting; linoleums and
11 other materials for covering floors; wall hangings
12 (nontextile).

13 (28) Games and playthings; gymnastic and sporting
14 articles (except clothing); ornaments and decorations for
15 Christmas trees.

16 (29) Meat, fish, poultry and game; meat extracts;
17 preserved, dried and cooked fruits and vegetables; jellies,
18 jams; eggs, milk and other dairy products; edible oils and
19 fats; preserves, pickles.

20 (30) Coffee, tea, cocoa, sugar, rice, tapioca, sago,
21 coffee substitutes; flour and preparations made from cereals;
22 bread, biscuits, cakes, pastry and confectionery, ices,
23 honey, treacle; yeast, baking powder; salt, mustard; pepper,
24 vinegar, sauces, spices; ice.

25 (31) Agricultural, horticultural and forestry products
26 and grains not included in other classes; living animals;
27 fresh fruits and vegetables; seeds; live plants and flowers;
28 foodstuffs for animals, malt.

29 (32) Beer, ale and porter; mineral and aerated waters
30 and other nonalcoholic drinks; syrups and other preparations

1 for making beverages.

2 (33) Wines, spirits and liqueurs.

3 (34) Tobacco, raw or manufactured; smokers' articles;
4 matches.

5 SERVICES

6 (35) Advertising and business.

7 (36) Insurance and financial.

8 (37) Construction and repair.

9 (38) Communication.

10 (39) Transportation and storage.

11 (40) Material treatment.

12 (41) Education and entertainment.

13 (42) Miscellaneous.]

14 § 1111. Registrability.

15 A mark by which the goods or services of any applicant for
16 registration may be distinguished from the goods or services of
17 others shall not be registered which:

18 (1) Consists of or comprises immoral, deceptive or
19 scandalous matter.

20 (2) Consists of or comprises matter which may disparage
21 or falsely suggest a connection with persons, living or dead,
22 institutions, beliefs or national symbols, or bring them into
23 contempt or disrepute.

24 (3) Consists of or comprises the flag or coat of arms or
25 other insignia of the United States, the Commonwealth of
26 Pennsylvania, or of any other state or municipality, or of
27 any foreign nation, or any simulation thereof.

28 (4) Consists of or comprises the name, signature or
29 portrait [of any] identifying a particular living individual,
30 except [with his or her] by the individual's written consent.

(5) Consists of a mark which:

(i) when [applied to] used on or in connection with the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them;

(ii) when [applied to] used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

(iii) is primarily merely a surname.

Nothing in this paragraph shall prevent the registration of a mark used in this Commonwealth by the applicant which has become distinctive of the goods or services of the applicant.

The department may accept as evidence that the mark has become distinctive as [applied to] used on or in connection with the goods or services of the applicant, proof of continuous use thereof as a mark by the applicant in this Commonwealth, [or elsewhere,] for the five years [next preceding] before the date [of the filing of the application for registration] on which the claim of distinctiveness is made.

(6) Consists of or comprises a mark which so resembles a mark registered in this Commonwealth or a mark or trade name previously used in this Commonwealth by another and not abandoned, as to be likely, when [applied to] used or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive, unless it shall be proved to the satisfaction of the department that the person last applying for the registry of such mark is entitled thereto and is the owner thereof by right of prior adoption and use, in which case the date of the adoption shall

determine the ownership, and shall be proved by verified statements of persons conversant with such dates. In case the department becomes satisfied after a hearing held as provided by section 1116(5) (relating to cancellation) that the person last applying for registry is entitled by priority of adoption and use in this Commonwealth to register such mark, it shall revoke the first registry thereof and, upon application and the payment of the fee, register the same in the name of such applicant.

§ 1112. Application for registration.

(a) General rule.--Subject to the limitations set forth in this chapter, any person who has adopted and used a mark in this Commonwealth may file in the department an application for registration of that mark, setting forth the following information:

(1) The name of the person applying for such registration, the residence, location or place of business of the applicant, and, if a corporation, the jurisdiction of incorporation or if a partnership, the state in which the partnership is organized and the names of the general partners.

(2) The goods or services on or in connection with which the mark is used, the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall.

(3) The date when the mark was first used anywhere and the date when it was first used in this Commonwealth by the applicant or the predecessor in [business of the applicant] interest.

(4) A statement that the applicant is the owner of the

1 mark, that the mark is in use, and that, to the knowledge of
2 the person verifying the application, no other person has
3 [the right to use such mark in this Commonwealth,]
4 registered, either federally or in this Commonwealth or has
5 the right to use such mark, either in the identical form
6 thereof or in [any] such near resemblance thereto as [might
7 be calculated to deceive or to be mistaken therefor] to be
8 likely, when applied to the goods or services of such other
9 person, to cause confusion, or to cause mistake, or to
10 deceive.

11 (4.1) Whether an application to register the mark or
12 portions or a composite thereof, has been filed by the
13 applicant or a predecessor in interest in the United States
14 Patent and Trademark Office; and, if so, the applicant shall
15 provide full particulars with respect thereto including the
16 filing date and serial number of each application, the status
17 thereof and, if any application was finally refused
18 registration or has otherwise not resulted in a registration,
19 the reasons therefore.

20 (5) Such other information necessary to the
21 administration of this chapter as the department may specify
22 by regulation.

23 (b) Facsimile.--The application shall be accompanied by a
24 facsimile of such mark.

25 (b.1) Application fee.--The application shall be accompanied
26 by the fee specified in 15 Pa.C.S. § 153(a) (relating to fee
27 schedule).

28 (c) Cross reference.--See 15 Pa.C.S. § 134 (relating to
29 docketing statement).

30 § 1114. Duration and renewal.

1 (a) General rule.--Registration of a mark under this chapter
2 shall be effective for a term of [ten] five years from the date
3 of registration and, upon application for renewal filed within
4 six months prior to the expiration of such term, the
5 registration may be renewed for a like term from the end of the
6 expiring term. A mark registration may be renewed for successive
7 periods of [ten] five years in like manner. All applications for
8 renewals shall include a statement that the mark is still in use
9 in this Commonwealth[.] and include a specimen showing actual
10 use of the mark on or in conjunction with the goods or services.
11 Any registration in force on the date on which the amendment to
12 this section shall become effective shall continue in full force
13 and effect for the unexpired term thereof and may be renewed by
14 filing an application of renewal in accordance with this
15 subsection.

16 (b) Cross reference.--See 15 Pa.C.S. § 134 (relating to
17 docketing statement).
18 § 1116. Cancellation.

19 (a) General rule.--The department shall cancel from the
20 register under this chapter:

21 (1) All registrations under this chapter which are [more
22 than ten years old and] not renewed in accordance with this
23 chapter.

24 (2) Any registration concerning which the department
25 shall receive an application for cancellation thereof from
26 the registrant or the assignee of record.

27 (3) Any registration concerning which a court of
28 competent jurisdiction shall find:

29 (i) That the registered mark has been abandoned.

30 (ii) That the registrant is not the owner of the

1 mark.

2 (iii) That the registration was granted improperly.

3 (iv) That the registration was obtained
4 fraudulently.

5 (iv.1) That the mark is or has become the generic
6 name for the goods or services, or a portion thereof, for
7 while it has been registered.

8 (v) That the registered mark is so similar, as to be
9 likely to cause confusion or mistake or to deceive, to a
10 mark registered by another person in the United States
11 Patent and Trademark Office, prior to the date of the
12 filing of the application for registration by the
13 registrant under this chapter or former provisions of law
14 and not abandoned, except that if the registrant proves
15 that the registrant is the owner of a concurrent
16 registration of the mark in the United States Patent and
17 Trademark Office, covering an area including this
18 Commonwealth, the registration under this chapter shall
19 not be cancelled.

20 (4) When a court of competent jurisdiction shall order
21 cancellation of a registration on any ground.

22 (5) Any registration in the following circumstances:

23 (i) Where an applicant, by verified statement or
24 other good and sufficient evidence, shall prove to the
25 satisfaction of the department that the applicant is
26 entitled by virtue of prior [adoption and] use to any
27 mark theretofore registered in the department.

28 (ii) In the case of a corporation having filed
29 articles of dissolution or a decree of dissolution, any
30 person may, at any time at least three years thereafter,

1 present a petition to the department setting forth such
2 fact.

3 (iii) In the case of a person not having filed
4 articles of dissolution or a decree of dissolution, but
5 having discontinued or gone out of the business to which
6 such registration is pertinent.

7 (iv) When a registered mark has been abandoned or
8 discontinued for a period of at least five years
9 subsequent to registration and such abandonment and
10 nonuse still persists.

11 In all circumstances enumerated in this paragraph, any person
12 may present a petition for cancellation to the department.

13 The petition shall set forth the pertinent facts relative
14 thereto, and shall contain proof of service of notice of the
15 petition on the person in whose name the registration is
16 recorded, and asking that such registration be cancelled. The
17 department shall fix a time to hear the parties concerned in
18 the matter, and shall send, by certified mail, a notice of
19 hearing to the person in whose name such registration is
20 recorded. If, after hearing, the department is satisfied of
21 the truth of the facts alleged in the petition in accordance
22 with the provisions of this paragraph, it shall cancel the
23 registration.

24 (b) Cross reference.--See 15 Pa.C.S. § 134 (relating to
25 docketing statement).

26 § 1121. Damages for fraudulent registration.

27 Any person who shall, for himself or herself or on behalf of
28 any other person, procure the filing or registration of any mark
29 in the department under this chapter by knowingly making any
30 false or fraudulent representation or declaration, [verbally]

1 orally or in writing, or by any other fraudulent means, shall be
2 liable to pay all damages sustained in consequence of such
3 filing or registration, to be recovered by or on behalf of the
4 party injured thereby in any court of competent jurisdiction.

5 § 1123. Infringement.

6 (a) General rule.--Subject to the provisions of section 1126
7 (relating to common law rights), any person who shall:

8 (1) use, without the consent of the registrant, any
9 reproduction, counterfeit, copy or colorable imitation of a
10 mark registered under this chapter in connection with the
11 sale, offering for sale or advertising of any goods or
12 services in a manner likely to cause confusion or mistake or
13 to deceive as to the source of origin of such goods or
14 services; or

15 (2) reproduce, counterfeit, copy or colorably imitate
16 any such mark and apply such reproduction, counterfeit, copy
17 or colorable imitation to labels, signs, prints, packages,
18 wrappers, receptacles or advertisements intended to be used
19 in connection with the sale or other distribution in this
20 Commonwealth of such goods or services;

21 shall be liable to a civil action by the [owner of such
22 registered mark] registrant for any or all of the remedies
23 provided in section 1125 (relating to remedies), except that
24 under paragraph (2) the registrant shall not be entitled to
25 recover profits or damages unless the acts have been committed
26 with [knowledge that such mark is intended to be used] the
27 intent to cause confusion or mistake or to deceive.

28 (b) Exception.--The provisions of subsection (a) shall not
29 apply to any advertising agency, publisher of newspapers,
30 magazines or other advertising media accepting authorization for

1 the reproduction or copy of any such mark innocently and in good
2 faith in the usual course of business.

3 § 1124. Injury to business or reputation; dilution.

4 [Likelihood of injury to business reputation or of dilution
5 of the distinctive quality of a mark registered under this
6 chapter, or a mark valid at common law, or a trade name valid at
7 common law, shall be a ground for injunctive relief
8 notwithstanding the absence of competition between the parties
9 or the absence of confusion as to the source of goods or
10 services.]

11 The owner of a mark which is famous in this Commonwealth
12 shall be entitled, subject to the principles of equity, and upon
13 such terms as the court deems reasonable, to an injunction
14 against another person's commercial use of a mark, or trade name
15 if such use begins after the mark has become famous and causes
16 dilution of the distinctive quality of the mark, and to obtain
17 such other relief as is provided in this section. In determining
18 whether a mark is distinctive and famous, a court may consider
19 factors such as, but not limited to:

20 (1) The degree of inherent or acquired distinctiveness
21 of the mark in this Commonwealth.

22 (2) The duration and extent of use of the mark in
23 connection with the goods and services with which the mark is
24 used.

25 (3) The duration and extent of advertising and publicity
26 of the mark in this Commonwealth.

27 (4) The geographical extent of the trading area in which
28 the mark is used.

29 (5) The channels of trade for the goods or services with
30 which the mark is used.

1 (6) The degree of recognition of the mark in the trading
2 areas and channels of trade in this Commonwealth used by the
3 mark's owner and the person against whom the injunction is
4 sought.

5 (7) The nature and extent of use of the same or similar
6 marks by third parties.

7 (8) Whether the mark is the subject of a registration in
8 this Commonwealth, or a Federal registration under the act of
9 March 3, 1881 (21 Stat. 502) or the act of February 20, 1905
10 (33 Stat. 724), repealed by the Trademark Act of 1946 (60
11 Stat. 427, 15 U.S.C. § 1051 et seq.) or on the principal
12 register.

13 In an action brought under this section, the owner of a famous
14 mark shall be entitled only to injunctive relief in this
15 Commonwealth, unless the person against whom the injunctive
16 relief is sought willfully intended to trade on the owner's
17 reputation or to cause dilution of the famous mark. If such
18 willful intent is proven, the owner shall also be entitled to
19 the remedies set forth in this chapter, subject to the
20 discretion of the court and the principles of equity. The
21 following shall not be actionable under this section:

22 (1) Fair use of a famous mark by another person in
23 comparative commercial advertising or promotion to identify
24 the competing goods or services of the owner of the famous
25 mark.

26 (2) Noncommercial use of a mark.

27 (3) All forms of new reporting and news commentary.

28 § 1125. Remedies.

29 (a) General rule.--Any owner of a mark registered under this
30 chapter may proceed by suit to enjoin the manufacture, use,

1 display or sale of any counterfeits or imitations thereof, and
2 any court of competent jurisdiction may grant injunctions to
3 restrain such manufacture, use, display or sale as may be by the
4 court deemed just and reasonable, and may, except as provided in
5 section 1123 (relating to infringement), require the defendants
6 to pay to such owner all profits derived from and all damages
7 suffered by reason of such wrongful manufacture, use, display or
8 sale, and such court may also order that any such counterfeits
9 or imitations in the possession or under the control of any
10 defendant in such case be delivered to an officer of the court
11 or to the complainant to be destroyed. The court, in its
12 discretion, may enter judgment for an amount not to exceed three
13 times such profits and damages and/or reasonable attorney fees
14 of the prevailing party in such cases where the court finds the
15 other party committed such wrongful acts with knowledge or in
16 bad faith or otherwise as according to the circumstances of the
17 case.

18 (b) Exception.--No owner of such a mark shall have such
19 right of injunction against an advertising agency, publisher of
20 newspapers, magazines or other advertising media accepting
21 authorization for the reproduction or copy of any such mark
22 innocently and in good faith in the usual course of business.

23 (c) Criminal prosecutions unaffected.--The enumeration of
24 any right or remedy in this chapter shall not affect the right
25 of a registrant to prosecute under Title 18 (relating to crimes
26 and offenses).

27 Section 2. This act shall take effect in 60 days.