

PROTECTION OF TRADEMARKS (INTER-AMERICAN)

Convention signed at Buenos Aires August 20, 1910

Senate advice and consent to ratification February 8, 1911

Ratified by the President of the United States March 21, 1911

Ratification of the United States deposited at Buenos Aires May 1, 1911

Entered into force July 31, 1912¹

Proclaimed by the President of the United States September 16, 1916

Replaced by convention of April 28, 1923,² and convention and protocol of February 20, 1929,³ as between contracting parties to the later conventions and protocol

39 Stat. 1675; Treaty Series 626

CONVENTION

PROTECTION OF TRADE-MARKS

Their Excellencies the Presidents of the United States of America, the Argentine Republic, Brazil, Chili, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay and Venezuela;

Being desirous that their respective countries may be represented at the Fourth International American Conference, have sent thereto, the following Delegates, duly authorized to approve the recommendations, resolutions, conventions and treaties which they might deem advantageous to the interest of America.

United States of America: Henry White, Enoch H. Crowder, Lewis Nixon, John Bassett Moore, Bernard Moses, Lamar C. Quintero, Paul Samuel Reinsch, David Kinley.

Argentine Republic: Antonio Bermejo, Eduardo L. Bidau, Manuel A. Montes de Oca, Epifanio Portela, Carlos Rodríguez Larreta, Carlos Salas, José A. Terry, Estanislao S. Zeballos.

United States of Brazil: Joaquim Murtinho, Domicio da Gama, José L. Almeida Nogueira, Olavo Bilac, Gastão da Cunha, Herculano de Freitas.

¹ Date of deposit of second instrument of ratification.

² TS 751, *post*, vol. 2.

³ TS 833, *post*, vol. 2.

Republic of Chili: Miguel Cruchaga Tocornal, Emilio Bello Codecido, Aníbal Cruz Díaz, Beltrán Mathieu.

Republic of Colombia: Roberto Ancízar.

Republic of Costa Rica: Alfredo Volio.

Republic of Cuba: Carlos García Vélez, Rafael Montoro y Valdés, Gonzalo de Quesada y Aróstegui, Antonio Gonzalo Pérez, José M. Carbonell.

Dominican Republic: Américo Lugo.

Republic of Ecuador: Alejandro Cárdenas.

Republic of Guatemala: Luis Toledo Herrarte, Manuel Arroyo, Mario Estrada.

Republic of Haiti: Constantin Fouchard.

Republic of Honduras: Luis Lazo Arriaga.

Mexican United States: Victoriano Salado Alvarez, Luis Pérez Verdía, Antonio Ramos Pedrueza, Roberto A. Esteva Ruiz.

Republic of Nicaragua: Manuel Pérez Alonso.

Republic of Panama: Belisario Porras.

Republic of Paraguay: Teodosio González, José P. Montero.

Republic of Peru: Eugenio Larrabure y Unánue, Carlos Alvarez Calderón, José Antonio de Lavalle y Pardo.

Republic of Salvador: Federico Mejía, Francisco Martínez Suárez.

Republic of Uruguay: Gonzalo Ramírez, Carlos M. de Pena, Antonio M. Rodríguez, Juan José Amézaga.

United States of Venezuela: Manuel Díaz Rodríguez, César Zumeta.

Who, after having presented their credentials and the same having been found in due and proper form, have agreed upon the following Convention for the Protection of Trade-Marks.

ARTICLE I

The signatory Nations enter into this Convention for the protection of trade-marks and commercial names.

ARTICLE II

Any mark duly registered in one of the signatory States shall be considered as registered also in the other States of the Union, without prejudice to the rights of third persons and to the provisions of the laws of each State governing the same.

In order to enjoy the benefit of the foregoing, the manufacturer or merchant interested in the registry of the mark must pay, in addition to the fees or charges fixed by the laws of the State in which application for registration is first made, the sum of fifty dollars gold, which sum shall cover all the expenses of both Bureaux for the international registration in all the signatory States.

ARTICLE III

The deposit of a trade-mark in one of the signatory States produces in favor of the depositor a right of priority for the period of six months, so as to enable the depositor to make the deposit in the other states.

Therefore, the deposit made subsequently and prior to the expiration of this period, cannot be annulled by acts performed in the interval, especially by another deposit, by publication, or by the use of the mark.

ARTICLE IV

The following shall be considered as trade-mark: any sign, emblem, or especial name that merchants or manufacturers may adopt or apply to their goods or products in order to distinguish them from those of other manufacturers or merchants who manufacture or deal in articles of the same kind.

ARTICLE V

The following cannot be adopted or used as trade-mark: national, provincial or municipal flags or coats-of-arms; immoral or scandalous figures; distinctive marks which may have been obtained by others or which may give rise to confusion with other marks; the general classification of articles; pictures or names of persons without their permission; and any design which may have been adopted as an emblem by any fraternal or humanitarian association.

The foregoing provisions shall be construed without prejudice to the particular provisions of the laws of each State.

ARTICLE VI

All questions which may arise regarding the priority of the deposit, or the adoption of a trade-mark, shall be decided with due regard to the date of the deposit in the State in which the first application was made therefor.

ARTICLE VII

The ownership of a trade-mark includes the right to enjoy the benefits thereof, and the right of assignment or transfer in whole or in part of its ownership or its use in accordance with the provisions of the laws of the respective States.

ARTICLE VIII

The falsification, imitation or unauthorized use of a trade-mark, as also the false representation as to the origin of a product, shall be prosecuted by the interested party in accordance with the laws of the State wherein the offence is committed.

For the effects of this article, interested parties shall be understood to be any producer, manufacturer or merchant engaged in the production, manufacture or traffic of said product, or in the case of false representation of

origin, one doing business in the locality falsely indicated as that of origin, or in the territory [in] which said locality is situated.

ARTICLE IX

Any person in any of the signatory States shall have the right to petition and obtain in any of the States, through its competent judicial authority, the annulment of the registration of a trade-mark, when he shall have made application for the registration of that mark, or of any other mark calculated to be confused, in such state, with the mark in whose annulment he is interested, upon proving:

- a) That the mark, the registration whereof he solicits, has been employed or used within the country prior to the employment or use of the mark registered by the person registering it, or by the persons from whom he has derived title;
- b) That the registrant had knowledge of the ownership, employment or use in any of the signatory states, of the mark of the applicant, the annulment whereof is sought, prior to the use of the registered mark by the registrant or by those from whom he has derived title;
- c) That the registrant had no right to the ownership, employment or use of the registered mark on the date of its deposit;
- d) That the registered mark had not been used or employed by the registrant or by his assigns within the term fixed by the laws of the State in which the registration shall have been made.

ARTICLE X

Commercial names shall be protected in all the States of the Union, without deposit or registration, whether the same form part of a trade-mark or not.

ARTICLE XI

For the purposes indicated in the present Convention a Union of American Nations is hereby constituted, which shall act through two International Bureaux established one in the city of Habana, Cuba, and the other in the city of Rio de Janeiro, Brazil, acting in complete accord with each other.

ARTICLE XII

The International Bureaux shall have the following duties:

1. To keep a register of the certificates of ownership of trade-mark issued by any of the signatory States.
2. To collect such reports and data as relate to the protection of intellectual and industrial property and to publish and circulate them among the nations of the Union, as well as to furnish them whatever special information they may need upon this subject.

3. To encourage the study and publicity of the questions relating to the protection of intellectual and industrial property; to publish for this purpose one or more official reviews, containing the full texts or digest of all documents forwarded to the Bureaux by the authorities of the signatory States.

The Governments of said States shall send to the International American Bureaux their official publications which contain the announcements of the registrations of trade-marks, and commercial names, and the grants of patents and privileges as well as the judgments rendered by the respective courts concerning the invalidity of trade marks and patents.

4. To communicate to the Governments of the Union any difficulties or obstacles that may oppose or delay the effective application of this Convention.

5. To aid the Governments of the signatory States in the preparations of international conferences for the study of legislation concerning industrial property, and to secure such alterations as it may be proper to propose in the regulations of the Union, or in treaties in force to protect industrial property. In case such conferences take place, the Directors of the Bureaux shall have the right to attend the meetings and there to express their opinions, but not to vote.

6. To present to the Governments of Cuba and of the United States of Brazil, respectively, yearly reports of their labors which shall be communicated at the same time to all the Governments of the other States of the Union.

7. To initiate and establish relations with similar Bureaux, and with the scientific and industrial associations and institutions for the exchange of publications, information and data conducive to the progress of the protection of industrial property.

8. To investigate cases where trade-marks, designs, and industrial models, have failed to obtain the recognition of registration provided for by this Convention, on the part of the authorities of any one of the States forming the Union, and to communicate the facts and reasons to the Government of the country of origin and to interested parties.

9. To cooperate as agents for each one of the Governments of the signatory States before the respective authorities for the better performance of any act tending to promote or accomplish the ends of this convention.

ARTICLE XIII

The Bureau established in the City of Habana, Cuba, shall have charge of the registration of trade-marks coming from the United States of America, Mexico, Cuba, Haiti, the Dominican Republic, El Salvador, Honduras, Nicaragua, Costa Rica, Guatemala and Panama.

The Bureau established in the City of Rio de Janeiro, shall have charge of the registration of trade-marks coming from Brazil, Uruguay, the Argen-

tine Republic, Paraguay, Bolivia, Chile, Peru, Ecuador, Venezuela, and Colombia.

ARTICLE XIV

The two International Bureaux shall be considered as one, and for the purpose of the unification of the registrations it is provided:

- a) Both shall have the same books and the same accounts kept under an identical system;
- b) Copies shall be reciprocally transmitted weekly from one to the other of all applications, registrations, communications and other documents affecting the recognition of the rights of owners of trademarks.

ARTICLE XV

The International Bureaux shall be governed by identical regulations, formed with the concurrence of the Governments of the Republic of Cuba and of the United States of Brazil and approved by all the other signatory States.

Their budgets, after being sanctioned by the said Governments, shall be defrayed by all the signatory States in the same proportion as that established for the International Bureau of the American Republics at Washington, and in this particular they shall be placed under the control of those Governments within whose territories they are established.

The International Bureaux may establish such rules of practice and procedure, not inconsistent with the terms of this convention, as they may deem necessary and proper to give effect to its provisions.

ARTICLE XVI

The Governments of the Republic of Cuba and of the United States of Brazil shall proceed with the organization of the Bureaux of the International Union as herein provided, upon the ratification of this Convention by at least two-thirds of the nations belonging to each group.

The simultaneous establishment of both Bureaux shall not be necessary; one only may be established if there be the number of adherent governments provided for above.

ARTICLE XVII

The treaties on trade-marks previously concluded by and between the signatory States, shall be substituted by the present convention from the date of its ratification, as far as the relations between the signatory States are concerned.

ARTICLE XVIII

The ratifications or adhesion of the American States to the present Convention shall be communicated to the Government of the Argentine Republic,

which shall lay them before the other States of the Union. These communications shall take the place of an exchange of ratifications.

ARTICLE XIX

Any signatory State that may see fit to withdraw from the present Convention shall so notify the Government of the Argentine Republic, which shall communicate this fact to the other States of the Union, and one year after the receipt of such communication this Convention shall cease with regard to the State that shall have withdrawn.

In witness whereof, the Plenipotentiaries and Delegates sign this Convention and affix to it the Seal of the Fourth International American Conference.

Made and signed in the City of Buenos Aires, on the twentieth day of August, in the year one thousand nine hundred and ten, in Spanish, English, Portuguese and French, and filed in the Ministry of Foreign Affairs of the Argentine Republic in order that certified copies may be made to be forwarded through appropriate diplomatic channels to each one of the signatory Nations.

For the United States of America:

HENRY WHITE
ENOCH H. CROWDER
LEWIS NIXON
JOHN BASSETT MOORE
BERNARD MOSES
LAMAR C. QUINTERO
PAUL S. REINSCH
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For the Argentine Republic:

ANTONIO BERMEJO
EDUARDO L. BIDAU
MANUEL A. MONTES DE OCA
EPIFANIO PORTELA
CARLOS SALAS
JOSÉ A. TERRY
ESTANISLAO S. ZEBALLOS

For the United States of Brazil:

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EMILIO BELLO CODECIDO
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For the Republic of Costa Rica:

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ALEJANDRO CÁRDENAS

For the Republic of Guatemala:

LUIS TOLEDO HERRARTE
MANUEL ARROYO
MARIO ESTRADA

For the Republic of Haiti:

CONSTANTIN FOUCARD

For the Republic of Honduras:

LUIS LAZO ARRIAGA

For the Mexican United States:

VICTORIANO SALADO ALVAREZ
LUIS PÉREZ VERDÍA
ANTONIO RAMOS PEDRUEZA
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For the Republic of Nicaragua:

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For the Republic of Panama:

BELISARIO PORRAS

For the Republic of Paraguay:

TEODOSIO GONZÁLEZ
JOSÉ P. MONTERO

For the Republic of Peru:

EUGENIO LARRABURE Y UNÁNUE
CARLOS ALVAREZ CALDERÓN
JOSÉ ANTONIO DE LAVALLE Y PARDO

For the Republic of Salvador:

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FRANCISCO MARTÍNEZ SUÁREZ

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