FOURTEENTH SESSION.

Chap. CXXIX.—An Act concerning Trade Marks and Names.

[Approved April 3, 1863.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. When a person who has complied with the provisions of section two of this Act uses any peculiar name, letters, marks, device, figures, or other trade mark or name, cut, stamped, cast, or engraved upon, or in any manner attached to, or connected with, any article, or with the covering or wrapping thereof, manufactured or sold by him, to designate it as an article of a peculiar kind, character, or quality, or as an article manufactured or sold by him, or if such trade mark or name be so connected with any bottle, box, cask, or other thing used for holding such article, it shall be unlawful for any other person, without his consent, to use said trade mark or name, or any similar trade mark or name, for the purpose of representing
any article to have been manufactured or sold by the person rightfully using such trade mark or name, or to be of the same kind, character, or quality, as that manufactured or sold by the person rightfully using such trade mark or name.

Sec. 2. Any person wishing to secure the exclusive use of any such trade mark or name, under the provisions of this Act, shall file his claim to the same and a copy or description of such trade mark or name with the Secretary of State.

Sec. 3. The Secretary of State shall keep a record of all trade marks or names filed in his office, with the date when filed, and name of claimant, for public examination. A fee of five dollars shall be paid to the Secretary of State, at the time of filing each copy and description of any trade mark or name, by the party claiming the use and benefit of the same. It is hereby made the duty of the Secretary of State to pay all fees accruing under this section into the State Library Fund.

Sec. 4. Any person violating the provisions of the first section of this Act shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not less than five days, nor more than thirty days, or by both such fine and imprisonment; and he shall be further liable to any party aggrieved by such violation for all damages actually incurred, to be recovered as a debt in any court of competent jurisdiction.

Sec. 5. It shall be unlawful for any person to counterfeit any trade mark or name, or to have or use a counterfeit trade mark or name, or sell any article bearing or having in any way connected with it, a counterfeit trade mark or name which has been filed according to section two of this Act, knowing it to be such, or having good and sufficient reason to know it to be such. Every alteration or imitation of any trade mark or name which has been filed according to section two of this Act, which shall be made, applied, or used, or which shall cause any trade mark or name, with such alteration or imitation, to resemble any genuine trade mark or name, so as to be calculated or likely to deceive, shall be deemed to be a counterfeit trade mark or name, within the meaning of this Act, and every act of making, applying, or otherwise using any such alteration or imitation as aforesaid, done by any person, such person shall be deemed to be guilty of counterfeiting a trade mark or name, or knowingly using a counterfeit trade mark or name, within the meaning of this Act. Every person violating the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section four of this Act.

Sec. 6. Every person who shall have or use any cask, bottle, vessel, case, cover, label, or other thing, bearing or having in any way connected with it the trade mark or name of another which has been filed, according to section two of this Act, for the purpose of disposing of any article, with intent to deceive or defraud, other than that which said cask, bottle, vessel, case, cover, label, or other thing, originally contained or was connected with by the owner of said trade mark or name, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section four of this Act.
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SEC. 7. Every person who shall aid, or abet, or counsel in, or procure the commission of any offence which is by this Act made a misdemeanor, shall be deemed and held to be guilty of a misdemeanor, and shall be subject to the penalties provided in section four of this Act.

SEC. 8. This Act shall not be so construed as to permit any person to file, without authority from the owner, any trade mark or name owned or previously used by another person, nor in any way to interfere with, hinder, prevent, or restrain, the importation or sale, by any person, of genuine articles of merchandise, having or belonging thereto genuine trade marks or names, manufactured or sold in other States or countries.

SEC. 9. Any person who has first adopted and used a trade mark, mark or name, whether within or beyond the limits of this State, shall be considered its original owner, and the ownership of the mark or name may be transferred in the same manner as personal property, and shall be entitled to the same protection by suits at law as other personal property.

SEC. 10. Every person filing with the Secretary of State, as claim, provided in section two of this Act, his claim to any trade mark or name, shall have attached to the copy and description thereof an affidavit, duly certified to by any officer authorized by the laws of this State to take acknowledgements of conveyances, setting forth that he (or the firm or corporation of which he is a member) is the exclusive owner or agent of the accompanying trade mark or name.

SEC. 11. Any Court of competent jurisdiction may restrain, by injunction, any use of trade marks or names in violation of any section of this Act.

SEC. 12. No person, otherwise competent as a witness, shall be disqualified or excused from testifying as a witness, either before a Grand Jury or a Petit Jury, or otherwise, concerning any offence mentioned in this Act, on the ground that his testimony may criminate himself; but such testimony shall be reduced to writing, and no indictment or prosecution shall afterwards be brought against him for said offences concerning which he has testified as a witness.

SEC. 13. Any witness called to give testimony on behalf of the State, before any Grand Jury, or before any Court of Justice, shall be required to give such testimony, which shall be reduced to writing, and such witness shall not be liable to suffer any punishment or forfeiture for any offence against the provisions of this Act so disclosed.

SEC. 14. An Act entitled an Act concerning trade marks, Act repealed passed May eighteenth, eighteen hundred and sixty-two, is hereby repealed.

SEC. 15. This Act shall take effect and be in force from and after the first day of May, one thousand eight hundred and sixty-three.