

HOUSE . . . . No. 1157.

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Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, April 15, 1895.

The committee on the Judiciary, to whom was referred the bill (introduced on leave) to more effectually protect manufacturers from the use of counterfeit labels and stamps (House, No. 149), report that the bill ought to pass in the accompanying new draft.

For the Committee,

FRANCIS C. LOWELL.

## Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Ninety-five.

### AN ACT

To more effectually protect Manufacturers from the Use of Counterfeit Labels and Stamps.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Any person or association may adopt a  
2 label, trademark, stamp or form of advertisement, and  
3 may file the same for record in the office of the secretary  
4 of the Commonwealth by leaving two copies, counter-  
5 parts or fac similes thereof, with said secretary; and shall  
6 file therewith a certificate specifying the name or names  
7 of the person, association or union so filing such label,  
8 trademark, stamp or form of advertisement, his or its  
9 residence, location or place of business, the class of mer-  
10 chandise and the particular description of goods com-  
11 prised in such class to which it has been or is intended to  
12 be appropriated, and the length of time, if any, during  
13 which it has been in use. Such certificate shall be ac-  
14 companied by a written declaration, verified under oath  
15 by the person or some officer of the association or union  
16 by whom it is filed, to the effect that the party so filing  
17 such label, trademark, stamp or form of advertisement

18 has a right to the use of the same, and that no other per-  
19 son, firm, association, union or corporation has the right  
20 to such use, either in the identical form or in any such  
21 near resemblance thereto as may be calculated to deceive,  
22 and that the fac similes, copies or counterparts filed there-  
23 with are true and correct. There shall be paid for such  
24 filing the fee of one dollar. Said secretary shall deliver  
25 to such person, association or union so filing the same a  
26 duly attested certificate of the record of the same, for  
27 which he shall receive the fee of one dollar. Such cer-  
28 tificate of record shall in all suits and prosecutions under  
29 this act be sufficient proof of the adoption of such label,  
30 stamp, trade-mark or form of advertisement. No label,  
31 trade-mark, stamp or form of advertisement shall be re-  
32 corded that would reasonably be mistaken for a label,  
33 trade-mark, stamp or form of advertisement already on  
34 record.

1 SECT. 2. The secretary of the Commonwealth is  
2 authorized to make rules and regulations, and prescribe  
3 forms for the filing of labels, trade-marks and forms of  
4 advertisement under the provision of this act.

1 SECT. 3. The owner of any label, trade-mark, stamp  
2 or form of advertisement recorded as provided in section  
3 one of this act, may proceed by suit to enjoin the manu-  
4 facture, use or sale of any such counterfeits or imitations,  
5 and all courts having jurisdiction thereof shall grant in-  
6 junctions to restrain such manufacture, use or sale, and  
7 shall award the complainant in such suit such dam-  
8 ages resulting from such wrongful manufacture, use or  
9 sale as may by said court be deemed just and reasonable,  
10 and shall require the defendant to pay to such person,  
11 association or union the profits derived from such wrong-  
12 ful manufacture, use or sale; and such court may also

13 order that all such counterfeits or imitations in the pos-  
14 session or under the control of any defendant in such case  
15 be delivered to an officer of the court, or to the com-  
16 plainant, to be destroyed. In all cases where such asso-  
17 ciation or union is not incorporated, suits under this act  
18 may be commenced and prosecuted by an officer of such  
19 association or union, on behalf of and for the use of such  
20 association or union, and every member of such associa-  
21 tion or union shall be liable for costs in any such pro-  
22 ceedings.

1 SECT. 4. Every person who, without authority from  
2 the owner of a label, trade-mark, stamp or form of ad-  
3 vertisement recorded as aforesaid, shall make or use any  
4 counterfeit or imitation of such label, trade-mark, stamp  
5 or form of advertisement, knowing the same to be coun-  
6 terfeit or imitation, and every person who, without  
7 authority from such owner, shall affix, impress or use  
8 such label, trade-mark, stamp or form of advertisement  
9 upon any goods shall be punished by a fine not exceeding  
10 two hundred dollars, or by imprisonment not exceeding  
11 one year or by both such fine and imprisonment.

1 SECT. 5. Every person who shall sell goods upon  
2 which such label, trade-mark, stamp or form of adver-  
3 tisement recorded as aforesaid, or any counterfeit or imi-  
4 tation thereof shall be unlawfully impressed, affixed or  
5 used, shall be punished by a fine not exceeding two hun-  
6 dred dollars, or by imprisonment not exceeding one  
7 year, or by both such fine and imprisonment, unless such  
8 person shall show that at the time such goods came into  
9 his possession he did not know that the impression, affix-  
10 ing or use of such label, trade-mark, stamp or form of  
11 advertisement was unlawful.

1   SECT. 6. In any suit or prosecution under the pro-  
2   visions of this act the defendant may show that he or it  
3   was the owner of such label, trade-mark or form of ad-  
4   vertisement, prior to its being filed under the provisions  
5   of this act, and that it has been filed wrongfully or with-  
6   out right, by some other person, association or union.

1   SECT. 7. Chapter four hundred and forty-three of the  
2   acts of the year eighteen hundred and ninety-three is  
3   hereby repealed. But this repeal shall not affect any  
4   legal proceedings, civil or criminal, instituted under or  
5   by virtue of said act ; and all labels, trade-marks, stamps  
6   and advertisements already recorded according to the  
7   provisions of section four of said chapter, shall be deemed  
8   to have been duly recorded according to the provisions  
9   of this act.





