

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of S. 1260, a bill to make technical corrections in title 17, United States Code, and other laws, and urge the House to adopt the measure.

This bill is nearly the same as H.R. 1189, a bill to make technical corrections to title 17, United States Code, and other laws, which passed the House under suspension of the rules on April 13, 1999. This legislation makes significant and necessary improvements to the Copyright Act.

The Subcommittee on Courts and Intellectual Property and the Committee on the Judiciary support S. 1260 in a bipartisan way. I urge its adoption today.

Mr. Speaker, I reserve the balance of my time.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from California (Mr. BERMAN), the ranking member of the subcommittee, is delayed and asked me to stand in for him, which I am glad to do.

Mr. Speaker, I rise in support of S. 1260, a bill making technical corrections in title 17 of the Copyright Act. If ever a bill were truly technical, this is it.

The House Committee on the Judiciary labored long, hard, and successfully last Congress to reduce landmark legislation in the copyright area. This past spring we brought to the House floor H.R. 1189, making a number of technical corrections to the copyright code. As we noted then, the brevity of that bill was testimony to a job well done by all concerned in our efforts last Congress.

Subsequent to passage in this body of H.R. 1189, a small number of additional glitches were identified by our staffs and the staff of the Copyright Office. S. 1260 differs from our House-passed bill for the simple reason that it makes several additional and necessary technical corrections.

I commend the bill to my colleagues and urge its passage. I commend this technical corrections bill to my colleagues.

Mr. Speaker, I yield back the balance of my time.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the gentleman from Maryland (Mr. CUMMINGS) mentioned, the gentleman from California (Mr. BERMAN) is not able to be with us today. But the gentleman from California (Mr. BERMAN), the ranking member, has worked very closely with me on this bill. He concurs, and I appreciate the effort that he has given.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. COBLE) that the House suspend the rules and pass the Senate bill, S. 1260.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

#### TRADEMARK AMENDMENTS ACT OF 1999

Mr. COBLE. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1259) to amend the Trademark Act of 1946 relating to dilution of famous marks, and for other purposes.

The Clerk read as follows:

S. 1259

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Trademark Amendments Act of 1999".

#### SEC. 2. DILUTION AS A GROUNDS FOR OPPOSITION AND CANCELATION.

(a) REGISTRABLE MARKS.—Section 2 of the Act entitled "An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes" (in this Act referred to as the "Trademark Act of 1946") (15 U.S.C. 1052) is amended by adding at the end the following flush sentences: "A mark which when used would cause dilution under section 43(c) may be refused registration only pursuant to a proceeding brought under section 13. A registration for a mark which when used would cause dilution under section 43(c) may be canceled pursuant to a proceeding brought under either section 14 or section 24."

(b) OPPOSITION.—Section 13(a) of the Trademark Act of 1946 (15 U.S.C. 1063(a)) is amended in the first sentence by inserting "including as a result of dilution under section 43(c)," after "principal register".

(c) PETITIONS TO CANCEL REGISTRATIONS.—Section 14 of the Trademark Act of 1946 (15 U.S.C. 1064) is amended in the matter preceding paragraph (1) by inserting "including as a result of dilution under section 43(c)," after "damaged".

(d) CANCELLATION.—Section 24 of the Trademark Act of 1946 (15 U.S.C. 1092) is amended in the second sentence by inserting "including as a result of dilution under section 43(c)," after "register".

(e) EFFECTIVE DATE AND APPLICATION.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply only to any application for registration filed on or after January 16, 1996.

#### SEC. 3. REMEDIES IN CASES OF DILUTION OF FAMOUS MARKS.

(a) INJUNCTIONS.—(1) Section 34(a) of the Trademark Act of 1946 (15 U.S.C. 1116(a)) is amended in the first sentence by striking "section 43(a)" and inserting "subsection (a) or (c) of section 43".

(2) Section 43(c)(2) of the Trademark Act of 1946 (15 U.S.C. 1125(c)(2)) is amended in the first sentence by inserting "as set forth in section 34" after "relief".

(b) DAMAGES.—Section 35(a) of the Trademark Act of 1946 (15 U.S.C. 1117(a)) is amended in the first sentence by striking "or a violation under section 43(a)," and inserting "a violation under section 43(a), or a willful violation under section 43(c)."

(c) DESTRUCTION OF ARTICLES.—Section 36 of the Trademark Act of 1946 (15 U.S.C. 1118) is amended in the first sentence—

(1) by striking "or a violation under section 43(a)," and inserting "a violation under

section 43(a), or a willful violation under section 43(c)."; and

(2) by inserting after "in the case of a violation of section 43(a)" the following: "or a willful violation under section 43(c)".

(d) EFFECTIVE DATE AND APPLICATION.—The amendments made by this section shall take effect on the date of enactment of this Act and shall not apply to any civil action pending on such date of enactment.

#### SEC. 4. LIABILITY OF GOVERNMENTS FOR TRADEMARK INFRINGEMENT AND DILUTION.

(a) CIVIL ACTIONS.—Section 32 of the Trademark Act of 1946 (15 U.S.C. 1114) is amended in the last undesignated paragraph in paragraph (1)—

(1) in the first sentence by inserting after "includes" the following: "the United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, or other persons acting for the United States and with the authorization and consent of the United States, and"; and

(2) in the second sentence by striking "Any" and inserting "The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, and any".

(b) WAIVER OF SOVEREIGN IMMUNITY.—Section 40 of the Trademark Act of 1946 (15 U.S.C. 1122) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) by striking "SEC. 40. (a) Any State" and inserting the following:

"SEC. 40. (a) WAIVER OF SOVEREIGN IMMUNITY BY THE UNITED STATES.—The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, shall not be immune from suit in Federal or State court by any person, including any governmental or nongovernmental entity, for any violation under this Act.

"(b) WAIVER OF SOVEREIGN IMMUNITY BY STATES.—Any State"; and

(3) in the first sentence of subsection (c), as so redesignated—

(A) by striking "subsection (a) for a violation described in that subsection" and inserting "subsection (a) or (b) for a violation described therein"; and

(B) by inserting after "other than" the following: "the United States or any agency or instrumentality thereof, or any individual, firm, corporation, or other person acting for the United States and with authorization and consent of the United States, or".

(c) DEFINITION.—Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127) is amended by inserting between the 2 paragraphs relating to the definition of "person" the following:

"The term 'person' also includes the United States, any agency or instrumentality thereof, or any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States. The United States, any agency or instrumentality thereof, and any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity."

#### SEC. 5. CIVIL ACTIONS FOR TRADE DRESS INFRINGEMENT.

Section 43(a) of the Trademark Act of 1946 (15 U.S.C. 1125(a)) is amended by adding at the end the following:

"(3) In a civil action for trade dress infringement under this Act for trade dress not

registered on the principal register, the person who asserts trade dress protection has the burden of proving that the matter sought to be protected is not functional.”.

#### SEC. 6. TECHNICAL AMENDMENTS.

(a) ASSIGNMENT OF MARKS.—Section 10 of the Trademark Act of 1946 (15 U.S.C. 1060) is amended—

(1) by striking “subsequent purchase” in the second to last sentence and inserting “assignment”;

(2) in the first sentence by striking “mark,” and inserting “mark.”; and

(3) in the third sentence by striking the second period at the end.

(b) ADDITIONAL CLERICAL AMENDMENTS.—The text and title of the Trademark Act of 1946 are amended by striking “trade-marks” each place it appears and inserting “trade-marks”.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. COBLE) and the gentleman from Maryland (Mr. CUMMINGS) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

#### GENERAL LEAVE

Mr. COBLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on S. 1259.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

I rise today, Mr. Speaker, in support of S. 1259, the Trademark Amendments Act of 1999, and urge the House to adopt the measure.

This bill is nearly identical to H.R. 1565, the Trademark Amendments Act of 1999, which the House Committee on the Judiciary favorably reported on May 26 of this year.

This legislation makes significant and necessary improvements in the trademark law.

The Subcommittee on Courts and Intellectual Property and the Committee on the Judiciary support S. 1259 in a bipartisan manner. I urge its adoption today.

Mr. Speaker, I reserve the balance of my time.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 1259, the Senate trademark bill that is substantially similar to the bill reported out of the Committee on the Judiciary earlier this year, H.R. 1565.

This legislation is a necessary follow-up to the Federal Trademark Dilution Act of 1995, which was enacted last Congress and which gave a Federal cause of action to holders of famous trademarks for dilution.

The bill before us today is necessary to clear up certain issues in the interpretation of the dilution act which the Federal courts have grappled with since its enactment.

In particular, S. 1259 would provide holders of famous marks with a right to oppose or seek cancellation of a

mark that would cause dilution as provided in the dilution act.

The legislation enacted in the 105th Congress authorizes injunctive relief after the harm has occurred, while the legislation before us today will allow the right to oppose or seek cancellation of a mark hopefully before harm has occurred.

While we today take up the Senate bill, it is substantially the same as the House bill on which a hearing and committee markup occurred earlier this year.

I urge my colleagues to support S. 1259.

Mr. Speaker, I yield back the balance of my time.

Mr. COBLE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. COBLE) that the House suspend the rules and pass the Senate bill, S. 1259.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

#### PATENT FEE INTEGRITY AND INNOVATION PROTECTION ACT OF 1999

Mr. COBLE. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1258) to authorize funds for the payment of salaries and expenses of the Patent and Trademark Office, and for other purposes.

The Clerk read as follows:

S. 1258

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Patent Fee Integrity and Innovation Protection Act of 1999”.

#### SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be made available for the payment of salaries and necessary expenses of the Patent and Trademark Office in fiscal year 2000, \$116,000,000 from fees collected in fiscal year 1999 and such fees as are collected in fiscal year 2000 pursuant to title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 et seq.), except that the Commissioner is not authorized to charge and collect fees to cover the accrued indirect personnel costs associated with post-retirement health and life insurance of officers and employees of the Patent and Trademark Office other than those charged and collected pursuant to title 35, United States Code, and the Trademark Act of 1946.

#### SEC. 3. EFFECTIVE DATE.

This Act shall take effect on October 1, 1999.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. COBLE) and the gentleman from Maryland (Mr. CUMMINGS) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

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#### GENERAL LEAVE

Mr. COBLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the bill under consideration and to insert extraneous material in the RECORD.

The SPEAKER pro tempore (Mr. PEASE). Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

I rise today, Mr. Speaker, in support of S. 1258, the Patent Fee Integrity and Innovation Protection Act, and urge the House to adopt the measure.

This bill is identical to H.R. 1225, the Patent and Trademark Office Reauthorization Act for Fiscal Year 2000, which the House Committee on the Judiciary favorably reported on June 9. This legislation is premised on the same policy goal as last year's version, namely, to prevent the diversion of revenue generated by special surcharges from the Patent and Trademark Office. The point of S. 1258 is straightforward and necessary, to allow the agency to keep all the revenue it raises in user fees to benefit American inventors and trademark holders. The Subcommittee on Courts and Intellectual Property and the Committee on the Judiciary support S. 1258 in a bipartisan manner, and I urge its adoption today.

Mr. Speaker, I reserve the balance of my time.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on behalf of the minority, I am happy to rise in support of S. 1258, a bill to reauthorize the Patent and Trademark Office.

S. 1258, like H.R. 1225, reflects bipartisan opposition to surcharges on patent applications and support for fees that will fully fund the PTO and its obligations to its retirees. The bill explicitly authorizes the use of carryover funds to pay for the expense of the Employees Health Benefits and Life Insurance Funds.

The Patent and Trademark Office is 100 percent funded through application and user fees which all too often in the past have been diverted to other agencies and programs to the detriment of the efficient function of our patent and trademark systems. S. 1258, like Public Law 105-358 from the last Congress, reflects our resolve that this practice be firmly a matter of past history.

Mr. Speaker, I yield back the balance of my time.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume. Not unlike S. 1260 regarding the gentleman from California (Mr. BERMAN), the gentleman from California has also worked very closely with us on this bill and the previous bill and concurs in its passage.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.