

SEC. 5. LIMITATION OF LIABILITY.

Section 39 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”, approved July 5, 1946, (commonly referred to as the “Trademark Act of 1946”) (15 U.S.C. 1121) is amended by adding at the end the following:

“(c)(1) In this subsection, the term ‘Internet’ has the meaning given that term in section 230(f)(1) of the Communications Act of 1934 (47 U.S.C. 230(f)(1)).

“(2)(A) An Internet service provider, domain name registrar, or registry described in subparagraph (B) shall not be liable for monetary relief to any person for a removal or transfer described in that subparagraph, without regard to whether the domain name or other identifier is ultimately determined to be infringing or dilutive.

“(B) An Internet service provider, domain name registrar, or registry referred to in subparagraph (A) is a provider, registrar, or registry that, upon receipt of a written notice from the owner of a trademark registered in the Patent and Trademark Office, removes from domain name service (DNS) service or registration, or transfers to the trademark owner, an Internet domain name or other identifier of an online location alleged to be infringing or dilutive, in compliance with—

“(i) a court order; or

“(ii) the reasonable implementation of a policy prohibiting the unauthorized registration or use of another’s registered trademark as an Internet domain name or other identifier of an online location.”.

THE ANTICYBERSQUATTING CONSUMER PROTECTION ACT—SECTION-BY-SECTION ANALYSIS

A bill to protect consumers and promote electronic commerce by amending certain trademark infringement, dilution, and counterfeiting laws, and for other purposes.

SECTION 1: SHORT TITLE

This Act may be cited as the “Anticybersquatting Consumer Protection Act.”

SECTION 2: FINDINGS

This section sets out Congressional findings concerning the effect of “unauthorized registration or use of trademarks as Internet domain names or other identifiers of online locations” (“cybersquatting”). Cyber-squatting (1) results in consumer fraud, (2) impairs electronic interstate commerce, and (3) deprives trademark owners of revenue and consumer goodwill.

SECTION 3: TRADEMARK REMEDIES**(a) Recovery for violation of rights**

The Trademark Act of 1946 (15 U.S.C. 1117) shall incorporate the definition of “Internet” used in the Communications Act of 1934 (47 U.S.C. 230 (f) (1)).

An “identifier” refers to an Internet domain name or another identifier of an online location that is (i) the plaintiff’s trademark, or (ii) so sufficiently similar to the plaintiff’s trademark as to be likely to “cause confusion or mistake,” “deceive,” or “cause dilution of the distinctive quality of a famous trademark.”

This section expands civil penalties for cybersquatting by providing that before final judgment in a case involving the registration or use of an identifier, a plaintiff may—instead of seeking actual damages or profits—elect to recover statutory damages of at least \$1,000, but not more than \$100,000 (at least \$3,000, but not more than \$300,000 if court finds that the registration or use of the trademark was willful) per trademark per identifier, as the court considers just. Furthermore, the plaintiff may recover full costs and reasonable attorney’s fees.

(b) Remedies for dilution of famous marks

This section amends the Trademark Act of 1946 (15 U.S.C. 1125 (c) (2)) by making the remedies set forth in section 3 (a) also available for the willful dilution of famous marks or trade on the owner’s reputation.

SECTION 4: CRIMINAL USE OF COUNTERFEIT TRADEMARK**(a) In general**

This section amends 18 U.S.C. 2320 (a) (“Trafficking in Counterfeit Goods or Services”) by adding criminal penalties for the use of a counterfeit trademark on the Internet. Like section 3 (a), this section incorporates the definition of Internet used in the Communications Act of 1934 (47 U.S.C. 230 (f) (1)). It also incorporates the same definition of “identifier” found in section 3 (a).

Under this section, whoever knowingly and fraudulently or in bad faith registers or uses the trademark of another would be guilty of a Class B misdemeanor. Repeat offenders would be guilty of Class E felony.

Prima facie evidence that a registration or use was fraudulent or in bad faith would require satisfaction of the following elements:

(1) the defendant registered or used an identifier with intent to (a) cause confusion or mistake, deceive, or cause dilution of the distinctive quality of a famous trademark, or (b) with intention of diverting consumers from the trademark owner to the defendant; and

(2) the defendant provided false information in its application to register the identifier or offered to transfer the identifier’s registration to the trademark owner or other person or entity for something of value; and

(3) the identifier is not the defendant’s legal first name or surname or the defendant had not used the identifier in legitimate commerce before the earlier of either the first use of the registered trademark or the effective date of its registration.

(b) Sentencing guidelines**(1) In general**

The United States Sentencing Commission shall provide for penalties for the criminal use of counterfeit trademarks by amending the sentencing guidelines in accordance with the guidelines for crimes against intellectual property (18 U.S.C. 2320).

(2) Factors for consideration

The United States Sentencing Commission shall take into account the Findings promulgated in Section 2 and ensure that the amendments to the sentencing guidelines adequately provide penalties for the crimes described in this Act.

SECTION 5: LIMITATION OF LIABILITY

An Internet service provider (ISP) or domain name registrar shall not be liable for monetary damages to any person if it removes an infringing identifier from domain name server (DNS) service or from registration, or transfers it to the trademark owner: (1) upon written notice from the trademark owner and (2) in compliance with either a court order or the reasonable implementation of a policy prohibiting the unauthorized registration or use of another’s registered trademark.

This limitation shall apply without regard to whether the domain name or other identifier is ultimately determined to be infringing or dilutive.

INFORMATION TECHNOLOGY INDUSTRY COUNCIL

Washington, DC, June 21, 1999.

Hon. SPENCER ABRAHAM,
U.S. Senate, Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR ABRAHAM: On behalf of ITI’s member companies, I am writing to thank

you, Senator Hatch and Senator Torricelli for your leadership in introducing the Anti-Cybersquatting Consumer Protection Act today.

ITI is the association of leading U.S. providers of information technology products and services. It advocates growing the economy through innovation and supports free-market policies. ITI members had worldwide revenue of more than \$440 billion in 1998 and employ more than 1.2 million people in the United States.

Over the past several years, trademark holders have found it difficult and expensive to prevent infringement and dilution of their marks online, especially as “cybersquatters” have made a cottage industry out of intentionally registering others’ trademarks as domain names and seeking to sell the domain name back to the rightful owners. Such activity damages electronic commerce by sowing confusion among consumers and other Internet users.

While some ITI members have concerns about the bill’s criminal provisions, we believe the importance of federal legislation to stop cybersquatting should not be underestimated and we look forward to working with you as this legislation is considered by the Senate.

Best regards,

PHILLIP BOND,
Senior Vice President,
Government Relations.

ADDITIONAL COSPONSORS

S. 25

At the request of Ms. LANDRIEU, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 25, a bill to provide Coastal Impact Assistance to State and local governments, to amend the Outer Continental Shelf Lands Act Amendments of 1978, the Land and Water Conservation Fund Act of 1965, the Urban Park and Recreation Recovery Act, and the Federal Aid in Wildlife Restoration Act (commonly referred to as the Pittman-Robertson Act) to establish a fund to meet the outdoor conservation and recreation needs of the American people, and for other purposes.

S. 37

At the request of Mr. GRASSLEY, the names of the Senator from Minnesota (Mr. GRAMS) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 37, a bill to amend title XVIII of the Social Security Act to repeal the restriction on payment for certain hospital discharges to post-acute care imposed by section 4407 of the Balanced Budget Act of 1997.

S. 57

At the request of Ms. MIKULSKI, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 57, a bill to amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees and annuitants, and for other purposes.

S. 61

At the request of Mr. DEWINE, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 61, a bill to amend the Tariff Act of 1930 to eliminate disincentives to fair trade conditions.

S. 71

At the request of Ms. SNOWE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 71, a bill to amend title 38, United States Code, to establish a presumption of service-connection for certain veterans with Hepatitis C, and for other purposes.

S. 115

At the request of Ms. SNOWE, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 115, a bill to require that health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

S. 285

At the request of Mr. MCCAIN, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 285, a bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test.

S. 288

At the request of Mr. JEFFORDS, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 288, a bill to amend the Internal Revenue Code of 1986 to exclude from income certain amounts received under the National Health Service Corps Scholarship Program and F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program.

S. 311

At the request of Mr. MCCAIN, the names of the Senator from Maine (Ms. SNOWE) and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 311, a bill to authorize the Disabled Veterans' LIFE Memorial Foundation to establish a memorial in the District of Columbia or its environs, and for other purposes.

S. 345

At the request of Mr. ALLARD, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 345, a bill to amend the Animal Welfare Act to remove the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful.

S. 459

At the request of Mr. BREAUX, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 459, a bill to amend the Internal Revenue Code of 1986 to increase the State ceiling on private activity bonds.

S. 512

At the request of Mr. GORTON, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 512, a bill to amend the

Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the Department of Health and Human Services with respect to research on autism.

S. 514

At the request of Mr. COCHRAN, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 514, a bill to improve the National Writing Project.

S. 542

At the request of Mr. ABRAHAM, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 542, a bill to amend the Internal Revenue Code of 1986 to expand the deduction for computer donations to schools and allow a tax credit for donated computers.

S. 664

At the request of Mr. CHAFEE, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 664, a bill to amend the Internal Revenue Code of 1986 to provide a credit against income tax to individuals who rehabilitate historic homes or who are the first purchasers of rehabilitated historic homes for use as a principal residence.

S. 676

At the request of Mr. CAMPBELL, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 676, a bill to locate and secure the return of Zachary Baumel, a citizen of the United States, and other Israeli soldiers missing in action.

S. 789

At the request of Mr. MCCAIN, the names of the Senator from Georgia (Mr. COVERDELL), and the Senator from New Jersey (Mr. TORRICELLI) were added as cosponsors of S. 789, a bill to amend title 10, United States Code, to authorize payment of special compensation to certain severely disabled uniformed services retirees.

S. 796

At the request of Mr. WELLSTONE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 796, a bill to provide for full parity with respect to health insurance coverage for certain severe biologically based mental illnesses and to prohibit limits on the number of mental illness-related hospital days and outpatient visits that are covered for all mental illnesses.

S. 801

At the request of Mr. SANTORUM, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 801, a bill to amend the Internal Revenue Code of 1986 to reduce the tax on beer to its pre-1991 level.

S. 821

At the request of Mr. LAUTENBERG, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 821, a bill to provide for the collection of data on traffic stops.

S. 835

At the request of Mr. CHAFEE, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 835, a bill to encourage the restoration of estuary habitat through more efficient project financing and enhanced coordination of Federal and non-Federal restoration programs, and for other purposes.

S. 878

At the request of Mr. TORRICELLI, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 878, a bill to amend the Federal Water Pollution Control Act to permit grants for the national estuary program to be used for the development and implementation of a comprehensive conservation and management plan, to reauthorize appropriations to carry out the program, and for other purposes.

S. 951

At the request of Mr. DOMENICI, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 951, a bill to amend the Internal Revenue Code of 1986 to establish a permanent tax incentive for research and development, and for other purposes.

S. 978

At the request of Mr. WARNER, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Alabama [Mr. SESSIONS] were added as cosponsors of S. 978, a bill to specify that the legal public holiday known as Washington's Birthday be called by that name.

S. 1024

At the request of Mr. MOYNIHAN, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 1024, a bill to amend title XVIII of the Social Security Act to carve out from payments to Medicare+Choice organizations amounts attributable to disproportionate share hospital payments and pay such amounts directly to those disproportionate share hospitals in which their enrollees receive care.

S. 1044

At the request of Mr. KENNEDY, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 1044, a bill to require coverage for colorectal cancer screenings.

S. 1131

At the request of Mr. HAGEL, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1131, a bill to promote research into, and the development of an ultimate cure for, the disease known as Fragile X.

S. 1185

At the request of Mr. ABRAHAM, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 1185, a bill to provide small business certain protections from litigation excesses and to limit the product liability of non-manufacturer product sellers.

S. 1187

At the request of Mr. DORGAN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1187, a bill to require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the Lewis and Clark Expedition, and for other purposes.

S. 1207

At the request of Mr. KOHL, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1207, a bill to amend the Internal Revenue Code of 1986 to ensure that income averaging for farmers not increase a farmer's liability for the alternative minimum tax.

S. 1244

At the request of Mr. THOMPSON, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1244, a bill to establish a 3-year pilot project for the General Accounting Office to report to Congress on economically significant rules of Federal agencies, and for other purposes.

SENATE CONCURRENT RESOLUTION 36

At the request of Mr. SCHUMER, the names of the Senator from Iowa (Mr. GRASSLEY), and the Senator from Pennsylvania (Mr. SANTORUM) were added as cosponsors of Senate Concurrent Resolution 36, a concurrent resolution condemning Palestinian efforts to revive the original Palestine partition plan of November 29, 1947, and condemning the United Nations Commission on Human Rights for its April 27, 1999, resolution endorsing Palestinian self-determination on the basis of the original Palestine partition plan.

SENATE CONCURRENT RESOLUTION 39

At the request of Mr. SCHUMER, the names of the Senator from Colorado (Mr. ALLARD), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Kansas (Mr. BROWNBACK), the Senator from California (Mrs. FEINSTEIN), the Senator from Minnesota (Mr. GRAMS), the Senator from Nebraska (Mr. HAGEL), the Senator from Iowa (Mr. HARKIN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from New York (Mr. MOYNIHAN), the Senator from Rhode Island (Mr. REED), the Senator from Nevada (Mr. REID), the Senator from Delaware (Mr. ROTH), the Senator from Oregon (Mr. SMITH), and the Senator from New Jersey (Mr. TORRICELLI) were added as cosponsors of Senate Concurrent Resolution 39, a concurrent resolution expressing the sense of the Congress regarding the treatment of religious minorities in the Islamic Republic of Iran, and particularly the recent arrests of members of that country's Jewish community.

SENATE RESOLUTION 99

At the request of Mr. REID, the name of the Senator from Nevada (Mr. BRYAN) was added as a cosponsor of

Senate Resolution 99, a resolution designating November 20, 1999, as "National Survivors for Prevention of Suicide Day."

SENATE RESOLUTION 115

At the request of Mr. SPECTER, his name was withdrawn as a cosponsor of Senate Resolution 115, a resolution expressing the sense of the Senate regarding United States citizens killed in terrorist attacks in Israel.

SENATE RESOLUTION 118

At the request of Mr. REID, the name of the Senator from Nevada (Mr. BRYAN) was added as a cosponsor of Senate Resolution 118, a resolution designating December 12, 1999, as "National Children's Memorial Day."

AMENDMENTS SUBMITTED

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2000

GRAHAM (AND HOLLINGS)

AMENDMENT NO. 700

(Ordered to lie on the table.)

Mr. GRAHAM (for himself and Mr. HOLLINGS) submitted an amendment intended to be proposed by them to the bill (S. 1233) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2000, and for other purposes; as follows:

On page 76, between lines 6 and 7, insert the following:

SEC. 7. INDICATION OF COUNTRY OF ORIGIN OF IMPORTED PERISHABLE AGRICULTURAL COMMODITIES.—(a) DEFINITIONS.—In this section, the terms "perishable agricultural commodity" and "retailer" have the meanings given the terms in section 1(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(b)).

(b) NOTICE OF COUNTRY OF ORIGIN REQUIRED.—A retailer of a perishable agricultural commodity imported into the United States shall inform consumers, at the final point of sale of the perishable agricultural commodity to consumers, of the country of origin of the perishable agricultural commodity.

(c) METHOD OF NOTIFICATION.—

(1) IN GENERAL.—The information required by subsection (b) may be provided to consumers by means of a label, stamp, mark, placard, or other clear and visible sign on the imported perishable agricultural commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers.

(2) LABELED COMMODITIES.—If the imported perishable agricultural commodity is already individually labeled regarding country of origin by the packer, importer, or another person, the retailer shall not be required to provide any additional information to comply with this section.

(d) VIOLATIONS.—If a retailer fails to indicate the country of origin of an imported perishable agricultural commodity as required by subsection (b), the Secretary of Agriculture may impose a monetary penalty on the retailer in an amount not to exceed—

(1) \$1,000 for the first day on which the violation occurs; and

(2) \$250 for each day on which the same violation continues.

(e) DEPOSIT OF FUNDS.—Amounts collected under subsection (d) shall be deposited in the Treasury of the United States as miscellaneous receipts.

(f) APPLICATION OF SECTION.—This section shall apply with respect to a perishable agricultural commodity imported into the United States after the end of the 6-month period beginning on the date of the enactment of this section.

ABRAHAM AMENDMENT NO. 701

(Ordered to lie on the table.)

Mr. ABRAHAM submitted an amendment intended to be proposed by him to the bill, S. 1233, *supra*; as follows:

On page 13, line 14, before the semicolon insert the following: " of which not less than \$600,000 shall be used to provide a special grant for bovine tuberculosis research at Michigan State University".

DASCHLE AMENDMENT NO. 702

Mr. DORGAN (for Mr. DASCHLE) proposed an amendment to the bill, S. 1233, *supra*; as follows:

At the appropriate place, insert the following:

TITLE —PATIENTS' BILL OF RIGHTS

SEC. 01. SHORT TITLE.

This title may be cited as the "Patients' Bill of Rights Act of 1999".

Subtitle A—Health Insurance Bill of Rights

CHAPTER 1—ACCESS TO CARE

SEC. 101. ACCESS TO EMERGENCY CARE.

(a) COVERAGE OF EMERGENCY SERVICES.—

(1) IN GENERAL.—If a group health plan, or health insurance coverage offered by a health insurance issuer, provides any benefits with respect to emergency services (as defined in paragraph (2)(B)), the plan or issuer shall cover emergency services furnished under the plan or coverage—

(A) without the need for any prior authorization determination;

(B) whether or not the health care provider furnishing such services is a participating provider with respect to such services;

(C) in a manner so that, if such services are provided to a participant, beneficiary, or enrollee by a nonparticipating health care provider without prior authorization by the plan or issuer, the participant, beneficiary, or enrollee is not liable for amounts that exceed the amounts of liability that would be incurred if the services were provided by a participating health care provider with prior authorization by the plan or issuer; and

(D) without regard to any other term or condition of such coverage (other than exclusion or coordination of benefits, or an affiliation or waiting period, permitted under section 2701 of the Public Health Service Act, section 701 of the Employee Retirement Income Security Act of 1974, or section 9801 of the Internal Revenue Code of 1986, and other than applicable cost-sharing).

(2) DEFINITIONS.—In this section:

(A) EMERGENCY MEDICAL CONDITION BASED ON PRUDENT LAYPERSON STANDARD.—The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition described in clause (i), (ii), or (iii) of section 1867(e)(1)(A) of the Social Security Act.