

# PROTECTION OF COMMERCIAL, INDUSTRIAL, AND AGRICULTURAL TRADEMARKS AND COMMERCIAL NAMES (INTER-AMERICAN)

*Convention signed at Santiago April 28, 1923*

*Senate advice and consent to ratification, with understandings or conditions, February 24, 1925*<sup>1</sup>

*Ratified by the President of the United States, with understandings or conditions, April 7, 1925*<sup>1</sup>

*Ratification of the United States deposited at Santiago June 16, 1925*

*Entered into force September 30, 1926*

*Proclaimed by the President of the United States January 12, 1927*

*Replaced by convention and protocol of February 20, 1929,<sup>2</sup> as between contracting parties to the later convention*

44 Stat. 2494; Treaty Series 751

## CONVENTION FOR THE PROTECTION OF COMMERCIAL, INDUSTRIAL AND AGRICULTURAL TRADE MARKS AND COMMERCIAL NAMES

Their Excellencies the Presidents of Venezuela, Panama, United States of America, Uruguay, Ecuador, Chile, Guatemala, Nicaragua, Costa Rica, Brazil, Salvador, Colombia, Cuba, Paraguay, Dominican Republic, Honduras, Argentine Republic and Haití.

Being desirous that their respective countries may be represented at the Fifth International Conference of American States, 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:

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<sup>1</sup> The U.S. understandings or conditions read as follows:

"First, that in section 1 of Article VIII the words 'and to which they give course for the purposes,' the equivalents of which appear in the Spanish, Portuguese, and French texts of the convention, shall be inserted in the English text after the word 'registration,' so that the English text of the section shall read as follows:

"Section 1. To keep a detailed record of the applications for the recognition of marks received through the national offices of registration and to which they give course for the purposes of this convention, as well as of all assignments or transfers thereof and of all notices pertaining thereto."

"Second, that in Article II of the Appendix, subheading C, line 2, the words 'for

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 Panamá: Narciso Garay, José Lefevre;  
 United States of America: Henry P. Fletcher, Frank B. Kellogg, Atlee Pomerene, Willard Saulsbury, Frank C. Partridge, George E. Vincent, William Eric Fowler, Leo S. Rowe;  
 Uruguay: J. Antonio Buero, Eugenio Martínez Thedy;  
 Ecuador: Rafael M. Arizaga, José Rafael Bustamante, Dr. Alberto Muñoz Vernaza;  
 Chile: Agustín Edwards, Manuel Rivas Vicuña, Carlos Aldunate Solar, Luis Barros Borgoño, Emilio Bello Codesido, Antonio Huneeus, Alcibiades Roldán, Guillermo Subercaseaux, Alejandro del Río;  
 Guatemala: Eduardo Poirier, Máximo Soto Hall;  
 Nicaragua: Carlos Cuadra Pasos, Arturo Elizondo;  
 Costa Rica: Alejandro Alvarado Quirós;  
 United States of Brazil: Afranio de Mello Franco, Sylvino Gurgel do Amaral, J. de P. Rodríguez Alves, A. de Ipanema Moreira, Helio Lobo;  
 El Salvador: Cecilio Bustamante;  
 Colombia: Guillermo Valencia, Laureano Gómez, Carlos Uribe Echeverri;  
 Cuba: José C. Vidal y Caro, Carlos García Vélez, Arístides Agüero, Manuel Márquez Sterling;  
 Paraguay: Manuel Gondra;  
 Dominican Republic: Tulio M. Cestero;  
 Honduras: Benjamín Villaseca Mujica;

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*Footnote continued from p. 395—*

registration,' the equivalents of which appear in the Spanish, Portuguese, and French texts, shall be inserted in the English text after the word 'application' so that the English text of the line shall read as follows:

"2. The date of the application for registration in the State of first registration or deposit."

"Third, that the expressions in Article I 'Without prejudice to the rights of third parties' and in Article II 'in the absence of other proof of ownership of a mark' are, and shall be, interpreted to protect every user of a trade-mark in the United States having ownership thereof by reason of adoption and use, and with or without subsequent registration, from any claim of priority under this convention based upon an application or a deposit in a signatory State subsequent to the actual date of such adoption and use in the United States.

"Fourth, that the expression 'legal protection for his mark' in Section 2(a) of Article V shall be interpreted to include ownership of the mark in the United States acquired by adoption and use and with or without subsequent registration.

"Fifth, that nothing contained in this convention shall take away or lessen any trade-mark right or any right to use a trade-mark of any person residing or doing business in the United States heretofore or hereafter lawfully acquired under the common law or by virtue of the statutes of the several States or of the United States; . . . ."

<sup>2</sup> TS 833, *post*, p. 751.

Argentine Republic: Manuel Augusto Montes de Oca, Fernando Saguier, Manuel Malbrán;  
Haití: Arturo Rameau.

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 Commercial, Industrial and Agricultural Trade-Marks, and Commercial Names, which shall be regarded as revision of the Convention of Buenos Aires of 1910.<sup>3</sup>

#### ARTICLE I

Section 1. The High Contracting Parties agree that any commercial, industrial or agricultural trade-mark registered or deposited in any of the States signatory of the Convention, by a person domiciled in any of such States, either directly, or through his duly authorized representative, may obtain in the other signatory States the same protection granted by them to the marks registered or deposited in their own territory, without prejudice to the rights of third parties and provided that the formalities and conditions required by the domestic law of each State, as well as the following requirements, are complied with:

a) Any person interested in the registration or deposit of the mark shall present to the proper Inter American Bureau through the proper office of the State of first registration or deposit, an application for recognition of the rights claimed, in accordance with the requirements prescribed in the Appendix of this Convention, which is declared to be a part hereof.

b) He shall pay, besides the fees of charges established by the domestic legislation of each State in which recognition of rights is desired, and other expenses incident to such recognition, a fee equivalent in value to fifty dollars (\$50.00) United States gold, this sum to be paid only once for each period and for a single mark. Such fee shall be used to cover the expenses of the said Inter American Bureau.

Section 2. The period during which protection is granted shall be the same as that accorded by the laws of the particular State.

Section 3. Protection under this Convention may be renewed at the expiration of each period upon fulfillment of the requirements set forth in paragraph (b) hereof. Application for renewal may also be made by the interested party directly to the proper Inter American Bureau.

Section 4. Commercial names shall be protected in all the signatory States, without deposit or registration, whether the same form part of a trade mark or not, in accordance with the domestic law of each State.

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<sup>3</sup> Convention signed at Buenos Aires Aug. 20, 1910 (TS 626), *ante*, vol. 1, p. 772.

## ARTICLE II

The date of filing in the State where first application is made for registration or deposit through the proper Inter American Bureau, in the absence of other proof of ownership of a mark, shall determine priority for the registration or deposit of such make in any of the signatory States.

## ARTICLE III

Section 1. Each signatory State, upon receipt of an application for recognition communicated by the proper Inter American Bureau, shall determine whether protection can be granted in accordance with its laws, and notify the Inter American Bureau as soon as possible of its decision.

Section 2. In case objection is made to the registration or deposit of a mark under this Convention, the term to answer such objection in the country where it is made shall begin ninety days after the date of sending notice of such objection to the proper Inter American Bureau. This Bureau shall have no other part in the controversy originated by the opposition.

## ARTICLE IV

The transfer of a mark registered or deposited in one of the contracting States shall be equally recognized in each one of the other States with the same force and effect as if made in accordance with the respective laws of each one of those States, provided that the mark transferred is a mark registered or deposited in the country where the recognition of transference under this Convention is applied for, and provided that the principles of Article V of this Convention are not impaired. Notification of transfer shall be made through the proper office of the State of first registration or deposit and the proper Inter American Bureau upon payment of the fees corresponding to each State for such transference.

## ARTICLE V

Section 1. In any civil, criminal or administrative proceeding arising in a country with respect to a mark, such as opposition, falsification, imitation or unauthorized appropriation, as also the false representation as to the origin of a product, the domestic authorities of the same State alone shall have jurisdiction thereof, and the precepts of law and procedure of that State shall be observed.

Section 2. When refused protection under this Convention in a signatory State because of prior registration or a pending application for registration, the proprietor of a mark claiming recognition of rights under this Convention shall have the right to seek and obtain the cancellation of the previously registered mark, upon proving, according to the procedure by law of the country where cancellation is sought, such refusal, and either :

(a) That he had legal protection for his mark in any of the contracting States before the date of application for the registration which he seeks to cancel; or

(b) That the registrant had no right to the ownership, use or employment of the registered mark at the date of its deposit; or

(c) That the mark covered by the registration which he seeks to cancel has been abandoned.

Section 3. (Transitory). Those who have heretofore sought the benefits of this Convention for their marks and who have been denied protection in certain States, may avail themselves of the right established in this article within two years after the present revision enters into effect. Those who subsequently seek to secure the benefits of the Convention shall have a period of one year, calculated in each instance from the day following that of the receipt by the proper Inter American Bureau of notice of refusal of protection, within which they may avail themselves of this right.

Section 4. This recourse shall not be applicable to trade marks the registration or deposit of which is already beyond question under national legislation; but it shall apply to renewals.

Section 5. The proof that a trade mark conceals or misrepresents the true quality, nature or origin of the merchandise covered by it, shall be cause for cancellation of the registration or deposit effected through the respective Inter American Bureau.

#### ARTICLE VI

For the purposes indicated in the present Convention, a union of American Nations is hereby constituted which shall act through two international bureaus, established, one in the city of Havana and the other in the city of Rio de Janeiro.

#### ARTICLE VII

The High Contracting Parties agree to confer the postal frank on the official correspondence of the Bureaus.

#### ARTICLE VIII

The Inter American Bureaus for the registration of trade-marks shall have the following duties:

Section 1. To keep a detailed record of the applications for the recognition of marks received through the national offices of registration and to which they give course for the purposes of this convention, as well as of all assignments or transfers thereof and of all notices pertaining thereto.

Section 2. To communicate to each of the contracting States, for such action as may be necessary, the application for recognition received.

Section 3. To distribute the fees received, in accordance with the provisions of paragraph (b) Article 1.

The Inter American Bureaus shall remit to the proper governments or, if the governments should so desire, to their local representatives in Havana and Rio de Janeiro, duly authorized therefor, the charges stipulated, at the time when recognition of the alleged rights is requested by the applicant in accordance with this Convention. The cost of remitting the said charges shall be for account of the States to which remittance is made. The Inter American Bureaus shall return to the interested parties any sums returned to such Bureaus.

Section 4. To communicate to the State of first registration or deposit, for the information of the owner of the mark, the notices received from other countries with respect to the granting, opposition to, or denial of protection, or any other circumstance related to the mark.

Section 5. To publish periodical bulletins in which shall appear notices of applications for protection in accordance with this Convention, received from and sent to the various States under the provisions of the Convention, as well as documents, information, studies and articles concerning protection of industrial property.

The High Contracting Parties agree to furnish to the Inter American Bureaus all the official gazettes, reviews and other publications containing notices of the registration of trade marks and commercial names, as well as of judicial proceedings and decisions relative thereto.

Section 6. To carry on any investigation on the subject of trade-marks which the government of any of the signatory States may request, and to encourage the investigation of problems, difficulties or obstacles which may hinder the operation of this Convention.

Section 7. To co operate with the governments of the contracting States in the preparation of material for international conferences on this subject; to present to the said States such suggestions as they may consider useful, and such opinions as may be requested as to what modifications should be introduced in the present Convention, or in the laws concerning industrial property; and in general to facilitate the execution of the purposes of this Convention.

Section 8. To inform the signatory governments at least once a year as to the work which the Bureaus are doing.

Section 9. To maintain relations with similar offices, and scientific and industrial institutions and organizations for the exchange of publications, information and data relative to the progress of the law of industrial property.

Section 10. To establish, in accordance with the provisions of this Convention, the regulations which the Directors may consider necessary for the internal administration of the Bureaus.

## ARTICLE IX

The Bureau established in the city of Havana shall arrange with the contracting States for the registration or deposit of commercial, industrial and agricultural trade marks coming from the United States of America, Cuba, Haití, Dominican Republic, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panamá, Colombia, and Ecuador.

The Bureau established in Rio de Janeiro shall arrange for the registration of the marks coming from Brazil, Uruguay, the Argentine Republic, Paraguay, Chile and Venezuela.

Transitory Paragraph. The Inter American Bureau of Rio de Janeiro shall be installed as soon as the present Convention shall have been ratified by one third of the signatory States.

## ARTICLE X

The two Inter American Bureaus shall be considered as one, and, for the purposes of uniformity in their procedure, it is provided:

- (a) That both Bureaus adopt the same system of books and accounts;
- (b) That each of them send to the other copies of all applications registrations, communications and other documents relative to the recognition of the rights of owners of marks.

## ARTICLE XI

The Inter American Bureaus shall both be governed by the same regulations, prepared for the purpose by the governments of the Republics of Cuba and of Brazil.

## ARTICLE XII

The part of the fees received by each Inter American Bureau which is stipulated for this purpose by the provisions of this Convention, shall be assigned to the maintenance and operation thereof.

The proceeds of the sale of publications by the Inter American Bureaus to individuals shall be assigned to the same purpose; and if both these sums should be insufficient, the deficit shall be paid by the contracting States in the following manner:

80% of the total deficit of the operating budget of both Bureaus shall be paid by the contracting States in proportion to the number of marks which they may have had registered each year through the Inter American Bureaus and the balance of 20% by the same States in proportion to the number of marks they may have registered at the request of the Inter American Bureaus.

Any annual surplus in one of the Bureaus shall be assigned to the reduction of the deficit, if any, of the other.

The Inter American Bureaus shall not incur any expense or obligation which does not appear in their definitive budgets and for which no funds may have been made available at the time of incurring such expense or obligation.

The provisional budget of annual expenditures of each Bureau shall be submitted to the approval of the Government of the State in which such Bureau is established, and shall be communicated to the contracting States for such observations as they may see fit to formulate.

The auditing of the accounts of the Inter American Bureaus shall be done by the officer authorized by the respective government, and the Directors of the Bureaus shall transmit the auditor's report to the contracting States through diplomatic channels.

#### ARTICLE XIII

Trade-marks which enjoy the protection of the Convention of 1910 shall continue to enjoy this protection without payment of any fees to the contracting States.

The High Contracting Parties agree that the protection accorded by their national legislation to all marks received up to the day on which the revised Convention becomes effective shall continue to be granted in accordance with the Convention of 1910, if they have ratified it.

#### ARTICLE XIV

The ratifications or adhesions to this Convention shall be communicated to the Government of the Republic of Chile, which shall communicate them to the other signatory or adhering States. These communications shall take the place of an exchange of ratifications.

The revised Convention shall become effective thirty days after the receipt by the Government of Chile of notice of ratification by a number of countries equivalent to one third of the signatory States; and from that moment the Convention signed on August 20, 1910 shall cease to exist, without prejudice to the provisions of Article XIII of this Convention.

The Government of Chile obligates itself to communicate by telegraph and in writing to all the signatory and adhering States the date on which the Convention in its present form becomes effective in accordance with the provisions of this Article.

#### ARTICLE XV

The American States not represented in this Conference may adhere to this Convention by communicating their decision in due form to the Government of the Republic of Chile, and shall be assigned to the group which each may select.

#### ARTICLE XVI

Any signatory State that may see fit to withdraw from this Convention, shall so notify the government of the Republic of Chile, which shall communicate the fact to the other signatory States; and one year after the receipt of such notification, this Convention shall cease in respect of the State that shall have withdrawn, but such withdrawal shall not affect the rights previously acquired in accordance with this Convention.

## ARTICLE XVII

The Inter American Bureaus shall continue so long as not less than one half of the ratifying states adhere to the Convention. If the number of States adhering to the Convention shall become less than half, the Bureaus shall be liquidated under the direction of the Governments of Cuba and Brazil, and their funds shall be distributed among the adhering countries in the same proportion as they would have contributed to their support. The buildings and other tangible property of the Bureaus shall become the property of the Governments of Cuba and Brazil, respectively, in recognition of the services of those Republics in giving effect to the Convention, it being understood that the said Governments shall dedicate such property to purposes preeminently inter American in character.

The High Contracting Parties agree to accept as final any steps which may be taken for the liquidation of the Bureaus.

The termination of the Convention shall not affect rights acquired during the period of its effectiveness.

## ARTICLE XVIII

Any differences between the contracting States relative to the interpretation or execution of this Convention shall be decided by arbitration.

## APPENDIX

## REGULATIONS

Article I. Any application to obtain protection under the Convention of which the present appendix is a part shall be made by the owner of the mark or his legal representative to the administration of the State of first registration or deposit, in the manner prescribed by the respective regulations, accompanied by a money order payable to the Director of the proper Inter American Bureau in the sum required by this Convention. His application and money order shall be accompanied by an electrotype of the mark reproducing it as registered in the State of first registration or deposit, and having the dimensions required in the State of first registration or deposit.

Article II. The administration of the State of first registration or deposit, having ascertained that the registration of the mark is regular and in force, shall send to the Inter American Bureau:

- A. The money order;
- B. The electrotype of the mark;
- C. A certificate in duplicate containing the following details:
  1. The name and address of the owner of the mark;
  2. The date of the application for registration in the State of first registration or deposit;

3. The date of registration of the mark in the State of first registration or deposit;
4. The order number of the registration in the State of first registration or deposit;
5. The date of expiration of the protection of the mark in the State of first registration or deposit;
6. A facsimile of the mark;
7. A statement of the goods on which the mark is used;
8. The date of the application for recognition of the rights claimed under the Convention.

Should the applicant wish to claim color as a distinctive element of his mark, he shall send thirty copies of the mark printed on paper, showing the color, and a brief description of the same.

Article III. The proper Inter American Bureau, upon receipt of the communication of the office of the State of first registration or deposit, mentioned in the foregoing article, shall enter all the information in its books and inform the office of the State of first registration or deposit of the receipt of the application and of the number and date of the entry.

Article IV. Copies of the entry in the books of the respective Inter-American Bureau containing all the details required shall be sent to the administration of the States in which the Convention has been ratified and in which protection is applied for. This data shall also be sent to the other contracting States, for the purposes of information.

Article V. The Inter American Bureaus shall publish in their bulletins reproductions of the marks received and such particulars as are necessary.

Article VI. The notice of acceptance, opposition or refusal of a mark by the contracting States shall be transmitted by the proper Inter American Bureau to the administration of the State of first registration or deposit with a view to its communication to whom it may concern.

Article VII. Changes in ownership of a mark communicated to the respective Inter American Bureau shall be entered in its register and corresponding notice sent to the other contracting States.

Article VIII. The Directors of the Inter American Bureaus, may, in their discretion, appoint or remove the officials or employees of their Bureaus giving notice thereof to the governments of the countries where such offices are established.

In witness whereof, the Delegates sign this Convention, and affix the seal of the Fifth International Conference of American States, in the city of Santiago, Chile, on the twenty eighth day of the month of April in the year one thousand nine hundred and twenty three, in English, Spanish, Portuguese and French.

This Convention shall be filed in the Ministry of Foreign Affairs of the Republic of Chile in order that certified copies may be made and forwarded through appropriate diplomatic channels to each of the Signatory States.

For Venezuela:

C. ZUMETA  
JOSÉ AUSTRIA

For Panama:

NARCISO GARAY  
J. E. LEFEVRE

For the United States of America:

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For Paraguay:

M. GONDRA

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TULIO M. CESTERO

For Honduras:

BENJAMÍN VILLASECA M.

For the Argentine Republic:

M. A. MONTES DE OCA  
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ARTURO RAMEAU