

Sec. 3. There is no express provision of the Convention requiring the enactment of a section in this form but it is impliedly required having regard to Art. 10 *is*, quoted in the note to Sec. 11 and the Articles relating to registration referred to in the notes to other sections. The important features of this section are (a) that the prohibition applies to Canada as a whole but only to cases in which the mark already in use is "knowingly" adopted and (b) that it is sufficient that wares should have been advertised in Canada in association with the mark without their having actually been distributed here. On the second point the law as declared in the Bill corresponds with the existing decisions by courts of first instance. On the first the rule as it at present stands is that if two persons, e.g., one in British Columbia and one in Nova Scotia, both make use of the same mark without registration, that one of them who happened to have been the first to adopt it is entitled to prevent the other from continuing to use it notwithstanding that its use by both may have continued for a very long period (e.g. thirty-five years in one case) without either having any notice of the other's use. This rule might work serious and unnecessary hardship. The *Trade Mark and Design Act* does not deal expressly with rights of the general character of those as are covered by this and the following sections. It undertakes to deprive the owners of unregistered marks of the right to sue for their infringement (Sec. 20), a course which it seems inadvisable to follow on more than one ground. The effect of registration under the provisions of the Bill is dealt with in Sec. 17, *infra*.

Sec. 4. Occasional cases of hardship may doubtless occur by vesting the exclusive right in the first user, however innocent the later user may be.

Sec. 5. This section covers the cases of distributors of wares to which a mark has been improperly applied by a manufacturer or wholesaler. The rule as stated is an obviously necessary one to ensure the effectiveness of the protection intended to be given. See Sec. 15 as to a retailer's right over against his vendor.

Sec. 6. This section gives greater certainty to the law as now contained in Sec. 5 of the *Trade Mark and Design Act*, which requires the mark to be "applied" to the wares, but does not specify the occasion on which it must appear to have been so. This is probably implied, however,

Sec. 7. This section is intended to give effect to the provisions of Art. 8 of the Convention. That article provides that:

"A trade name" shall be protected in all the countries of the Union without being required to be filed or registered and whether or not it forms part of a trade mark".

The principles laid down by this and the next section follow generally those adopted in the case of trade marks (Secs. 3 and 4).