

county jail for a term of not less than one month nor more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both, in the discretion of the court, and the burden of proving that the defendant did not know the true character of the said label, trade-mark or form of advertisement, and that he used the same in good faith shall be on the defendant.

1892, ch. 357.

40 c. Every such person, association or union that has heretofore adopted or shall hereafter adopt a label, trade-mark or form of advertisement as aforesaid, may file the same for record, in the office of the Secretary of State, by leaving two copies, counterparts or fac similes thereof, with the Secretary of State, and said secretary shall deliver to such person, association or union so filing the same, duly attested certificate of the record of the same, for which he shall receive a fee of one dollar. Such certificate of record shall be in all suits and prosecution under sections 40 A to 40 F sufficient proof of the adoption of such label, trade-mark or form of advertisement, and of the right of said person, association or union to adopt the same. No label shall be recorded that probably would be mistaken for a label already of record, of which question the said secretary shall be the judge.

Ibid.

40 d. Every such person, association or union adopting a label, trade-mark or form of advertisement as aforesaid, may proceed by suit to enjoin the manufacture, use, display or sale of any such counterfeit or imitation, and all courts having jurisdiction thereof, shall grant injunctions to restrain such manufacture, use, display or sale, and shall award the complainant in such suit such damage resulting from such wrongful manufacture, use, display, or sale, as may by said court be deemed just and reasonable, according to the evidence in the case, and shall require the defendants to pay such persons, associations or unions, the profits derived from such wrongful manufacture, use, display or sale, and in addition to court costs, such reasonable attorney's fees as the court may allow; and said court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed.