(b) CONFORMING AMENDMENT.—The heading for title VIII of the Trademark Act of 1946 is amended by striking ''AND FALSE DESCRIPTIONS'' and inserting ''FALSE DESCRIPTIONS, AND DILUTION''.

SEC. 4. DEFINITION.

Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127) is amended by inserting after the paragraph defining when a mark shall be deemed to be ''abandoned'' the following:

''The term 'dilution' means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of—

''(1) competition between the owner of the famous mark and other parties, or

''(2) likelihood of confusion, mistake, or deception.''.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF THE FEDERAL TRADEMARK DILUTION ACT OF 1995

Section 1. Section one of the bill provides the short title of the bill, the ''Federal Trademark Dilution Act of 1995.''

Section 2. Section 2 of the bill clarifies the references in the bill to the ''Trademark Act of 1946,'' giving the full title of the law and statutory citations.

Section 3. Section 3 of the bill would create a new Section 43© of the Lanham Act to provide a cause of action for dilution of ''famous'' marks. A new Section 43(c)(1) would provide protection to the owners of famous marks against another person's commercial use in commerce of the mark which dilutes the distinctive quality of the mark. The section would provide protection to famous marks, whether or not the mark is the subject of a federal trademark registration.

Section 3 identifies a list of nonexclusive factors that a court may consider in determining whether a mark qualifies for protection. These factors include: (1) the degree of distinctiveness of the mark; (2) the duration and extent of use of the mark; (3) the geographical extent of the trading area in which the mark is used; and (4) whether the mark is federally registered.

With respect to relief, a new Section 43(c)(2) of the Lanham Act would provide that, normally, the owner of a famous mark will only be entitled to an injunction upon a finding of liability. An award of damages, including the possibility of treble damages, may be awarded upon a finding that the defendant willfully intended to trade on the trademark owner's reputation or to cause dilution of the famous mark.

Under section 3 of the bill, a new Section 43(c)(3) of the Lanham Act would provide that ownership of a valid federal trademark registration is a complete bar to an action brought against the registrant under state dilution law. In this regard, it is important to note that the proposed federal dilution statute would not preempt state dilution laws.

A new Section 43(c)(4) sets forth various activities that would not be actionable. These activities include the use of a famous mark for purposes of comparative advertising, the noncommercial use of a famous mark, and the use of a famous mark in the context of news reporting and news commentary. This section is consistent with existing case law. The cases recognize that the use of marks in certain forms of artistic and expressive speech is protected by the First Amendment.

Section 4. Section 4 of the bill defines the term ''dilution'' to mean the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of (1) competition between the owner of the famous mark and other parties, or (2) likelihood of confusion, mistake, or deception. The definition is designed to encompass all forms of dilution recognized by the courts, including disparagement. In an effort to clarify the law on the subject, the definition also recognizes that a cause of action for dilution may exist whether or not the parties market the same or related goods and whether or not likelihood of confusion exists.

Section 5. Section 5 of the bill makes the legislation effective upon enactment.

SENATE RESOLUTION 206—MAKING MINORITY PARTY APPOINTMENTS

Mr. LEAHY (for Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 206

Resolved, That the following shall constitute the minority party's membership on the Committee on Veterans' Affairs for the second session of the 104th Congress, or until their successors are appointed: Mr. Rockefeller, Mr. Graham, Mr. Akaka, Mr. Wellstone, and Mrs. Murray.

ADDITIONAL STATEMENTS

TEXAS' STATEHOOD SESQUICENTENNIAL

● Mr. GRAMM. Mr. President, I am honored today to recognize a momentous occasion in the history of the great State which I have the privilege to represent, the proud Lone Star State of Texas. This month we recognize and celebrate Texas' statehood sesquicentennial, 150 years during which we have been blessed and have prospered.

The spirit of Texas has been evident since our earliest days, when we were conceived in the eternal struggle for freedom. The men and women of Texas have an innate and inherent commitment to God and country, and even our flag displays a single star—our people have always looked to the Heavens.

No utterance in our State's history better represents the spirit, virtue, and values of Texas, then or now, than the remarkable letter written on February 24, 1836, by William Barret Travis at the Alamo:

To the People of Texas and all Americans in the world—

Fellow citizens and compatriots—

I am besieged, by a thousand or more of the Mexicans under Santa Anna—I have sustained a continual Bombardment and cannonade for 24 hours and have not lost a man—The enemy has demanded a surrender at discretion; otherwise, the garrison are to be put to the sword, if the fort is taken—I have answered the demands with a cannon shot, and our flag still waves proudly from the wall—I shall never surrender or retreat. Then, I call on you in the name of Liberty, or patriotism and of everything dear to the American character, to come to our aid, with all dispatch—The enemy is receiving reinforcements daily and will no doubt increase to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible and die like a soldier who never forgets what is due to his own honor and that of his country—Victory or Death.

WILLIAM BARRET TRAVIS,
Lieutenant Colonel Commandant.

Colonel Travis' letter captures the heart and soul of the people of Texas, and I am honored to recognize the statehood sesquicentennial of my beloved Texas.●

SIGNING DULY ENROLLED BILLS

Mr. DOLE. Mr. President, today when the Senate convened, the President pro tempore, Senator THURMOND, appointed the Senator from Idaho, Senator KEMPTHORNE, to be Acting President pro tempore for the day. It is my understanding Senator THURMOND is necessarily absent attending business in South Carolina and attending the funeral of the president pro tempore of the South Carolina State Senate, the Honorable Marshall Williams.

While Senator KEMPTHORNE was Acting President pro tempore for today, one of his responsibilities was to sign duly enrolled bills. Signing enrolled bills is part of the process necessary prior to the documents being sent to the White House for the President's approval or disapproval.

Senator KEMPTHORNE had the distinct pleasure to sign the following enrolled bills, therefore facilitating their being sent to the White House: H.R. 4, welfare reform; H.R. 394, State pensions; H.R. 1878, enrollment of HMO's; and H.R. 2627, Smithsonian coin.

I want to commend Senator KEMPTHORNE and congratulate him on his work today. I hope the President signs all the bills. That may or may not be the case.

REAUTHORIZING THE TIED AID CREDIT PROGRAM

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2203, just received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2203) to reauthorize the Tied Aid Credit Program of the Export-Import Bank of the United States, and to allow the Export-Import Bank to conduct a demonstration project.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 2203) was deemed read the third time and passed.

FEDERAL TRADEMARK DILUTION ACT OF 1995

Mr. DOLE. Mr. President, I ask unanimous consent to proceed to the immediate consideration of H.R. 1295, just received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1295) to amend the Trademark Act of 1946 to make certain revisions relating to the protection of famous marks.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, passage of this bill is part of our effort to improve intellectual property protection around the world. I hope that it will serve to improve trademark enforcement domestically and serve as a model for our trading partners overseas.

Along with the Anti-Counterfeiting and Consumer Protection Act of 1995, S. 1360, which recently passed the Senate and has already been the subject of a hearing and markup before the House Judiciary Committee's Subcommittee on Courts and Intellectual Property, this bill will help protect the good names, reputations for quality, and investments of American companies from IBM to Ben & Jerry's.

Although no one else has yet considered this application, it is my hope that this antidilution statute can help stem the use of deceptive Internet addresses taken by those who are choosing marks that are associated with the products and reputations of others.

I thank our House colleagues for their work on this bill. It is a pleasure to work with Chairman MOORHEAD and the House subcommittee on these matters. I commend, in particular, Representative SCHROEDER for her outstanding work on this measure. Our House colleagues have announced their intention not to seek reelection next fall. Their leadership and judgment will be greatly missed.

When we in the Senate last considered and passed a similar bill to provide an injunctive remedy against the dilution of the effectiveness of distinctive marks, we did so as part of more comprehensive trademark revision legislation in 1988. Since that time the dilution of well-known marks has become a greater problem both domestically and, especially, internationally.

We intend for this legislation to strengthen the hand of our international negotiators from the Office of the U.S. Trade Representative and the Department of Commerce as they press for bilateral and multilateral agreements to secure greater protection for the world famous marks of our U.S. companies. Foreign countries should no longer argue that we do not protect our marks from dilution, nor seek to excuse their own inaction against practices that are destructive of the distinctiveness of U.S. marks within their borders.

I am delighted that bill now includes express reference to fair use, news reporting, and news commentary. I continue to believe, as our House colleagues also affirm, that parody, satire, editorial, and other forms of expression will remain unaffected by this legislation.

Finally, I want to acknowledge the strong support of the U.S. Patent and Trademark Office, the Department of Commerce, and that of the International Trademark Association and its many members. Without their efforts, we would not be in position to approve this legislation and send it to the President for his signature.

Mr. President, this was an example of Senator HATCH, myself, and others working in a bipartisan effort to get a major piece of legislation through. I thank the leader for his efforts in getting it through.

Mr. DOLE. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 1295) was deemed read the third time and passed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination on today's Excutive Calendar: Calendar No. 439.

I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, that any statements relating to the nomination appear at the appropriate place in the RECORD, that the President be immediately notified of the Senate's action, and that the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the nomination was considered and confirmed, as follows:

Jed S. Rakoff, of New York, to be U.S. District Judge for the Southern District of New York.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate that we have had a meeting all afternoon at the White House, and I will say, without violating our agreement on statements, afterward we had a good working session. We covered a lot of ground. We are going to meet tomorrow morning. We are going to be there all day, and probably through the evening. We will determine then whether or not we will be here Sunday or Monday. I think it is fair to say that we had a constructive session where everybody, in my view—regardless of party, regardless of being from the White House, Democrats or Republicans, the House or the Senate—had one thing in mind: trying to move the process along to get a balanced budget over the next 7 years.

I think there is a recognition that most Americans, regardless of party, want us to do that. We are not there yet. We have a lot of work to do. But I would say that today has been a day of progress.

I would also say that it had been my hope earlier that we could work out an agreement where Federal employees could go back to work. A week ago today we passed a measure in the Senate by unanimous consent that, in effect, deemed all Federal employees ''essential'' and also guaranteed that they would be paid. That bill went to the House, but it has not been considered.

I was advised today by the majority leader in the House, Congressman ARMEY, and the speaker, Congressman GINGRICH, that if we would send to the House the same measure we passed last week, and the so-called Mideast Peace Facilitation Act, and a third provision with reference to expedited procedures, so that once an agreement is reached there will be some expedited procedure in the Senate so that we will be certain we get a disposition of it, that they would be able to take that up today, Friday, by unanimous consent in the House. That was their best judgment. And so I was in hopes that we could work that out on the Senate side.

I was advised at the White House by the distinguished Democratic leader, Senator DASCHLE, that they would have to object because of the expedited procedure language, which seems to me something we ought to be able to work out. If we want people to go back to work and we want to make certain they will be paid and we also want to pass another very important piece of legislation, we ought to be able to reach some agreement on how we are going to handle the bill if we have an agreement, or if we do not have an agreement, how would we handle the balanced budget amendment.

I will ask that the text of this be printed in the RECORD after I ask unanimous consent, which will be objected to. But we have just taken the Budget Act, reduced the time to 10 hours, open to amendment during that 10 hours. Otherwise, we kept the Byrd amendment, for example. So we hope that the Democratic leader will have an opportunity between now and tomorrow to maybe come back with a counteroffer, because we are ready to act, put people back to work, and my view is that it is a very important matter that should be attended to.