

The Unwanted Copyrights: Commercial Prints and Labels 1874-1940

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For some 65 years, from 1874 to 1940, labels and commercial prints (advertisements) could not be registered as copyrights with the Library of Congress, but rather were registered with the Patent Office. At the time the act was passed in 1874 it was not clear that labels and commercial prints could be copyrighted under the Constitution, and the statute not only never specified whether prints and labels were being registered as patents, copyrights, trademarks, or some other form of intellectual property, but it gave some indication that prints and labels could not be copyrighted. As

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it seemingly fit under neither the trademark nor copyright systems, this act survived well beyond both the trademark and copyright laws enacted in 1870, until it was repealed in 1939.¹ This article explores the history of the act, from its enactment to its repeal, focused on the Constitutional questions raised as well as the confusion over what protection commercial artistic work had, and how it reflects the development of the understanding of what a copyright is.

I. PRINTS AND LABELS FROM 1870 TO 1881

The proximate cause of the legislation changing the registration place for labels was the vision of the Librarian of Congress for his library. Appointed by Abraham Lincoln in 1864, Ainsworth Rand Spofford would continue to serve as Librarian of Congress through 1897 and then Chief Assistant Librarian Emeritus through his death in 1908. In that time and certainly thereafter his vision of the Library of Congress as the nation's library was largely realized, and a vital part of that was centralization of copyright registrations in the Library, thus bringing essentially all American literature to the library.² Legislation came quickly, with an act establishing registration with the Library of Congress as well as the Patent Office in 1865,³ a law establishing penalties for failure to timely register with the Library in 1867,⁴ and a complete revision of the copyright laws embodying this new approach and removing copyright registration from the Patent Office entirely in 1870.⁵ But with this change came a problem – suddenly

¹ 53 Stat. 1142 (1939).

² Registration of copyrights had been vested with the Library before, from 1846 to 1859, with a requirement that another copy be deposited with the Smithsonian Institute. 9 Stat. 106 (1846); 11 Stat. 380 (1859). After 1859 registration was vested with the Patent Office. P.J. Federico, *Copyrights in the Patent Office*, 21 J. PAT. OFF. SOC'Y 911, 913 (1939).

³ 16 Stat. 198 § x (1865).

⁴ 14 Stat. 395 (1867).

⁵ 16 Stat. 198 (1870).

commercial labels and prints (such as signs advertising a product) were pouring into the Library of Congress. In 1870 there were 1,426 prints (including many labels and commercial prints) registered, while in 1872 there were 4,712, and in 1874 there were nearly 6,000.

A. *Considerations for the Act*

The question of copyrightability for commercial prints and labels was fairly murky at this time. They were usually registered as prints,⁶ but the caselaw was doubtful as to whether these copyrights would withstand a legal challenge. In one case Justice McLean, riding circuit in Ohio, held that a label on a medicine bottle could not be copyrighted.⁷ In doing so he was unequivocal, asking whether “such labels...are the proper subjects of copy right,” and answering that “the statute will not bear this construction.”⁸ Despite this decision, registrations of labels continued.⁹

This flood of commercial labels and prints was first raised in the 1872 Report of the Librarian of Congress.¹⁰ In his report he noted that it had been customary for labels to be registered as copyrighted due to a liberal interpretation of the word “prints” in the copyright statute.¹¹ However, as the constitutional provision did not encompass such material, the Librarian felt they should be registered at the Patent office as trademarks or designs.¹² Furthermore, he felt it incongruous that such commercial labels should be in

⁶ *Infra* at 10.

⁷ *Scoville v. Toland* 21 Fed. Cas. 863 (C.C. Oh. 1848). Justice McLean held similarly in another case, but there he simply assumed that labels were not copyrightable, but did not explain why. *Coffeen v. Brunton*, 5 F. Cas. 1184 (C.C.D. Ind. 1849)

⁸ *Id.*

⁹ WILLIAM HENRY BROWNE, A TREATISE ON THE LAW OF TRADE-MARKS AND ANALOGOUS SUBJECTS § 381 (2nd Ed. 1885). It is worth noting that copyrights were not examined, then as now, for validity when registered.

¹⁰ Annual report of Librarian of Congress, 1872, Misc. Doc. 13, 42nd Cong., 3rd Sess. (1872).

¹¹ *Id.* at 2.

¹² *Id.* at 2-3.

the same category as more exalted works of the mind, and asked that the Congressional Joint Committee on the Library address this concern.¹³

A little over than a month after the Librarian's report in 1872, Sen. Morrill of Maine introduced S. 1369.¹⁴ The Congress was already in the third session, so work would need to be fast, and within three weeks the bill was reported back amended.¹⁵ The structure of the bill was simple enough. In the original version a label was expressly prohibited from copyright, and instead was to be registered as a trademark or design.¹⁶ The amended bill was even clearer, providing that such labels would need to be registered as trademarks.¹⁷

On February 17 the Senate took up the bill, and Sen. Sherman explained that “[t]he only effect of the bill is to relieve the Library from a great mass of little stuff of no account to anybody in the world.”¹⁸ Following an amendment to the bill's preamble, it passed the Senate.¹⁹ However, time was simply too short. The bill did not come up in the house until the last day of the Congress, at which point it was passed up for other business.²⁰

In his 1873 Report, the Librarian of Congress expressed displeasure at this, and argued that labels “clearly have no proper relation [to copyright].”²¹ By the time the librarian's report came out, the 43rd Congress was all of nine days old; it would act to revive the failed act of the 42nd on labels. The revived version of the 1873 Bill was

¹³ *Id.*

¹⁴ 42nd Cong., 3rd Sess., Senate J. 149 (Jan. 15, 1873).

¹⁵ 42nd Cong., 3rd Sess., Senate J. 262 (Feb. 3, 1873).

¹⁶ S. 1369 (as introduced)

¹⁷ S. 1369 (as passed)

¹⁸ 42nd Cong., 3rd Sess., Cong. Globe 1420 (Feb. 17, 1873).

¹⁹ *Id.*

²⁰ 42nd Cong., 3rd Sess., Cong. Globe 2120 (Mar. 3, 1873).

²¹ Annual report of Librarian of Congress, 1873, Misc. Doc. 20, 43rd Cong., 1st Sess. (1872).

introduced as the third section of S. 876 on Jun. 1, 1874.²² It was reported directly from the Senate Committee on Patents without prior introduction or referral on the Senate floor; doubtless in part because it had already received consideration in the previous congress. The relevant section read:

[I]n the construction of this act, the words “Engraving,” “cut” and “print” shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed for use for any other articles of manufacture shall be entered under the copyright laws, but may be registered in the Patent Office; and the Commissioner of Patents is charged with the supervision and control of the entry or registry of such prints of labels in conformity to the regulations provided by law as to copyrights of prints, except that there shall be paid for recording the title of any print or label not a trade-mark three dollars...²³

This section received some explanation on the Senate floor, that it was meant to allow the registration of labels that were not trademarks in the Patent Office instead of the Library of Congress, since they had nothing to do with works of art, and there was no place for them in the Library of Congress.²⁴ The bill would pass in essentially this form.²⁵ Its effect was to briefly put a dent in the volume of copyright registrations with the Library, but by 1879 they were higher than ever.²⁶

Reading the language of the act reveals an immediate source of confusion. The second phrase of the Act states that “no prints or labels designed for use for any other articles of manufacture shall be entered under the copyright laws,” which is clear enough on its own, stating a bar to registration of commercial prints and labels as copyrights. The second phrase does not limit itself to registration as copyrights with the Library of Congress, but rather is categorical. The third phrase states that commercial prints and

²² 43rd Cong., 1st Sess., Senate J. 650 (Jun. 1, 1874).

²³ S. 876, 43rd Cong. (As introduced Jun. 1, 1874).

²⁴ 1 Cong. Rec. 4413 (Jun. 1, 1874).

²⁵ The only amendment was that the fee was amended to \$6 in the House, which the senate concurred in. *Id* at 4875 (Jun. 11, 1874) (House amendments).

²⁶ Ainsworth Spofford, *The Records of Copyright*, 11 CURRENT LITERATURE 458, 459 (Vol. 4, Dec. 1892).

labels “may be registered in the Patent Office; and the Commissioner of Patents is charged with the supervision and control of the entry or registry of such prints of labels in conformity to the regulations provided by law as to copyrights of prints.” The ambiguity that would bedevil commentators for the next 18 years would be whether this just moved the place to register copyrights in commercial prints and labels, or whether it removed commercial prints and labels from the subject matter of copyright, and set them up as a different class of intellectual property, registered with the same procedures and formalities of copyrights, but with different protections – and implicitly Constitutional status.

B. The First Years

The best way to describe the first few years of existence for the 1874 Act would be confusion. What were these labels to be regarded as – trademarks, copyrights, patents, or something else? The original 1873 bill had stated specifically that they were to be registered as trademarks, but the 1874 bill not only did not contain this language, but stated specifically that they were not trademarks. The law itself was unclear... it stated that prints and labels were to be registered *as if* they were copyrights by the patent office. Applicants were no less confused, and frequently sent their applications for registration to the Library of Congress, which usually (but not always) forwarded them on to the Patent Office.²⁷ In 1881 the Commissioner of Patents held that prints meant printed labels and

²⁷ Cite.

nothing more,²⁸ but it seems this was the case beforehand as well as no prints were registered separately, and this was the rule until 1893.²⁹

In early 1877, the Commissioner of Patents commented on this confusion in his annual report for the previous year, noting that a distinction is made between labels and trademarks, but not defined in the law.³⁰ While the Commissioner noted that there must be a difference, and that the two species receive different protection, it “is very often a distinction without a difference.”³¹ Nonetheless applications for label registrations did come in, either directly or forwarded from the Library, and excluding the stub year 1874, averaged 625 applications and 391 registrations per year. The first reported decision on the law was also made in 1877, assuming that labels were copyrights and requiring the holders to comply with formalities regarding copyrights save for the substitution of the Patent Office for the Library of Congress.³² On the other hand, in the first edition of his famous treatise on copyright law, Eaton Drone noted the 1874 Act as well as the *Scoville* case, and asserted that labels could not be copyrighted, implying that they were something else entirely.³³

²⁸ Schumacher & Ettliger, 19 O.G. 791 (1881)

²⁹ Federico, *supra* note 2 at 919; United States. Patent Office, Notice Dated Feb. 9, 1893, 62 O.G. 909 (Comm’r Patents, 1893).

³⁰ UNITED STATES. PATENT OFFICE, REPORT OF THE COMMISSIONER OF PATENTS FOR THE YEAR 1876 at VIII (1877). Until 1893, commercial prints were lumped in with labels for all purposes. See United States Statutes Concerning the Protection and Registration of Trade-Marks and Labels with the Rules of the Patent Office Relating Thereto (1885).

³¹ *Id.*; See also *Ex parte Parker*, 13 O.G. 323 (Comm’r Patents, 1877) (“The subjects to be protected under the design [patent], copyright, label, and trade-mark acts are often so nearly the same in character that it is difficult always to say to which class they belong, especially in the absence of definitions in the statutes.”).

³² *Marsh v. Warren*, 16 F.Cas. 821 (C.C.N.Y., 1877)

³³ EATON DRONE, A TREATISE ON THE LAW OF PROPERTY IN INTELLECTUAL PRODUCTIONS 178 (1st Ed. 1879).

C. *The Trade-Mark Cases*

In late 1879 the Print and Label Act would have its first great test, with the decision of the Supreme Court in the *Trade-Mark Cases*.³⁴ In that case the Supreme Court held the 1870 Trademark Act unconstitutional, on the grounds that a trademark is not in the proper subject matter of the copyright clause of the constitution, which has a requirement of artistry and ingenuity not fulfilled by a mark used to identify a product for commercial purposes.³⁵ While that case did not *per se* involve the 1874 Act, if there was no real difference between labels and trademarks in practice, Congress would equally lack the power to legislate regarding them under the copyright clause.

This problem was immediately clear to contemporary observers, but it does not seem anything was done about it. A leading authority on trademarks of the day noted in a footnote to an article in 1880 that this reasoning would seem to apply with equal force to the 1874 Print and Label Act, and wondered how “such prints or labels of manufacture could be *copyright* matter,” and not fit more neatly into the category of trademarks.³⁶ In a speech on the House floor in 1880, Rep. Hammond likewise admitted that the 1874 Act suffered the same Constitutional weaknesses as the 1870 Trademark Act, and “if attacked, may fall under the same condemnation.”³⁷ Ordinary citizens likewise seemed to have lost faith in the act, and applications for label registrations in 1880 and 1881 averaged 369, or only slightly more than half those for the previous five years.

And yet the 1874 Act survived its first major test relatively unscathed. Part of this was doubtless the relative obscurity of the law, but part of this was also that neither

³⁴ 100 U.S. 82 (1879).

³⁵ *Id.* See also Zvi S. Rosen, *In Search of the Trade-Mark Cases*, 83 ST. JOHN’S L. REV. ____ (2009).

³⁶ William Henry Browne, *Has Congress Authority to Legislate on the Subject of Trade-Marks*, 14 AM. L. REV. 156, 158 n. 1 (1880) (emphasis in original).

³⁷ 46th Cong., 2nd Sess., Cong. Rec. 2702 (Apr. 23, 1880).

Congress, Courts, or experts on the matter were entirely sure of what a label was within the taxonomy of intellectual property law. This confusion was illustrated by the 1880 decision in *Rosenbach v. Dreyfuss* that labels registrations were not a copyrighted.³⁸

In that case the Circuit court for the Southern District of New York was faced with a suit with multiple claims, in which the defendant was charged as having illegally copied patterns for hanging baskets and balloons.³⁹ The Court determined that these patterns, which including cutting lines and the like, were prints within the scope of the 1874 Act, and held on reading the Act that:

It would be such a strange departure from this settled policy of these laws that one particular class of copyrighted articles, namely, this class of “prints and labels,” if they are copyrightable, should be expressly excluded, without any apparent reason, as they are by the third section of the act from being marked as copyrighted; that, whatever may have been the construction of the former laws, this exclusion must be taken to show the intention of congress that thereafter these articles should be excluded from the category of copyrighted articles.⁴⁰

In other words, in the Court’s opinion the 1874 Act specifically removed what had previously removed copyrightable subject matter from the realm of copyright law. The Court did not further opine on what prints and labels were, focusing instead on the procedure for pleading a copyright infringement, and holding the plaintiff’s pleading had been inadequate.⁴¹ In the next decade the confusion over the 1874 Act would intensify, leading to the Decision of the Supreme Court in the case of *Higgins v. Keuffel* in 1891.

³⁸ *Rosenbach v. Dreyfuss*, 2 F. 217, 222 (D.C.S.D.N.Y. 1880).

³⁹ *Id.*

⁴⁰ *Id.* at 224.

⁴¹ *Id.* The Court held the plaintiffs needed to prove that a copyright was being infringed, since it seemed the infringement could be of uncopyrightable prints and not copyrightable subject matter.

II. PRINTS AND LABELS FROM 1881 TO 1891

Applications for label registrations recovered to 532 in 1882, and by 1883 they were higher than they had ever been, averaging 786 applications and 440 registrations per year. And yet even as the system of print and label registration hit its stride again, confusion over the nature of the 1874 Act continued, culminating in the *Higgins v. Keuffel* decision.

A. *Controversy and Confusion*

The 1874 Act required that the label being registered not be a trademark, doubtless in part to prevent individuals from taking advantage of the lower fee for registration (\$6 for a label and \$25 for a trademark).⁴² In one of the first decisions of the Commissioner of Patents on this issue, the Commissioner upheld the decision of the examiner that there could be no election between trademark and label registration if the label was a trademark.⁴³ This decision also suggested that if a label even contained a trademark, it needed to be registered as a trademark and not a label, but the commissioner stated that this was not the case a year later.⁴⁴

As is seen from this, the Patent Office never adopted the practice on the Library of Congress of simply registering without examination – labels were rather examined by trademark examiners and registration numbers often were far lower than the number of applications. In 1881 the Supreme Court for the District of Columbia (the forerunner of today's DC Circuit) held this approach invalid, and issued mandamus to the Commissioner of Patents to register an application it had denied as being a trademark, because copyright

⁴² This was suggested by a contemporary practitioner in a letter to *Scientific American* in 1884. *Correspondance*, *SCIENTIFIC AMERICAN*, Sep. 13, 1884 at 165.

⁴³ *Ex parte* Godillot, 6 O.G. 642 (Comm'r Patents, 1874).

⁴⁴ *Ex parte* Orcutt, 8 O.G. 277 (Comm'r Patents, 1875) (Stating that the label in the Godillot was in reality just a trademark, whereas here it was a proper label where the trademark was only a small part of it).

registration is a purely ministerial task.⁴⁵ Two years later the same Court again issued mandamus to register an application for a label registration that had been denied.⁴⁶ This second case had a unique twist – the Commissioner of Patents argued that the label law was unconstitutional following the *Trade-Mark Cases*, but the Court held that this was not an appropriate argument for the Commissioner to make and declined to rule on it.⁴⁷ Scientific American took issue the Commissioner’s recalcitrance in 1884, arguing that the Commissioner of Patents should not engage in examination – that there was no discretion regarding the registration of copyrights.⁴⁸ The unsigned editorial asserted that labels were in fact copyrights, and that while the constitutionality of such a law granting copyright to labels was questionable, it was not the purview of the Commissioner to rule on that.⁴⁹

It is likely no coincidence that the Commissioner of Patents disagreed in upholding an examiner’s ruling less than a month later.⁵⁰ The Commissioner noted that the 1874 Act raised the fee for a label registration from \$1 to \$6, and specifically required that labels not be trademarks. He also noted the *Willcox* decision but argued it was not well-considered, and declined to follow it. Scientific American took “decided issue” with the Commissioner’s decision,⁵¹ but the Commissioner’s view nonetheless could not be easily challenged, and the practice of examination continued.

⁴⁵ United States, *ex rel.* The Willcox & Gibbs Sewing Machine Co., vs. E. M. Marble, 1 Mackey 284 (D.C.Sup. 1881). There is no record the mandamus was complied with.

⁴⁶ United States, *ex rel.* Theodore Schumacher and Louis Ettlinger, 3 Mackey 32 (D.C.Sup. 1883)

⁴⁷ *Id.*

⁴⁸ *Labels as Subjects of Copyright*, SCIENTIFIC AMERICAN, Aug 9, 1884 at 80.

⁴⁹ *Id.*

⁵⁰ *Ex parte Moodie*, 28 O.G. 1271 (Comm’r Patents, 1884).

⁵¹ *Recent Decisions of the Commissioner of Patents Concerning Trade Marks and Labels*, SCIENTIFIC AMERICAN, Oct 18, 1884 at 240.

While the better view continued to be that labels were copyrights, confusion remained and in 1888 the Circuit Court in New York asserted in that while a drawing which could be used for a label could be an ordinary (non-label) copyright, a label registration itself was a trademark (in spite of the act's legislative history and plain text), not a copyright.⁵² In this case the plaintiffs had registered the original of a painting meant to for a label with the librarian of Congress, in what the court felt was an end-run around the 1874 Act.⁵³ The Court felt that the 1874 Act “declares in substance that no prints or labels designed to be used for any article of manufacture can be copyrighted, but authorizes them to be registered and protected as trade-marks in proper cases,” and dismissed the claims of the plaintiffs for infringement.⁵⁴

The Rules for label registration published by the Patent Office also manifested this confusion, demonstrating that the Patent Office itself thought that the labels it was registering were not copyrightable. In a note to the rules for label registration, it noted:

The registration of copyright matter is, by law, under the control of the Librarian of Congress at Washington. At the time of the enactment of the trade-mark law of July 8, 1870, it was the custom of the Librarian of Congress to enter, under the provisions of the copyright law, labels and prints of commerce, many of which embraced legal trade-marks. Notwithstanding the existence of a separate statute in 1870 for the registration of trade-marks, the Librarian of Congress, in entering labels and prints of commerce, gave a semblance of protection to many trade-marks, of which the labels and prints entered by him were the Mere vehicles. To remedy this difficulty was the object of the amendment to the copyright law of June 18, 1874, referred to herein as the act for the registration of prints and labels. By this amendatory act the Librarian of Congress is restricted, in the registry of copyright matter, to pictorial illustrations or works connected with the fine arts, and is prohibited from

⁵² Schumacher v. Wogram, 35 F. 210 (C.C.S.D.N.Y. 1888) (painting which is specifically designed as a label is uncopyrightable and must be registered as a label; label registration is not copyright registration); *see also* Schumacher v. Schwencke, 25 F. 466 (C.C.S.D.N.Y. 1885), 30 F. 690 (C.C.S.D.N.Y. 1887) (underlying which could be used label for cigar case could be registered as an ordinary copyright).

⁵³ *Wogram*, *Id* at 211.

⁵⁴ *Id.*

registering labels or prints designed to be used for any other articles of manufacture, i. e., articles of commerce. These are now registrable at the Patent Office; while matter properly coining within the definition of copyright subject-matter, as contained in the act of June 18, 1874, is registrable at the office of the Librarian of Congress.⁵⁵

Implicit in this is that the Patent Office did not consider label registrations to be copyrights at all, but rather a form of trademarks.

In 1890, with questions of both the meaning of the Act and the constitutionality of registering commercial labels under the copyright clause continuing, a bill was proposed to remedy these problems, by simply removing the provisions for registration of labels in the patent office, but keeping the provision preventing them from being registered as regular copyrights.⁵⁶ The effect would have been to end protection for labels entirely, but the bill went nowhere in Congress once reported. Nonetheless, registration of labels was about to come to a grinding halt.

B. Higgins v. Keuffel

As had been seen before, constitutional questions had long dogged the 1874 Act, and label registration before it. In the case of *Higgins v. Keuffel* these questions reached the Supreme Court, and while the Supreme Court's opinion itself was surprisingly limited, its effect was on one hand to affirm that a label registration is a copyright, and on the other hand to shut down nearly all label registrations for several years.

⁵⁵ 1885 Rules, *supra* note 30 at 23.

⁵⁶ 51st Cong., 2nd Sess., H. Rep. 27 (1890) at 4 (Reporting H.R. 3812).

1. The Litigation

Charles M. Higgins was an inventor who had developed a unique waterproof ink, which was superior to other inks and quickly became popular.⁵⁷ The bottles were in a unique shape, and carried a label reading, in type-set letters, “WATERPROOF DRAWING INK.”⁵⁸ The label was duly registered with the Commissioner of Patents in 1883, but no other protection was sought, either for the ink as a patent or by placing a trademark on the label and registering that.⁵⁹ The label carried a notice of registration “Registered 3693, 1883.”⁶⁰ The defendants, partners in the firm of Keuffel & Esser, were in the business of selling inks made by both themselves and others, and had for a time sold Higgins ink.⁶¹ The defendants had a history of using a label with the same phrase on their own inks, and after they had agreed to stop using it, reverted to doing so again,⁶² and Higgins brought suit under the Label Act in the Circuit Court for the Southern District of New York.⁶³

The defendants filed an answer, and asserted that the defendant’s claim was fatally flawed because the label was descriptive of the contents and nothing more, and that that the label was not proper subject matter for a label and could not be lawfully registered.⁶⁴ At the hearing before the Circuit Court additional arguments were made: that the form of notice of registration on the label was incorrect, that Congress had never

⁵⁷ Deposition of Charles M. Higgins, in the case file for Higgins v. Keuffel, Records and Briefs of the U.S. Supreme Court. While Higgins is obviously biased, there is no reason to gainsay this since it was not at issue.

⁵⁸ Example Label in casefile, *Id.*

⁵⁹ Complaint in casefile, *Id.* Label reg. no. 3693 (Nov. 20, 1883) in casefile, *Id.*

⁶⁰ Sample label in casefile, *Id.*

⁶¹ Higgins Deposition in casefile, *Id.*

⁶² The label included with the complaint reads “BLACK WATERPROOF DRAWING INK.” Complaint, *Id.*

⁶³ *Id.* This is the old Circuit Court, and not the modern Circuit Court of Appeals.

⁶⁴ Answer, *Id.*

meant to apply the copyright law to labels, and that the 1874 Act was unconstitutional.⁶⁵ The question of form of notice for a label was not a simple one, complicated by the fact that the statute was unclear, and it was unclear whether a label registration even was a copyright. While the registration had been properly received, the copyright law at the time required a specific form of notice, stating that the copyrighted matter had been registered with the Library of Congress, or specifically registered as a copyright.⁶⁶ The problem was in both cases clear – labels were not registered with the Library of Congress, and it was not at all clear that they were being copyrighted.

Nonetheless, the Circuit Court held that the Label was unprotected because the registration did not conform to the statutory requirements for copyrights.⁶⁷ Judge Wheeler assumed that label registrations were copyrights, and held that the notice was so defective that it was as if there had been no notice at all, and it practically constituted an abandonment of copyright.⁶⁸ Constitutional questions were not mentioned by the Circuit Court, and the case would most likely not be remembered if it had not been appealed.

Of course, it was appealed, and the briefs of both sides to the Supreme Court provide a window into both their arguments and what questions were unsettled. Although of course both briefs gave substantial space to the procedural questions the lower court decision was based on, they also addressed the broader questions of classification and Constitutionality. The lawyers for Higgins asserted that the 1874 Act was simply a change in the place of registration, and that the labels were copyrighted and

⁶⁵ Appellant's brief in casefile, *Id.* at 4.

⁶⁶ Drone, *supra* note 33 at 265 n. 8.

⁶⁷ Higgins v. Keuffel, 30 F. 627 (C.C.S.D.N.Y. 1887).

⁶⁸ *Id.* at 628.

held the same protections for copyrights registered with the Library of Congress.⁶⁹ In defending whether a label with such a simple phrase could be copyrighted, Higgins asserted that the level of originality necessary for a copyright was so slight that it need barely be perceptible, and the choice and organization of the words “waterproof drawing ink” was sufficiently original.⁷⁰ Regarding the constitutionality of the Act, Higgins asserted that if photographs, catalogs, and pamphlets could be copyrighted, it followed that labels could as well.⁷¹

The defendant-appellees, on the other hand, made the first argument in their brief a direct assault on the Constitutionality of the 1874 Act.⁷² Looking to the *Trade-Mark Cases*, they noted that such a law must rest on the commerce or copyright clauses. After noting that the commerce clause could not be used because the 1874 Act was not limited to interstate or international commerce, the appellees turned to the copyright clause, and asserted that since labels were not “founded in the creative powers of the mind” by their very definition, thus making them invalid subject matter under the copyright clause.⁷³ The appellees asserted that Congress had recognized that labels were not copyrightable (as, indeed the Librarian of Congress had been arguing) and rather removed them from the realm of copyrightable subject matter.⁷⁴ The argument was further made that even if labels were copyrights, the particular label at issue could not be registered as it was not copyrightable subject matter.⁷⁵ The appellees also made an interesting argument in favor

⁶⁹ Appellant’s brief in casefile, *supra* note 57 at 12

⁷⁰ *Id.* at 21. Higgins asserted while being deposed that he had thought of many other possibilities for the phraseology of the label. Higgins Deposition in casefile, *Id.*

⁷¹ Brief, *Id.* at 22.

⁷² Appellee’s brief in casefile, *Id.* at 3.

⁷³ *Id.* at 3-4 (*quoting* *Burrows-Giles Lithographic v. Sarony*, 111 U.S. 53 (188?))

⁷⁴ *Id.* at 4.

⁷⁵ *Id.* at 6-7.

of dismissal – if label were not copyrights there was no federal jurisdiction, since all were citizens of New York.⁷⁶

2. The Decision

Argument before the Supreme Court was held April 7-8, 1891, several years after the case was decided in the lower Court.⁷⁷ The Court's unanimous opinion came out slightly over a month later upholding the Circuit Court, in an opinion written by Justice Field.⁷⁸

Examining the constitutional question first, Justice Field held that the label in question could not be copyrighted, holding that the copyright clause

does not have any reference to labels which simply designate or describe the articles to which they are attached, and which have no value separated from the articles, and no possible influence upon science or the useful arts. A label on a box of fruit, giving its name as 'grapes,' even with the addition of adjectives characterizing their quality as 'black,' or 'white,' or 'sweet,' or indicating the place of their growth, as Malaga or California, does not come within the object of the clause. The use of such labels upon those articles has no connection with the progress of science and the useful arts. So a label designating ink in a bottle as 'black,' 'blue,' or 'red,' or 'indelible,' or 'insoluble,' or as possessing any other quality, has nothing to do with such progress. It cannot, therefore, be held by any reasonable argument that the protection of mere labels is within the purpose of the clause in question. To be entitled to a copyright the article must have by itself some value as a composition, at least to the extent of serving some purpose other than as a mere advertisement or designation of the subject to which it is attached.⁷⁹

Curiously, the Court's analysis here was actually more along the lines of a Patent Clause argument than a Copyright Clause argument, looking to whether it advanced the progress of science and the useful arts. Following this the Supreme Court quoted Justice

⁷⁶ *Id.* at 9.

⁷⁷ *United States Supreme Court*, N.Y. TIMES, Apr. 8, 1891 at 9. The reason for this delay is unclear, the case was originally supposed to be heard in the October term of 1888. Notice of hearing in casefile, *supra* note 57.

⁷⁸ *Higgins v. Keuffel*, 140 U.S. 428 (1891).

⁷⁹ *Id.* at 431.

McLean's opinion in the *Scoville* case at some length, and endorsed its reasoning.⁸⁰ The Supreme Court then affirmed the Circuit Court's decision regarding the form of notice of registration on the label, finding it insufficient.⁸¹

Left unsaid in the decision was whether the 1874 Act was unconstitutional. It is certainly a plausible inference that it was, given the language about labels serving no purpose other than the commercial, but at the same time all the labels discussed in the opinion (and the *Scoville* case) were simple text labels with no artistic features. The first reaction of many to the decision was that the 1874 Act had been swept away, but a few years later the Act was once again standing strong.

III. PRINTS AND LABELS FROM 1891 TO 1909

With the decision in the *Higgins* case, registration of labels abruptly stopped. It would be a few years before it resumed, and when they resumed it would be in its modern form – clearly understood as copyright registration.

A. *The First Death of the 1874 Act – Aftermath of Higgins*

In 1891, The Commissioner of Patents registered 131 labels, presumably almost all in the stub year prior to the *Higgins* decision. There were only six registrations in 1892, none for the next 3 years, one in 1896 and fourteen in 1897. The *Higgins* case had not been followed closely in the papers, applications remained in the hundreds (but lower than before) for a few years after the decision, finally crashing to roughly 60 in 1896 and 1897. While the decision didn't quite hold this, it at first it seemed that the 1874 Act was an unconstitutional dead letter.

⁸⁰ *Id.* at 431-432.

⁸¹ *Id.* at 434.

At first it was felt after *Higgins* that no label could sufficiently artful to be a valid copyright,⁸² and the Commissioner of Patents had declined to register a label solely on the grounds of that decision.⁸³ However, a year later the Commissioner clarified that a sufficiently artful label *would* be registered.⁸⁴ The examiner had held that all label registrations were to be denied, but the Commissioner interpreted the *Higgins* decision as leaving room for registration where the label “possess[es] just as much artistic excellence, and no more, as would entitle it to copyright in the office of the Librarian of Congress.”⁸⁵ While the “narrow margin” this decision provided would be seldom found applicable in the next few years,⁸⁶ it made it clear that the 1874 Act was still operative, at least in theory.

Up to this point, labels had been regarded as being the prints referred to in the 1874 Act. But with label registration essentially shut down, and with commercial prints seeming to more easily fit into copyright law, the provisions regarding commercial prints took on new importance. In 1893 Heinz attempted to register a flyer advertising their products, including their still well-known ketchup.⁸⁷ It was not a label, but was nonetheless rejected as being one by the examiner⁸⁸ In overturning the examiner the Commissioner reiterated the points made in the *Palmer* decision, but also went further and asserted that prints were within the 1874 separately from labels, and could be registered as prints, rather than labels.⁸⁹ He noted that no rationale was given for conflating prints with labels in the Rules of the Patent Office, given that the 1874 Act mentioned them

⁸² *Labels Under the Copyright Law*, WASH. POST, Jan. 17, 1892 at 4.

⁸³ *Ex parte Eldredge*, 55 O.G. 1278 (Comm’r Patents, 1891).

⁸⁴ *Ex parte Palmer*, 58 O.G. 383 (Comm’r Patents, 1892).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Ex parte H.J. Heinz Co.*, 62 O.G. 1064 (Comm’r Patents, 1893)

⁸⁸ *Id.*

⁸⁹ *Id.*

separately, and thus prints should be registered separately.⁹⁰ In closing, the Commissioner made clear that he now considered the 1874 Act, along with the Label and newly instituted Print registrations under it, part of the copyright law.⁹¹ With this opinion the 1874 Act reached its modern understanding under the copyright law. The Commissioner of Patents also published new rules in 1893, which would set forth procedures for separate print registration but also required that no label could have a trademark on it and be registered.

B. *The 1874 Act in Bloom and its Second Demise*

While the theoretical framework was now in place for print and label registrations to resume at full capacity, this was not to be. This was due in large part to rules adopted in 1893 holding that any trademark on a label would make unregistrable as a label, and this spurred Congress to propose two bills in 1898 to loosen the restrictions on label registrations.⁹² This would prove unnecessary, as two decisions of the Commissioner of Patents in that year would finally loosen things sufficiently to allow registrations to resume as before. The first decision allowed for print registrations (which had been a mere trickle until then) to become more commonplace, by holding that a trademark could appear on a print without rendering it unregistrable.⁹³ The second decision applied this holding to labels, holding that having a trademark on a label only rendered it unregistrable if the totality of the label was a trademark or could be used as a

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² 55 H.R. 8582 (1898); 55 H.R. 8620 (1892); 55 H.Rep. 691 (reporting H.R. 8620 favorably); *New Bills for the Regulation of Print and Label Registration*, 78 SCIENTIFIC AMERICAN 242 (No. 16, Apr. 16, 1898) (reporting on the bills and noting that the 1874 Act was essentially a “dead letter” at this point).

⁹³ *Ex parte* U.S. Playing Card Co., 82 O.G. 1209 (1898).

trademark.⁹⁴ In doing so the Commissioner turned away from an expansive reading of *Higgins* and interpreted it narrowly – it only prohibited registration of labels like the one in that case – merely typeset words describing the product.⁹⁵ Labels displaying more creativity could now be registered, and registered they were. The numbers of both applications and registrations skyrocketed, and within a few years were higher than ever. There were over 1,000 applications for label registration, a trend which would continue around that level through 1908, while there 1904 saw over 1,000 label registrations. Prints meanwhile saw several hundred applications and registrations a year separate from labels over this period.

As this occurred, progress was being made on what would become the 1909 Copyright Act, the first full revision of the copyright law since 1870. The record is unclear as to whether the 1909 Act was meant to repeal the 1874 Act – an earlier draft returned commercial labels to the Library of Congress in no uncertain terms, but this language did not remain for reasons that were obscure then as now.⁹⁶ In addition to this the Copyright Office informally acquiesced to taking in Prints and Labels as the negotiations over the new copyright act progressed,⁹⁷ and thus many were of the impression the 1909 Act worked a repeal of the 1874 Act. They were mistaken.

IV. PRINTS AND LABELS FROM 1909 TO 1940

One unusual aspect of the 1874 Act was its longevity, and after 1909 it could be best described as an undead anachronism that had surprised two separate seeming deaths. In this last period registrations would reach heights barely dreamt of originally as

⁹⁴ *Ex parte Mahn*, 82 O.G. 1210 (1898).

⁹⁵ *Id.*

⁹⁶ Chauncy P. Carter, *Print and Label Registrations*, 6 J. Pat. Off. Soc’y 522, 524-525 (1923-1924)

⁹⁷ *Id.* at 525.

America metamorphosized almost completely from where it had been in 1874. By the end the only surprise about the Act's repeal was that it had taken so long.

A. *Reanimation*

Upon the passage of the 1909 Act, the Commissioner of Patents issued a notice that he would no longer register prints and labels, but would refer them to the Library of Congress.⁹⁸ The Library of Congress however also refused to register commercial prints and labels, and after a contentious hearing at the House Committee on Patents the question was taken to the Attorney General.⁹⁹ In his opinion, the Attorney General looked to the plain text of the 1909 Act, and finding no statutory language repealing the 1874 Act, held it had not been repealed.¹⁰⁰ He further found that under the 1874 Act print and label registrations were a class of patent registration and not copyrights, and thus were not impacted by the 1909 Act.¹⁰¹ Upon this ruling, the Commissioner of Patents resumed registration of Prints and Labels, now pursuant to the 1909 Act.¹⁰²

Over the next 30 years, the 1874 Act would weather World War 1, the roaring 20s, and the great depression, and the trends regarding applications especially mirror the pace of the overall economy almost shockingly. The Library of Congress also underwent substantial changes – in 1874 the Library was tucked away in a corner of the capital, and what is now the Thomas Jefferson Building of the Library of Congress was little more than a dream for Ainsworth Spofford. It opened in 1897, and the annex building (now the John Adams Building) opened in 1938. Space to store labels was no longer a serious

⁹⁸ *Id.* This seems to have been the understanding of the laws at the time. *Navy Seeks More Money*, *Washington Post*, Dec. 16, 1909 at 4.

⁹⁹ *Navy, Id.*

¹⁰⁰ Registration in Patent Office of Prints Designed to be Used on Articles of Manufacture, 28 Op. Att'y Gen. 116, 121 (1910).

¹⁰¹ *Id.* at 118.

¹⁰² Carter, *supra* note 96 at 525-526.

problem. While America was in the midst of the Great Depression in the 1930s, it was still a major nation, a far cry from the backwater it had been in the 1870s, and its commerce had advanced commensurately. In the midst of this stood the 1874 Act, seeming less logical and more confusing and counterintuitive by the day. The report of the House Committee on Patents in 1939 on what would become the Act repealing the 1874 Act enumerated the problems thusly:

Although registered in the Patent Office under the 1874 act, applications, registrations, and renewals are governed by the terms of the 1909 Copyright Act. There is no copyright official in the Patent Office, and the registrations are handled by trade-mark officials. The practice in the Patent Office is quite different from the practice in the Copyright Office and governed by an entirely separate set of rules and decisions. The Patent Office fee is \$6; the Copyright Office fee is \$2. The Copyright Office issues quite promptly a brief 3-by-5-inch certificate; the Patent Office eventually issues a large, ornate certificate similar to a patent. The Copyright Office furnishes small printed application forms; the Patent Office requires the applicant to prepare his own application. For renewal, the Patent Office requires a fresh application for registration; the Copyright Office does not. The Patent Office refuses registration for reasons unknown to the Copyright Office. The Patent Office justifies renewal by the 1909 copyright law but charges the fee prescribed by the 1874 law. Certain advertisements are apparently eligible for registration in either office, with no assurance that the choice results in a valid registration. Almost daily the Copyright Office receives applications for registration which it must return because the subject matter of the copyright comes within the 1874 law. Thousands of copyright labels are registered in the Patent Office under this 1874 law under the misapprehension that such registration protects the trade-marks appearing on the labels.¹⁰³

With these problems, repeal was inevitable.

B. Demise

Despite this, the effort to overrule the 1874 Act took the better part of the decade. The first of the series of bills was proposed in the Senate in 1932, and proposed simply that the system of registration be discontinued in 1933, and that all files regarding labels

¹⁰³ 76 H. Rep. 70 at 2 (1939)

and prints be transferred to the Library of Congress along with responsibility for registering labels and commercial prints.¹⁰⁴ The bill was reported to the Committee on Patents, and was never heard from again in the 72nd Congress.

Three years later in the 74th Congress, a more sustained effort was made to transfer registration to the Library of Congress.¹⁰⁵ The bill was identical to the bill proposed two Congresses ago, and was once again reported to the Committee on Patents. This time, though, the Committee on Patents reported it, urging its passage.¹⁰⁶ The report including several comments from the Register of Copyrights (a position which did not even exist until 1897), commenting that the 1874 Act was “somewhat of an anachronism.”¹⁰⁷ He recommended its passage, although he did not feel the matter was of great import, and noted that the Library of Congress already registered many commercial prints in practice.¹⁰⁸ The Register of Copyrights did request one amendment though – that the files relating to existing print and label registrations be kept at the Patent Office.¹⁰⁹ The bill was reported back with this amendment and was voted on and passed without any objections being voiced.¹¹⁰ The ABA Section on Copyright also voiced its approval.¹¹¹ It was never voted on by the House.

Surprisingly, the matter never came up in the 35th Congress, but early in the 36th Congress Rep. Fritz Lanham, of Lanham Act fame, proposed a bill with different language than the previous two, but with the same effect – the repeal of the 1874 Act.¹¹²

¹⁰⁴ 72 S. 4919 (1932).

¹⁰⁵ 74 S. 3121 (1935).

¹⁰⁶ 74 S. Rep. 1473 (1936).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ 80 CONG. REC. 1453 (Feb. 6, 1936).

¹¹¹ 1937 ABA Sec. Pat. Trademark & Copyright L. Comm. Rep. 12 (1937).

¹¹² 76 H.R. 153 (1939)

As in the amended version in the 74th Congress, there was no mention of transferring the records. The bill was reported back quickly from the House Committee on Patents (Rep. Lanham's committee), and passage was recommended.¹¹³ The report enumerated the problems of the current 1874 Act, and noted that those who stood in favor of its repeal – the Commissioner of Patents, the Register of Copyrights, The ABA, and the Brookings Institution.¹¹⁴ It does not seem anyone opposed repeal. The bill reached the House Floor on March 6, 1939, and after some technical amendments by Rep. Lanham was approved without an opposing word.¹¹⁵

The bill went to the Senate, whose Committee on Patents reported it favorably.¹¹⁶ The committee report included a long letter from the Register of Copyrights in favor of this change, enumerating many of the confusions occasioned by the 1874 Act in the modern era:

Many lawyers throughout the country take the position that there is a choice in the matter of registration, and that they can register commercial prints and labels either in the Patent Office or in the Copyright Office. And of course there are always certain borderline cases arising. Applications still keep coming to the Copyright Office almost every day for registration of material of this character, notwithstanding that the act has been in force nearly three-quarters of a century.

As a typical example of what happens: Two or more copies of a commercial print or label are received with an application on the regular Copyright Office form for registration as a "print or pictorial illustration" under section 5 (k) of the Copyright Act; and a money order for \$2 to pay the fee. The material and fee are returned to the applicant with a letter explaining that this kind of material, while copyrightable, must be filed with the Commissioner of Patents in accordance with the requirements of the act of 1874, and a copy of the Commissioner's pamphlet of directions is usually enclosed with the letter. Upon receipt thereof, the applicant feels that there has been some misunderstanding on the part of the Copyright Office, and he promptly returns the copies and fee with a letter stating that

¹¹³ 76 H. Rep. 70 (1939)

¹¹⁴ *Id.* at 2; see also 1939 ABA Sec. Pat. Trademark & Copyright L. Comm. Rep. 23 (1939).

¹¹⁵ 84 Cong. Rec. 2298 (Mar. 6, 1939).

¹¹⁶ 76 S. Rep. 793 (1939).

he is not seeking registration of a trade-mark but of a claim of copyright in his print or label. Again the Office must return the copies and fee with a further letter of explanation. At this stage, the applicant frequently consults a lawyer, and then follows additional correspondence.

Thus there is a constant flow of such material back and forth through the mails in the fruitless effort to register a claim of copyright. Sometimes the work received here does not reveal its real purpose, and registration is made; later on, infringement occurs and the claimant brings suit, whereupon the real nature and use of the work is disclosed as a commercial print; the claimant is told by the court that his registration is invalid because made in the wrong place.¹¹⁷

The bill came to the Senate floor, and several amendments were made, the most notable being the reintroduction of the \$6 fee from the 1874 Act. After assurances that the only real change was to move prints and labels back to the copyright office the bill passed without objections.¹¹⁸ The following day the House concurred in the Senate amendments, no doubt eager to get a bill passed without trouble.¹¹⁹ On July 31, 1939, the President signed the bill into law, effective Jan. 1, 1940.¹²⁰

To this day, the records for commercial prints and labels registered from 1874 to 1940 are held by the U.S. Patent and Trademark Office.

V. WHAT WERE PRINTS AND LABELS FROM 1874 TO 1940?

There is a certain irony that the 1874 Print and Label Act was enacted to keep everything related to trademarks in one place where they belonged, and happened due to the advocacy of a great copyright advocate. It was repealed to keep everything related to copyrights in one place where they belonged, and was repealed due to the efforts of a great trademark advocate.

¹¹⁷ *Id.*

¹¹⁸ 84 Cong. Rec. 9378 (Jul. 18, 1939).

¹¹⁹ 84 Cong. Rec. 9530-9531 (Jul. 19, 1939).

¹²⁰ 84 Cong. Rec. 10939 (Aug. 3, 1939)

It is clear that in the 20th century the better view of the 1874 Act was that commercial labels and prints were being registered as copyrights, but it seems equally clear that Congress did not intend for these registrations to be copyrights, or trademarks. The most logical answer as to what Congress did mean to do was to create a new form of intellectual property for artwork used to sell commercial products. While this approach obviously did not catch on, it remains an interesting approach, and could be instructive regarding modern labels, prints, and advertisements.

VI. APPENDIX

<follows on next page>

Statistics for Print and Label Application and Registration, 1874-1940

Year	Label Apps	Label Regs	Print Apps	Print Regs	All Apps	All Regs	Label %	Print %	Combined %
1874	221	151			221	151	0.6832579		0.683257919
1875	566	313			566	313	0.5530035		0.553003534
1876	650	402			650	402	0.6184615		0.618461538
1877	632	392			632	392	0.6202532		0.620253165
1878	700	492			700	492	0.7028571		0.702857143
1879	576	355			576	355	0.6163194		0.616319444
1880	375	184			375	184	0.4906667		0.490666667
1881	363	202			363	202	0.5564738		0.556473829
1882	532	304			532	304	0.5714286		0.571428571
1883	834	906			834	906	1.0863309		1.086330935
1884	812	513			812	513	0.6317734		0.631773399
1885	728	391			728	391	0.5370879		0.537087912
1886	792	378			792	378	0.4772727		0.477272727
1887	686	380			686	380	0.5539359		0.55393586
1888	729	327			729	327	0.4485597		0.448559671
1889	828	319			828	319	0.3852657		0.3852657
1890	875	304			875	304	0.3474286		0.347428571
1891	698	137			698	137	0.1962751		0.196275072
1892	458	6			458	6	0.0131004		0.013100437
1893	401	0	*	2	401	2	0	0	0.004987531
1894	371	0	*	5	371	5	0	0	0.013477089
1895	293	0	13	3	306	3	0	0	0.009803922
1896	59	1	36	32	95	33	0.0169492	0	0.347368421
1897	66	14	26	16	92	30	0.2121212	1.14285714	0.326086957
1898	316	200	50	35	366	235	0.6329114	0.175	0.642076503
1899	629	511	143	100	772	611	0.8124006	0.19569472	0.791450777
1900	943	737	127	93	1070	830	0.7815483	0.12618725	0.775700935
1901	1061	878	233	159	1294	1037	0.8275212	0.18109339	0.801391036
1902	1121	767	266	158	1387	925	0.6842105	0.20599739	0.666906994
1903	1234	990	380	270	1614	1260	0.802269	0.27272727	0.780669145
1904	1335	1,114	397	297	1732	1411	0.8344569	0.26660682	0.814665127

Year	Label Apps	Label Regs	Print Apps	Print Regs	All Apps	All Regs	Label %	Print %	Combined %
1905	1068	830	467	359	1535	1189	0.7771536	0.43253012	0.774592834
1906	844	709	419	656	1263	1365	0.8400474	0.92524683	1.080760095
1907	1027	667	403	315	1430	982	0.6494645	0.47226387	0.686713287
1908	860	618	312	220	1172	838	0.7186047	0.35598706	0.715017065
1909	554	492	190	148	744	640	0.8880866	0.30081301	0.860215054
1910	755	370	226	120	981	490	0.4900662	0.32432432	0.499490316
1911	969	659	337	248	1306	907	0.6800826	0.37632777	0.694486983
1912	885	633	309	243	1194	876	0.7152542	0.38388626	0.733668342
1913	1002	708	391	290	1393	998	0.7065868	0.40960452	0.71643934
1914	988	719	434	338	1422	1057	0.7277328	0.47009736	0.743319269
1915	982	803	486	371	1468	1174	0.8177189	0.46201743	0.79972752
1916	939	864	469	432	1408	1296	0.9201278	0.5	0.920454545
1917	814	613	316	245	1130	858	0.7530713	0.39967374	0.759292035
1918	754	654	242	197	996	851	0.867374	0.30122324	0.854417671
1919	1219	520	486	146	1705	666	0.4265792	0.28076923	0.390615836
1920	1280	622	570	158	1850	780	0.4859375	0.25401929	0.421621622
1921	1601	1485	602	466	2203	1951	0.9275453	0.31380471	0.885610531
1922	1719	1612	710	587	2429	2199	0.9377545	0.36414392	0.905310828
1923	1605	1261	785	617	2390	1878	0.7856698	0.48929421	0.785774059
1924	1788	1278	771	535	2559	1813	0.7147651	0.41862285	0.708479875
1925	1875	1725	833	839	2708	2564	0.92	0.48637681	0.946824225
1926	1979	1676	933	868	2912	2544	0.8468924	0.51789976	0.873626374
1927	2111	1782	1259	1074	3370	2856	0.8441497	0.6026936	0.847477745
1928	2165	1857	1236	944	3401	2801	0.8577367	0.5083468	0.8235813
1929	1964	1774	991	933	2955	2707	0.9032587	0.5259301	0.91607445
1930	1868	1610	857	723	2725	2333	0.8618844	0.44906832	0.856146789
1931	**	1787	**	678	2866	2465			0.86008374
1932	**	1492	**	483	2452	1975			0.805464927
1933	**	1458	**	579	2524	2037			0.807052298
1934	**	1635	**	535	2687	2170			0.80759211
1935	**	1908	**	500	2969	2408			0.811047491
1936	**	1787	**	519	2923	2306			0.788915498

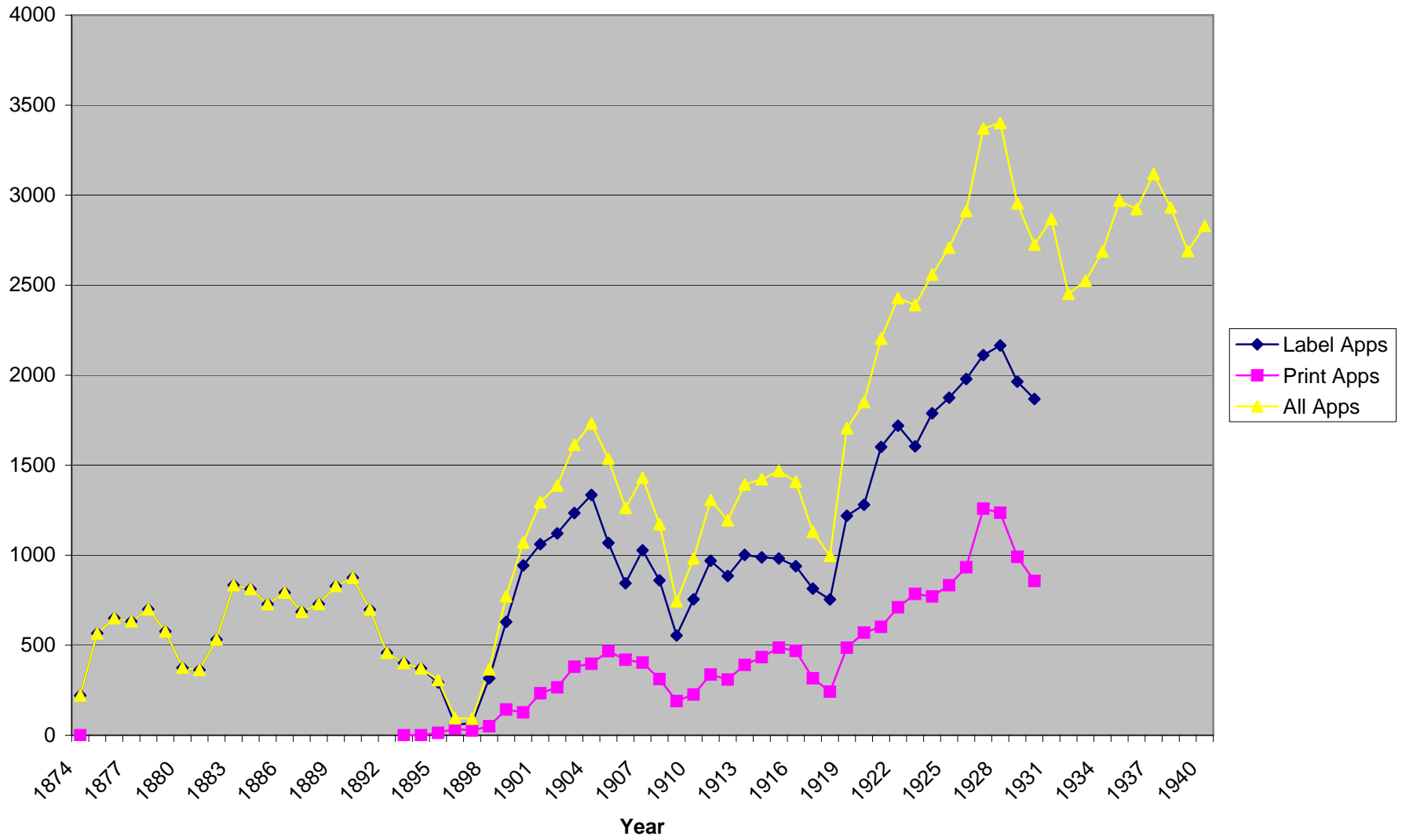
Year	Label Apps	Label Regs	Print Apps	Print Regs	All Apps	All Regs	Label %	Print %	Combined %
1937	**	1955	**	551	3118	2506			0.803720334
1938	**	1806	**	607	2932	2413			0.822987722
1939	**	1770	**	545	2689	2315			0.860914838
1940	**	1856	**	604	2829	2460			0.869565217

Statistics taken from the annual Reports of the Commissioner of Patents (1874-1924, 1926), Secretary of Interior (1925), and Secretary of Commerce (1927-1940)

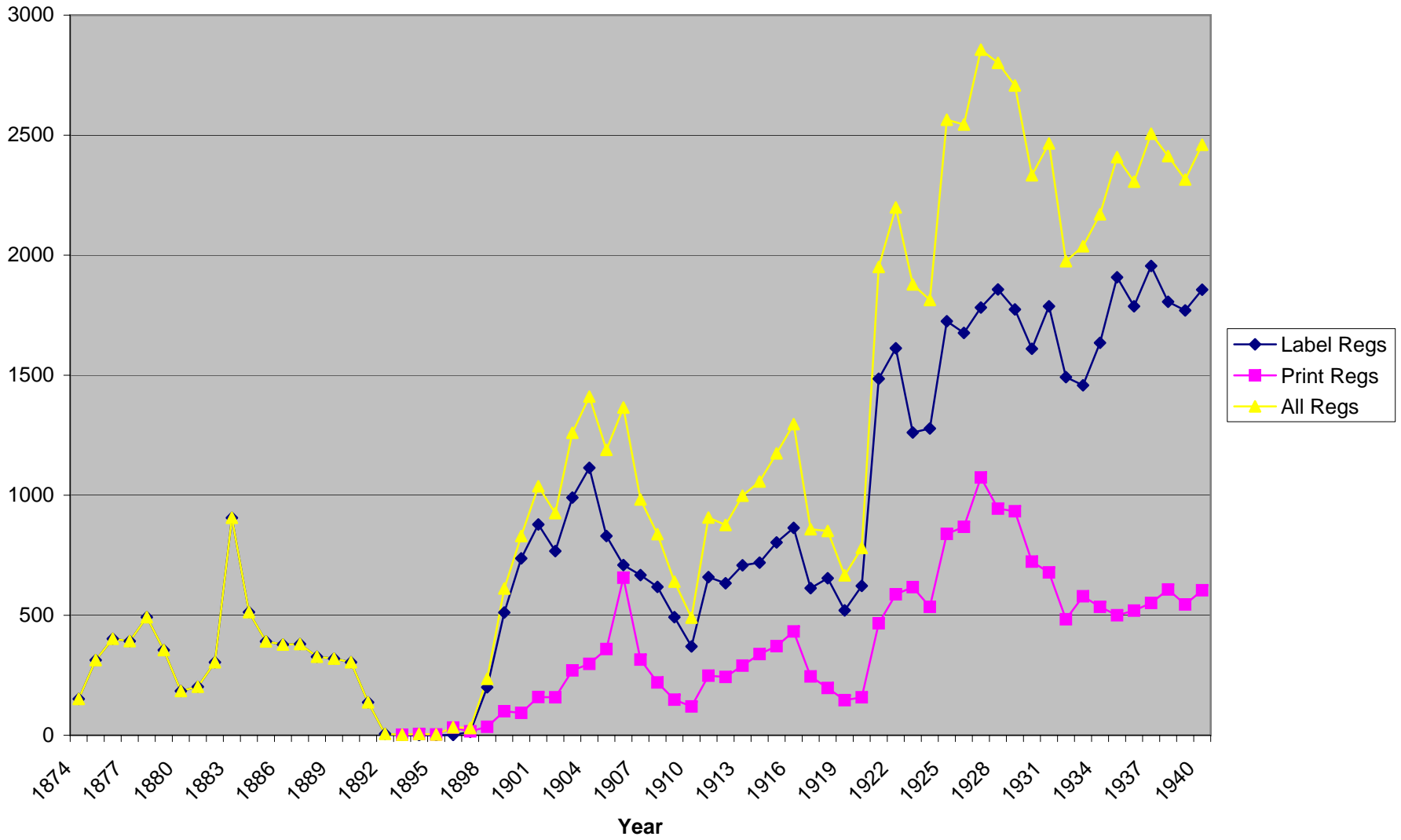
* For the first two years of print registrations application figures are not given, and registrations are given in later reports.

** For the year 1931 and on, the number of applications for print and label registrations was not listed seperately.

Applications for Registration



Registrations of Labels and Prints



Percentage of Applications Registered

