

Sec. 8—Powers of Congress

Cl. 8—Copyrights and Patents

Trade-Marks and Advertisements

In the famous *Trade-Mark Cases*,¹⁴⁶⁵ decided in 1879, the Supreme Court held void acts of Congress that, in apparent reliance upon this clause, extended the protection of the law to trademarks registered in the Patent Office. "The ordinary trade mark," Justice Miller wrote for the Court, "has no necessary relation to invention or discovery"; nor is it to be classified "under the head of writings of authors." It does not "depend upon novelty, invention, discovery, or any work of the brain."¹⁴⁶⁶ Not many years later, the Court, again speaking through Justice Miller, ruled that a photograph may be constitutionally copyrighted,¹⁴⁶⁷ and still later the Court held a circus poster to be entitled to the same protection. In answer to the objection of the circuit court that a lithograph that "has no other use than that of a mere advertisement" would not be within the meaning of the Constitution, Justice Holmes summoned forth the shades of Velasquez, Whistler, Rembrandt, Ruskin, Degas, and others in support of the proposition that it is not for the courts to attempt to judge the worth of pictorial illustrations outside the narrowest and most obvious limits.¹⁴⁶⁸

Clause 9. The Congress shall have Power * * * To constitute Tribunals inferior to the supreme Court; (see Article III).

IN GENERAL

See discussion "The Power of Congress to Control the Federal Courts" under Article III, § 2, cl. 2, *infra*.

Clause 10. The Congress shall have Power * * * To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.

PIRACIES, FELONIES, AND OFFENSES AGAINST THE LAW OF NATIONS**Origin of the Clause**

"When the United States ceased to be a part of the British empire, and assumed the character of an independent nation, they became subject to that system of rules which reason, morality, and custom had established among civilized nations of Europe, as their

¹⁴⁶⁵ 100 U.S. 82 (1879).

¹⁴⁶⁶ 100 U.S. at 94.

¹⁴⁶⁷ *Burrow-Giles Lithographic Co. v. Saroney*, 111 U.S. 53 (1884).

¹⁴⁶⁸ *Bleisten v. Donaldson Lithographing Co.*, 188 U.S. 239, 252 (1903).