No. 21-1043

IN THE
Supreme Court of the United States

ABITRON AUSTRIA GMBH, ET AL.,
Petitioners,

v.

HETRONIC INTERNATIONAL, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF FOR RESPONDENT

DEBBIE L. BERMAN
WADE A. THOMSON
JENNER & BLOCK LLP
353 N. Clark St.
Chicago, IL 60654

GIANNI P. SERVODIDIO
RÉMI J.D. JAFFRÉ
JENNER & BLOCK LLP
1155 Avenue of the Americas
New York, NY 10036

SAMUEL R. FULKERSON
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
621 N. Robinson Ave., Suite 400
Oklahoma City, OK 73102

MATTHEW S. HELLMAN
Counsel of Record
LAUREN J. HARTZ
VICTORIA HALL-PALERM
JONATHAN J. MARSHALL*
JENNER & BLOCK LLP
1099 New York Ave., NW, Suite 900
Washington, DC 20001
(202) 639-6000
mhellman@jenner.com

* *Not admitted in the District of Columbia; practicing under direct supervision of members of the D.C. Bar*

QUESTION PRESENTED

Whether the Lanham Act's trademark-infringement provisions, 15 U.S.C. §§ 1114(1)(a), 1125(a)(1)(A), impose liability where the defendant's use of a mark outside the United States substantially affects commerce between the United States and foreign countries, tarnishes the goodwill of a U.S. mark owner, and poses a likelihood of confusing consumers in the United States.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, counsel for Respondent Hetronic International, Inc., certify that Hetronic International, Inc., is not a publicly held company; that its parent corporation is Methode Electronics, Inc.; and that no publicly held company owns 10% or more of the stock of Methode Electronics, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

LEGISLATIVE MATERIALS

OTHER AUTHORITIES

INTRODUCTION

Petitioners were once international distributors for Respondent Hetronic International, Inc., an Oklahoma company. As both judge and jury found below, Petitioners engaged in a sweeping scheme of willful trademark infringement intended to "attack [Hetronic] at their doorstep in the U.S." J.A. 66. By exploiting their contracts with Hetronic, Petitioners misappropriated Hetronic's intellectual property to create knockoff products. Petitioners then marketed their knockoffs through industry trade shows, direct mailings, and digital channels, where they baldly lied to Hetronic's customers by telling them that Petitioners were the real Hetronic. Petitioners' deception and shoddy goods damaged Hetronic's reputation and caused Hetronic to lose $90 million in sales. Although some of the infringing conduct took place overseas, all of it was inextricably tied to the United States and to U.S. commerce: Petitioners intended to cause harm to a U.S. company and confusion among U.S. consumers, and they succeeded.

Petitioners now ask this Court to hold that the Lanham Act is powerless to stop their infringement to the extent it was consummated overseas. As Petitioners would have it, foreign trademark pirates are categorically beyond the Act's reach, no matter how substantial the harm to U.S. commerce they inflict. For its part, the government acknowledges that the Act reaches some foreign infringement, but claims that it ignores conduct that was not likely to confuse U.S. consumers.

Statutory text and settled precedent dictate a different answer. For 70 years, this Court has consistently recognized that the Lanham Act's unusually broad

language covers foreign acts of infringement, notwithstanding the presumption that federal statutes generally do not apply abroad. Unlike in other statutes, Congress chose to regulate to the constitutional limit, expressly imposing liability for trademark infringement in "all commerce which may lawfully be regulated by Congress." 15 U.S.C. § 1127. That unique language means what it says: Congress invoked the full extent of its commerce powers, which indisputably include regulating foreign conduct that substantially affects U.S. commerce. For that reason, this Court has explained on *three* different occasions that the Act overcomes the presumption against extraterritoriality.

First, in *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952), this Court held that the Act overcomes the presumption given its "sweeping reach" into all commerce within Congress's power to regulate. *Id.* at 287. Next, when the government argued in *EEOC v. Arabian American Oil Co.*, 499 U.S. 244 (1991), that Title VII should apply extraterritorially like the Lanham Act, the Court distinguished the Lanham Act's language as a far cry from the "boilerplate" language appearing in Title VII and other federal statutes. *Id.* at 252. Finally, when the Court clarified the framework for analyzing the extraterritorial reach of federal statutes in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), it confirmed that *Steele* was a "step one" case—*i.e.*, that the Court had concluded that the Act clears the presumption against extraterritoriality. *Id.* at 271 n.11.

Taking this Court at its word, the lower courts have for 70 years applied the Lanham Act to cases—just like

this one—involving foreign piracy that siphons the goodwill U.S. mark holders have devoted resources to acquire. And though Congress has repeatedly amended the Act during that time, it has never curtailed the Act's extraterritorial reach. That well-settled extraterritorial reach has saved mark owners from the impossible task of chasing pirates around the world to repair the harm they have inflicted on U.S. commerce.

Petitioners have no real response to any of this. They woodenly invoke the presumption against extraterritoriality, but they ignore that this Court has already resolved that the Lanham Act's unique language clears the presumption. They labor to recast *Steele* as speaking only to Congress's power over the foreign infringement of U.S. citizens; the government, too, attempts to reinterpret *Steele* as not involving foreign infringement at all. But again, this Court has already rejected those views. And Petitioners' fallback assertion that *Steele* may warrant overruling comes nowhere close to meeting the exacting standard for this Court to abandon statutory precedent.

Without text or precedent to support them, Petitioners invoke vague "territoriality" principles of trademark law, the United States' treaty obligations, and the danger of international friction. Those arguments cannot overcome the Act's clear text and are meritless in any event. The Act's extraterritorial reach is fully consistent with territoriality principles because, as the lower courts have recognized, comity considerations will call for nonenforcement when U.S. trademark rights conflict with the rights of the parties abroad. The Act accords with treaty obligations because it

treats foreign and domestic plaintiffs evenhandedly. This explains why the conflicts that Petitioners conjure up have not materialized over the past 70 years. Indeed, neither Petitioners nor their *amici* identify a single case in which a defendant was held liable under the Lanham Act for foreign conduct protected by foreign law. Petitioners' specter of international conflict truly is a ghost.

With the Lanham Act properly construed, this is a straightforward case. Petitioners' mantra (Pet. Br. i, 3, 9, 10, 13, 46) is that their overseas infringement was "purely" foreign, but that infringement had highly significant effects on U.S. commerce, just as Petitioners intended. Petitioners pirated tens of millions of dollars in sales that the undisputed evidence showed Hetronic otherwise would have made. And their scheme—which they effectuated by exploiting confidential information obtained under U.S. contracts—tarnished Hetronic's hard-earned reputation and devalued its marks. Their infringement therefore substantially affected U.S. commerce. And there is no potential conflict with foreign trademark rights, as European tribunals have conclusively determined that Hetronic—not Petitioners—owns the relevant marks. The court of appeals properly resolved this case based on these two considerations.

Even if this Court were to depart from 70 years of precedent and hold that the Act does not apply extraterritorially, the judgment below should be affirmed because this case involves a domestic application of the Act. As this Court has long recognized, the Act's trademark-infringement provisions are focused on preventing two effects: harm to a producer's goodwill and

consumer confusion. Petitioners' infringing acts—though occurring abroad—brought about both ill effects in the United States. Petitioners' conduct inflicted harm on the goodwill, reputation, and balance sheet of Hetronic in the United States. And all of Petitioners' infringing uses of Hetronic's marks posed a likelihood of confusing consumers in the United States.

Petitioners contend that disgorgement should have been limited to profits from *sales* to Americans. That is wrong. As the government recognizes, the Lanham Act imposes liability for *using* a mark in a way that is likely to confuse consumers. Even assuming that the likely confusion must occur in the United States, all of Petitioners' uses of Hetronic's marks—marketing at global trade shows, direct mailings, and more—qualify. Put simply, Petitioners amassed their ill-gotten gains by marketing knockoff goods through means that were likely to confuse, intended to confuse, and actually did confuse Americans. The jury was well justified in ordering the disgorgement of all of Petitioners' profits. While Petitioners had the opportunity at trial to reduce that award by showing their costs or severing the causal link between their infringement and their sales, they failed to do so.

This Court should affirm the judgment below.

STATEMENT

Hetronic is a U.S. company, headquartered in Oklahoma. Pet. App. 88a. Operating globally, Hetronic manufactures, sells, and services radio remote controls for heavy-duty machinery like cranes and mining equipment. Pet. App. 3a-4a. Petitioners are Albert

Fuchs and his companies, some of which served as Hetronic's third-party distributors in Germany and Austria.[1] Pet. App. 4a-5a.

A. Petitioners' Willful Infringement Of Hetronic's Trademarks

1. The radio-remote-control market is "a very global business." J.A. 11. Purchasers of Hetronic's devices are typically multinational manufacturers of heavy machinery who install the devices on their equipment. *Ibid.* Those manufacturers then sell their Hetronic-equipped machinery to customers worldwide, who in turn use that machinery for projects around the globe. *Ibid.*

Given the industry's worldwide nature, Hetronic contracts with foreign companies to sell and repair its products globally. Hetronic entered into such contracts with Petitioners, giving them royalty-free licenses for Hetronic's trademarks—including product names and Hetronic's "distinctive black-and-yellow color scheme" trade dress. Pet. App. 3a-4a. The agreements were governed by Oklahoma law, required that disputes be resolved in Oklahoma, and gave Petitioners exclusive rights to assemble and sell Hetronic-branded devices in over twenty European countries. Pet. App. 4a. In exchange, Petitioners agreed to purchase components only from Hetronic and not to compete against Hetronic. *Ibid.*

---

[1] Hetronic refers to Fuchs and his various corporations collectively as "Petitioners" unless the specific entity is relevant.

2. Petitioners almost immediately began violating their agreements in a self-described scheme designed to "attack [Hetronic] at their doorstep in the U.S." J.A. 66. Petitioners exploited the confidential information they received as Hetronic's distributor to reverse-engineer counterfeit parts. Pet. App. 5a. Petitioners then bought those parts from unauthorized sources, placed them into devices bearing Hetronic's name, and sold them to Hetronic's customers as if they were genuine Hetronic devices. *Ibid.* Even after their licenses were terminated for misconduct, Petitioners continued selling Hetronic-branded products in the guise of Hetronic-authorized distributors. *Ibid.*

After the agreements were terminated, Petitioners created new "Abitron" entities to carry out their scheme of infringement. Pet. App. 5a-6a. The new entities used "the same facilities, management, employees, customer lists, and product mark and dress" as their predecessors and were nothing more than continuations of the prior companies by a new name. Pet. App. 12a-13a.

Petitioners then sought to poach Hetronic's customers by telling them that Abitron was the real Hetronic. J.A. 15-16. Petitioners sent letters using Hetronic's name and logo to Hetronic customers—including in the United States—informing them that the company "you currently know as Hetronic" had concluded its "rebranding" to "the new name ABITRON." J.A. 12, 15. Per Petitioners' letters, all "open orders with [Hetronic] will be taken over by ABITRON," and Abitron's products would "present themselves in the familiar yellow design." J.A. 15.

True to their promise, Abitron competed directly against Hetronic using Hetronic's same product names and signature yellow-and-black trade dress, as shown below. Pet. App. 6a; J.A. 69; *see* 2 C.A. Supp. App. 481-85 (Petitioners marketed identical products "worldwide," including the "United States").[2]

[2] "C.A. Supp. App." refers to Appellee's Appendix in the Tenth Circuit (Oct. 13, 2020).

Hetronic NOVA

Abitron NOVA

Hetronic ERGO

Abitron ERGO

Petitioners marketed their infringing goods through the key industry channel, "exhibit[ing] infringing products at international trade shows," Pet. App. 129a-30a, including the "hugest" show, known as Bauma, held in Germany. J.A. 33. Petitioners were well aware that these shows attract hundreds of thousands of attendees from nearly every country in the world—including Hetronic's "United States customers." Pet. App. 129a-31a; *see* J.A. 28-29, 33-36.

Petitioners also intentionally deceived customers searching for Hetronic online—another significant trade channel—by embedding "Hetronic" in their website's metadata to drive consumers to their site, rather than Hetronic's. J.A. 78-83. On their website, Petitioners offered their knockoff products for sale, including to U.S. customers. Pet. App. 92a. Abitron employees also used email addresses with Hetronic domain names, furthering the façade that they were the real Hetronic. J.A. 81-83.

Moreover, Petitioners' scheme involved a substantial physical presence in the United States. Petitioners hired a U.S. distributor to sell and service their infringing products in the United States. J.A. 96. That distributor also exhibited Abitron's infringing products in at least one U.S. trade show. J.A. 29. And Petitioners sent European "employees to train salespersons and to perform repairs in the United States." Pet. App. 131a.

3. Petitioners' scheme was a success, sowing confusion among consumers in the United States and abroad. *See* Pet. App. 41a-42a. Trade-show attendees were, unsurprisingly, confused when seeing Petitioner's products, questioning "what's the difference be-

tween Abitron and Hetronic," and complaining of faulty products they mistakenly believed were Hetronic's. J.A. 20, 33-36. Indeed, Petitioners' own U.S. distributor testified that he did not know whether Hetronic and Petitioners were competitors or the same entity, and that if their products were displayed side by side, he "would have no idea" which products were whose. Pet. App. 42a-43a.

Prospective U.S. customers routinely contacted Petitioners through their English-language website seeking Hetronic products. Pet. App. 42a; J.A. 20, 22-23. U.S. companies sent Petitioners' products to *Hetronic* for repair in the mistaken belief that they were Hetronic products. J.A. 23-24. And customers complained to Hetronic about Petitioners' products, thinking that Hetronic had supplied them. J.A. 33-36, 74-77, 88-94.

Petitioners' infringing products routinely ended up in the United States regardless of the location of the purchaser or the initially identified project site. Petitioners made sales directly to U.S. customers, and they made sales to foreign customers where Petitioners "knew" the customer would use the product in the United States. Pet. App. 129a. But infringing goods would also travel for use in the United States even if they had not been initially so designated. J.A. 23-24. For example, hundreds of infringing devices were sent to the United States by one of Petitioners' foreign customers notwithstanding that many were not identified by Petitioners as destined for U.S. use. J.A. 96-97; 3 C.A. Supp. App. 582; Plaintiffs' Trial Exh. 225.

All told, Petitioners grossed about $90 million globally from sales of fake Hetronic products. Pet. App. 8a.

B. District Court Proceedings

Hetronic sued Petitioners for breach of their agreements, numerous torts, and trademark infringement under the Lanham Act. Pet. App. 6a.

On summary judgment, Petitioners acknowledged that the Lanham Act applied extraterritorially but contended that other than direct sales to U.S. buyers, their conduct lacked the requisite substantial effect on U.S. commerce. *See* D. Ct. Doc. 262, at 20-31 (Mar. 26, 2018). The district court disagreed, relying on evidence that Petitioners' "alleged infringing conduct … had a substantial effect on United States commerce" in a variety of ways, including "harm to [Hetronic's] reputation" and "sales diverted" from Hetronic. Pet. App. 79-80a.

Petitioners also asserted that Hetronic's claims failed because Petitioners, not Hetronic, were the rightful owners of all of Hetronic's trademarks and trade dress. Pet. App. 50a. Petitioners, however, had earlier made that same argument to the European Union Intellectual Property Office (EUIPO) and lost. Pet. App. 7a. The EUIPO (and, subsequently, several European appellate tribunals) held that Petitioners had "no rights" to Hetronic's intellectual property and that their arguments for ownership were "entirely without basis." J.A. 61; *see* Pet. App. 58a. The district court subsequently granted summary judgment to Hetronic on ownership, finding that Petitioners were precluded

from relitigating the issue after the EUIPO ruling. Pet. App. 8a.[3]

During an eleven-day trial, the jury heard evidence of Petitioners' scheme as described above. Without objection by Petitioners, the jury was instructed that to impose liability, it needed to find a likelihood of confusion "among an appreciable number of people who buy or use, or consider buying or using, [Hetronic's] products." J.A. 111-12 (instruction); J.A. 109-10 (no objection). The jury was also instructed, again without objection, that it could award the profits Petitioners "gained from [that] infringement." J.A. 112 (instruction); J.A. 109-10 (objecting only to expert's exclusion).

The jury returned a verdict for Hetronic on all counts, specifically finding that Petitioners willfully infringed Hetronic's trademarks and harmed Hetronic's goodwill. Pet. App. 114a; J.A. 114-25. The jury awarded Hetronic the full $90 million that Petitioners grossed from sales of their knockoff products. Pet. App. 134a-36a; J.A. 116-25.

The court then entered an injunction against future infringement by Petitioners, citing the jury's findings of willful and ongoing infringement that would otherwise "continue to cause … Hetronic to suffer" "irreparable injury to its reputation and its goodwill." Pet. App. 117a. In so holding, the court found that "any re-

---

[3] Petitioners brazenly maintain (Pet. Br. 8-9) that they are the true owners of the relevant marks, but it is undisputed in this Court that Hetronic owns its marks, consistent with the ruling of every court to address this issue.

maining qualms about extraterritorial application really melt away," Pet. App. 131a, given the "ample evidence" that Petitioners' infringement was stealing sales from Hetronic, Pet. App. 129a; the "reliable evidence of confusion in the American marketplace" arising from Petitioners' "exihibit[ion] of infringing products at international tradeshows, as well as "other evidence of confusion in the U.S. marketplace," Pet. App. 129-30a; the fact that Petitioners' infringement was made possible by their "intricate" contract with a U.S. company, Pet. App. 131a; and the fact that Petitioners marketed their infringing goods in America, *ibid.*

In light of the substantial effect on U.S. commerce likely to result from Petitioners' continued infringement, the district court entered a global injunction against any use of Hetronic's marks. Pet. App. 129a-32a, 113a-21a.

C. Court Of Appeals Proceedings

On appeal, Petitioners once again "accept[ed] that the Lanham Act can sometimes apply extraterritorially," but they renewed their argument that only their sales to U.S. buyers had a substantial effect on U.S. commerce. Pet. App. 3a. The Tenth Circuit unanimously rejected that argument and affirmed in relevant part.

The court of appeals began by recognizing that *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952), "held that the Lanham Act could apply abroad at least in some circumstances" despite the "the general presumption against extraterritoriality." Pet. App. 21a. Placed in the context of this Court's recent extraterritoriality

precedents, the court interpreted *Steele* as "rebutt[ing]" that presumption at "step one" of the pertinent inquiry. *See* Pet. App. 22a-23a. The question, in the court's view, was therefore the "limits of the Lanham Act's extraterritorial reach." Pet. App. 23a.

In answering this question, the Tenth Circuit canvassed the "tests developed by the courts of appeals to explore the Lanham Act's extraterritorial reach," which had "stem[med] from the Supreme Court's *Steele* decision." Pet. App. 23a; *see* Pet. App. 24a-28a. Following that authority, the court held that foreign acts of infringement fall within the Act's reach if they have "a substantial effect on U.S. commerce," Pet. App. 29a, and if "extraterritorial application of the Lanham Act would [not] create a conflict with trademark rights established under the relevant foreign law," Pet. App. 30a.

Applying that standard, the Tenth Circuit found that Petitioners' infringement produced a substantial effect on U.S. commerce for several reasons. The court explained that Petitioners' "efforts to sell [their] products caused confusion among U.S. consumers," not only through actual sales, but also through Petitioners' marketing of the knockoffs at global trade shows they knew U.S. consumers attended and their other outreach to U.S. consumers. Pet. App. 43a. The court also observed that "millions of euros worth of infringing products found their way into the United States," *ibid.*, and that Petitioners "diverted tens of millions of dollars of foreign sales from Hetronic that otherwise would have ultimately flowed into the United States," Pet. App. 47a. *See* Pet. App. 43a-47a. As to diverted sales, the

court further noted that Petitioners had forfeited any argument that Hetronic would not have otherwise made those sales. Pet. App. 45a n.9.

The Tenth Circuit accordingly concluded that "the Lanham Act applies extraterritorially here to reach all of [Petitioners'] foreign infringing conduct" and upheld the jury's $90 million disgorgement award. Pet. App. 47a, 66a. The court further held that while an injunction against future infringement was proper, it should reach only those countries "in which Hetronic currently markets or sells its products." Pet. App. 47a, 50a.

SUMMARY OF ARGUMENT

I. The Lanham Act applies extraterritorially and covers Petitioners' willful infringement.

A. The Act reaches trademark infringement in "all commerce which may lawfully be regulated by Congress." 15 U.S.C. § 1127. That phrasing is as broad as it is clear: if Congress *can* impose liability for misuse of a trademark, it *chose to do so* in the Act. And Congress indisputably has power to regulate foreign conduct that substantially affects U.S. commerce. The Act thus overcomes the presumption against extraterritoriality by making unmistakably clear that it covers foreign infringement. Underscoring the breadth and clarity of the Act's definition of "commerce," the Act is the *only* civil statute in the U.S. Code that expressly reaches to the outer limits of Congress's authority.

B. This Court has repeatedly explained that the Act is the rare statute that applies abroad. In *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952), the Court held that the Act overcomes the presumption against extra-

territoriality. The Court reaffirmed that holding in *EEOC v. Arabian American Oil Co.*, 499 U.S. 244 (1991), distinguishing the Act's uniquely broad definition of "commerce"—which overcomes the presumption—from the boilerplate definitions in other federal statutes that do not. Any questions about *Steele*'s consistency with this Court's modern extraterritoriality framework were answered in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), which confirmed that the Act applies extraterritorially at "step one."

C. Because the Act reaches to the limits of Congress's power, it captures foreign conduct with a substantial effect on U.S. commerce. Seventy years of lower-court cases applying the Act extraterritorially have vindicated Congress's judgment to give the Act a broad reach, rather than require U.S. mark owners to chase wrongdoers around the world.

D. Though the Act applies extraterritorially, relevant background doctrines of personal jurisdiction, *forum non conveniens*, and international comity remain applicable. Comity plays a particularly significant role; as *Steele* and its progeny have recognized, the doctrine could require dismissal of an infringement suit if the relevant foreign law recognizes the defendant's right to use the marks.

E. The lower courts correctly held that the Act applies here. Petitioners' infringement substantially affected U.S. commerce, and Petitioners do not own the relevant marks in *any* country. The proven diversion of $90 million in sales from Hetronic is a substantial effect on U.S. commerce, and in any event, diversion of

sales was not the only effect on U.S. commerce found by the lower courts.

II. Petitioners' counterarguments are meritless.

A. In arguing that the Lanham Act fails to overcome the presumption against extraterritoriality, Petitioners largely ignore the relevant statutory language. They instead focus on what the Act does *not* say, unrelated provisions of the Act, and irrelevant comparisons to language in other statutes. Petitioners' legislative-history arguments are also unavailing—it is simply implausible that Congress opted for uniquely broad language in an effort to *restrict* the Act's reach.

B. Petitioners strain to recast *Steele* as a case about U.S. defendants rather than the presumption against extraterritoriality. This Court has squarely rejected that revisionist reading, and Petitioners' suggestion that this Court should overrule *Steele* falls well short of the necessary showing to overcome statutory *stare decisis*.

C. Petitioners' invocation of territoriality principles and international agreements are unavailing, as are their warnings about international tension. Extraterritorial application of the Act is fully consistent with traditional trademark principles and the United States' treaty obligations. And the specter of international conflict should be dismissed outright in light of 70 years of experience to the contrary.

III. Alternatively, the judgment below can be affirmed as a domestic application of the Lanham Act.

A. The Act has two focuses: protecting mark

owners' goodwill and preventing consumer confusion. The government contends that the Act's sole focus is protecting consumers, but the statutory text and this Court's precedents refute that view. Petitioners' contention—that a statute's focus must be *conduct* rather than an *effect*—is incompatible with this Court's precedent.

B. Petitioners' infringement implicated the Act domestically because it harmed U.S.-based goodwill. Petitioners caused Hetronic to lose sales, sowed confusion among Hetronic's customers, and tarnished Hetronic's reputation in the marketplace. That harm was felt at Hetronic's home in Oklahoma.

C. Petitioners' infringement also implicated the Act domestically because it was likely to confuse U.S. consumers. Under the Act, infringement occurs when a mark is misleadingly *used*, and *all* of Petitioners' uses of Hetronic's marks were likely to sow confusion domestically. All of Petitioners' sales resulted from those uses, so they were all subject to disgorgement.

ARGUMENT

I. The Lanham Act Applies Extraterritorially And Encompasses Petitioners' Willful Infringement.

A. The Lanham Act's Text Overcomes The Presumption Against Extraterritoriality.

1. Statutory analysis begins with text, and the text of the Lanham Act leaves no doubt that it has extraterritorial reach. The Act's trademark-infringement provisions impose liability for "use in commerce" of a mark in a manner that "is likely to cause confusion, or

to cause mistake, or to deceive." 15 U.S.C. § 1114(1)(a); *see id.* § 1125(a)(1)(A). The Act in turn defines "commerce" as "all commerce which may lawfully be regulated by Congress." *Id.* § 1127.

That language is not just exceptionally clear; it is maximally broad. Congress said as plainly as it could that the Act should govern the use of trademarks to the full extent allowable under the Constitution. Congress did so by regulating "all," *i.e.*, "[t]he whole of," commercial activity within Congress's prescriptive authority. All, *Webster's New International Dictionary of the English Language* 67 (2d ed. 1947); *see* Lawful, *Black's Law Dictionary* 1079 (3d ed. 1933) ("not contrary to nor forbidden by the law"); Regulate, *id.* at 1519 ("to subject to governing principles or laws").

Put simply, if Congress *can* impose liability for the infringing use of a trademark, it *did* impose that liability in the Lanham Act. In this way, the Act resembles a state long-arm statute that stretches maximally to the constitutional limit. *See, e.g.*, *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014) (state long-arm statute authorizing personal jurisdiction "on any basis not inconsistent with the Constitution" permits its exercise "to the full extent permissible under the U.S. Constitution" (citation omitted)).

The Lanham Act's text, which reflects Congress's decision to regulate to the constitutional limit, thus overcomes the presumption against extraterritoriality. The presumption is just that—a presumption, not a prohibition. Congress indisputably has the "power to make laws applicable to persons or activities beyond our territorial boundaries where United States inter-

ests are affected." *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 813-14 (1993) (Scalia, J., dissenting); *see, e.g.*, *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010); *Blackmer v. United States*, 284 U.S. 421, 436-37 (1932). That power includes the authority to impose liability on defendants who "engage in, or affect in some significant way, commerce directly involving the United States," including "commerce between the United States and a foreign country." *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 344 (2016).

Congress asserted precisely that authority in the Lanham Act. Trademark infringement—even when occurring overseas—undoubtedly has the potential to substantially affect U.S. commerce; Congress reached that foreign conduct by extending the Act to "all commerce which [it] may lawfully … regulate[]." 15 U.S.C. § 1127. With that definition, Congress "affirmatively and unmistakably instructed," *RJR Nabisco*, 579 U.S. at 335, that the Act extends extraterritorially. Limiting the Act to domestic applications would disrespect Congress's clear choice to legislate to the outer limits of its powers.

2. Congress's choice is confirmed by the Act's unique definition of "commerce." Well over 100 other civil statutes include definitions of "commerce." But in not *one* of those statutes did Congress do what it did in

the Lanham Act: expressly assert its power to regulate to the full extent of its constitutional authority.[4]

Instead, other definitions of "commerce"—both before the enactment of the Lanham Act and since—speak not in terms of extending to the *limits* of Congress's power, but in terms of covering certain *categories* of commerce. Take, as one of many examples, the Fur Products Labeling Act, ch. 298, 65 Stat. 175 (1951) (codified as amended at 15 U.S.C. §§ 69-69j), enacted just a few years after the Lanham Act, which prohibits misbranding fur products "in commerce," 15 U.S.C. § 69a(a)-(f). The Act defines "commerce" as "commerce between any State, Territory, or possession of the United States, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia." *Id.* § 69(j).

The U.S. Code is filled front to back with similar definitions of "commerce." *See, e.g.*, 7 U.S.C. § 92(*l*) (near-verbatim definition of "commerce" in the Naval Stores Act, ch. 217, 42 Stat. 1435 (1923)); 21 U.S.C. § 61(b) (near-verbatim definition of "interstate or foreign commerce" in the Filled Milk Act, ch. 262, 42 Stat. 1486 (1923)); 47 U.S.C. § 330(d)(1) (similar definition of

---

[4] A catalogue of definitions of the terms "commerce," "foreign commerce," "interstate commerce," and similar phrases in the U.S. Code appears in an Appendix to this brief.

"interstate commerce" in the Communications Act of 1934, ch. 652, 48 Stat. 1064).

Congress took a different approach with the Lanham Act. In the ultimate display of breadth, Congress eschewed its typical language for defining "commerce" and instead regulated to the outermost limits of its constitutional authority. To deny the Act's extraterritorial reach would be to treat its definition of "commerce" as no different than the narrower, boilerplate definitions that appear elsewhere. But Congress's "choice to use the [broader] term" in the Act "requires respect, not disregard." *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2072 (2018); *see, e.g.*, *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1723-24 (2017).[5]

3. The Lanham Act's assertion of authority to regulate to the limit of Congress's powers was a departure from the language of predecessor trademark statutes, too. The change reflected Congress's intent to "protect[] the trademark owner," who "has spent ener-

---

[5] Two criminal statutes list categories of commerce in boilerplate fashion and then include "all other commerce over which the United States has jurisdiction." Appendix, *infra*, pp. 43a-44a (reproducing 18 U.S.C. §§ 1033(f)(3), 1951(b)(3)). The latter provision, the Hobbs Act, has been interpreted to apply extraterritorially in light of this Court's statement that it "speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence." *Stirone v. United States*, 361 U.S. 212, 215 (1960); *see United States v. Inigo*, 925 F.2d 641, 648 (3d Cir. 1991). The issue of extraterritoriality seems not to have arisen regarding the other provision, a 1994 enactment prohibiting certain insurance-related misconduct. *See* 18 U.S.C. § 1033.

gy, time, and money in presenting to the public [its] product," from the mark's "misappropriation by pirates and cheats." S. Rep. No. 79-1333, at 3 (1946).

Trademark statutes prior to the Lanham Act employed the same category-based invocation of commerce powers seen in every other civil statute, before or since. For instance, the 1920 trademark statute created a cause of action for trademark infringement "in interstate or foreign commerce or commerce with Indian tribes." Act of Mar. 19, 1920, ch. 104, § 3, 41 Stat. 533, 534. When Congress amended that statute in 1938, it continued to use the language "interstate or foreign commerce, or commerce with the Indian tribes." *E.g.*, Act of June 10, 1938, ch. 332, § 2, 52 Stat. 638, 638.

In the Lanham Act, Congress replaced that language with a unique phrase that made unequivocally clear its intent to capture *everything* within its power. That includes foreign activity with a substantial effect on U.S. commerce.

Nor is it difficult to understand why Congress would make that choice. As expressed in the statute itself, a core purpose of the Act is to "protect persons engaged in [commerce within Congress's power to regulate] against unfair competition." 15 U.S.C. § 1127. In a global economy in which counterfeit goods travel, all infringement affecting U.S. commerce is likely to hurt a mark owner's reputation and goodwill, even when the infringing acts occur outside the United States. And as explained below, Congress's decision to provide broad trademark protection has proved a wise judgment. Pp. 30-31, *infra*.

B. This Court Has Repeatedly Recognized That The Lanham Act's Unique Language Overcomes The Presumption Against Extraterritoriality.

Almost as soon as the Lanham Act was enacted, this Court recognized that the Act's maximally broad definition of "commerce" overcomes the presumption against extraterritoriality. That conclusion has subsequently been reaffirmed twice.

1. First, in *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952), this Court held that the "sweeping reach" of the Act's "commerce" definition overcame the presumption against extraterritoriality. *Id.* at 287. *Steele* involved a defendant who stamped the U.S.-registered mark BULOVA on knockoff watches assembled and sold in Mexico. *Id.* at 281, 284-85. The Court acknowledged the presumption against extraterritoriality, noting that it "ha[d] often stated that the legislation of Congress will not extend beyond the boundaries of the United States unless a contrary legislative intent appears." *Id.* at 285. But the Court, over dissent, held that the Lanham Act applied extraterritorially, notwithstanding the presumption.[6] The Court observed

---

[6] The two dissenting Justices in *Steele* took the view that the Lanham Act's text did not overcome the then-well-established presumption against extraterritoriality. *See* 344 U.S. at 290-91 (Reed, J., dissenting) (citing *Blackmer*, 284 U.S. at 437; and *Foley Bros. v. Filardo*, 336 U.S. 281, 285 (1949)). The *Steele* majority cited those very same cases for the very same principle of statutory interpretation, but nonetheless concluded that the Lanham Act's text overcame the usual rule that "the legislation of Con-

that the Act used a distinctively broad definition of commerce, and its enacted statement of purpose similarly evinced a clear intent to regulate sweepingly. *See id.* at 283-84 (quoting 15 U.S.C. § 1127). As the Court put it, the Act's "broadened" definition of commerce has a "sweeping reach" that "[e]ven when most jealously read" reaches infringement "consummated" abroad. *Id.* at 287.

Steele then analyzed the defendant's conduct and concluded that it sufficiently affected U.S. commerce to bring it within the Lanham Act's broad scope. *See* 344 U.S. at 285-86. The Court emphasized that the Act applied, even though the infringement occurred in Mexico, because the defendant's "competing goods could well reflect adversely on Bulova Watch Company's trade reputation in markets cultivated by advertising," both "here" in the United States "as well as abroad." *Id.* at 286.

2. In *EEOC v. Arabian American Oil Co.*, 499 U.S. 244 (1991) (*Aramco*), this Court reaffirmed the breadth—and distinctiveness—of the Lanham Act's definition of "commerce." *Aramco* involved a Title VII suit brought by a U.S. plaintiff against his U.S. employer for employment discrimination in Saudi Arabia. *Id.* at 247. This Court held that Title VII did not overcome the presumption against extraterritoriality and thus

---

gress will not extend beyond the boundaries of the United States." *Id.* at 285 (majority opinion). It is therefore no refutation of *Steele* to simply dismiss it, as Petitioners and the government do (Pet. Br. 32-35; U.S. Br. 13-14), as a mere relic of an era in which the Court was ignorant of the presumption.

did not support a cause of action for conduct abroad. *See id.* at 248-49.

In so holding, this Court rejected the government's argument that Title VII must have extraterritorial reach because its definition of commerce was equivalent to the Lanham Act's. *Aramco*, 499 U.S. at 252-53. The Court explained that Title VII's definition of "foreign commerce" used the sort of "boilerplate language which can be found in any number of congressional Acts." *Id.* at 250-51; *see id.* at 251 (collecting statutes); *see* Appendix, *infra*, p. 61a (reproducing 42 U.S.C. § 2000e(g)). The Lanham Act, in contrast, "expressly stated that it applied to the extent of Congress' power over commerce," which was why "the Court in *Steele* concluded that Congress intended that [it] apply abroad." 499 U.S. at 252. The Lanham Act's unique definition, the Court concluded, made it the *exceptional* statute that overcomes the presumption against extraterritoriality.

3. This Court once again recognized the Lanham Act's extraterritorial reach in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010). There, the government argued that even if Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), did not apply extraterritorially (at step one), it could still reach fraud relating to foreign securities if that fraud involved significant domestic conduct (at step two). *See Morrison*, 561 U.S. at 261-65. The government contended that *Steele* supported its view because it demonstrated that "domestic conduct with consequences abroad can be covered even by a statute that does not apply extraterritorially." *Id.* at 271 n.11.

This Court squarely rejected the government's assertion that *Steele* involved a statute that does not apply extraterritorially. Instead, the Court explained—citing *Aramco*—that *Steele* stands for the proposition that the Lanham Act "ha[s] extraterritorial effect." *Morrison*, 561 U.S. at 271 n.11 (citing *Aramco*, 499 U.S. at 252).[7] In other words, the Court confirmed that *Steele* was a "step one" case that had found the Lanham Act to overcome the presumption against extraterritoriality.

C. The Lanham Act's Extraterritorial Reach Rightfully Encompasses Foreign Infringement That Substantially Affects U.S. Commerce.

Both text and precedent thus establish that the Lanham Act governs "use" of a trademark "in commerce"—regardless where that "use" occurs. The relevant question in a case involving foreign trademark infringement is whether the allegedly infringing "use" was "in commerce," *i.e.*, whether that "use" "may lawfully be regulated by Congress," 15 U.S.C. § 1127.

1. As noted above, it is uncontroversial that Congress's commerce powers allow it to regulate foreign conduct that has a substantial effect on U.S. commerce.

---

[7] Having not learned its lesson from *Morrison*, the United States again urges (U.S. Br. 13, 18-19) its strained interpretation of *Steele* as involving a mere *domestic* application of the Act. It is implausible to argue that *Steele* was concerned with the Act's "focus," a concept this Court did not articulate until its decision in *Morrison* 60 years later.

Just as Congress may regulate *intra*state activity that has a "substantial effect" on *inter*state commerce, *Gonzales v. Raich*, 545 U.S. 1, 17 (2005); *see, e.g.*, *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), Congress may regulate overseas activity that substantially affects commerce moving between the United States and foreign countries. *See Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 448 (1979) (analogizing scope of Congress's power under the Foreign Commerce Clause to its powers under the neighboring Interstate Commerce Clause); *Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433-34 (1932) (similar).[8]

2. The nature of the harm caused by trademark infringement explains why Congress extended the Lanham Act extraterritorially even though it did not do so with other forms of intellectual-property protection. *See Impression Prods., Inc. v. Lexmark Int'l, Inc.*, 581 U.S. 360, 379 (2017) (copyright laws); *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 443 (2007) (patent laws). Copyright and patent infringement consummated abroad may cost a plaintiff sales. But foreign trademark infringement inflicts a harm of a different and

---

[8] Petitioners briefly opine that Congress lacks the power to regulate foreign transactions that do not directly involve a U.S. citizen, but their only support for that proposition is an 1879 decision of this Court, and they make no effort to grapple with the last century of this Court's precedent on the scope of Congress's commerce powers. Pet. Br. 46 (quoting *Trade-Mark Cases*, 100 U.S. 82, 96); *see also N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 518 (2015) (Alito, J., dissenting) ("[I]n [the late 19th century], the understanding of the commerce power was far more limited than it is today.").

more consequential character: it tarnishes the mark owner's reputation both domestically and abroad, thus creating the potential for a cascading loss of sales, disruption of business, and harm to U.S. commerce. *Accord* U.S. Br. 3, 18; *see* 5 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 29:57 (Westlaw 5th ed. updated Dec. 2022) (McCarthy). The damage caused by trademark infringement does not stop at international borders—and that is why the Lanham Act does not, either.[9]

3. Seven decades of experience applying the Lanham Act extraterritorially have vindicated Congress's judgment to impose liability for *all* infringement within its control, not just infringement confined within the United States.

In *Trader Joe's Co. v. Hallatt*, 835 F.3d 960 (9th Cir. 2016), for instance, the well-known grocery chain received a complaint "from a consumer who became sick after eating a Trader Joe's-branded product she purchased from Pirate Joe's," a knockoff store in Canada. *Id.* at 964. The (aptly named) defendant "display[ed] Trader Joe's trademarks and mimick[ed] Trader Joe's trade dress, and re[sold] Trader Joe's goods without authorization and without adhering to Trader Joe's'

---

[9] Petitioners assert that it would be "upside-down" for trademark law to cover foreign conduct when patent and copyright law do not because the Constitution "grants Congress 'more extensive' authority over patents and copyrights than trademarks." Pet. Br. 24 (citation omitted). This is a non sequitur. No one doubts Congress's *authority* to give the patent and copyright laws extraterritorial effect. Congress has simply chosen not to do so.

strict quality control practices." *Id.* at 965. Defendants' products were not sold to U.S. customers, nor did they come back to the United States, but they harmed the reputation of Trader Joe's. The court allowed the Lanham Act suit to go forward given the effect on U.S. commerce. *See id.* at 969-72. Under Petitioners' view of the Act, however, Congress left this sort of intentional piracy—which causes a U.S. mark owner to "suffer a tarnished reputation and resultant monetary harm in the United States," *id.* at 971—to the vagaries of foreign law.

Nor is it any answer to observe that a plaintiff could theoretically seek to enforce its rights in the many countries in which a defendant engages in infringement. Not all countries offer comprehensive trademark protection. *See* Am. Intell. Prop. Law Ass'n *Amicus* Br. 12. Even if they did, it would be hard enough to obtain a damages award in dozens of countries, and it would be next to impossible to enforce compliance with separate injunctions in each forum.

D. Background Legal Principles Limit The Class Of Lanham Act Suits Involving Foreign Conduct.

Like all causes of action, Lanham Act trademark-infringement claims are subject to background principles of law. For example, the doctrines of personal jurisdiction and *forum non conveniens* substantially limit plaintiffs from suing foreign defendants over foreign infringement, even when that conduct violates the Act. Likewise, it is possible that a Lanham Act claim will implicate a conflict with foreign law. This question arises, for instance, when the defendant owns the rele-

vant marks under the laws of the country in which the alleged infringement occurred. *See Steele*, 344 U.S. at 288-89; *see also, e.g.*, *Vanity Fair Mills, Inc. v. T. Eaton Co.*, 234 F.2d 633, 638-40 (2d Cir. 1956). In such an instance, a court must consider whether it should "decline[] to exercise [its] jurisdiction under the principle of international comity." *Hartford Fire Ins.*, 509 U.S. at 797.[10]

At least where the defendant is not a U.S. citizen, the doctrine of international comity dictates that a court should consider whether to dismiss such a suit. *See* U.S. Br. 19 n.3. The courts of appeals applying the Lanham Act extraterritorially have uniformly agreed that conflict with foreign law or foreign legal proceedings is a valid reason for declining to exercise jurisdiction over a suit implicating foreign conduct. *See, e.g.*, *Trader Joe's*, 835 F.3d at 972-73; Pet. App. 30a. This Court itself recognized in *Steele* that where the defendant has "a valid foreign registration," that could limit a court's jurisdiction or otherwise bear on "the propriety of its exercise." 344 U.S. at 289. And as this Court has explained more recently, where there is "a true conflict between domestic and foreign law," international comity demands that a court "refrain from the exercise of

---

[10] The *Hartford Fire Insurance* Court split on the question whether international comity is a basis for declining to exercise jurisdiction, *see* 509 U.S. at 798, or a built-in limitation on the reach of a federal statute, *see id.* at 817-18, 818 n.9 (Scalia, J., dissenting). But the Court unanimously agreed that the principle operates to limit adjudication of suits brought under an otherwise-extraterritorial federal statute.

jurisdiction." *Hartford Fire Ins.*, 509 U.S. at 798-99 (internal quotation marks omitted); *see also Restatement (Fourth) of Foreign Relations Law of the United States* § 402(1)-(2) (Westlaw ed. updated Oct. 2022).

As it turns out, the Lanham Act has never—to Respondent's knowledge or in any case cited by Petitioners—been used to hold a defendant liable for foreign conduct where the defendant had superior foreign rights. Instead, the cases consistently involve facts like those here: the defendant has no right to use the mark and is engaging in infringement that is unprotected by any law.

E. The Court Of Appeals Properly Concluded That Petitioners Violated The Lanham Act.

The court of appeals correctly applied the Lanham Act in concluding that it governs Petitioners' willful infringement.

1. Consistent with *Steele* and other appellate authority, the court of appeals held that "when a plaintiff seeks to recover under the Lanham Act against a foreign national," it "must show that the defendant's conduct has a substantial effect on U.S. commerce." Pet. App. 29a; *see also, e.g.*, *Vanity Fair*, 234 F.2d at 641. That is equivalent to asking whether the conduct abroad is regulable by Congress under the commerce power. *See Buti v. Impressa Perosa, S.R.L.*, 139 F.3d 98, 103 (2d Cir. 1998).

The court of appeals then correctly concluded that the trial evidence showed that Petitioners' infringement abroad had the requisite "substantial" effect on U.S. commerce. Pet. App. 43a. This evidence included

the facts that "millions of euros worth of infringing products found their way into the United States" and that Petitioners' manifold efforts to sell their infringing products "caused confusion among U.S. consumers." Pet. App. 41a-43a. The court also observed that Petitioners' conduct stole tens of millions of dollars of sales away from a U.S. company that otherwise would have traveled in U.S. commerce. Pet. App. 44a-46a. Finally, the court explained that this case presents no comity concern. *See* Pet. App. 50a-61a.

2. Petitioners do not seriously contest that if the Lanham Act applies extraterritorially, it captures their willful infringement. Aside from their steadfast view that *Steele* and every appellate decision applying it over 70 years are wrong, Petitioners' only rejoinder to the court of appeals' analysis involves a narrow focus (Pet. Br. 45-47) on the court's finding that their willful infringement substantially affected U.S.–foreign commerce by diverting sales that otherwise would have been made by Hetronic, a U.S. company, to purchasers abroad.

Petitioners contend (Pet. Br. 45) that diverted sales are a mere "supposition," but they were *proven* here. Pp. 15-16, *supra*. Petitioners also maintain (Pet. Br. 46) that diverted sales do not involve commerce "with" foreign nations, and thus are beyond Congress's power to regulate. Even leaving aside Petitioners' outdated view of Congress's commerce powers, p. 29 n.8, *supra*, that is precisely what diverted sales represent. Because of Petitioners' infringement, tens of millions of dollars' worth of radio remote controls did *not* travel in commerce between the United States and other na-

tions. That is why diverted sales have long been recognized as having the substantial effect on U.S. commerce necessary to fall within the Lanham Act. *See McBee v. Delica Co.*, 417 F.3d 107, 126 (1st Cir. 2005) (collecting cases); Pet. App. 44a-46a.

Nor, in any event, were diverted sales the *only* fact supporting that conclusion below; in particular, the courts independently found the requisite substantial effect based on the consumer confusion in the United States caused by Petitioners' efforts both domestically and abroad. Pet. App. 43a. Petitioners do not even try to argue that the lower courts clearly erred in concluding, based on undisputed evidence in the trial record, that Petitioners' conduct substantially affected U.S. commerce. *See U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 965-68 (2018).

II. Petitioners' Contention That The Lanham Act Does Not Apply Extraterritorially Is Meritless.

Petitioners raise several counterarguments in an effort to distract from the Lanham Act's clear text and this Court's precedents. Those arguments are unpersuasive. To reach their conclusion that the Lanham Act does not overcome the presumption against extraterritoriality, Petitioners treat the text of the Act as equivalent to other statutes when it is not. They read this Court's precedents as not having conclusively held that the Act reaches extraterritorially when they have. And Petitioners contend that extraterritorial application of the Act would threaten international friction when 70 years of experience demonstrates otherwise.

A. Petitioners' Textual Arguments Have No Merit.

1. Petitioners' primary textual argument is about what the Lanham Act supposedly does *not* say: they observe (Pet. Br. 17) that "[n]othing in its text says it applies outside the United States." But this Court has repeatedly acknowledged that the presumption against extraterritoriality is not a "clear statement rule" in the sense of "a requirement that a statute say 'this law applies abroad.'" *Morrison*, 561 U.S. at 265; *see RJR Nabisco*, 579 U.S. at 340 (RICO applies extraterritorially despite lacking "an express statement"). It is therefore of little moment that Congress has indicated extraterritorial effect using different terminology in other statutes. In the Lanham Act, Congress took a different approach—expressly legislating to the outer limits of its authority, and thereby unmistakably capturing foreign conduct. Congress's failure to follow a magic-words formula says nothing about the Act's applicability to foreign conduct.

2. Relatedly, Petitioners contend that the breadth of the Lanham Act's definition of commerce is irrelevant because this Court "has 'emphatically rejected reliance on such language' to overcome the presumption against extraterritoriality." Pet. Br. 25 (quoting *RJR Nabisco*, 579 U.S. at 353). The government echoes (U.S. Br. 12) this view. But as explained above, the Lanham Act's text is bespoke, not boilerplate. This Court has never "emphatically rejected" that the unique language appearing in the Act is insufficient to cover foreign conduct; rather, the Court has repeatedly *distinguished* the Lanham Act's definition of "com-

merce" from definitions, like Title VII's, that fail to overcome the presumption. *See Aramco*, 499 U.S. at 252-53.

Tellingly, Petitioners turn to this Court's decision in *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013), for the proposition that it is "well established that generic terms like 'any' or 'every'"—or, apparently, "all"—"do not rebut the presumption against extraterritoriality." Pet. Br. 25 (quoting *Kiobel*, 569 U.S. at 118). But *Kiobel* in turn cited *Aramco* for that principle. And as explained above, *Aramco* expressly stated that the Lanham Act's distinctive definition of "commerce," unlike the generic definitions that appear elsewhere, overcomes the presumption that cabins most federal statutes within U.S. borders.

3. Petitioners also argue (Pet. Br. 18-20) that there are insufficient instructions in the Act for *how* the Act should cover foreign acts of infringement, in contrast to the Act's extensive procedural requirements for certain foreign "[a]cknowledgments and verifications," 15 U.S.C. § 1061. But there is no need for the Act to set forth a separate set of substantive rules governing foreign infringing conduct because there *is* no separate set of rules. By governing "all commerce which may lawfully be regulated by Congress," 15 U.S.C. § 1127, the Act instructs that conduct constituting trademark infringement domestically is just as unlawful when it affects U.S. commerce from abroad. And though it is true that the Lanham Act's foreign operation could sometimes lead to conflicts with local law, there was no need for special attention to that scenario because Congress legislated against the backdrop of international-

comity principles. *See Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1016 (2020); pp. 31-33, *supra*.

4. Unable to marshal the text of the Lanham Act, Petitioners fall back on legislative history. They argue (Pet. Br. 26-27) that the Act's uniquely broad definition of "commerce" actually reflects an effort to "*cabin* the statute's reach." Petitioners' contention—that the words "all commerce which may lawfully be regulated by Congress," 15 U.S.C. § 1127, are an attempt at *narrowness*—is simply implausible.

It is true that this Court had invalidated an earlier trademark statute on the ground that it purported to regulate "commerce wholly between citizens of the same State"—activity that (under 19th-century doctrine) was "obviously the exercise of a power not confided to Congress." *Trade-Mark Cases*, 100 U.S. 82, 96-97, 99 (1879). It is therefore fair to assume that Congress would not want to exceed its constitutional powers in subsequent trademark legislation. But it is equally clear that Congress chose to legislate to the limit of its authority (but not beyond) in the Lanham Act. The Act's embrace of all commerce that "may lawfully be regulated by Congress," 15 U.S.C. § 1127, evinces (maximal) breadth, not a retreat from it. *See Steele*, 344 U.S. at 287 (emphasizing the Act's "broadened" and "sweeping" definition of commerce compared to prior trademark laws).

No more helpful are Petitioners' cherry-picked snippets (Pet. Br. 26-27) from the Lanham Act's sprawling legislative history, which Petitioners believe suggest a focus on interstate (not foreign) commerce.

Those scattered statements simply reflect that Congress was careful not to *exceed* its constitutional authority and that it understood, in light of changing economic conditions, that trademarks were no longer a matter of purely *local* commerce. They provide no reason to depart from the Act's plain meaning: the Act governs "*all* commerce" that Congress has power to regulate. 15 U.S.C. § 1127 (emphasis added).

B. Petitioners' Arguments Based On Precedent Have No Merit.

Petitioners also have no answer to this Court's consistent precedent concluding that the Act has extraterritorial effect.

1. Petitioners strain (Pet. Br. 32-36) to explain away *Steele*, arguing that it is merely a case about Congress's power over U.S. citizens' actions in foreign countries and that it need not be "extend[ed]," *id.* at 34, to a holding that the Lanham Act applies abroad. But this Court has not once but twice recognized that *Steele*'s holding was that the Act overcomes the presumption against extraterritoriality. *See Aramco*, 499 U.S. at 252; *Morrison*, 561 U.S. at 271 n.11. Those were not idle observations. The difference between the definitions of "commerce" in the Lanham Act and Title VII was the linchpin of *Aramco*'s conclusion that Title VII does not apply extraterritorially even though the Lanham Act does. *See* 499 U.S. at 252-53. Likewise, *Morrison* relied on the Lanham Act's extraterritorial application at step one to reject the government's treatment of *Steele* as a step-two case. *See* 561 U.S. at 271 n.11. *Steele* means what it says and what this Court has said that it says.

2. Petitioners alternatively suggest (Pet. Br. 36-37) that the Court should overrule this precedent notwithstanding the extraordinary version of *stare decisis* governing this Court's interpretations of statutes. But Petitioners do not come remotely close to the showing that would justify that extraordinary step.

As this Court has explained, when a decision has interpreted a statute, "unlike in a constitutional case, critics of [the] ruling can take their objections across the street, and Congress can correct any mistake it sees." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015); *see Ramos v. Louisiana*, 140 S. Ct. 1390, 1413 (2020) (Kavanaugh, J., concurring in part) ("[T]he Court has ordinarily left the updating or correction of erroneous statutory precedents to the legislative process."). Even if this Court's precedents construing the Lanham Act have been consistently wrong, the circumstances here support leaving any necessary corrections to Congress.

The Lanham Act has been applied extraterritorially to reach foreign trademark infringement with a substantial effect on U.S. commerce for over 70 years.[11] Scores of cases during that period have followed *Steele*'s holding (not to mention this Court's affirmations in *Aramco* and *Morrison*) that the Act applies extraterritorially. Meanwhile, Congress has amended the

---

[11] As Hetronic has explained (Br. in Opp. 20-26), the courts of appeals have used different adjectives to describe the requisite connection with U.S. commerce, but the varying approaches are substantially the same.

relevant section of the Act repeatedly since *Steele*, and it has never found it necessary to course-correct the uniform approach of the federal courts.[12] Nor would overruling *Steele* "achieve a uniform interpretation of similar statutory language" because the Lanham Act's language is one-of-a-kind. *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989).

In short, there is no reason, much less a "most compelling" one, to depart from precedent. *Hilton v. S.C. Pub. Rys. Comm'n*, 502 U.S. 197, 205 (1991).

C. Petitioners' Policy Arguments Have No Merit.

Under the Act's plain text, Petitioners' foreign infringement violated the Act. That should be the end of the matter. As this Court put it in another Lanham Act case, "[w]e do not ask whether in our judgment Congress *should* have authorized [the] suit, but whether Congress in fact did so." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). In any event, Petitioners' grab bag of policy arguments is unavailing.

1. Petitioners argue (Pet. Br. 21-24, 27-30) that interpreting the Lanham Act to govern some foreign infringing conduct would undermine trademark law's "territoriality" principle and thereby create tension

---

[12] *See, e.g.*, Act of Oct. 9, 1962, Pub. L. No. 87-772, § 21, 76 Stat. 769, 774-75 (amending 15 U.S.C. § 1127); Trademark Clarification Act of 1984, Pub. L. No. 98-620, tit. I, § 103, 98 Stat. 3335, 3335-36 (same); Trademark Dilution Revision Act of 2006, Pub. L. No. 109-312, § 3(e), 120 Stat. 1730, 1733 (same).

with the United States' obligations under certain international agreements.

For starters, whatever the nature of the "territoriality" principle and these agreements, they cannot overcome the Lanham Act's clear text. *See Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016). But in any event, extraterritorial application of the Act is fully consistent with trademark principles and U.S. treaty obligations.

The "territoriality" principle Petitioners invoke (Pet. Br. 22-24) is not implicated here because it is a rule about *priority of ownership* of a mark. Extraterritorial application of the Lanham Act does not violate this principle because, under notions of comity, the Act respects foreign determinations as to rightful ownership. Here, Hetronic owns the marks at issue in each relevant country, and Petitioners own those marks *nowhere*.

Petitioners also invoke (Pet. Br. 27-30) the Paris Convention and the Madrid Protocol, but those agreements similarly pose no obstacle to the Lanham Act's extraterritorial reach. The Paris Convention "is essentially a compact between the various member nations to accord in their own countries to citizens of the other member nations trademark and other rights comparable to those accorded their own citizens by their domestic law." 5 McCarthy § 29:25; *see* Pet. Br. App. 48a. The Convention thus imposes nondiscrimination obligations on its signatories but leaves them free to extend their trademark laws extraterritorially in a manner evenhanded to foreign and domestic plaintiffs. The Lanham Act accords with that obligation because it al-

lows foreign and U.S. plaintiffs alike to sue for trademark infringement, so long as the defendant has used the mark in commerce subject to congressional control.[13] And the Madrid Protocol, which is merely "a mechanism for facilitating the registration of a mark in several nations" by "reduc[ing] the paperwork and expense of obtaining and maintaining" multiple registrations, 3 McCarthy § 19:31.20, is entirely irrelevant.

Indeed, Petitioners support their territoriality argument with cases from the very same circuits that have been applying the Act extraterritorially in the 70 years since *Steele*. *See* Pet. Br. 23 & n.5. Petitioners do not explain why, if the consistent approach of these circuits so drastically departs from fundamental principles of trademark law and violates several international agreements, no one ever thought to mention it.

2. Petitioners relatedly contend (Pet. Br. 30-32) that if the Lanham Act were interpreted to govern some foreign conduct, it would cause international friction and invite retaliation from other nations. But from *Steele* onwards, every court has recognized that the Act is subject to background principles of comity, and Petitioners have not identified a single case in which the Act was used to hold a defendant liable for foreign con-

---

[13] Petitioners are therefore wrong to argue (Pet. Br. 46-47) that relying on diversion of sales between the United States and foreign countries to satisfy the Act's "in commerce" requirement would be "blatantly protectionist" and "breach treaty obligations." A foreign plaintiff, too, can claim the protection of the Act by showing that infringement substantially affected U.S. commerce—including by showing diversion of sales *from* the United States.

duct protected by foreign law. Nor is there any evidence that, during this period, foreign nations have lodged the sorts of complaints they have raised regarding extraterritorial application of other federal statutes. *See Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1406-07 (2018). With seven decades of experience suggesting that the plain-text approach to the Lanham Act poses no danger, this Court should disregard Petitioners' self-serving predictions of international disaster.

Moreover, and as noted above, the doctrines of international comity, personal jurisdiction, and *forum non conveniens* limit the application of the Lanham Act to foreign conduct in U.S. courts. Pp. 31-33, *supra.* These "tools" provide time-tested bulwarks against any potential international friction. *Nestlé USA, Inc. v. Doe*, 141 S. Ct. 1931, 1948 (2021) (Sotomayor, J., concurring in part and concurring in the judgment).

For all these reasons, the Court should affirm the extraterritorial application of the Act.

III. This Case Involves A Domestic Application Of The Lanham Act.

Regardless whether the Lanham Act applies extraterritorially, the judgment below is supported on the alternative ground that this case involves a *domestic* application of the Act. This Court has explained that even if a statute fails to overcome the presumption against extraterritoriality, it still captures foreign activity when the conduct or effect that is the "focus" of the statute occurs or is felt in the United States. *Morrison*, 561 U.S. at 266. When that is true, "the case involves a domestic application of the statute."

WesternGeco LLC v. ION Geophysical Corp., 138 S. Ct. 2129, 2136 (2018) (quoting *RJR Nabisco*, 579 U.S. at 337).

As its text and this Court's precedent make clear, the Lanham Act's trademark-infringement provisions have two core focuses: protecting mark owners from those who trade on and harm their goodwill, and protecting consumers from confusion. Petitioners' conduct implicated both focuses domestically and thus is actionable under the Act.

A. The Lanham Act Is Focused Both On Protecting The Goodwill Of Mark Owners And On Preventing Consumer Confusion.

1. "The focus of a statute is 'the objec[t] of [its] solicitude,' which can include the conduct it 'seeks to "regulate,"' as well as the parties and interests it 'seeks to "protec[t]"' or vindicate." *WesternGeco*, 138 S. Ct. at 2137 (alterations in original) (quoting *Morrison*, 561 U.S. at 267). Identifying the focus of the Lanham Act "requires no guesswork, since the Act includes an unusual, and extraordinarily helpful, detailed statement of the statute's purposes." *Lexmark*, 572 U.S. at 131; *see POM Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 106-07 (2014). The Act states that its "intent," *inter alia*, is "to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce"; "to protect persons engaged in such commerce against unfair competition"; and "to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations" of protected trademarks. 15 U.S.C. § 1127.

The Act's trademark-infringement provisions accordingly have two focuses. As this Court has explained, the term "unfair competition" as used by the Act refers to "injuries to business reputation and present and future sales." *Lexmark*, 572 U.S. at 131. By seeking to protect against unfair competition, the Act thereby evinces a focus on protecting mark owners' goodwill. The Act similarly makes clear its focus on protecting consumers from confusion in the marketplace.

This Court has recognized these two focuses when it has observed that "blatant trademark infringement" of the sort Petitioners engaged in here "subverts *both goals* of the Lanham Act." *Inwood Lab'ys, Inc. v. Ives Lab'ys, Inc.*, 456 U.S. 844, 854 n.14 (1982) (emphasis added). "By applying a trademark to goods produced by one other than the trademark's owner," the Court explained, "the infringer deprives the owner of the goodwill which [it] spent energy, time, and money to obtain," and "[a]t the same time … deprives consumers of their ability to distinguish among the goods of competing manufacturers." *Ibid.*; *see also* 1 McCarthy §§ 2:1-:2 (explaining that trademark law serves these two goals and that neither can fairly be described as the primary goal).

2. The government acknowledges that the Lanham Act seeks to protect both mark owners and consumers. It repeatedly recites this Court's observations that "[i]nfringement law protects consumers from being misled by the use of infringing marks *and also protects producers from unfair practices by an imitating competitor*." U.S. Br. 2 (emphasis added) (quoting

Moseley v. V Secret Catalogue, Inc., 537 U.S. 418, 428 (2003)); *see also, e.g.*, *id.* at 3 (quoting *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 164 (1995)).

But despite beginning from correct premises, the government veers off course when it asserts (U.S. Br. 16) that "the most likely location of the harms that trademark law is designed to prevent is the place where consumers are confused or deceived." That is only partially true. Of course, to the extent the Act focuses on protecting consumers, there is a domestic application if there is a likelihood of consumer confusion in the United States.

But the Act's other focus—protecting mark owners—is not necessarily tied to the locus of customer confusion or the locus of the wrongdoer's conduct. Rather, the mark holder's injury is felt where the mark owner operates—its place of business. A mark owner who proves lost sales because of infringement feels that financial harm at its place of business, not where consumers were deceived. And reputational harm—the harm to goodwill that is at the core of what the Act protects—is felt where the victim resides, even if the misconduct was committed elsewhere.[14] *Cf. Calder v. Jones*, 465 U.S. 783, 788-89 (1984) (personal jurisdiction in a libel suit proper in the plaintiff's home state, because the "brunt of the harm" to her "professional reputation" was felt there). The Act's focus is thus

---

[14] While it is more likely that a U.S.-based company will feel the injury to its goodwill in the United States, foreign holders of U.S. marks operating in this country may be injured here as well.

"squarely implicated" domestically, U.S. Br. 16, when infringing acts harm a business's goodwill in the United States and pirate its sales—even if the infringement occurs abroad.

3. Petitioners deny *both* of the Act's express focuses and instead assert (Pet. Br. 39-45) that the Act's lone focus is the "use" of a mark. That view, which ignores the stated purposes of the Act and this Court's teachings, and which would mean that the Act *never* applies to foreign infringement, is indefensible.

Petitioners' view rests on their contention (Pet. Br. 39-43) that a statute's focus must always be some aspect of the defendant's *conduct*. But that is inconsistent with this Court's recognition in *Morrison* that a case may implicate a domestic application of a federal statute even when none of the defendant's conduct occurs in the United States. *See* 561 U.S. at 266-70; *see also* U.S. Br. 14. In *RJR Nabisco*, too, this Court held that RICO's private right of action covers foreign conduct when a plaintiff alleges "a domestic *injury* to business or property." 579 U.S. at 354 (emphasis added). And in a long line of cases relating to the extraterritorial application of federal antitrust law, this Court has similarly held that "the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial *effect* in the United States." *Hartford Fire Ins.*, 509 U.S. at 796 (emphasis added); *see, e.g.*, *United States v. Sisal Sales Corp.*, 274 U.S. 268, 276 (1927).

B. Petitioners Committed A Domestic Violation Of The Lanham Act By Tarnishing The Goodwill Of A U.S. Business.

This case involves a quintessential domestic application of the Lanham Act's focus on protecting mark owners. Petitioners did not just trade on Hetronic's goodwill and reputation—they cannibalized it.

In an intentional scheme to "attack" Hetronic in the United States, J.A. 66, Petitioners informed Hetronic's customers that they were the real Hetronic, and then used those misrepresentations to pirate tens of millions of dollars in sales from Hetronic, which would have otherwise made every one of them. Pp. 7-10, *supra*. As a Hetronic official testified, the loss of those pirated sales to a competitor "impacted Hetronic's business and operations right here in the U.S." because "if we're not selling those components, we're not enjoying those sales" and those "financials" "roll back up into [Hetronic] which is all U.S. based." 2 C.A. Supp. App. 448. Still worse, Petitioners' knockoff products were inferior, leading customers to mistakenly believe that the quality of Hetronic's products had plummeted. Pp. 10-11, *supra*.

Thus, though some of Petitioners' conduct took place overseas, the harm it caused to Hetronic's "business reputation and present and future sales," *Lexmark*, 572 U.S. at 131, was necessarily felt at Hetronic's home in the United States. Petitioners set out to hurt Hetronic in the United States, and they accomplished that.

C. Petitioners Committed A Domestic Violation Of The Lanham Act By Using Hetronic's Marks In A Manner Likely To Confuse U.S. Consumers.

This case also involves a domestic application of the Lanham Act even under the government's theory that the Act's sole focus is consumer confusion. The evidence at trial showed that all of Petitioners' willful infringement—which encompassed their *use* of Hetronic's marks, not just their sales of knockoff goods—posed a likelihood of confusing consumers in the United States. And contrary to Petitioners' view, the jury's full $90 million disgorgement award can be affirmed based on this risk of confusion—not just the profits from the 3% of sales initially designated for U.S. use at the time of sale.[15]

1. A defendant violates the Act by engaging in certain improper "use[s]" of a mark that are likely to cause consumer confusion. 15 U.S.C. §§ 1114(1)(a),

---

[15] Petitioners suggest (Pet. Br. 38-39) that Hetronic has waived any argument that the judgment can be affirmed on the basis of domestic consumer confusion. That is incorrect. In urging the Court to deny certiorari, Hetronic explained that it was indisputable on this record that "[a]ll of [Petitioners'] infringing uses posed a likelihood of confusing U.S. customers." Supp. Br. in Opp. 2; *see id.* at 1-2, 5-7; *see also* Hetronic C.A. Br. 2-3 (making the same argument). Hetronic also distinctly argued that the Act applies here because Petitioners' infringement harmed a U.S. mark owner. *See* Br. in Opp. 32-33. Petitioners' view of waiver is curious, moreover, given that they never hinted at what is now their primary theory—that the Lanham Act has no extraterritorial application whatsoever—before reaching this Court.

1125(a)(1)(A). Likelihood of confusion involves many factors, such as the similarity of the marks, the overlap of marketing channels, and the infringer's intent. *See* 4 McCarthy § 23:19. While actual confusion is one factor, it is not a necessary one. *Ibid.* And likelihood of confusion can occur when a customer initially is looking at products, at the time of sale, or *after* sale upon seeing the infringing product in the field. *Id.* §§ 23:5-:7. Once likelihood of confusion is established, the mark holder can, "subject to the principles of equity, … recover … defendant's profits," 15 U.S.C. § 1117(a), and obtain an injunction "to prevent" future violations, *id.* § 1116(a); *see Romag Fasteners, Inc. v. Fossil, Inc.*, 140 S. Ct. 1492, 1494-95 (2020).

a. Petitioners treat their infringement as limited to their *sales* of knockoff products, but the Lanham Act's text makes misleading *use* of a mark infringing, not just sales. The Act is explicit that infringement of a registered mark encompasses "use in commerce" of the mark "in connection with the sale, *offering for sale, distribution, or advertising* of any goods or services," 15 U.S.C. § 1114(1)(a) (emphasis added), and the Act's provision governing infringement of unregistered marks is broader still, *see id.* § 1125(a)(1)(A).

Here, it was the gamut of Petitioners' "use" of Hetronic's marks—their marketing, customer communications, and sales *offers*—that constituted infringement. Indeed, the evidence was overwhelming on this score. Petitioners' website was coded to attract customers, including U.S. customers, searching for Hetronic's products. Pp. 10-11, *supra*. Petitioners held out their infringing goods at international trade shows

attended by U.S. consumers. *Ibid.* And Hetronic's U.S. customers received communications from Petitioners on Hetronic letterhead telling them that Petitioners *were* Hetronic. Pp. 7-8, *supra*.

All of those "uses" of Hetronic's marks posed a likelihood of confusing consumers in the United States, and Petitioners obtained *all* of their ill-gotten gains from those uses. *All* of Petitioners' profits were therefore fairly subject to disgorgement, regardless of what percentage of sales were made to U.S. buyers or otherwise ended up in the United States. That conclusion follows from the text of the Lanham Act, which allows recovery of all "profits" from a "violation," 15 U.S.C. § 1117(a). It also follows from the nature of disgorgement itself, which "reflect[s] [the] foundational principle" that it is "inequitable" for the wrongdoer to "make a profit out of his own wrong." *Liu v. SEC*, 140 S. Ct. 1936, 1943 (2020) (citation omitted).

b. The evidence of likely U.S. confusion was not only overwhelming, it was unchallenged. It is true, as Petitioners note (Pet. Br. 10), they were precluded at one point from eliciting testimony that some examples of confusion involved foreign customers. But as the court of appeals explained, this testimony would not have refuted Hetronic's copious evidence of domestic confusion. *See* Pet. App. 38a ("[Petitioners] never tried to argue that [Hetronic's] examples [of U.S. confusion] never happened or otherwise refute that portion of Hetronic's evidence.").

c. The government agrees (U.S. Br. 33 n.5) that Hetronic is entitled to disgorge profits from all uses, such as use at "foreign trade shows," that were likely to

confuse Americans. That is this case: Petitioners obtained their ill-gotten gains by using infringing marks in the most important marketing channels—tradeshows, direct mail, internet—all of which were not only likely to confuse U.S. consumers, but were *intended* to do so.[16] Pp. 7-11, *supra*. Having used Hetronic's marks in ways likely to confuse U.S. consumers, Petitioners were liable for disgorgement of all their profits from those uses.

d. Indeed, even if disgorgement required proof of likelihood of U.S. confusion based on a sale (as opposed to an infringing *use* like marketing), the judgment below should be affirmed. The evidence showed that even sales to *foreigners* were likely to cause confusion in the United States. Petitioners concede (Pet. Br. 12-13) that millions of dollars of so-called "foreign sales" were expressly destined for use in U.S. projects. But the record showed that other infringing goods came back to the United States for servicing or use at project sites, even if they were not initially designated for use in the United States. Pp. 10-11, *supra*. A knockoff product sold anywhere in the world was therefore likely, in time, to confuse U.S. consumers, and thus is actionable

---

[16] The government misstates this point elsewhere. It is wrong to assert (U.S. Br. 28) that a defendant can reduce a disgorgement award "by proving that some of its sales were not attributable to *U.S.* confusion." Assuming domestic consumer confusion is necessary, a defendant wishing to avoid disgorging profits from a particular sale would have to show that the sale did not result from a *use* of the mark that was *likely* to confuse U.S. consumers.

under the Act. *See, e.g. Gen. Motors Corp. v. Keystone Auto. Indus., Inc.*, 453 F.3d 351, 356 (6th Cir. 2006).

3. Because all of Petitioners' $90 million in sales were traceable to infringing uses of Hetronic's marks, $90 million was an appropriate disgorgement award.

To be sure, a trademark-infringement defendant facing a disgorgement award may show that some of its profits are not due to its infringing use of the mark. *See* 5 McCarthy § 30:65. Petitioners therefore had an opportunity to sever the causal link between their willfully infringing use of Hetronic's marks and a subset of their sales. The government observes (U.S. Br. 33) that the jury was not instructed to consider only those infringing uses of Hetronic's marks that were likely to confuse consumers in the United States. But Petitioners never objected to that instruction, p. 13, *supra*. Petitioners cannot complain now that the jury did not make a finding that they never asked it to make.

A defendant also may introduce evidence of its costs and expenses, which can be deducted from gross sales to limit disgorgement to actual profits. *See* 5 McCarthy § 30:65; *see also Liu*, 140 S. Ct. at 1955. Petitioners at least attempted to make this showing by offering a damages expert at trial. Pet. App. 63a. But his testimony was excluded as unreliable because neither he nor Petitioners could not substantiate the underlying cost information. Pet. App. 165a-69a. That determination was affirmed on appeal. Pet. App. 63a-66a

Trying to overcome these evidentiary defaults, Petitioners now suggest (Pet. Br. 48) that it was *Hetronic's* burden to show that the purchaser *in each*

sale was likely to be confused. This is doubly wrong. First, infringement occurs based on the *use* of a mark in a way *likely* to cause confusion; even when the sole infringing use is a sale, the plaintiff does not need to show that the buyer was *actually* confused in order to disgorge the defendant's profits. *See Web Printing Controls Co. v. Oxy-Dry Corp.*, 906 F.2d 1202, 1205 (7th Cir. 1990). And further—as the Act makes explicit—it is the *defendant* who bears the burden of showing that some of its profits are unrelated to its infringement. *See* 15 U.S.C. § 1117(a) ("In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed.").

In sum, the trial evidence demonstrated that each of Petitioners' knockoff sales resulted from uses of Hetronic's marks that were likely to confuse consumers in the United States. Hetronic was therefore entitled to disgorge the entirety of Petitioners' ill-gotten gains. And in light of the district court's determination that Petitioners' infringement would continue to confuse Hetronic's customers both in the United States and around the world, Hetronic was entitled to an injunction barring Petitioners from continuing their scheme of willful infringement—both here and abroad.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

DEBBIE L. BERMAN
WADE A. THOMSON
JENNER & BLOCK LLP
353 N. Clark St.
Chicago, IL 60654

GIANNI P. SERVODIDIO
RÉMI J.D. JAFFRÉ
JENNER & BLOCK LLP
1155 Avenue of the Americas
New York, NY 10036

SAMUEL R. FULKERSON
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
621 N. Robinson Ave.,
Suite 400
Oklahoma City, OK 73102

MATTHEW S. HELLMAN
Counsel of Record
LAUREN J. HARTZ
VICTORIA HALL-PALERM
JONATHAN J. MARSHALL*
JENNER & BLOCK LLP
1099 New York Ave., NW,
Suite 900
Washington, DC 20001
(202) 639-6000
mhellman@jenner.com

* *Not admitted in the District of Columbia; practicing under direct supervision of members of the D.C. Bar*

APPENDIX

APPENDIX—TABLE OF CONTENTS

APPENDIX—DEFINITIONS OF "COMMERCE" AND RELATED TERMS IN U.S. CODE

1. Section 1a of the Commodity Exchange Act, ch. 369, 42 Stat. 998 (1922), as amended, 7 U.S.C. § 1a, provides in relevant part:

§ 1a. Definitions

As used in this chapter:

. . . .

(30) Interstate commerce

The term "interstate commerce" means commerce—

(A) between any State, territory, or possession, or the District of Columbia, and any place outside thereof; or

(B) between points within the same State, territory, or possession, or the District of Columbia, but through any place outside thereof, or within any territory or possession, or the District of Columbia.

. . . .

2. Section 11 of the United States Cotton Standards Act, ch. 288, 42 Stat. 1517 (1923), 7 U.S.C. § 62, provides in relevant part:

§ 62. Definitions

Wherever used in this chapter, . . . (b) the word "commerce" means commerce between any State or the District of Columbia and any place outside thereof, or between points within the same State or the District of Columbia but through any place outside thereof, or within the District of Columbia . . . .

3. Section 3 of the United States Grain Standards Act, ch. 313, pt. B, 39 Stat. 482 (1916), as amended, 7 U.S.C. § 75, provides in relevant part:

§ 75. Definitions

When used in this chapter, except where the context requires otherwise—

. . . .

(f) the term "interstate or foreign commerce" means commerce from any State to or through any other State, or to or through any foreign country . . . .

. . . .

4. Section 2 of the Naval Stores Act, ch. 217, 42 Stat. 1435 (1923), 7 U.S.C. § 92, provides in relevant part:

§ 92. Definitions

When used in this chapter—

. . . .

(*l*) The term "commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia.

5. Section 2(a) of the Packers and Stockyards Act, 1921, ch. 64, 42 Stat. 159, as amended, 7 U.S.C. § 182, provides in relevant part:

§ 182. Definitions

When used in this chapter—

. . . .

(11) The term "commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia.

. . . .

6. Section 1 of the Perishable Agricultural Commodities Act, 1930, ch. 436, 46 Stat. 531, as amended, 7 U.S.C. § 499a, provides in relevant part:

§ 499a. Short title and definitions

. . . .

(b) Definitions

For purposes of this chapter—

> . . . .
>
> (3) The term "interstate or foreign commerce" means commerce between any State or Territory, or the District of Columbia and any place outside thereof; or between points within the same State or Territory, or the District of Columbia but through any place outside thereof; or within the District of Columbia.
>
> . . . .

7. Section 1 of the Tobacco Inspection Act, ch. 623, 49 Stat. 731 (1935), 7 U.S.C. § 511, provides in relevant part:

§ 511. Definitions

When used in this chapter—

. . . .

(i) "Commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purposes of this chapter (but not in any wise limiting the foregoing definition) a transaction in respect to tobacco shall be considered to be in commerce if such tobacco is part of that current of commerce usual in the tobacco industry whereby tobacco or products manufactured therefrom are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Tobacco normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations.

8. Section 9 of the Export Apple Act, ch. 59, 48 Stat. 123 (1933), 7 U.S.C. § 589, provides in relevant part:

§ 589. Definitions

When used in this chapter—

. . . .

(3) Except as provided herein, the term "foreign commerce" means commerce between any State, or the District of Columbia, and any place outside of the United States or its possessions.

. . . .

9. Section 9 of the Export Grape and Plum Act, Pub. L. No. 86-687, 74 Stat. 734 (1960), 7 U.S.C. § 599, provides in relevant part:

§ 599. Definitions

When used in this chapter—

. . . .

(3) Except as provided herein, the term "foreign commerce" means commerce between any State, or the District of Columbia, and any place outside of the United States or its possessions.

. . . .

10. Section 10 of the Agricultural Adjustment Act, ch. 25, tit. I, 48 Stat. 31 (1933), as amended, 7 U.S.C. § 610, provides in relevant part:

§ 610. Administration

. . . .

(j) Definitions

The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this chapter (but in nowise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of said sections. As used herein, the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations.

11. Section 301 of the Agricultural Adjustment Act of 1938, ch. 30, 52 Stat. 31, as amended, 7 U.S.C. § 1301, provides in relevant part:

§ 1301. Definitions

(a) General definitions

For the purposes of this subchapter and the declaration of policy—

. . . .

(3) The term "interstate and foreign commerce" means sale, marketing, trade, and traffic between any State or Territory or the District of Columbia or Puerto Rico, and any place outside thereof; or between points within the same State or Territory or within the District of Columbia or Puerto Rico, through any place outside thereof; or within any Territory or within the District of Columbia or Puerto Rico.

. . . .

. . . .

12. Section 101 of the Federal Seed Act, ch. 615, 53 Stat. 1275 (1939), as amended, 7 U.S.C. § 1561, provides in relevant part:

§ 1561. Definition of terms

(a) When used in this chapter—

. . . .

(3) The term "interstate commerce" means—

(A) commerce between any State, Territory, possession, or the District of Columbia, and any other State, Territory, possession, or the District of Columbia; or

(B) commerce between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or

(C) commerce within the District of Columbia.

. . . .

(5) The term "foreign commerce" means commerce between the United States, its possessions, or any Territory of the United States, and any foreign country.

. . . .

. . . .

13. Section 2 of the Animal Welfare Act, Pub. L. No. 89-544, 80 Stat. 350 (1966), as amended, 7 U.S.C. § 2132, provides in relevant part:

§ 2132. Definitions

In this chapter:

. . . .

(c) The term "commerce" means trade, traffic, transportation, or other commerce—

(1) between a place in a State and any place outside of such State, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia;

(2) which affects trade, traffic, transportation, or other commerce described in paragraph (1).

. . . .

14. Section 3 of the Egg Research and Consumer Information Act, Pub. L. No. 93-428, 88 Stat. 1171 (1974), 7 U.S.C. § 2702, provides in relevant part:

§ 2702. Definitions

As used in this chapter—

. . . .

(m) The term "commerce" means interstate, foreign, or intrastate commerce.

. . . .

15. Section 1907 of the Pecan Promotion and Research Act of 1990, Pub. L. No. 101-624, tit. XIX, subtit. A, 104 Stat. 3838, as amended, 7 U.S.C. § 6002, provides in relevant part:

§ 6002. Definitions

As used in this chapter—

. . . .

(2) Commerce

The term "commerce" means interstate, foreign, or intrastate commerce.

. . . .

16. Section 1923 of the Mushroom Promotion, Research, and Consumer Information Act of 1990, Pub. L. No. 101-624, tit. XIX, subtit. B, 104 Stat. 3854, 7 U.S.C. § 6102, provides in relevant part:

§ 6102. Definitions

As used in this chapter—

(1) Commerce

The term "commerce" means interstate, foreign, or intrastate commerce.

. . . .

17. Section 1967 of the Soybean Promotion, Research, and Consumer Information Act, Pub. L. No. 101-624, tit. XIX, subtit. E, 104 Stat. 3881 (1990), 7 U.S.C. § 6302, provides in relevant part:

§ 6302. Definitions

As used in this chapter—

. . . .

(2) Commerce

The term "commerce" includes interstate, foreign, and intrastate commerce.

. . . .

18. Section 533 of the Canola and Rapeseed Research, Promotion, and Consumer Information Act, Pub. L. No. 104-127, tit. V, subtit. C, 110 Stat. 1048 (1996), 7 U.S.C. § 7442, provides in relevant part:

§ 7442. Definitions

In this subchapter (unless the context otherwise requires):

. . . .

(4) Commerce

The term "commerce" includes interstate, foreign, and intrastate commerce.

. . . .

19. Section 573 of the Popcorn Promotion, Research, and Consumer Information Act, Pub. L. No. 104-127, tit. V, subtit. E, 110 Stat. 1074 (1996), 7 U.S.C. § 7482, provides in relevant part:

§ 7482. Definitions

In this subchapter (unless the context otherwise requires):

. . . .

(2) Commerce

The term "commerce" means interstate, foreign, or intrastate commerce.

. . . .

20. Section 403 of the Plant Protection Act, Pub. L. No. 106-224, tit. IV, 114 Stat. 438 (2000), 7 U.S.C. § 7702, provides in relevant part:

§ 7702. Definitions

In this chapter:

. . . .

(7) Interstate commerce

The term "interstate commerce" means trade, traffic, or other commerce—

(A) between a place in a State and a point in another State, or between points within the same State but through any place outside that State; or

(B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

. . . .

21. Section 10403 of the Animal Health Protection Act, Pub. L. No. 107-171, tit. X, subtit. E, 116 Stat. 494 (2002), as amended, 7 U.S.C. § 8302, provides in relevant part:

§ 8302. Definitions

In this chapter:

. . . .

(9) Interstate commerce

The term "interstate commerce" means trade, traffic, or other commerce—

(A) between a place in a State and a place in another State, or between places within the same State but through any place outside that State; or

(B) within the District of Columbia or any territory or possession of the United States.

. . . .

22. Section 1 of the United States Arbitration Act, ch. 213, 43 Stat. 883 (1925), 9 U.S.C. § 1, provides in relevant part:

§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

. . . "[C]ommerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

23. Section 1 of the Clayton Act, ch. 323, 38 Stat. 730 (1914), as amended, 15 U.S.C. § 12, provides in relevant part:

§ 12. Definitions; short title

(a) . . . .

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

. . . .

24. Section 4 of the Federal Trade Commission Act, ch. 311, 38 Stat. 717 (1914), as amended, 15 U.S.C. § 44, provides in relevant part:

§ 44. Definitions

The words defined in this section shall have the following meaning when found in this subchapter, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

. . . .

25. Section 2 of the Wool Products Labeling Act of 1939, ch. 871, 54 Stat. 1128, as amended, 15 U.S.C. § 68, provides in relevant part:

§ 68. Definitions

As used in this subchapter—

. . . .

(g) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

. . . .

26. Section 2 of the Fur Products Labeling Act, ch. 298, 65 Stat. 175 (1951), as amended, 15 U.S.C. § 69, provides in relevant part:

§ 69. Definitions

As used in this subchapter—

. . . .

(j) The term "commerce" means commerce between any State, Territory, or possession of the United States, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia.

. . . .

27. Section 2 of the Textile Fiber Products Identification Act, Pub. L. No. 85-897, 72 Stat. 1717 (1958), 15 U.S.C. § 70, provides in relevant part:

§ 70. Definitions

As used in this subchapter—

. . . .

(k) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation or between the District of Columbia and any State or Territory or foreign nation.

. . . .

28. Section 2 of the Securities Act of 1933, ch. 38, tit. I, 48 Stat. 74, as amended, 15 U.S.C. § 77b, provides in relevant part:

§ 77b. Definitions; promotion of efficiency, competition, and capital formation

(a) Definitions

When used in this subchapter, unless the context otherwise requires—

. . . .

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

. . . .

. . . .

29. Section 3 of the Securities Exchange Act of 1934, ch. 404, 48 Stat. 881, as amended, 15 U.S.C. § 78c, provides in relevant part:

§ 78c. Definitions and application

(a) Definitions

When used in this chapter, unless the context otherwise requires—

. . . .

(17) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

. . . .

. . . .

30. Section 104 of the Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, tit. I, 91 Stat. 1494, as amended, 15 U.S.C. § 78dd-2, provides in relevant part:

§ 78dd-2. Prohibited foreign trade practices by domestic concerns

. . . .

(h) Definitions

For purposes of this section:

. . . .

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

. . . .

31. Section 104A of the Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, tit. I, 91 Stat. 1494, as added by the International Anti-Bribery and Fair Competition Act of 1998, Pub. L. No. 105-366, 112 Stat. 3302, 15 U.S.C. § 78dd-3, provides in relevant part:

§ 78dd-3. Prohibited foreign trade practices by persons other than issuers or domestic concerns

. . . .

(f) Definitions

For purposes of this section:

. . . .

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

32. Section 2 of the Investment Company Act of 1940, ch. 868, tit. I, 54 Stat. 789, as amended, 15 U.S.C. § 80a-2, provides in relevant part:

§ 80a-2. Definitions; applicability; rulemaking considerations

(a) Definitions

When used in this subchapter, unless the context otherwise requires—

. . . .

(18) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

. . . .

. . . .

33. Section 202 of the Investment Advisers Act of 1940, ch. 868, tit. II, 54 Stat. 847, as amended, 15 U.S.C. § 80b-2, provides in relevant part:

§ 80b-2. Definitions

(a) In general

When used in this subchapter, unless the context otherwise requires, the following definitions shall apply:

. . . .

(10) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

. . . .

. . . .

34. Section 1 of the Calder Act, ch. 24, 40 Stat. 450 (1918), as amended, 15 U.S.C. § 261, provides in relevant part:

§ 261. Zones for standard time; interstate or foreign commerce

(a) In general

. . . As used in sections 261 to 264 of this title, the term "interstate or foreign commerce" means commerce between a State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof.

. . . .

35. Section 1 of the Jenkins Act, ch. 699, 63 Stat. 884 (1949), as amended, 15 U.S.C. § 375, provides in relevant part:

§ 375. Definitions

As used in this chapter, the following definitions apply:

. . . .

(10) Interstate commerce

(A) In general

The term "interstate commerce" means commerce between a State and any place outside the State, commerce between a State and any Indian country in the State, or commerce between points in the same State but through any place outside the State or through any Indian country.

. . . .

. . . .

36. Section 1 of the Act of Mar. 4, 1927, ch. 508, 44 Stat. 1423, 15 U.S.C. § 431, provides in relevant part:

§ 431. Definitions

When used in this chapter . . . .

(c) The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia.

. . . .

37. Section 2 of the Connally Hot Oil Act, ch. 18, 49 Stat. 30 (1935), as amended, 15 U.S.C. § 715a, provides in relevant part:

§ 715a. Definitions

As used in this chapter—

. . . .

(3) The term "interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, or from any place in the United States to a foreign country, but only insofar as such commerce takes place within the United States.

. . . .

38. Section 2 of the Natural Gas Act, ch. 556, 52 Stat. 821 (1938), as amended, 15 U.S.C. § 717a, provides in relevant part:

§ 717a. Definitions

When used in this chapter, unless the context otherwise requires—

. . . .

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

. . . .

39. Section 606 of the Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117, 15 U.S.C. § 717y, provides in relevant part:

§ 717y. Voluntary conversion of natural gas users to heavy fuel oil

. . . .

(e) Definitions

For purposes of this section—

. . . .

(12) The term "interstate commerce" has the same meaning as such term has under the Natural Gas Act.[1]

. . . .

40. Section 45 of the Lanham Act, ch. 540, 60 Stat. 427 (1946), as amended, 15 U.S.C. § 1127, provides in relevant part:

§ 1127. Construction and definitions; intent of chapter

In the construction of this chapter, unless the contrary is plainly apparent from the context—

. . . .

The word "commerce" means all commerce which may lawfully be regulated by Congress.

. . . .

---

1 *See* p. 26a, *supra* (reproducing 15 U.S.C. § 717a(7)).

41. Section 1 of the Gambling Devices Transportation Act, ch. 1194, 64 Stat. 1134 (1951), as amended, 15 U.S.C. § 1171, provides in relevant part:

§ 1171. Definitions

As used in this chapter—

. . . .

(d) The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(e) The term "intrastate commerce" means commerce wholly within one State or possession of the United States.

. . . .

42. Section 2 of the Flammable Fabrics Act, ch. 164, 67 Stat. 111 (1953), as amended, 15 U.S.C. § 1191, provides in relevant part:

§ 1191. Definitions

As used in this chapter—

. . . .

(b) The term "commerce" means commerce among the several States or with foreign nations or in any territory of the United States or in the District of Columbia or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia or the Commonwealth of Puerto Rico and any State or territory or foreign nation, or between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

. . . .

43. Section 4 of the Act of Aug. 2, 1956, ch. 890, 70 Stat. 953, 15 U.S.C. § 1214, provides:

§ 1214. "Interstate commerce" defined

As used in this chapter, the term "interstate commerce" includes commerce between one State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico and another State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico.

44. Section 1 of the Automobile Dealers' Day in Court Act, ch. 1038, 70 Stat. 1125 (1956), 15 U.S.C. § 1221, provides in relevant part:

§ 1221. Definitions

As used in this chapter—

. . . .

(d) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

. . . .

45. Section 2 of the Automobile Information Disclosure Act, Pub. L. No. 85-506, 72 Stat. 325 (1958), as amended, 15 U.S.C. § 1231, provides in relevant part:

§ 1231. Definitions

For purposes of this chapter—

. . . .

(h) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. New automobiles delivered to, or for further delivery to, ultimate purchasers within the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, the Trust Territories of the Pacific, the Canal Zone, Wake Island, Midway Island, Kingman Reef, Johnson Island, or within any other place under the jurisdiction of the United States shall be deemed to have been distributed in commerce.

46. Section 1 of the Federal Switchblade Act, Pub. L. No. 85-623, 72 Stat. 562 (1958), 15 U.S.C. § 1241, provides in relevant part:

§ 1241. Definitions

As used in this chapter—

(a) The term "interstate commerce" means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

. . . .

47. Section 2 of the Federal Hazardous Substances Act, Pub. L. No. 86-613, 74 Stat. 372 (1960), as amended, 15 U.S.C. § 1261, provides in relevant part:

§ 1261. Definitions

For the purposes of this chapter—

. . . .

(b) The term "interstate commerce" means (1) commerce between any State or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory not organized with a legislative body.

. . . .

48. Section 3 of the Federal Cigarette Labeling and Advertising Act, Pub. L. No. 89-92, 79 Stat. 282 (1965), as amended, 15 U.S.C. § 1332, provides in relevant part:

§ 1332. Definitions

As used in this chapter—

. . . .

(2) The term "commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (B) commerce between points in any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (C) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

. . . .

49. Section 10 of the Fair Packaging and Labeling Act, Pub. L. No. 89-755, 80 Stat. 1296 (1966), as amended, 15 U.S.C. § 1459, provides in relevant part:

§ 1459. Definitions

For the purpose of this chapter—

. . . .

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries.

. . . .

50. Section 1402 of the Interstate Land Sales Full Disclosure Act, Pub. L. No. 90-448, tit. XIV, 82 Stat. 590 (1968), as amended, 15 U.S.C. § 1701, provides in relevant part:

§ 1701. Definitions

For the purposes of this chapter, the term—

. . . .

(8) "interstate commerce" means trade or commerce among the several States or between any foreign country and any State;

. . . .

51. Section 3 of the Consumer Product Safety Act, Pub. L. No. 92-573, 86 Stat. 1207 (1972), as amended, 15 U.S.C. § 2052, provides in relevant part:

§ 2052. Definitions

(a) In general

In this chapter:

. . . .

(3) Commerce

The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

. . . .

. . . .

52. Section 7 of the Hobby Protection Act, Pub. L. No. 93-167, 87 Stat. 686 (1973), as amended, 15 U.S.C. § 2106, provides in relevant part:

§ 2106. Definitions

For purposes of this chapter—

. . . .

(5) The term "commerce" has the same meaning as such term has under the Federal Trade Commission Act.[2]

. . . .

53. Section 101 of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. No. 93-637, 88 Stat. 2183 (1975), 15 U.S.C. § 2301, provides in relevant part:

§ 2301. Definitions

For the purposes of this chapter:

. . . .

(14) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

. . . .

---

2 *See* p. 17a, *supra* (reproducing 15 U.S.C. § 44).

54. Section 3 of the Toxic Substances Control Act, Pub. L. No. 94-469, 90 Stat. 2003 (1976), as amended, 15 U.S.C. § 2602, provides in relevant part:

§ 2602. Definitions

As used in this chapter:

. . . .

(3) The term "commerce" means trade, traffic, transportation, or other commerce (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, transportation, or commerce described in clause (A).

. . . .

55. Section 101 of the Petroleum Marketing Practices Act, Pub. L. No. 95-297, 92 Stat. 322 (1978), as amended, 15 U.S.C. § 2801, provides in relevant part:

§ 2801. Definitions

As used in this subchapter:

. . . .

(18) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

. . . .

56. Section 201 of the Petroleum Marketing Practices Act, Pub. L. No. 95-297, 92 Stat. 322 (1978), 15 U.S.C. § 2821, provides in relevant part:

§ 2821. Definitions

As used in this subchapter:

. . . .

(13) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

. . . .

57. Section 604 of the Condominium and Cooperative Abuse Relief Act of 1980, Pub. L. No. 96-399, tit. VI, 94 Stat. 1672, 15 U.S.C. § 3603, provides in relevant part:

§ 3603. Definitions

For the purpose of this chapter—

. . . .

(15) "interstate commerce" means trade, traffic, transportation, communication, or exchange among the States, or between any foreign country and a State, or any transaction which affects such trade, traffic, transportation, communication, or exchange;

. . . .

58. Section 9 of the Comprehensive Smokeless Tobacco Health Education Act of 1986, Pub. L. No. 99-252, 100 Stat. 30, as amended, 15 U.S.C. § 4408, provides in relevant part:

§ 4408. Definitions

For purposes of this chapter:

. . . .

(2) The term "commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (C) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

. . . .

59. Section 3 of the Endangered Species Act of 1973, Pub. L. No. 93-205, 87 Stat. 884, as amended, 16 U.S.C. § 1532, provides in relevant part:

§ 1532. Definitions

For the purposes of this chapter—

. . . .

(9) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

. . . .

60. Section 10 of the Federal Criminal Code, as enacted by ch. 645, 62 Stat. 683 (1948), 18 U.S.C. § 10, provides:

§ 10. Interstate commerce and foreign commerce defined

The term "interstate commerce", as used in this title, includes commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia.

The term "foreign commerce", as used in this title, includes commerce with a foreign country.

61. Section 31 of the Federal Criminal Code, as added by the Act of July 14, 1956, ch. 595, 70 Stat. 538, and as amended, 18 U.S.C. § 31, provides in relevant part:

§ 31. Definitions

. . . .

(b) TERMS DEFINED IN OTHER LAW.—In this chapter, the terms . . . "foreign air commerce", "interstate air commerce", . . . [and] "overseas air commerce" have the meanings given those terms in section[] 40102(a) . . . of title 49.[3]

62. Section 232 of the Federal Criminal Code, as added by the Civil Obedience Act of 1968, Pub. L. No. 90-284, tit. X, 82 Stat. 90, and as amended, 18 U.S.C. § 232, provides in relevant part:

§ 232. Definitions

For purposes of this chapter:

. . . .

(2) The term "commerce" means commerce (A) between any State or the District of Columbia and any place outside thereof; (B) between points within any State or the District of Columbia, but through any place outside thereof; or (C) wholly within the District of Columbia.

. . . .

---

3 *See* pp. 73a-74a, *infra* (reproducing 49 U.S.C. § 40102(a)). Note that the current version of the cross-referenced section does not define "overseas air commerce."

63. Section 921 of the Federal Criminal Code, as added by the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, and as amended, 18 U.S.C. § 921, provides in relevant part:

§ 921. Definitions

(a) As used in this chapter—

. . . .

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

. . . .

64. Section 1033 of the Federal Criminal Code, as added by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 18 U.S.C. § 1033, provides in relevant part:

§ 1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce

. . . .

(f) As used in this section—

. . . .

(3) the term "interstate commerce" means—

(A) commerce within the District of Columbia, or any territory or possession of the United States;

(B) all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;

(C) all commerce between points within the same State through any place outside such State; or

(D) all other commerce over which the United States has jurisdiction . . . .

. . . .

65. The Hobbs Act, ch. 537, 60 Stat. 420 (1946), as amended, 18 U.S.C. § 1951, provides in relevant part:

§ 1951. Interference with commerce by threats or violence

. . . .

(b) As used in this section—

. . . .

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

. . . .

66. Section 2343 of the Federal Criminal Code, as added by the Act of Nov. 2, 1978, Pub. L. No. 95-575, 92 Stat. 2463, as amended, 18 U.S.C. § 2343, provides in relevant part:

§ 2343. Recordkeeping, reporting, and inspection

. . . .

(f) In this section, the term "interstate commerce" means commerce between a State and any place outside the State, or commerce between points in the same State but through any place outside the State.

67. Section 308 of the Tariff Act of 1930, ch. 497, 46 Stat. 590, as added by the Dog and Cat Protection Act of 2000, Pub. L. No. 106-476, 114 Stat. 2163, and as amended, 19 U.S.C. § 1308, provides in relevant part:

§ 1308. Prohibition on importation of dog and cat fur products

(a) Definitions

In this section:

. . . .

(2) Interstate commerce

The term "interstate commerce" means the transportation for sale, trade, or use between any State, territory, or possession of the United States, or the District of Columbia, and any place outside thereof.

. . . .

. . . .

68. Section 301 of the Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (1975), as added by the Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 144, and as amended, 19 U.S.C. § 2411, provides in relevant part:

§ 2411. Actions by United States Trade Representative

. . . .

(d) Definitions and special rules

For purposes of this subchapter—

(1) The term "commerce" includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

. . . .

69. Section 601 of the Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (1975), as amended, 19 U.S.C. § 2481, provides in relevant part:

§ 2481. Definitions

For purposes of this chapter—

. . . .

(10) The term "commerce" includes services associated with international trade.

70. Section 1 of the Filled Milk Act, ch. 262, 42 Stat. 1486 (1923), 21 U.S.C. § 61, provides in relevant part:

§ 61. Definitions

Whenever used in this chapter—

. . . .

(b) The term "interstate or foreign commerce" means commerce (1) between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; (2) between points within the same State, Territory, or possession, or within the District of Columbia, but through any place outside thereof; or (3) within any Territory or possession, or within the District of Columbia . . . .

. . . .

71. Section 201 of the Federal Food, Drug, and Cosmetic Act, ch. 675, 52 Stat. 1040 (1938), as amended, 21 U.S.C. § 321, provides in relevant part:

§ 321. Definitions; generally

For the purposes of this chapter—

. . . .

(b) The term "interstate commerce" means (1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other Territory not organized with a legislative body.

. . . .

72. Section 531 of the Federal Food, Drug, and Cosmetic Act, ch. 675, 52 Stat. 1040 (1938), as added by the Radiation Control for Health and Safety Act of 1968, Pub. L. No. 90-602, 82 Stat. 1173, and as amended, 21 U.S.C. § 360hh, provides in relevant part:

§ 360hh. Definitions

As used in this part—

. . . .

(4) the term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia . . . .

. . . .

73. Section 900 of the Federal Food, Drug, and Cosmetic Act, ch. 675, 52 Stat. 1040 (1938), as added by the Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, div. A, 123 Stat. 1776 (2009), 21 U.S.C. § 387, provides in relevant part:

§ 387. Definitions

In this subchapter:

. . . .

(5) Commerce

The term "commerce" has the meaning given that term by section 1332(2) of title 15.[4]

. . . .

---

4 *See* p. 33a, *supra* (reproducing 15 U.S.C. § 1332(2)).

74. Section 4 of the Poultry Products Inspection Act, Pub. L. No. 85-172, 71 Stat. 441 (1957), as amended, 21 U.S.C. § 453, provides in relevant part:

§ 453. Definitions

For purposes of this chapter—

(a) The term "commerce" means commerce between any State, any territory, or the District of Columbia, and any place outside thereof; or within any territory not organized with a legislative body, or the District of Columbia.

. . . .

75. Section 1 of the Federal Meat Inspection Act, ch. 2907, 34 Stat. 1256 (1907), as added by the Wholesome Meat Act, Pub. L. No. 90-201, 81 Stat. 584 (1967), and as amended, 21 U.S.C. § 601, provides in relevant part:

§ 601. Definitions

As used in this chapter, except as otherwise specified, the following terms shall have the meanings stated below:

. . . .

(h) The term "commerce" means commerce between any State, any Territory, or the District of Columbia, and any place outside thereof; or within any Territory not organized with a legislative body, or the District of Columbia.

. . . .

76. Section 4 of the Egg Products Inspection Act, Pub. L. No. 91-597, 84 Stat. 1620 (1970), as amended, 21 U.S.C. § 1033, provides in relevant part:

§ 1033. Definitions

For purposes of this chapter—

. . . .

(c) The term "commerce" means interstate, foreign, or intrastate commerce.

. . . .

77. Section 117 of the Federal Alcohol Administration Act, ch. 814, 49 Stat. 977 (1935), as amended, 27 U.S.C. § 211, provides in relevant part:

§ 211. Miscellaneous provisions

(a) Definitions

As used in this subchapter—

. . . .

(2) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

. . . .

. . . .

78. Section 203 of the Federal Alcohol Administration Act, ch. 814, 49 Stat. 977 (1935), as added by the Alcoholic Beverage Labeling Act of 1988, Pub. L. No. 100-690, § 8001(a)(3), 102 Stat. 4518, 27 U.S.C. § 214, provides in relevant part:

§ 214. Definitions

As used in this subchapter—

. . . .

(4) The term "commerce" means—

(A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof;

(B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or

(C) commerce wholly within the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

. . . .

79. Section 501 of the Labor Management Relations Act, 1947, ch. 120, 61 Stat. 136, 29 U.S.C. § 142, provides in relevant part:

§ 142. Definitions

When used in this chapter—

. . . .

(3) The term[] "commerce" . . . shall have the same meaning as when used in subchapter II of this chapter.[5]

80. Section 2 of the National Labor Relations Act, ch. 372, 49 Stat. 449 (1935), as amended, 29 U.S.C. § 152, provides in relevant part:

§ 152. Definitions

When used in this subchapter—

. . . .

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

. . . .

---

5 *See* this page, *infra* (reproducing 29 U.S.C. § 152(6)).

81. Section 3 of the Fair Labor Standards Act of 1938, ch. 676, 52 Stat. 1060, as amended, 29 U.S.C. § 203, provides in relevant part:

§ 203. Definitions

As used in this chapter—

. . . .

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

. . . .

82. Section 3 of the Labor-Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, 73 Stat. 519, as amended, 29 U.S.C. § 402, provides in relevant part:

§ 402. Definitions

For the purposes of this chapter—

(a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

. . . .

83. Section 11 of the Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, 81 Stat. 602, as amended, 29 U.S.C. § 630, provides in relevant part:

§ 630. Definitions

For the purposes of this chapter—

. . . .

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

. . . .

84. Section 3 of the Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 Stat. 1590, as amended, 29 U.S.C. § 652, provides in relevant part:

§ 652. Definitions

For the purposes of this chapter—

. . . .

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.

. . . .

85. Section 3 of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829, as amended, 29 U.S.C. § 1002, provides in relevant part:

§ 1002. Definitions

For purposes of this subchapter:

. . . .

(11) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

. . . .

86. Section 2 of the Employee Polygraph Protection Act of 1988, Pub. L. No. 100-347, 102 Stat. 646, 29 U.S.C. § 2001, provides in relevant part:

§ 2001. Definitions

As used in this chapter:

(1) Commerce

The term "commerce" has the meaning provided by section 203(b) of this title.[6]

. . . .

---

6 *See* p. 53a, *supra* (reproducing 29 U.S.C. § 203(b)).

87. Section 101 of the Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6, as amended, 29 U.S.C. § 2611, provides in relevant part:

§ 2611. Definitions

As used in this subchapter:

(1) Commerce

The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce", as defined in paragraphs (1) and (3) of section 142 of this title.[7]

. . . .

7 *See* p. 52a, *supra* (reproducing 29 U.S.C. § 142(3)).

88. Section 3 of the Federal Mine Safety and Health Act of 1977, Pub. L. No. 91-173, 83 Stat. 742, as amended, 30 U.S.C. § 802, provides in relevant part:

§ 802. Definitions

For the purpose of this chapter, the term—

. . . .

(b) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a place in a State and any place outside thereof, or within the District of Columbia or a possession of the United States, or between points in the same State but through a point outside thereof;

. . . .

89. Section 701 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, 91 Stat. 445, as amended, 30 U.S.C. § 1291, provides in relevant part:

§ 1291. Definitions

For the purposes of this chapter—

. . . .

(3) "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or between points in the same State which directly or indirectly affect interstate commerce;

. . . .

90. Section 3 of the International Waterways Act, ch. 1079, 32 Stat. 331 (1902), as amended, 33 U.S.C. § 541, provides in relevant part:

§ 541. Board of Engineers for Rivers and Harbors; establishment; duties and powers generally

. . . As used in this section the term "commerce" shall include the use of waterways by seasonal passenger craft, yachts, house boats, fishing boats, motor boats, and other similar water craft, whether or not operated for hire.

. . . .

91. Section 301 of the National Organ Transplant Act, Pub. L. No. 98-507, 98 Stat. 2339 (1984), as amended, 42 U.S.C. § 274e, provides in relevant part:

§ 274e. Prohibition of organ purchases

. . . .

(c) Definitions

For purposes of subsection (a):

. . . .

(3) The term "interstate commerce" has the meaning prescribed for it by section 321(b) of title 21.[8]

. . . .

---

8 *See* p. 47a, *supra* (reproducing 21 U.S.C. § 321(b)).

92. Section 498B of the Public Health Service Act, ch. 373, 58 Stat. 682 (1944), as added by the National Institutes of Health Revitalization Act of 1993, Pub. L. No. 103-43, 107 Stat. 122, and as amended, 42 U.S.C. § 289g-2, provides in relevant part:

§ 289g-2. Prohibitions regarding human fetal tissue

. . . .

(e) Definitions

For purposes of this section:

. . . .

(2) The term "interstate commerce" has the meaning given such term in section 321(b) of title 21.[9]

. . . .

9 *See* p. 47a, *supra* (reproducing 21 U.S.C. § 321(b)).

93. Section 201 of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, 42 U.S.C. § 2000a, provides in relevant part:

§ 2000a. Prohibition against discrimination or segregation in places of public accommodation

. . . .

(c) Operations affecting commerce; criteria; "commerce" defined

. . . For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

. . . .

94. Section 701 of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, as amended, 42 U.S.C. § 2000e, provides in relevant part:

§ 2000e. Definitions

For the purposes of this subchapter—

. . . .

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

. . . .

95. Section 3 of Noise Control Act of 1972, Pub. L. No. 92-574, 86 Stat. 1234, 42 U.S.C. § 4902, provides in relevant part:

§ 4902. Definitions

For purposes of this chapter:

. . . .

(7) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

. . . .

96. Section 321 of the Energy Policy and Conservation Act, Pub. L. No. 94-163, 89 Stat. 871 (1975), as amended, 42 U.S.C. § 6291, provides in relevant part:

§ 6291. Definitions

For purposes of this part:

. . . .

(17) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

. . . .

97. Section 340 of the Energy Policy and Conservation Act, Pub. L. No. 94-163, 89 Stat. 871 (1975), as added by the National Energy Conservation Policy Act, Pub. L. No. 95-619, 92 Stat. 3206 (1978), and as amended, 42 U.S.C. § 6311, provides in relevant part:

§ 6311. Definitions

For purposes of this part—

. . . .

(7) The term[] . . . "commerce" ha[s] the same meaning as is given such term[] in section 6291 of this title.[10]

. . . .

---

10 *See* this page, *supra* (reproducing 42 U.S.C. § 6291(17)).

98. Section 216 of the National Emission Standards Act, Pub. L. No. 89-272, § 101(8), 79 Stat. 992 (1965), as amended, 42 U.S.C. § 7550, provides in relevant part:

§ 7550. Definitions

As used in this part—

. . . .

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

. . . .

99. Section 101 of the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, as amended, 42 U.S.C. § 12111, provides in relevant part:

§ 12111. Definitions

As used in this subchapter:

. . . .

(7) The term[] . . . "commerce" . . . shall have the same meaning given such term[] in section 2000e of this title.[11]

. . . .

---

11 *See* p. 61a, *supra* (reproducing 42 U.S.C. § 2000e(g)).

100. Section 301 of the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. § 12181, provides in relevant part:

§ 12181. Definitions

As used in this subchapter:

(1) Commerce

The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

. . . .

101. Section 603 of the Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. No. 95-372, 92 Stat. 629, 43 U.S.C. § 1862, provides in relevant part:

§ 1862. Natural gas distribution

. . . .

(c) Definitions

For purposes of this section, the term—

. . . .

(2) "interstate commerce" shall have the same meaning as such term has under section 717a(7) of title 15 . . . .[12]

. . . .

---

12 *See* p. 26a, *supra* (reproducing 15 U.S.C. § 717a(7)).

102. Section 1 of the Railway Labor Act, ch. 347, 44 Stat. 577 (1926), as amended, 45 U.S.C. § 151, provides in relevant part:

§ 151. Definitions; short title

When used in this chapter and for the purposes of this chapter—

. . . .

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

. . . .

103. Section 905 of the Merchant Marine Act, 1936, ch. 858, 49 Stat. 1985, as amended, 46 U.S.C. § 109, provides:

§ 109. Foreign commerce or trade

(a) IN GENERAL.—In this title, the terms "foreign commerce" and "foreign trade" mean commerce or trade between a place in the United States and a place in a foreign country.

(b) CAPITAL CONSTRUCTION FUNDS AND CONSTRUCTION-DIFFERENTIAL SUBSIDIES.—In the context of capital construction funds under chapter 535 of this title, and in the context of construction-differential subsidies under title V of the Merchant Marine Act, 1936, the terms "foreign commerce" and "foreign trade" also include, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in a manner that will permit bulk vessels of the United States to compete freely with foreign bulk vessels in their operation or competition for charters, subject to regulations prescribed by the Secretary of Transportation.

104. Section 53101 of the Federal Shipping Code, as added by the Maritime Security Act of 2003, Pub. L. No. 108-136, tit. XXXV, 117 Stat. 1788, and as amended, 46 U.S.C. § 53101, provides in relevant part:

§ 53101. Definitions

In this chapter:

. . . .

(4) FOREIGN COMMERCE.—The term "foreign commerce" means—

(A) commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country; and

(B) commerce or trade between foreign countries.

. . . .

105. Section 53401 of the Federal Shipping Code, as added by the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388 (2021), and as amended, 46 U.S.C. § 53401, provides in relevant part:

§ 53401. Definitions

In this chapter:

(1) FOREIGN COMMERCE.—The term "foreign commerce" means—

(A) commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country; and

(B) commerce or trade between foreign countries.

. . . .

106. Section 330 of the Communications Act of 1934, ch. 652, 48 Stat. 1064, as added by the Act of July 10, 1962, Pub. L. No. 87-529, 76 Stat. 150, and as amended, 47 U.S.C. § 330, provides in relevant part:

§ 330. Prohibition against shipment of certain television receivers

. . . .

(d) For the purposes of this section, and sections 303(s), 303(u), and 303(x) of this title—

(1) The term "interstate commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof which is within the United States, (B) commerce between points in the same State, the District of Columbia, the Commonwealth of Puerto Rico, or possession of the United States but through any place outside thereof, or (C) commerce wholly within the District of Columbia or any possession of the United States.

. . . .

107. Section 321 of the Federal Transportation Code, as enacted by Pub. L. No. 97-449, 96 Stat. 2413 (1983), and as amended, 49 U.S.C. § 321, provides in relevant part:

§ 321. Definitions

In this subchapter, . . . "air commerce" . . . ha[s] same meaning[] given th[at] term[] in section 40102(a) of this title.[13]

108. Section 103 of the Hazardous Materials Transportation Act, Pub. L. No. 93-633, tit. I, 88 Stat. 2156 (1975), as amended, 49 U.S.C. § 5102, provides in relevant part:

§ 5102. Definitions

In this chapter—

(1) "commerce" means trade or transportation in the jurisdiction of the United States—

(A) between a place in a State and a place outside of the State;

(B) that affects trade or transportation between a place in a State and a place outside of the State; or

(C) on a United States-registered aircraft.

. . . .

---

13 *See* p. 73a, *infra* (reproducing 49 U.S.C. § 40102(a)(3)).

109. Section 6 of the Department of Transportation Act, Pub. L. No. 89-670, 80 Stat. 931 (1966), as amended, 49 U.S.C. § 30102, provides in relevant part:

§ 30102. Definitions

(a) GENERAL DEFINITIONS.—In this chapter—

. . . .

(5) "interstate commerce" means commerce between a place in a State and a place in another State or between places in the same State through another State.

. . . .

. . . .

110. Section 204 of the Motor Carrier Safety Act of 1984, Pub. L. No. 98-554, tit. II, 98 Stat. 2832, as amended, 49 U.S.C. § 31132, provides in relevant part:

§ 31132. Definitions

In this subchapter—

. . . .

(4) "interstate commerce" means trade, traffic, or transportation in the United States between a place in a State and—

(A) a place outside that State (including a place outside the United States); or

(B) another place in the same State through another State or through a place outside the United States.

(5) "intrastate commerce" means trade, traffic, or transportation in a State that is not interstate commerce.

. . . .

111. Section 30 of the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793, as amended, 49 U.S.C. § 31139, provides in relevant part:

§ 31139. Minimum financial responsibility for transporting property

(a) DEFINITIONS.—In this section—

. . . .

(2) "interstate commerce" includes transportation between a place in a State and a place outside the United States, to the extent the transportation is in the United States.

. . . .

. . . .

112. Section 12019 of the Commercial Motor Vehicle Safety Act of 1986, Pub. L. No. 99-570, tit. XII, 100 Stat. 3207-170, as amended, 49 U.S.C. § 31301, provides in relevant part:

§ 31301. Definitions

In this chapter—

. . . .

(2) "commerce" means trade, traffic, and transportation—

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

. . . .

113. Section 2 of the Motor Vehicle Information and Cost Savings Act, Pub. L. No. 92-513, 86 Stat. 947 (1972), as amended, 49 U.S.C. § 32101, provides in relevant part:

§ 32101. Definitions

In this part (except chapter 329 and except as provided in section 33101)—

. . . .

(3) "interstate commerce" means commerce between a place in a State and—

(A) a place in another State; or

(B) another place in the same State through another State.

. . . .

114. Section 101 of the Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 731, as amended, 49 U.S.C. § 40102, provides in relevant part:

§ 40102. Definitions

(a) GENERAL DEFINITIONS.—In this part—

In this part (except chapter 329 and except as provided in section 33101)—

. . . .

(3) "air commerce" means foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in, foreign or interstate air commerce.

. . . .

(22) "foreign air commerce" means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation, between a place in the United States and a place outside the United States when any part of the transportation or operation is by aircraft.

. . . .

(24) "interstate air commerce" means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) a State and another place in the same State through the airspace over a place outside the State;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation or operation is by aircraft.

. . . .

115. Section 2 of the Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, 82 Stat. 720, as amended, 49 U.S.C. § 60101, provides in relevant part:

§ 60101. Definitions

(a) GENERAL.—In this chapter—

. . . .

(8) "interstate or foreign commerce"—

(A) related to gas, means commerce—

(i) between a place in a State and a place outside that State; or

(ii) that affects any commerce described in subclause (A)(i) of this clause; and

(B) related to hazardous liquid, means commerce between—

(i) a place in a State and a place outside that State; or

(ii) places in the same State through a place outside the State;

. . . .