

70-3a-301 Registrability.

- (1) A mark by which the goods or services of an applicant for registration may be distinguished from the goods or services of others may not be registered if it:
- (a) consists of or comprises immoral, deceptive, or scandalous matter;
 - (b) consists of or comprises matter that may:
 - (i) disparage or falsely suggest a connection with:
 - (A) a person, living or dead;
 - (B) an institution;
 - (C) a belief; or
 - (D) a national symbol; or
 - (ii) bring an item listed in Subsection (1)(b)(i) into contempt or disrepute;
 - (c) consists of or comprises the flag or coat of arms or other insignia of:
 - (i) the United States;
 - (ii) any state;
 - (iii) any municipality;
 - (iv) any foreign nation; or
 - (v) any simulation of an item listed in Subsections (1)(c)(i) through (iv);
 - (d) consists of or comprises the name, signature, or portrait identifying a particular living individual, except by the individual's written consent;
 - (e) subject to Subsection (3), consists of a mark that:
 - (i) when used on or in connection with the goods or services of the applicant, is:
 - (A) merely descriptive of the goods or services;
 - (B) deceptively misdescriptive of the goods or services;
 - (C) primarily geographically descriptive of the goods or services; or
 - (D) primarily geographically deceptively misdescriptive of the goods or services; or
 - (ii) is primarily merely a surname;
 - (f) consists of or comprises a mark that:
 - (i) resembles:
 - (A) a mark registered in this state; or
 - (B) a mark or trade name previously used by another and not abandoned; and
 - (ii) is likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or to deceive; or
 - (g) without the written consent of the United States Olympic Committee, contains or consists of:
 - (i) the symbol of the International Olympic Committee, consisting of five interlocking rings;
 - (ii) the emblem of the United States Olympic Committee, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with five interlocking rings displayed on the chief;
 - (iii) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the International Olympic Committee or the United States Olympic Committee;
 - (iv) the words "Olympic," "Olympiad," "Citius Altius Fortius"; or
 - (v) any combination or simulation of any item referenced in Subsections (1)(g)(i) through (iv) that:
 - (A) causes confusion or mistake;
 - (B) deceives; or
 - (C) falsely suggests a connection with:
 - (I) the International Olympic Committee;
 - (II) the United States Olympic Committee; or

(III) any Olympic activity.

- (2)
- (a) Any actual use of an item under Subsection (1)(g)(ii) or the words or any combination of the words under Subsection (1)(g)(iv), for any lawful purpose prior to September 21, 1950, is not prohibited by this section and may be continued for the same purpose and for the same goods or services.
 - (b) Any actual use of any other trademark, trade name, sign, symbol, or insignia under Subsections (1)(g)(iii) and (iv) for any lawful purpose prior to September 21, 1950, is not prohibited by this section and may be continued for the same purpose and for the same goods or services.
- (3)
- (a) Subsections (1)(e)(i)(A) through (1)(e)(i)(C) do not prevent the registration of a mark used by the applicant that has become distinctive of the applicant's goods or services.
 - (b) For purposes of Subsection (3)(a), the division may accept as evidence that the mark has become distinctive as used on or in connection with the applicant's goods or services, proof of continuous use of the mark as a mark by the applicant in this state for the five years before the date when the claim of distinctiveness is made.

Enacted by Chapter 318, 2002 General Session