

**70-3a-103 Definitions -- Use -- Service marks.**

(1) As used in this chapter:

- (a) "Abandoned mark" means a mark whose:
  - (i) use has been discontinued with no intent to resume use; or
  - (ii) significance as a mark has been lost due to any course of conduct of the owner, including acts of omission or commission.
- (b) "Applicant" means:
  - (i) the person filing an application for registration of a mark under this chapter; and
  - (ii) a legal representative, successor, or assign of a person described in Subsection (1)(b)(i).
- (c) "Dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of:
  - (i) competition between the owner of the famous mark and another person; or
  - (ii) the likelihood of:
    - (A) confusion;
    - (B) mistake; or
    - (C) deception.
- (d) "Division" means the Division of Corporations and Commercial Code within the Department of Commerce.
- (e) "Mark" means any trademark or service mark entitled to registration under this chapter whether or not the trademark or service mark is registered.
- (f) "Registrant" means:
  - (i) the person to whom the registration of a mark under this chapter is issued; and
  - (ii) a legal representative, successor, or assign of a person described in Subsection (1)(f)(i).
- (g)
  - (i) If the conditions of Subsection (1)(g)(ii) are met, "service mark" means:
    - (A) a word, term, name, symbol, design, or device; or
    - (B) any combination of words, terms, names, symbols, designs, or devices.
  - (ii) The mark described in Subsection (1)(g)(i) is a service mark only if it is used by a person:
    - (A) to identify and distinguish the services of one person from the services of others, including a unique service; and
    - (B) to indicate the source of the services, even if that source is unknown.
- (h)
  - (i) If the conditions of Subsection (1)(h)(ii) are met, "trademark" means:
    - (A) a word, term, name, symbol, design, or device; or
    - (B) any combination of words, terms, names, symbols, designs, or devices.
  - (ii) The mark described in Subsection (1)(h)(i) is a trademark only if it is used by a person:
    - (A) to identify and distinguish the goods of that person from those manufactured or sold by others, including a unique product; and
    - (B) to indicate the source of the goods, even if that source is unknown.
- (i) "Trade name" means any name used by a person to identify a business or vocation of that person.
- (j) "Use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark.

(2) For the purposes of this chapter, a mark is considered to be in use:

- (a) on goods:
  - (i) when the mark is placed:
    - (A) in any manner on the goods or other containers;
    - (B) in any manner on displays associated with the goods or other containers;

- (C) on the tags or labels affixed to the goods or other containers; or
- (D) if the nature of the goods makes the placements referred to in Subsections (2)(a)(i)(A) through (C) impracticable, on documents associated with the goods or the sale of the goods; and
- (ii) the goods are sold or transported in commerce in this state; and
- (b) on services:
  - (i) when it is used or displayed in the sale or advertising of services; and
  - (ii) when the services are rendered in this state.
- (3) For purposes of Subsection (1)(a):
  - (a) intent not to resume may be inferred from circumstances; and
  - (b) nonuse for two consecutive years is prima facie evidence of abandonment.
- (4) Notwithstanding Subsection (1)(g), the following may be registered as service marks notwithstanding that they may advertise the goods of the sponsor:
  - (a) titles;
  - (b) character names used by a person; and
  - (c) other distinctive features of:
    - (i) a radio program;
    - (ii) a television program; or
    - (iii) a program similar to a program described in Subsection (4)(c)(i) or (ii).

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