

70-3a-402 Infringement.

- (1) Subject to Section 70-3a-104 and Subsection (2), any person is liable in a civil action brought by the registrant for any and all of the remedies provided in Section 70-3a-404, if that person:
 - (a) uses a reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter:
 - (i) without the consent of the registrant; and
 - (ii) in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which that use is likely to cause confusion, mistake, or to deceive as to the source of origin, nature, or quality of those goods or services; or
 - (b) reproduces, counterfeits, copies, or colorably imitates any mark and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of goods or services.
- (2) Under Subsection (1)(b), the registrant is not entitled to recover profits or damages unless the act described in Subsection (1)(b) has been committed with the intent:
 - (a) to cause confusion or mistake; or
 - (b) to deceive.
- (3) In a civil action for a violation of Section 70-3a-309:
 - (a) the plaintiff may recover court costs and reasonable attorney fees; and
 - (b) the plaintiff may elect, at any time before final judgment is entered by the district court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than \$1,000 and not more than \$100,000 per domain name, as the court considers just.
- (4) Statutory damages awarded under Subsection (3)(b) are presumed to be \$100,000 per domain name if there is a pattern and practice of infringements committed willfully for commercial gain.

Amended by Chapter 200, 2010 General Session