

Part 1 General Provisions

70-3a-101 Title.

This chapter is known as the "Registration and Protection of Trademarks and Service Marks Act."

Enacted by Chapter 318, 2002 General Session

70-3a-102 Relation to federal law.

- (1) This chapter shall be interpreted to provide for the registration and protection of trademarks and service marks in a manner substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, 15 U.S.C. Sec. 1051, et seq.
- (2) In interpreting this chapter, a construction given the Trademark Act of 1946, 15 U.S.C. Sec. 1051, et seq., should be used as persuasive authority.

Enacted by Chapter 318, 2002 General Session

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).

Amended by Chapter 258, 2008 General Session

70-3a-104 Common law rights.

This chapter does not adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

Enacted by Chapter 318, 2002 General Session

