TRADEMARKS AND SERVICE MARKS
Act 242 of 1969

AN ACT to provide for the registration of trademarks and service marks; to prescribe the powers and duties of certain state officers and agencies; to prescribe remedies; and to repeal certain acts and parts of acts.

History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

The People of the State of Michigan enact:

429.31 Definitions.

Sec. 1. As used in this act:

(a) "Trademark" means any word, name, symbol, or device, or any combination thereof, other than a trade name in its entirety, adopted and used by a person to identify goods made or sold by him or her and to distinguish them from similar goods made or sold by others.

(b) "Person" means any individual, firm, partnership, corporation, association, union, or other organization.

(c) "Applicant" means the person filing an application for registration of a trademark or service mark under this act, his or her legal representatives, successors, or assigns.

(d) "Registrant" means the person to whom the registration of a trademark or service mark under this act is issued, his or her legal representatives, successors, or assigns.

(e) "Service mark" means any word, name, symbol, or device, or any combination thereof, other than a trade name in its entirety, adopted and used by a person in the sale or advertising of services to identify his or her services and distinguish them from the similar services of others.

(f) "Mark" includes any trademark or service mark.

(g) "Trade name" means a word or group of words used by any person to identify a sole proprietorship, firm, partnership, corporation, association, union, or other organization.

(h) A mark is "used" in this state on goods when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state, and on services when it is used or displayed in this state in the sale or advertising of services and the services are rendered in this state.

(i) A mark is "abandoned" when its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for 2 consecutive years shall be prima facie abandonment.

(j) "Administrator" means the director of commerce or his or her designated representative.

History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

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429.32 Registration of certain marks prohibited.

Sec. 2. A mark by which the goods or services of an applicant for registration may be distinguished from the goods or services of others shall not be registered if the mark:

(a) Consists of or comprises immoral, deceptive, or scandalous matter.

(b) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute.

(c) Consists of or comprises the flag, coat of arms, or other insignia of the United States, or of a state or municipality, or of a foreign nation, or a simulation thereof.

(d) Consists of or comprises the name, signature, or portrait of a living individual, except with the individual's written consent.

(e) Consists of a mark which, when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of the goods or services, or when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, or is primarily merely a surname. This subsection shall not prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The administrator may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for 5 years immediately preceding the date of the filing of the application for registration.

(f) Consists of or comprises a mark which so resembles a mark registered in this state, or a mark or trade name previously used in this state by another person and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion, mistake, or to deceive.

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History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1980, Act 63, Imd. Eff. Apr. 2, 1980;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

429.33 Application for registration of mark; form; contents; signature, verification, and oath; specimens; fee; service of process.

Sec. 3. (1) Subject to the limitations set forth in this act, a person who adopts and uses a mark in this state may file with the administrator, on a form to be furnished by the administrator, an application for registration of that mark which contains all of the following information:

(a) The name, business name, if any, and business address of the person applying for registration, and, if a corporation, the state of incorporation.

(b) The goods or services in connection with which the mark is used, the mode or manner in which the mark is used in connection with the goods or services, and the class in which the goods or services fall.

(c) The date when and the place where the mark was first used anywhere, and the date when the mark was first used in this state by the applicant or the applicant's predecessor in title.

(d) A statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form or in a form which so nearly resembles the mark as to be likely to deceive or to be mistaken for the mark.

(e) Other information relating to the registration of a mark as requested by the administrator.

(2) The application shall be signed, verified, and sworn to by the applicant, if an individual; by a member of the firm; by an officer of the corporation, association, or union; or by a member of the partnership applying.

(3) The application shall be accompanied by 2 specimens or facsimiles of the mark as used at the time of applying for registration of the mark.

(4) The application for registration shall be accompanied by a filing fee of $50.00, payable to the state of Michigan.

(5) The application shall include an appointment of the administrator as the applicant's agent for service of process only in actions relating to the registration of a mark for which an application has been submitted or a registered mark. Service of process may be issued under this subsection if the applicant is or becomes a nonresident individual, partnership, or association; if the applicant is or becomes a foreign corporation without a certificate to do business in this state; or if the applicant cannot be found in this state. Service of process shall be made by mailing a summons and a copy of the complaint to the administrator who shall keep a record of each process received. This service shall be sufficient upon the nonresident applicant provided notice of the service and a copy of the complaint are served upon the applicant by certified mail sent by the plaintiff.

History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1980, Act 63, Imd. Eff. Apr. 2, 1980;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

429.34 Certificate of registration; issuance; contents; refusal to register mark; notice; certificate as evidence.

Sec. 4. (1) Upon compliance by the applicant with the requirements of this act, the administrator shall issue a certificate of registration to the registrant. The certificate of registration shall be issued under the signature of the administrator and shall set forth the name and business address and, if a corporation, the state of incorporation, of the registrant, the description or a reproduction of the mark and the general class of goods or services to which appropriated, a description of the goods or services on which the mark is used, the date claimed for first use of the mark anywhere and the date claimed for the first use of the mark in this state, the registration date and term of the registration.

(2) If the administrator refuses to register a mark the applicant shall be notified and the reason for the refusal stated in writing.

(3) Any certificate of registration issued by the administrator, or a copy thereof duly certified by the administrator, shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceedings in any court of this state and shall be evidence of registrant's right to use the mark throughout this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein, but shall not preclude an opposing party from proving any legal or equitable defense or defect which might have been asserted if such mark had not been registered.

History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

429.35 Registration; term; application for renewal; form; fee; notice to registrant; expiration and renewal of existing registration; statement.

Sec. 5. (1) Registration of a mark shall be effective for a term of 10 years from the date of registration, and may be renewed for successive terms of 10 years upon application filed within 6 months prior to the

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expiration of each term, on a form to be furnished by the administrator. A renewal fee of $25.00, payable to the state, shall accompany the application for renewal of the registration.

(2) The administrator shall notify registrants of marks of the necessity of renewal within the year next preceding the expiration of the 10 years from the date of registration by writing to the last known address of the registrants.

(3) Any registration in force on the date on which this act becomes effective shall expire 10 years from the date of the registration or of the last renewal thereof or 1 year after the effective date of this act, whichever is later, and may be renewed by filing an application with the administrator, on a form furnished by the administrator, and paying the renewal fee therefor within 6 months prior to the expiration of the registration.

(4) An application for renewal shall include a statement by the applicant setting forth the goods or services on or in connection with which the mark is still in use in this state, or if not still in use sufficient facts must be recited to show that nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

429.36 Mark and registration assignable; recordation of assignment; fee; issuance of certificate to assignee; subsequent purchaser.

Sec. 6. Any mark and its registration shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the administrator upon the payment of a fee of $15.00, payable to the state, who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this act is void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the administrator within 3 months after the date thereof or prior to the subsequent purchase.

History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

429.37 Record; public examination.

Sec. 7. The administrator shall keep for public examination a record of all marks registered or renewed under this act.

History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

429.38 Cancellation from register.

Sec. 8. The administrator shall cancel from the register:

(a) All registrations under this and prior acts which are more than 10 years old and not renewed in accordance with this act.

(b) Any registration concerning which the administrator receives a voluntary request for cancellation thereof from the registrant or the assignee of record.

(c) Any registration concerning which a court of competent jurisdiction of record finds:

(*i*) That the registered mark has been abandoned.

(*ii*) That the registrant is not the owner of the mark.

(*iii*) That the registration was granted improperly.

(*iv*) That the registration was obtained fraudulently.

(d) Any registration ordered canceled on any ground by a court of competent jurisdiction of record.

History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

429.39 Repealed. 1984, Act 203, Eff. Oct. 1, 1984.

Compiler's note: The repealed section pertained to petition for cancellation.

429.40 Classes of goods and services; amendment; limitation.

Sec. 10. (1) The following general classes of goods and services are established for the purpose of administering this act. The administrator may amend, by rule or regulation, the classification established in this section, but not in any way to limit or extend the applicant's or registrant's rights. An application for registration of a mark shall be limited to a single general class of goods or services. Nothing in this act shall be construed as limiting the registration of a mark to 1 general class.

(2) The classes are as follows:

(a) Goods:

(1) Raw or partly prepared materials.

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(2) Receptacles.
(3) Baggage, animal equipments, portfolios and pocketbooks.
(4) Abrasives and polishing materials.
(5) Adhesives.
(6) Chemicals and chemical compositions.
(7) Cordage.
(8) Smokers' articles, not including tobacco products.
(9) Explosives, firearms, equipment and projectiles.
(10) Fertilizers.
(11) Inks and inking materials.
(12) Construction materials.
(13) Hardware and plumbing and steam-fitting supplies.
(14) Metals and metal castings and forgings.
(15) Oils and greases.
(16) Paints and painters' materials.
(17) Tobacco products.
(18) Medicines and pharmaceutical preparations.
(19) Vehicles.
(20) Linoleum and oiled cloth.
(21) Electrical apparatus, machines and supplies.
(22) Games, toys and sporting goods.
(23) Cutlery, machinery and tools, and parts thereof.
(24) Laundry appliances and machines.
(25) Locks and safes.
(26) Measuring and scientific appliances.
(27) Horological instruments.
(28) Jewelry and precious-metal ware.
(29) Brooms, brushes and dusters.
(30) Crockery, earthenware and porcelain.
(31) Filters and refrigerators.
(32) Furniture and upholstery.
(33) Glassware.
(34) Heating, lighting and ventilation apparatus.
(35) Belting, hose, machinery packing, and nonmetallic tires.
(36) Musical instruments and supplies.
(37) Paper and stationery.
(38) Prints and publications.
(39) Clothing.
(40) Fancy goods, furnishings and notions.
(41) Canes, parasols and umbrellas.
(42) Knitted, netted and textile fabrics, and substitutes therefor.
(43) Thread and yarn.
(44) Dental, medical and surgical appliances.
(45) Soft drinks and carbonated waters.
(46) Foods and ingredients of foods.
(47) Wines.
(48) Malt beverages and liquors.
(49) Distilled alcoholic liquors.
(50) Merchandise not otherwise classified.
(51) Cosmetics and toilet preparations.
(52) Detergents and soaps.
(b) Services:
(100) Miscellaneous.
(101) Advertising and business.
(102) Insurance and financial.
(103) Construction and repair.
(104) Communication.
(105) Transportation and storage.

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(106) Material treatment.

(107) Education and entertainment.

History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

429.41 Fraudulent procurement of filing or registration; liability.

Sec. 11. Any person who on their behalf, or on behalf of any other person, procures the filing or registration of any mark in the office of the administrator, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of the filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction of record.

History: 1969, Act 242, Eff. Jan. 1, 1970;—Am. 1984, Act 203, Eff. Oct. 1, 1984.

429.42 Improper use, reproduction or imitation; damages.

Sec. 12. Subject to the provisions of section 14, any person who shall:

(a) Use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered under this act in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(b) Reproduce, counterfeit, copy or colorably imitate any such registered mark and apply such 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 such goods or services; is liable to a civil action by the owner of the registered mark for any or all of the remedies provided in section 13, except that under subdivision (b) of this section the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that the mark is intended to be used to cause confusion or mistake or to deceive.

History: 1969, Act 242, Eff. Jan. 1, 1970.

429.43 Injunctions; damages; prosecution; exceptions.

Sec. 13. (1) Any owner of a mark registered under this act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction of record may grant injunctions to restrain such manufacture, use, display or sale as by the court may be deemed just and reasonable, and may require the defendants to pay to the owner all profits derived from or all damages suffered by reason of such wrongful manufacture, use, display, or sale, or both; and the court may also order that any counterfeits or imitations in the possession or under the control of any defendant in the case be delivered to an officer of the court, or to the complainant, to be destroyed.

(2) The enumeration of any right of remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

(3) Notwithstanding any other provision of this act, the remedies given to the owner of the right infringed shall be limited as follows: (a) where an infringer is engaged solely in the business of printing the mark for others and establishes that he was an innocent infringer, the owner of the right infringed shall be entitled as against the infringer only to an injunction against future printing; (b) where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the publisher or distributor of the newspaper, magazine, or other similar periodical shall be confined to an injunction against the presentation of such advertising matter in future issues of the newspapers, magazines, or other similar periodicals. These limitations shall apply only to innocent infringers; (c) injunction relief shall not be available to the owner of the right infringed in respect of an issue of a newspaper, magazine, or other similar periodical containing infringing matter when restraining the dissemination of such infringing matter in any particular issue of such periodical would delay the delivery of the issue after the regular time therefor, and the delay would be due to the method by which publication and distribution of the periodical is customarily conducted in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter.

History: 1969, Act 242, Eff. Jan. 1, 1970.

429.44 Common law rights.

Sec. 14. Nothing contained in this act shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

History: 1969, Act 242, Eff. Jan. 1, 1970.

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429.45 Repeal.

Sec. 15. Act No. 258 of the Public Acts of 1955, being sections 429.11 to 429.24 of the Compiled Laws of 1948, is repealed.

History: 1969, Act 242, Eff. Jan. 1, 1970.

429.46 Effective date.

Sec. 16. This act shall take effect January 1, 1970.

History: 1969, Act 242, Eff. Jan. 1, 1970.

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