

which racing may be conducted in Maryland. The Racing Commission shall award this one additional day to such one of the mile tracks as it may in its discretion determine and the decision of the Commission in this respect shall be final.

SEC. 2. *And be it further enacted*, That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety and having been passed by a ye and nay vote, supported by three-fifths of all the members elected to each of the two Houses of the General Assembly of Maryland, the same shall take effect from the date of its passage.

Approved March 12, 1954.

CHAPTER 63

(Senate Bill 14)

AN ACT to repeal Sections 60 to 65, inclusive, of Article 27 of the Annotated Code of Maryland (1951 Edition), title "Crimes and Punishments," sub-title "Counterfeiting and Forgery," said sections **relating to the registration of certain labels, trade-marks or forms of advertisement and being known generally as the trade-mark law**, and to add 14 new sections to Article 41 of said Code, title "Governor—Executive and Administrative Departments," said new sections to be known as Sections 87A to 87N, inclusive, to be under the sub-title "Secretary of State," and under the new sub-heading "Trade-marks," **enacting provisions for the registration and protection of trade-marks and relating generally to the use and registration of certain words, names, symbols, devices or any combination thereof, and known generally as "trade-marks."**

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That 14 new sections be and they are hereby added to Article 41 of the Annotated Code of Maryland (1951 Edition), title "Governor—Executive and Administrative Departments," said new sections to be known as

EXPLANATION: *Italics indicate new matter added to existing law.*

[Brackets] indicate matter stricken from existing law.

CAPITALS indicate amendments to bill.

~~Strike out~~ indicates matter stricken out of bill.

Sections 87A to 87N, inclusive, to be under the sub-title "Secretary of State," and the new sub-heading "Trade-marks," and to read as follows:

TRADE-MARKS

87A. (*Definitions.*) (a) *The term "trade-mark" as used herein means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.*

(b) *The term "person" as used herein means any individual, firm, partnership, corporation, association, union or other organization.*

(c) *The term "applicant" as used herein embraces the person filing an application for registration of a trade-mark under this sub-heading, his legal representatives, successors or assigns.*

(d) *The term "registrant" as used herein embraces the person to whom the registration of a trade-mark under this sub-heading is issued, his legal representatives, successors or assigns.*

(e) *For the purposes of this sub-heading, a trade-mark shall be deemed to be "used" in this state 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.*

87B. (*Registrability.*) *A trade-mark by which the goods of any applicant for registration may be distinguished from the goods of others shall not be registered if it*

(1) *consists of or comprises immoral, deceptive or scandalous matter; or*

(2) *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; or*

(3) *consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or*

(4) *consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or*

(5) consists of a mark which, (A) when applied to the goods of the applicant, is merely descriptive or deceptively misdescriptive of them, or (B) when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (C) is primarily merely a surname provided, however, that nothing in this paragraph shall prevent the registration of a mark used in this State by the applicant which has become distinctive of the applicant's goods. **The Secretary of State may accept as evidence that the mark has become distinctive, as applied to the applicant's goods, proof of continuous use thereof as a mark by the applicant in this State or elsewhere for the five years next preceding the date of the filing of the application for registration; or**

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

87C. (Application for Registration.) (a) Subject to the limitations set forth in this sub-heading, **any person who adopts and uses a trade-mark in this State may file in the office of the Secretary of State, on a form to be furnished by the Secretary of State, an application for registration of that trade-mark setting forth, but not limited to, the following information:**

(1) the name and business address of the person applying for such registration; and, if a corporation, the state of incorporation,

(2) the goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods and the class in which such goods fall,

(3) the date when the trade-mark was first used anywhere and the date when it was first used in this State by the applicant or his predecessor in business, and

(4) a statement that the applicant is the owner of the trade-mark and that no other person has the right to use such trade-mark in this State either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

(b) The application shall be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

(c) The application shall be accompanied by a specimen or facsimile of such trade-mark in triplicate.

(d) The application for registration shall be accompanied by a filing fee of Ten Dollars (\$10.00), payable to the Secretary of State.

87D. (Certificate of Registration.) (a) Upon compliance by the applicant with the requirements of this sub-heading, the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant. **The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the State, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the trade-mark, the date claimed for the first use of the trade-mark anywhere and the date claimed for the first use of the trade-mark in this State, the class of goods and a description of the goods on which the trade-mark is used, a reproduction of the trade-mark, the registration date and the term of the registration.**

(b) **Any certificate of registration issued by the Secretary of State under the provisions hereof or a copy thereof duly certified by the Secretary of State shall be admissible in evidence as competent and sufficient proof of the registration of such trade-mark in any action or judicial proceedings in any court of this State.**

**(C) BEFORE THE SECRETARY OF STATE DECIDES THAT AN APPLICANT HAS NOT COMPLIED WITH THE REQUIREMENTS OF THIS SUB-HEADING AND FOR THAT REASON MAY NOT BE ISSUED A CERTIFICATE OF REGISTRATION, HE SHALL PROVIDE THE APPLICANT AN OPPORTUNITY TO APPEAR PERSONALLY BEFORE HIM IN ORDER TO EXPLAIN THE APPARENT NON-COMPLIANCE WITH SUCH REQUIREMENTS.**

87E. (Duration and Renewal.) (a) Registration of a trade-mark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term, on a form to be furnished by the Secretary of State, the registration may be renewed for a like term. A renewal fee of Five Dollars (\$5.00), payable to the Secretary of State, shall accompany the application for renewal of the registration.

(b) A trade-mark registration may be renewed for successive periods of ten years in like manner.

(c) The Secretary of State shall notify registrants of trade-marks hereunder of the necessity of renewal within the year next preceding the expiration of the ten years from the date of registration by writing to the last known address of the registrants.

(d) Any registration in force on June 1, 1954, shall expire ten years from the date of the registration or of the last renewal thereof or one year after June 1, 1954, whichever is later, and may be renewed by filing an application with the Secretary of State on a form furnished by him and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration.

(e) The Secretary of State shall within six months after June 1, 1954, notify all registrants of trade-marks under previous acts of the date of expiration of such registrations unless renewed in accordance with the provisions of this sub-heading by writing to the last known address of the registrants.

87F. (Assignment.) Any trade-mark and its registration hereunder shall be assignable with the good will of the business in which the trade-mark is used, or with that part of the good will of the business connected with the use of and symbolized by the trade-mark. Assignment shall be by instruments in writing duly executed and may be recorded with the Secretary of State upon the payment of a fee of Five Dollars (\$5.00) payable to the Secretary of 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 sub-heading shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the Secretary of State within three months after the date thereof or prior to such subsequent purchase.

87G. (Records.) The Secretary of State shall keep for public examination a record of all trade-marks registered or renewed under this sub-heading.

87H. (Cancellation.) The Secretary of State shall cancel from the register:

(1) after one year from June 1, 1954, all registrations under prior acts which are more than ten years old and not renewed in accordance with this sub-heading;

(2) any registration concerning which the Secretary of State shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(3) all registrations granted under this sub-heading and not renewed in accordance with the provisions hereof;

(4) any registration concerning which a court of competent jurisdiction shall find

(A) that the registered trade-mark has been abandoned,

(B) that the registrant is not the owner of the trade-mark,

(C) that the registration was granted improperly,

(D) that the registration was obtained fraudulently,

(E) that the registered trade-mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a trade-mark registered by another person in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned, provided, however, that should the registrant prove that he is the owner of a concurrent registration of his trade-mark in the United States Patent Office covering an area including this State, the registration hereunder shall not be cancelled.

(5) when a court of competent jurisdiction shall order cancellation of a registration on any ground.

87-I. (Classification.) (a) The following general classes of goods are established for convenience of administration of this sub-heading, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a trade-mark may include any or all goods upon which the trade-mark is actually being used comprised in a single class, but in no event shall a single application include goods upon which the trade-mark is being used which fall within different classes of goods.

(b) The said classes are as follows:

1. Raw or partly prepared materials.
2. Receptacles.
3. Baggage, animal equipments, portfolios, and pocket-books.
4. Abrasives and polishing materials.
5. Adhesives.
6. Chemicals and chemical compositions.
7. Cordage.

8. *Smokers' articles, not including tobacco products.*
9. *Explosives, firearms, equipments, 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 ventilating apparatus.*
35. *Belting, hose, machinery packing, and non-metallic 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.*

**87J. (Fraudulent Registration.)** *Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any trade-mark in the office of the Secretary of State under the provisions hereof, 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 such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.*

**87K. (Infringement.)** *Subject to the provisions of Section 87M hereof any person who shall*

*(1) use, without the consent of the registrant any reproduction, counterfeit, copy, or colorable imitation of a trade-mark registered under this sub-heading in connection with the sale, offering for sale, or advertising of any goods 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*

*(2) reproduce, counterfeit, copy or colorably imitate any such trade-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 conjunction with the sale or other distribution in this state of such goods;*

*shall be liable to a civil action by the owner of such registered trade-mark for any or all of the remedies provided in Section 87L hereof. except that under paragraph (2) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such trade-mark is intended to be used to cause confusion or mistake or to deceive.*

**87L. (Remedies.)** *(a) Any owner of a trade-mark registered under this sub-heading may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed.*

(b) *The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this State.*

87M. *(Common Law Rights.) Nothing herein shall adversely affect the rights or the enforcement of rights in trade-marks acquired in good faith at any time at common law.*

87N. *(Severability.) If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this sub-heading shall not be affected thereby.*

SEC. 2. *And be it further enacted, That Sections 60 to 65, inclusive, of Article 27 of said Code, title "Crimes and Punishments," sub-title "Counterfeiting and Forgery," be and they are hereby repealed. Provided, however, that this repeal of Sections 60 to 65, inclusive, of Article 27 of the Code, shall not affect any suit, proceeding or appeal pending on June 1, 1954. As to any such suit, proceeding or appeal and for that purpose only, this section of this act shall be deemed not to be effective until the final determination of the pending, suit, proceeding or appeal, under the provisions of Sections 60 to 65, inclusive, in Article 27 of the Code.*

SEC. 3. *And be it further enacted, That this Act shall take effect June 1, 1954.*

Approved April 2, 1954.

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