

(I) ANOTHER MARK REGISTERED IN THE STATE; OR

(II) A MARK OR TRADE NAME THAT ANOTHER PERSON HAS USED IN THE STATE AND HAS NOT ABANDONED.

(C) LIMITED EXCEPTION.

(1) UNLESS THE MARK HAS BECOME DISTINCTIVE OF THE PERSON'S GOODS OR SERVICES, A PERSON MAY NOT REGISTER A MARK THAT:

(I) ONLY DESCRIBES OR DECEPTIVELY MISDESCRIBES GOODS OR SERVICES;

(II) PRIMARILY DESCRIBES OR DECEPTIVELY MISDESCRIBES THE GEOGRAPHIC ORIGIN OF GOODS OR SERVICES; OR

(III) IS PRIMARILY MERELY A SURNAME.

(2) AS EVIDENCE THAT A MARK HAS BECOME DISTINCTIVE OF THE GOODS OR SERVICES OF A PERSON, THE SECRETARY OF STATE MAY ACCEPT PROOF THAT THE PERSON HAS USED THE MARK AS A MARK IN THE STATE OR ELSEWHERE CONTINUOUSLY FOR AT LEAST 5 YEARS IMMEDIATELY BEFORE THE DAY ON WHICH THE PERSON APPLIES FOR REGISTRATION.

(D) REGISTRATION OF TRADE NAME PROHIBITED.

A PERSON MAY NOT REGISTER A TRADE NAME THAT IS NOT A MARK.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 3-102, the second sentence of § 3-101(h), and, as it related to filing an application for registration, § 3-103(a).

In subsection (b)(2)(ii) of this section, the word "individual" is substituted for the former word "persons" since this provision applies to human beings.

In subsection (b)(3) of this section, the general word "government" is substituted for the former narrow references to "United States", "state", "municipality", and "any foreign nation". The Business Regulation Article Review Committee notes, for consideration by the General Assembly, that this substitution is made so that this exception encompasses any type of government.

In subsection (b)(5) of this section, the former word "mistake" is deleted as included in the word "confuse".

Defined terms: "Mark" § 1-401

"Person" §§ 1-101 and 1-401

"Trade name" § 1-401