
CHAPTER 751

(House Bill 984)

AN ACT to repeal and re-enact, with amendments, Sections 90(e), 91, 92(a), (c), 93(a), (b), 94(a), (b), (c), (e), 95, 96, 97(4), 98(a), (b), 99, 100, 101(a), and 102, of Article 41 of the Annotated Code of Maryland (1965 Replacement Volume), title "Executive and Administrative Departments," subtitle "Secre-

“Secretary of State,” subheading “Trade-Marks,” and to add new Sections 90(f), (g) and (h), 94(f), 98(c), and 100A to said Article and subtitle of the Code to follow immediately after Sections 90(e), 94(e), 98(b), and 100, respectively, to define the terms “service mark,” “mark,” “trade name,” to include services within the scope of the subheading, to substitute the term “mark” for “trade-mark,” to specify the services included, to provide for injunctive relief in certain instances and to generally amend the laws relating to trade-marks.

SECTION 1. Be it enacted by the General Assembly of Maryland, That Sections 90(e), 91, 92(a), (c), 93(a), (b), 94(a), (b), (c), (e), 95, 96, 97(4), 98(a), (b), 99, 100, 101(a), and 102 of Article 41 of the Annotated Code of Maryland (1965 Replacement Volume), title “Executive and Administrative Departments,” subtitle “Secretary of State,” subheading “Trade-Marks,” be and they are hereby repealed and re-enacted, with amendments; and that new Sections 90(f), (g) and (h), 94(f), 98(c) and 100A be and they are hereby added to said Article and subtitle of the Code, to follow immediately after Sections 90(e), 94(e), 98(b) and 100, respectively, and all to read as follows:

90.

~~(e)~~(H) For the purposes of this subheading, a trade-mark shall be deemed to be “used” in this State *(a) on goods* when it is placed in any manner on the goods or their containers or *the displays associated therewith or on the tags or labels affixed thereto* and such goods are sold or otherwise distributed in this State, *(b) or services when it is used or displayed in the sale or advertising of services and the services are rendered in this State.*

~~(f)~~(B) The term “service mark” as used herein means a mark used in the sale of OR advertising of services to identify the services of one person and distinguish them from the services of others.

~~(g)~~(C) The term “mark” as used herein includes any trademark or service mark entitled to registration under this subheading whether registered or not.

~~(h)~~(D) The term “trade name” means a word, name, symbol, device or any combination thereof used by a person to identify his business, vocation or occupation and distinguish it from the business, vocation or occupation of others.

91.

A **[trade-mark]** mark by which the goods or services of any applicant for registration may be distinguished from the goods or services 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 or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (b) when applied to the goods or services 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 or services. The Secretary of State 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 the five years next preceding the date of the filing of the application for registration; or

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

92.

(a) Subject to the limitations set forth in this subheading, any person who adopts and uses a [trade-mark] 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] 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 or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall,

(3) The date when the [trade-mark] 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] mark and that no other person has the right to use such [trade-mark] 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.

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

93.

(a) Upon compliance by the applicant with the requirements of this subheading, the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant. The certifi-

cate 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 and address, if a corporation, the state of incorporation, of the person claiming ownership of the [trade-mark] mark, the date claimed for the first use of the [trade-mark] mark anywhere and the date claimed for the first use of the [trade-mark] mark in this State, the class of goods or services and a description of the goods OR SERVICE on which the [trade-mark] mark is used, a reproduction of the [trade-mark] 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] mark in any action or judicial proceedings in any court of this State.

94.

(a) Registration of a [trade-mark] 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] 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] 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.~~

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

(f) *All applications for renewals under this subheading, whether of registrations made under this subheading or of registrations effected under any prior act, shall include a statement that the mark is still in use in this State.*

95.

Any [trade-mark] mark and its registration hereunder shall be assignable with the good will of the business in which the [trade-mark] 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] 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 assign-

ment of any registration under this subheading 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.

96.

The Secretary of State shall keep for public examination a record of all [trade-marks] marks registered or renewed under this subheading.

97.

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

- (a) That the registered [trade-mark] mark has been abandoned,
- (b) That the registrant is not the owner of the [trade-mark] mark,
- (c) That the registration was granted improperly,
- (d) That the registration was obtained fraudulently,
- (e) That the registered [trade-mark] mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a [trade-mark] 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] mark in the United States Patent Office covering an area including this State, the registration hereunder shall not be cancelled.

98.

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

(b) *Goods.* The said classes OF GOODS are as follows:

1. Raw or partly prepared materials.
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, 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.

(c) *Services: THE SAID CLASSES OF SERVICES ARE AS FOLLOWS:*

53. *Miscellaneous.*
54. *Advertising and business.*
55. *Insurance and financial.*
56. *Construction and repair.*
57. *Communications.*
58. *Transportation and storage.*
59. *Material treatment.*
60. *Education and entertainment.*

99.

Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any **[trade-mark]**

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.

100.

Subject to the provisions of Section 102 hereby any person who shall:

(1) Use, without the consent of the registrant any reproduction, counterfeit, copy or colorable imitation of a **trade-mark** *mark* registered under this subheading 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

(2) Reproduce, counterfeit, copy or colorably imitate any such **trade-mark** *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 *or services*; shall be liable to a civil action by the owner of such registered **trade-mark** *mark* for any or all of the remedies provided in Section 101 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** *mark* is intended to be used to cause confusion or mistake or to deceive.

100A.

Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under this subheading, or a mark valid at common law, or a trade name valid at common law, shall be ground for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

101.

(a) Any owner of a **trade-mark** *mark* registered under this subheading 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.

102.

Nothing herein shall adversely affect the rights or the enforcement of rights in **trade-marks** *marks* required in good faith at any time at common law.

SEC. 2. *And be it further enacted*, That this Act shall take effect June 1, 1967.

Approved May 4, 1967.
