

ests of the civil defense organization, or the people of the state. For the reasons stated above, subsection 3, of section 1, of Senate Bill No. 82 is vetoed and the remainder of the bill is approved."

CHAPTER 211.

[H. B. 435.]

TRADEMARKS.

AN ACT relating to trademarks; and repealing sections 1 through 9, chapter 47, Laws of 1897 and RCW 19.76.010 through 19.76.090.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. As used in this act:

Definitions:
"Applicant"
defined.

(1) "Applicant" means the person filing an application for registration of a trademark under this act, his legal representatives, successors, or assigns of record with the secretary of state;

"Person"
defined.

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

"Registrant"
defined.

(3) "Registrant" means the person to whom the registration of a trademark under this act is issued, his legal representatives, successors, or assigns of record with the secretary of state;

"Trademark"
defined.

(4) "Trademark" 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, and further includes without limitation a mark, name, symbol, title, designation, slogan, character name, and distinctive feature of radio or other advertising used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others;

Trademark
deemed
"used."

(5) A trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers, or on tabs or labels affixed thereto, or displayed in connection with such goods,

and such goods are sold or otherwise distributed in this state, or when it is used or displayed in the sale or advertising of services rendered in this state.

SEC. 2. A trademark 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:

Trademark shall not be registered.

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

Immoral, deceptive or scandalous matter.

(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

Disparaging matter respecting persons, institutions, beliefs or symbols.

(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

Flag or coat of arms or insignia.

(4) Consists of or comprises the name, portrait, or signature identifying a particular living individual, except with his written consent; or

Name, portrait or signature of particular living individual.

(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

Descriptive mark.

(b) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or

Geographically descriptive mark.

(c) is primarily merely a surname; or

Surname.

(6) Consists of or comprises a trademark which so resembles a trademark registered in this state, or a trademark 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.

Similar to existing trademark.

SEC. 3. Subject to the limitations set forth in this act, any person who has adopted and is using a trademark 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 trademark setting forth, but not limited to, the following information:
- File application for registration of trademark.** (1) The name and business address of the applicant, and, if the applicant is a corporation, its state of incorporation;
- Name and business address.** (2) The particular goods or services in connection with which the trademark is used and the class in which such goods or services fall;
- Goods and class.** (3) The manner in which the trademark is placed on or affixed to the goods or containers, or displayed in connection with such goods, or used in connection with the sale or advertising of the services;
- Manner trademark used.** (4) The date when the trademark was first used with each of such goods or services anywhere and the date when it was first used with each of such goods or services in this state by the applicant or his predecessor in business;
- Date trademark first used.** (5) A statement that the trademark is presently in use in this state by the applicant; and
- Statement of present use.** (6) A statement that the applicant believes himself to be the owner of the trademark and believes that no other person has the right to use such trademark in connection with the same or similar goods or services 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.
- Statement of ownership.** A single application for registration of a trademark may specify all goods or services in a single class for which the trademark is actually being used, but may not specify goods or services in different classes.
- Single application.** The application shall be signed and verified by the applicant individual, or by a member of the applicant firm, or by an officer of the applicant corporation, association, union or other organization.
- Signature and verification.** The application shall be accompanied by three

specimens or facsimiles of the trademark for at least one of the goods or services for which its registration is requested, and a filing fee of ten dollars payable to the secretary of state.

Specimens.

Filing fee.

SEC. 4. Upon compliance by the applicant with the requirements of this act, the secretary of state shall issue a certificate of registration and deliver it 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 registrant's name and business address and, if the registrant is a corporation, its state of incorporation, the date claimed for the first use of the trademark anywhere, the date claimed for the first use of the trademark in this state, the particular goods or services for which the trademark is used, the class in which such goods and services fall, a reproduction of the trademark, the registration date and the term of the registration.

Secretary of state to issue certificate of registration. Certificate of registration contents.

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 trademark in any action or judicial proceeding in any court of this state.

Certificate of registration admissible evidence.

SEC. 5. Registration of a trademark hereunder shall be effective for a term of ten years from the date of registration. Upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state requiring all the allegations of an application for original registration, the registration may be renewed for successive terms of ten years as to the goods or services for which the trademark is still in use in this state. A renewal fee of ten dollars, payable to the secretary of state, shall accompany each application for renewal of the registration.

Effective term after registration. Renewal application.

Renewal fee.

Secretary of state notifies of necessity of renewal.

The secretary of state shall notify registrants of trademarks hereunder or their agents for service of record with the secretary of state of the necessity of renewal within the year, but not less than six months, next preceding the expiration of the unexpired original or renewed term by writing to the last known address of the registrants or their agents according to the files of the secretary of state.

Expiration of registration in force date act effective.

Any registration in force on the date on which this act shall become effective shall expire five years from the date of the registration or one year after the effective date of this act, whichever date is later, and may be renewed as provided for renewing registrations under this act. A separate renewal application is required for goods in each class.

Secretary of state notifies registrants under previous acts.

The secretary of state shall, within six months after the effective date of this act, notify all registrants of trademarks under previous acts of the date of expiration of their registrations by writing to the last known address of the registrants according to the files of the secretary of state, unless such registrations have been renewed in accordance with the provisions of this act.

Trademark assignable.

SEC. 6. Any trademark and its registration or application for registration hereunder shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. An assignment by an instrument in writing duly executed and acknowledged, or the designation of a legal representative, successor, or agent for service shall be recorded by the secretary of state on request when accompanied by a fee of five dollars payable to the secretary of state. On request, upon recording of the assignment and payment of a further fee of three dollars, the secretary of state shall issue in the name of the assignee a new certificate for the

Recording assignment of trademark.

New certificate.

remainder of the unexpired original or renewal term of the registration. An assignment of any registration or application for registration under this act shall be void as against any subsequent purchaser for a 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.

Assignment or application for registration void.

SEC. 7. The secretary of state shall keep for public examination a record of all trademarks registered or renewed under this act, and the records specified in section 6 of this act.

Record of trademarks for public examination.

SEC. 8. The secretary of state shall cancel from the register:

Cancel from register.

(1) After one year from the effective date of this act, all registrations under prior acts which are more than five years old and not renewed in accordance with this act;

Registrations under prior acts.

(2) Any registration concerning which the secretary of state shall receive a voluntary written request for cancellation thereof from the registrant;

Voluntary written requests for cancellation.

(3) All expired registrations not renewed under this act;

Expired registrations.

(4) Any registration concerning which a final decree of a court of competent jurisdiction, upon filing of a certified copy of such decree with the secretary of state, shall adjudge;

Court decree.

(a) That the registered trademark has been abandoned; or

Abandoned trademark.

(b) That the registrant is not the owner of the trademark; or

Registrant not owner.

(c) That the registration was granted improperly; or

Registration improperly granted.

(d) That the registration was obtained fraudulently; or

Registration fraudulently obtained.

(e) That the registration be cancelled on any ground.

Registration be cancelled.

Secretary of
state agent
for service
of process.

SEC. 9. The secretary of state shall be the agent for service of process in any action relating to the registration of any registrant who is at the time of such service a nonresident or a foreign firm, corporation, association, union, or other organization without a resident of this state designated as the registrant's agent for service of record with the secretary of state, or who cannot be found in this state, and service of process, pleadings and papers in such action made upon the secretary of state shall be held as due and sufficient process upon the registrant.

Sufficient
process.

Damaged by
registration of
trademark.

SEC. 10. Any person who believes he will be damaged by a registration of a trademark by the secretary of state may request cancellation of such registration by filing with the secretary of state in duplicate a verified petition setting forth the facts in support of such request, accompanied by a fee of twenty-five dollars payable to the secretary of state. To each copy of said petition for cancellation there shall be attached a copy of each of the trademarks or trade names, or the personal name, portrait, or signature, of the petitioner, or other exhibits of like character relied on in the petition. Thereafter the secretary of state shall mail to the registrant or his agent for service of record with the secretary of state a copy of said petition, addressed to the last known address of the registrant or such agent according to the files of the secretary of state, accompanied by a notice that said registrant may, within twenty days if the registrant is a resident of the state of Washington, or within sixty days if the registrant is a nonresident of the state of Washington, file in duplicate a verified answer to said petition. Thereafter the secretary of state shall forward a copy of said answer to said petitioner, accompanied by a notice that said petitioner may, within a specified time, not less than twenty days, file in duplicate a verified statement as to any further facts which

Verified
petition.

Petition copy
mailed to
registrant.

Verified
answer.

Statement of
further facts.

are pertinent to issues raised by said answer, and the secretary of state shall in like manner forward a copy thereof to said registrant or such agent. The secretary of state shall then fix a hearing date not less than thirty days from the last day that the petitioner may file a statement of further facts. Written notice of such hearing shall be served on the parties by the secretary of state not less than fifteen days before the hearing in the same manner as the petition and answer were forwarded. Additional relevant testimony or other evidence may be introduced by the parties, and the secretary of state may subpoena such witnesses as he deems necessary. The parties shall have the right to be represented by counsel. On conclusion of the hearing the secretary of state shall grant or deny the petitioner's request for cancellation of the registration as the facts shall warrant and shall send a copy of his decision to the petitioner and to the registrant or such agent. If the secretary of state finds that the trademark should not have been registered, or is in violation of the common law rights of the petitioner, or if the secretary of state receives no answer from the registrant within the time limits specified hereinabove, he shall cancel said registration from the register, unless a petition for review of such decision is filed as provided hereinafter.

Hearing date.

Written notice of hearing.

Representation by council at hearing.

Decision by secretary of state.

Registration cancelled from register.

Either the petitioner or the registrant may, within sixty days after mailing of the copy of the decision by the secretary of state, file in the superior court of the state of Washington for Thurston county, and mail to the secretary of state and the other party or such agent at his last known address according to the files of the secretary of state, a petition for review of the decision of the secretary of state. The court shall review such decision on the basis of the record before the secretary of state for the purpose of determining the reasonableness and lawfulness of

Petition for review in superior court.

Review on record before secretary of state.

Right of appeal to supreme court.

such decision and, subject to the right of appeal to the supreme court of the state, the decree of the superior court shall be binding upon the secretary of state with respect to the granting or denial of the petitioner's request for cancellation. In any such petition for review the secretary of state shall be a necessary party, and the petitioner for cancellation and the registrant shall be proper parties.

Secretary of state, necessary party.

General classes of goods.

SEC. 11. The following general classes of goods are established for the convenient administration of this act, but do not limit or extend the applicant's or registrant's rights:

- (1) Raw or partly prepared materials.
- (2) Receptacles.
- (3) Baggage, animal equipment, 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 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.

SEC. 12. The following general classes of services are established for the convenient administration of this act, but do not limit or extend the applicant's or registrant's rights:

General
classes of
services.

- (100) Miscellaneous.

- (101) Advertising and business.
- (102) Insurance and financial.
- (103) Construction and repair.
- (104) Communication.
- (105) Transportation and storage.
- (106) Material treatment.
- (107) Education and entertainment.

Procurement of registration by fraudulent representation; liability for.

SEC. 13. Any person who shall for himself, or on behalf of any other person, procure the registration of any trademark by the secretary of state under the provisions of this act, by knowingly making any false or fraudulent representation or declaration, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

SEC. 14. Subject to the provisions of section 16 hereof any person who shall:

Use of trademark registered under act without registrant's consent.

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trademark 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

(2) Reproduce, counterfeit, copy or colorably imitate any such trademark 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 of goods or services in this state; shall be liable to a civil action by the registrant for any or all of the remedies provided in section 15 of this act, except that under subdivision (2) of this section the registrant shall not be entitled to recover profits or dam-

Civil action by registrant.
Exception.

ages unless the acts have been committed with knowledge that such use is intended to cause confusion or mistake or to deceive.

SEC. 15. Any registrant may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of a trademark registered under this act, and any court of competent jurisdiction may grant injunction 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 registrant 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 registrant, to be destroyed.

Injunctive relief.

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

Prosecution under penal law.

SEC. 16. Nothing herein shall adversely affect the rights or the enforcement of rights in trademarks acquired in good faith at any time at common law.

Trademarks acquired at common law.

SEC. 17. As to any pending suit, proceeding or appeal, and for that purpose only, the repeal of prior acts shall be deemed not to be effective until final determination.

Repeal of prior acts on suits pending.

SEC. 18. The first three thousand dollars received each calendar year by the secretary of state from fees paid under the provisions of this act shall be placed in a special fund which shall not be a state fund, which shall be kept segregated and apart from all other funds and which shall be accumulative and not restricted to biennium or fiscal periods of the state. The secretary of state is authorized to expend this special fund for salaries, wages and operations

Vetoed.

Vetoed. } to carry out and enforce the provisions of this act.
 } All sums received under the provisions of this act
 } in excess of said sum of three thousand dollars each
 } calendar year shall be paid into the general fund.

Effective date. SEC. 19. This act shall be in force and take effect on September 1, 1955.

Validity. SEC. 20. If any provision of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions.

Repeal. SEC. 21. Sections 1 through 9, chapter 47, Laws of 1897 and RCW 19.76.010 through 19.76.090 are each repealed.

Passed the House February 26, 1955.

Passed the Senate March 7, 1955.

Approved by the Governor March 16, 1955, with the exception of Section 18, which is vetoed.

Note: Excerpt of Governor's Veto Message reads as follows:

" * * * This provision would authorize the Secretary of State to place the first \$3,000 received each calendar year from fees paid under the provisions of this bill in a special fund separate from all other funds and to expend such funds for salaries, wages and operations to carry out the provisions of the bill. The fund would under this provision be accumulative and not restricted to biennium or fiscal periods of the state. This provision is contrary to the current policy of the legislature, as expressed in numerous bills enacted during this session, in consolidating various state funds under the control of the State Treasurer. In my opinion, there is no valid reason for establishing this special fund.

"Section 18 is therefore vetoed, and the remainder of the bill is approved."