



LAWS OF ALASKA

1996

Source
CSHB 450(FIN)

Chapter No.

—132—

AN ACT

Relating to trademarks; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: July 3, 1996

Actual Effective Date: Sections 1 - 30 take effect January 1, 1997; section 31 takes effect
July 4, 1996

AN ACT

1 Relating to trademarks; and providing for an effective date.

2

3 * **Section 1.** INTENT. It is the intent of the legislature to provide a system of state
4 trademark registration and protection substantially consistent with the federal system of
5 trademark registration and protection under 15 U.S.C. 1051 et seq., 1091 et seq., 1111 et seq.
6 (Trademark Act of 1946, as amended). To that end, the construction given the Trademark Act
7 of 1946, as amended, should be examined as a persuasive authority for interpreting and
8 construing AS 45.50.010 - 45.50.205 (Alaska Trademark Act).

9 * **Sec. 2.** AS 43.20.040(a) is amended to read:

- 10 (a) In this chapter, income from sources in the state includes
- 11 (1) income from real or tangible personal property located in the state;
- 12 (2) income of whatever nature from a business, trade or profession
- 13 having a business situs in the state and compensation for services rendered in the state;
- 14 (3) income from stocks, bonds, notes, bank deposits, and other
- 15 intangible personal property having a taxable or business situs in the state;

Chapter 132

1 (4) rentals and royalties for the use of or for the privilege of using, in
2 the state, patents, copyrights, secret processes and formulas, good will, marks
3 [TRADEMARKS], trade brands, franchises, and other property having a taxable or
4 business situs in the state.

5 * Sec. 3. AS 45.50.010 is amended to read:

6 Sec. 45.50.010. REGISTRABILITY. A mark [TRADEMARK] may not be
7 registered if it consists of or comprises

8 (1) [CONSISTS OF] immoral, deceptive, or scandalous matter;

9 (2) [CONSISTS OF] matter that [WHICH] may disparage or falsely
10 suggest a connection with persons, living or dead, institutions, beliefs, or national
11 symbols, or bring them into contempt [,] or disrepute;

12 (3) [CONSISTS OF] the flag, [OR] coat of arms, or other insignia of
13 the United States, this or another [OR OF A] state, a [OR] municipality of this or
14 another state, [OR OF] a foreign nation, or simulation of any of these;

15 (4) [CONSISTS OF] the name, signature, or portrait identifying [OF]
16 a living individual, except with the written consent of the individual;

17 (5) [CONSISTS OF] a mark that,

18 (A) when used on or in connection with goods or services of
19 the applicant, is merely descriptive or deceptively misdescriptive of them;
20 [THE APPLICANT'S GOODS, OR]

21 (B) when used on or in connection with the goods or services
22 of the applicant, is primarily geographically descriptive or deceptively
23 misdescriptive of them; [THE APPLICANT'S GOODS, OR]

24 (C) is primarily merely a surname; however, this paragraph
25 does not prevent the registration of a mark used [IN THE STATE] by the
26 applicant that [WHICH] has become distinctive of the applicant's goods or
27 services; the commissioner may accept [;] as evidence that the mark has
28 become distinctive, as used on or in connection with the applicant's goods
29 or services, [THE COMMISSIONER MAY ACCEPT] proof of continuous use
30 of the mark as a mark by the applicant in this state [OR ELSEWHERE] for the
31 five years immediately preceding the date on which the claim of

1 distinctiveness is made [OF THE FILING OF THE APPLICATION FOR
2 REGISTRATION]; or

3 (6) [CONSISTS OF] a mark [TRADEMARK] that so resembles a
4 mark [TRADEMARK] registered in the state or in the United States Patent and
5 Trademark Office, [A TRADEMARK] or a mark [TRADE NAME] previously used
6 [IN THIS STATE] by another and not abandoned, as to be likely, when used on or
7 in connection with [APPLIED TO] the goods or services of the applicant, to cause
8 confusion or mistake or to deceive.

9 * **Sec. 4.** AS 45.50.010 is amended by adding a new subsection to read:

10 (b) For purposes of this section,

11 (1) "descriptive" means a word or combination of words that describes
12 one or more of the characteristics of the goods or services, such as, what the goods or
13 services are, what the goods are made of, or what the goods or services are used for;
14 however, an otherwise descriptive word or combination of words can, as a secondary
15 meaning, become accepted as identifying the goods or services of the applicant, in
16 which case it is no longer merely descriptive;

17 (2) "misdescriptive" means a word or combination of words that falsely
18 describes the nature, function, or capacity of goods or services.

19 * **Sec. 5.** AS 45.50.020 is amended to read:

20 Sec. 45.50.020. APPLICATION FOR REGISTRATION. Subject to
21 limitations under AS 45.50.010 - 45.50.205, a [A] person who [ADOPTS AND] uses
22 a mark [TRADEMARK] in the state may file with the commissioner
23 [DEPARTMENT], on a form furnished by the department and in a manner
24 complying with AS 45.50.010 - 45.50.205, an application for registration of that
25 mark [THE TRADEMARK] setting out the following information:

26 (1) the name and business address of the registrant [PERSON
27 APPLYING FOR REGISTRATION,] and, if the registrant is a

28 (A) corporation, the state of incorporation; or

29 (B) partnership, the state in which the partnership is
30 organized and the names of the general partners;

31 (2) the goods or services on or in connection with which the mark is

Chapter 132

1 used, the manner in which the mark is used on or in connection with the goods or
2 services, and the class of the goods or services;

3 (3) the date when the mark [TRADEMARK] was first used anywhere
4 and the date when it was first used in this state by the applicant or a [THE
5 APPLICANT'S] predecessor in interest; [BUSINESS; AND]

6 (4) a statement that the applicant is the owner of the mark, that the
7 mark is in use, [TRADEMARK] and that, to the knowledge of the individual
8 verifying the application, no other person has the right to use the mark
9 [TRADEMARK IN THIS STATE] either in the identical form or in a near
10 resemblance to it as to [MIGHT] be likely, when applied to the goods or services
11 of another person, to cause confusion or mistake, or to deceive; and

12 (5) a statement as to whether the applicant, or a predecessor in
13 interest, has filed an application to register the mark, or portions or a composite
14 of the mark, with the United States Patent and Trademark Office, and, if so,
15 information regarding that application, including the filing date and serial
16 number, the status of that application, whether that application was refused
17 registration or otherwise did not result in a registration, and, if so, the reasons
18 that application did not result in a registration [CALCULATED TO DECEIVE OR
19 TO BE MISTAKEN FOR IT].

20 * Sec. 6. AS 45.50 is amended by adding a new section to read:

21 Sec. 45.50.025. PROCEDURE CONCERNING APPLICATION. (a) Upon
22 the filing of an application for registration of a mark and payment of the application
23 fee, the commissioner shall examine the application for conformity with AS 45.50.010
24 - 45.50.205. The commissioner may request additional information, including a
25 description of a design mark, suggest amendments to the application, or suggest that
26 a new application be filed. The applicant may provide the additional information
27 requested, authorize the commissioner to make amendments to the application, or
28 withdraw the application and file a new one to respond to a potential objection or
29 rejection.

30 (b) As a condition of registration, the commissioner may require the applicant
31 to disclaim an unregistrable component of a mark, or an applicant may voluntarily

1 disclaim a component of a mark originally sought to be registered. A disclaimer under
2 this subsection does not prejudice or affect the rights of an applicant or registrant

3 (1) in the disclaimed matter that exist at the time of the disclaimer or
4 that arise later; or

5 (2) to register the disclaimed matter in another application if the
6 disclaimed matter is or becomes distinctive of the applicant's or registrant's goods or
7 services.

8 (c) If an applicant is found not to be entitled to registration of a mark, the
9 commissioner shall notify the applicant and inform the applicant of the reasons for the
10 finding. The commissioner shall give the applicant a reasonable period of time in
11 which to reply or amend the application. If a reply or amendment is delivered to the
12 commissioner within the designated period, the commissioner shall reexamine the
13 application. Before making a final decision, an application may be amended and
14 reexamined as many times as the commissioner determines to be necessary. However,
15 if the applicant fails to reply or amend the application within the period designated by
16 the commissioner, the application is considered abandoned.

17 (d) When the commissioner makes a final decision on the application, the
18 commissioner shall notify the applicant in writing of the decision and that the decision
19 is final, setting out the reasons for the decision if the application is disapproved. The
20 applicant may appeal the commissioner's final decision to the superior court. The
21 court may enter judgment setting aside, modifying, remanding, or affirming the
22 decision.

23 (e) If the commissioner receives more than one application for registration of
24 the same or a confusingly similar mark for the same or related goods or services, the
25 commissioner shall grant the registration to the applicant who first filed the original
26 application if the application otherwise qualifies for registration. A rejected applicant
27 may bring an action in superior court for cancellation of the registration upon the
28 grounds of prior or superior rights to the mark.

29 * Sec. 7. AS 45.50.030 is amended to read:

30 Sec. 45.50.030. FORM OF APPLICATION. The application shall be signed
31 and verified by the applicant or by a member of the firm or an officer of the

Chapter 132

1 corporation, partnership, or association applying. The application shall be
2 accompanied by three specimens showing the actual use of the mark on or in
3 connection with the goods or services [A SPECIMEN OR FACSIMILE OF THE
4 TRADEMARK IN TRIPLICATE].

5 * Sec. 8. AS 45.50.040 is amended to read:

6 Sec. 45.50.040. FILING FEE. The application for registration shall be
7 accompanied by a filing fee of \$50 [\$10] payable to the department [DEPARTMENT
8 OF COMMERCE AND ECONOMIC DEVELOPMENT].

9 * Sec. 9. AS 45.50.050 is amended to read:

10 Sec. 45.50.050. FORM AND CONTENTS OF CERTIFICATE OF
11 REGISTRATION. Upon compliance by the applicant with the requirements of
12 AS 45.50.010 - 45.50.205 [AS 45.50.010 - 45.50.200], the commissioner shall issue
13 and deliver a certificate of registration to the applicant. The certificate of registration
14 shall be issued under the signature of the commissioner and the seal of the state. The
15 certificate must show

16 (1) the name and business address [AND, IF A CORPORATION, THE
17 STATE OF INCORPORATION,] of the registrant and, if that registrant is a

18 (A) corporation, the state of incorporation; or

19 (B) partnership, the state in which the partnership is
20 organized and the names of the general partners [; PERSON CLAIMING
21 OWNERSHIP OF THE TRADEMARK];

22 (2) the date claimed for the first use of the mark [TRADEMARK]
23 anywhere and the date claimed for the first use of the mark [TRADEMARK] in this
24 state;

25 (3) the class of goods or services and a description of the goods or
26 services on or in connection with which the mark [TRADEMARK] is used;

27 (4) a reproduction of the mark [TRADEMARK];

28 (5) the registration date; and

29 (6) the term of the registration.

30 * Sec. 10. AS 45.50.060 is amended to read:

31 Sec. 45.50.060. CERTIFICATE OF REGISTRATION AS EVIDENCE. A

1 certificate of registration issued by the commissioner [DEPARTMENT] under
2 AS 45.50.010 - 45.50.205 [THE PROVISIONS OF AS 45.50.010 - 45.50.200] or a
3 copy of it certified by the commissioner is admissible in evidence as competent and
4 sufficient proof of the registration of the mark [TRADEMARK] in an action or
5 judicial proceeding in the state.

6 * Sec. 11. AS 45.50.070 is amended to read:

7 Sec. 45.50.070. DURATION AND RENEWAL. Registration of a mark
8 [TRADEMARK] is effective for a term of five [10] years from the date of registration.
9 Upon application filed within six months before the expiration of the term in a
10 manner complying with the requirements of the commissioner [, ON A FORM
11 FURNISHED BY THE DEPARTMENT], the registration may be renewed for an
12 additional term of five [10] years.

13 * Sec. 12. AS 45.50.070 is amended by adding a new subsection to read:

14 (b) An application for renewal of a registration must include a verified
15 statement that the mark has been used and is still in use. Three specimens showing
16 actual use of the mark on or in connection with the goods or services shall be
17 submitted with the renewal application.

18 * Sec. 13. AS 45.50.080 is amended to read:

19 Sec. 45.50.080. FEE FOR RENEWAL OF REGISTRATION. A renewal fee
20 of \$50 [\$10] shall accompany the application for renewal of the registration.

21 * Sec. 14. AS 45.50.090 is amended to read:

22 Sec. 45.50.090. ADDITIONAL TERMS OF RENEWAL. A [TRADEMARK]
23 registration of a mark may be renewed for successive periods of five [10] years in the
24 manner provided in AS 45.50.070 and 45.50.080.

25 * Sec. 15. AS 45.50.100 is amended to read:

26 Sec. 45.50.100. NOTIFICATION OF EXPIRATION OF REGISTRATION
27 PERIOD. The commissioner shall notify each registrant of the necessity of renewal
28 at least six months [WITHIN THE YEAR] preceding the expiration [OF THE 10
29 YEARS FROM THE] date of the registration. Notification shall be by writing to the
30 last known address of the registrant.

31 * Sec. 16. AS 45.50.120 is amended to read:

Chapter 132

1 Sec. 45.50.120. ASSIGNMENT. (a) A mark [TRADEMARK] and its
2 registration are assignable with the goodwill of the business in which the mark
3 [TRADEMARK] is used, or with that part of the goodwill of the business connected
4 with the use of and symbolized by the mark [TRADEMARK].

5 (b) An assignment shall be in writing and may be filed [RECORDED] with
6 the commissioner [DEPARTMENT] upon the payment of a fee of \$25 [\$2,
7 PAYABLE] to the department. The commissioner shall file [RECORD] the
8 assignment [,] and shall issue in the name of the assignee a new certificate for the
9 remainder of the term of the registration.

10 (c) An assignment of registration is void as against a subsequent purchaser for
11 valuable consideration without notice, unless it is filed [RECORDED] with the
12 commissioner [DEPARTMENT] within three months after the date of the assignment
13 or before the subsequent purchase.

14 * **Sec. 17.** AS 45.50 is amended by adding a new section to read:

15 Sec. 45.50.125. NAME CHANGE AND OTHER FILINGS. (a) The name of
16 a registrant or applicant may be changed by filing the change of name with the
17 commissioner on a form furnished by the department that has been signed and verified
18 by the registrant or applicant and paying a filing fee of \$25. The commissioner shall
19 issue in the changed name of a registrant an amended certificate of registration.

20 (b) Other signed and verified instruments that relate to a registered mark or
21 an application for registration of a mark may be filed at the discretion of the
22 commissioner upon payment of a filing fee established by regulation of the department.

23 (c) A photocopy of an instrument shall be accepted by the commissioner for
24 filing if it is certified by a party to the instrument or a successor of a party to be a true
25 and correct copy of the original and if the commissioner would have accepted the
26 original for filing under (a) or (b) of this section.

27 (d) Acknowledgment is prima facie evidence for the commissioner of the
28 execution of an assignment, change of name, or other instrument related to a registered
29 mark or to registration of a mark. When the instrument is filed by the commissioner,
30 the filing is prima facie evidence of execution of the instrument for all other purposes.

31 * **Sec. 18.** AS 45.50.130 is amended to read:

1 Sec. 45.50.130. COMMISSIONER TO KEEP RECORD OF REGISTRATION.

2 The commissioner shall keep for public examination a record of all marks
3 [TRADEMARKS] registered or renewed under AS 45.50.010 - 45.50.205 and a
4 record of all instruments filed under AS 45.50.125 [AS 45.50.010 - 45.50.200].

5 * Sec. 19. AS 45.50.140 is amended to read:

6 Sec. 45.50.140. CANCELLATION. The commissioner shall cancel in whole
7 or in part [FROM THE REGISTER]

8 (1) [EACH REGISTRATION UNDER A PREVIOUS LAW THAT IS
9 MORE THAN FIVE YEARS OLD AND NOT RENEWED IN ACCORDANCE
10 WITH AS 45.50.010 - 45.50.200;

11 (2)] a registration for which the commissioner receives a voluntary
12 written request for cancellation from [REQUESTED BY] the registrant or the
13 assignee of record [RECORDS TO BE CANCELED];

14 (2) [(3)] each registration [UNDER AS 45.50.010 - 45.50.200] that
15 expires and is not renewed under AS 45.50.070 and 45.50.090;

16 (3) [(4)] a registration found by a court to be

17 (A) abandoned; [,]

18 (B) not owned by the registrant; [,]

19 (C) granted improperly; [,]

20 (D) obtained fraudulently; [, OR]

21 (E) so similar, as to be likely to cause confusion or mistake or
22 to deceive, to a mark [TRADEMARK] registered by another person in the
23 United States Patent and Trademark Office, before the date of filing of the
24 application for registration by the registrant under AS 45.50.010 - 45.50.205
25 [AS 45.50.010 - 45.50.200], and not abandoned; however, if the registrant
26 proves that the registrant is the owner of a concurrent registration of the mark
27 [TRADEMARK] in the United States Patent and Trademark Office covering
28 an area including this state, the registration may not be canceled; or

29 (F) the generic name for all or a portion of the goods or
30 services for which the mark has been registered;

31 (4) [(5)] when a court orders cancellation of a registration on any

Chapter 132

1 ground.

2 * Sec. 20. AS 45.50.140 is amended by adding a new subsection to read:

3 (b) For purposes of (a) of this section, registration of a mark is abandoned
4 when use of the mark has been discontinued and the registrant has no intent to resume
5 its use, or when the mark loses its significance as a mark due to action or failure to
6 act by the registrant. The intent not to resume the use of a mark may be inferred from
7 circumstances. No use of a mark by the registrant for at least a 24-month period
8 constitutes prima facie evidence that its registration has been abandoned.

9 * Sec. 21. AS 45.50.150 is amended to read:

10 Sec. 45.50.150. CLASSIFICATION. The department shall by regulation
11 establish a classification [FOLLOWING GENERAL CLASSES] of goods and
12 services [ARE ESTABLISHED] for convenience of administration of AS 45.50.010 -
13 45.50.205 [AS 45.50.010 - 45.50.200]. However, the classification does [THEY DO]
14 not limit or extend the applicant's or registrant's rights, and a single application for
15 registration of a mark [TRADEMARK] may include [ANY OR] all goods upon
16 which, or services with which, the mark [TRADEMARK] is actually being used
17 comprised in a single class, but in no event may a single application include goods or
18 services upon which the mark [TRADEMARK] is being used that [WHICH] fall
19 within different classes of goods or services. To the extent practical, the
20 classification of goods and services should conform to the classification adopted
21 by the United States Patent and Trademark Office [. THE CLASSES ARE
22 AS FOLLOWS:

- 23 (1) ABRASIVES AND POLISHING MATERIALS;
24 (2) ADHESIVES;
25 (3) BAGGAGE, ANIMAL EQUIPMENT, PORTFOLIOS, AND
26 POCKETBOOKS;
27 (4) BELTING, HOSE, MACHINERY PACKING, AND
28 NONMETALLIC TIRES;
29 (5) BROOMS, BRUSHES, AND DUSTERS;
30 (6) CANES, PARASOLS, AND UMBRELLAS;
31 (7) CHEMICALS AND CHEMICAL COMPOSITIONS;

- 1 (8) CLOTHING;
2 (9) CONSTRUCTION MATERIALS;
3 (10) CORDAGE;
4 (11) COSMETICS AND TOILET PREPARATIONS;
5 (12) CROCKERY, EARTHENWARE, AND PORCELAIN;
6 (13) CUTLERY, MACHINERY, AND TOOLS, AND PARTS
7 THEREOF;
8 (14) DENTAL, MEDICAL, AND SURGICAL APPLIANCES;
9 (15) DETERGENTS AND SOAPS;
10 (16) DISTILLED ALCOHOLIC LIQUORS;
11 (17) ELECTRICAL APPARATUS, MACHINES AND SUPPLIES;
12 (18) EXPLOSIVES, FIREARMS, EQUIPMENT, AND PROJECTILES;
13 (19) FANCY GOODS, FURNISHINGS, AND NOTIONS;
14 (20) FERTILIZERS;
15 (21) FILTERS AND REFRIGERATORS;
16 (22) FOODS AND INGREDIENTS OF FOODS;
17 (23) FURNITURE AND UPHOLSTERY;
18 (24) GAMES, TOYS, AND SPORTING GOODS;
19 (25) GLASSWARE;
20 (26) HARDWARE AND PLUMBING AND STEAMFITTING
21 SUPPLIES;
22 (27) HEATING, LIGHTING, AND VENTILATING APPARATUS;
23 (28) HOROLOGICAL INSTRUMENTS;
24 (29) INKS AND INKING MATERIALS;
25 (30) JEWELRY AND PRECIOUS METALWARE;
26 (31) KNITTED, NETTED AND TEXTILE FABRICS, AND
27 SUBSTITUTES FOR THEM;
28 (32) LAUNDRY APPLIANCES AND MACHINES;
29 (33) LINOLEUM AND OILED CLOTH;
30 (34) LOCKS AND SAFES;
31 (35) MALT BEVERAGES AND LIQUORS;

Chapter 132

- 1 (36) MEASURING AND SCIENTIFIC APPLIANCES;
- 2 (37) MEDICINES AND PHARMACEUTICAL PREPARATIONS;
- 3 (38) METALS AND METAL CASTINGS AND FORGINGS;
- 4 (39) MUSICAL INSTRUMENTS AND SUPPLIES;
- 5 (40) OILS AND GREASES;
- 6 (41) PAINTS AND PAINTERS' MATERIALS;
- 7 (42) PAPER AND STATIONERY;
- 8 (44) RAW OR PARTLY PREPARED MATERIALS;
- 9 (45) RECEPTACLES;
- 10 (46) SMOKERS' ARTICLES, NOT INCLUDING TOBACCO
- 11 PRODUCTS;
- 12 (47) SOFT DRINKS AND CARBONATED WATERS;
- 13 (48) THREAD AND YARN;
- 14 (49) TOBACCO PRODUCTS;
- 15 (50) VEHICLES;
- 16 (51) WINES;
- 17 (52) MERCHANDISE NOT OTHERWISE CLASSIFIED].

18 * Sec. 22. AS 45.50.160 is amended to read:

19 Sec. 45.50.160. FRAUDULENT REGISTRATION. A person who, for the
20 person or on behalf of another, procures the filing or registration of a mark under
21 AS 45.50.010 - 45.50.205 [TRADEMARK WITH THE DEPARTMENT,] by
22 knowingly making a false or fraudulent representation or declaration, orally
23 [VERBALLY] or in writing, or by another [ANY OTHER] fraudulent means, is liable
24 to pay all damages sustained in consequence of the filing or registration, which may
25 be recovered by or on behalf of the party injured in any court.

26 * Sec. 23. AS 45.50.170 is amended to read:

27 Sec. 45.50.170. INFRINGEMENT. A [SUBJECT TO AS 45.50.190, A]
28 person is liable in a civil action by the registrant [OWNER OF THE REGISTERED
29 TRADEMARK] for the remedies provided in AS 45.50.180 [,] if the person

- 30 (1) uses, without the consent of the registrant, a reproduction,
- 31 counterfeit, copy, or colorable imitation of a mark [TRADEMARK] registered under

1 AS 45.50.010 - 45.50.205 [AS 45.50.010 - 45.50.200] in connection with the sale,
2 distribution, offering for sale, or advertising of goods or services on or in connection
3 with which the use is likely to cause confusion or mistake or to deceive as to the
4 source of origin of the goods or services; or

5 (2) reproduces, counterfeits, copies, or colorably imitates the mark
6 [TRADEMARK] and applies the reproduction, counterfeit, copy, or colorable imitation
7 to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to
8 be used upon or in conjunction with the sale or distribution in this state of the goods
9 or services; except that under this paragraph the registrant may not recover profits or
10 damages unless the acts are committed with [KNOWLEDGE THAT] the intent
11 [TRADEMARK IS INTENDED TO BE USED] to cause confusion or mistake or to
12 deceive.

13 * Sec. 24. AS 45.50.180(a) is amended to read:

14 (a) A registrant [THE OWNER OF A TRADEMARK REGISTERED
15 UNDER AS 45.50.010 - 45.50.200] may enjoin the manufacture, use, display, or sale
16 of a counterfeit or imitation of the registrant's mark [TRADEMARK].

17 * Sec. 25. AS 45.50.180(b) is amended to read:

18 (b) The court may grant an injunction to restrain the manufacture, use, display,
19 or sale, and may require the defendant to pay to the registrant either [OWNER] the
20 profits derived from or the damages suffered by reason of the wrongful manufacture,
21 use, display, or sale, or both. The court may also order that the counterfeit or
22 imitation in the possession or under the control of a defendant be delivered to an
23 officer of the court, or to the complainant, to be destroyed. The court may also enter
24 judgment for punitive damages in an amount not to exceed three times the profits
25 and damages.

26 * Sec. 26. AS 45.50.180 is amended by adding new subsections to read:

27 (d) A registrant that owns a mark that is famous in the state is entitled to an
28 injunction against another's dilution of the mark. If the user of the famous mark
29 wilfully intended to trade on the registrant's reputation or to cause dilution of the
30 mark, the registrant is also entitled to remedies set out in (b) of this section. In
31 determining whether a mark is famous, a court may consider any factor, including the

Chapter 132

- 1 (1) degree of inherent or acquired distinctiveness of the mark in the
2 state;
3 (2) duration and extent of use of the mark in connection with the goods
4 and services;
5 (3) duration and extent of advertising and publicity of the mark in the
6 state;
7 (4) geographical extent of the trading area in which the mark is used;
8 (5) channels of trade for the goods or services with which the mark is
9 used;
10 (6) degree of recognition in the state of the mark in the registrant's
11 trading area and channel of trade, and in the user's trading area and channel of trade;
12 and
13 (7) nature and extent of use of the same or similar mark by other
14 persons.

15 (e) For purposes of (d) of this section, "dilution" means the use of a word,
16 symbol, or device, or a combination of one or more of these, in a manner that deprives
17 or reduces the distinctiveness of a mark.

18 * Sec. 27. AS 45.50.200 is amended to read:

19 Sec. 45.50.200. DEFINITIONS. In AS 45.50.010 - 45.50.205, [AS 45.50.010 -
20 45.50.200]

21 (1) "applicant" means the person filing an application for registration
22 of a mark [TRADEMARK], or a legal representative, successor, or assign of that
23 person;

24 (2) "certification mark" means a mark used upon or in connection
25 with the goods or services of one or more persons other than the registrant to
26 certify national or other origin, material, mode of manufacture, quality, accuracy,
27 or other characteristics of the goods or services or that the work or labor on the
28 goods or services was performed by members of a union or other organization;

29 (3) "collective mark" means a trademark or service mark used by
30 the members of a cooperative, an association or other collective group or
31 organization and includes marks used to indicate membership in a union, an

1 association, or other organization;

2 (4) "commissioner" means the commissioner of commerce and
3 economic development;

4 (5) [(3)] "department" means the Department of Commerce and
5 Economic Development;

6 (6) "mark" [(4) "PERSON"] means a certification mark, a collective
7 mark, a service mark, or a trademark;

8 (7) [AN INDIVIDUAL, FIRM, PARTNERSHIP, CORPORATION,
9 ASSOCIATION, UNION OR OTHER ORGANIZATION;

10 (5)] "registrant" means the person to whom the registration of a mark
11 [TRADEMARK] is issued, or a legal representative, successor, or assign of that
12 person;

13 (8) "service mark" means a word, symbol, design, or a combination
14 of one or more of these that identifies the services of a person;

15 (9) [(6)] "trademark" means a word, symbol, or design, or a
16 combination of one or more of these, used by a person to identify its goods and
17 distinguish them from those of another;

18 (10) "use" or "used" means the bona fide use of a mark in the
19 ordinary course of trade, and not made merely to reserve a right in the mark; a
20 mark is considered to be in use on goods when it is placed in any manner on the
21 goods, on the goods' container, on tags or labels affixed to the goods, on displays
22 associated with the goods, or, if the nature of the goods makes other types of
23 placement impracticable, on documents associated with the goods or with the sale
24 of the goods when they are sold or transported in commerce in this state; a mark
25 is considered to be in use on services when it is displayed in the sale or
26 advertising of services that are performed in this state;

27 (11) "verified" means that a document has been certified to be true
28 as provided in AS 09.63.040 [NAME, SYMBOL, OR DEVICE OR COMBINATION
29 OF ANY OF THESE ADOPTED AND USED BY A PERSON TO IDENTIFY
30 GOODS MADE OR SOLD BY THE PERSON AND TO DISTINGUISH THEM
31 FROM GOODS MADE OR SOLD BY OTHERS;

Chapter 132

1 (7) A TRADEMARK IS "USED" IN THIS STATE WHEN IT IS
2 PLACED IN ANY "USED" MANNER ON GOODS OR THEIR CONTAINERS OR
3 ON THE TAGS OR LABELS AFFIXED TO GOODS, WHEN THE GOODS ARE
4 SOLD OR DISTRIBUTED IN THE STATE].

5 * **Sec. 28.** AS 45.50 is amended by adding a new section to article 1 to read:

6 Sec. 45.50.205. SHORT TITLE. AS 45.50.010 - 45.50.205 may be cited as
7 the Alaska Trademark Act.

8 * **Sec. 29.** AS 45.50.180(c) and 45.50.190 are repealed.

9 * **Sec. 30.** TRANSITION. The amendments made to AS 45.50.010 - 45.50.200 by this Act
10 do not apply to an application, suit, proceeding, or appeal pending on the effective date of this
11 Act. Notwithstanding the amendments made to AS 45.50.070 - 45.50.090 in secs. 11 - 14 of
12 this Act, a registration or renewal of a registration that is in effect on the effective date of this
13 Act remains in effect for the full term that existed on the date of the registration or renewal.

14 * **Sec. 31.** AUTHORIZATION TO ADOPT REGULATIONS. The Department of
15 Commerce and Economic Development may adopt regulations to implement this Act;
16 however, the regulations may not be effective before the effective date of this Act.

17 * **Sec. 32.** Sections 1 - 30 of this Act take effect January 1, 1997.

18 * **Sec. 33.** Section 31 of this Act takes effect immediately under AS 01.10.070(c).