

Quicker

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1 IN THE HOUSE

BY: MR. RUTHERFORD

2 HOUSE BILL NO. 115

3 IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4 TWENTY-FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to provide for the registration
7 and protection of Trade-Marks."

8 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

9 Section 1. DEFINITIONS:

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

15 (B) The term "person" as used herein means any
16 individual, firm, partnership, corporation, association,
17 union or other organization.

18 (C) The term "applicant" as used herein embraces
19 the person filing an application for registration of a
20 trade-mark under this Act, his legal representatives,
21 successors or assigns.

22 (D) The term "registrant" as used herein embraces
23 the person to whom the registration of a trade-mark under
24 this Act is issued, his legal representatives, successors
25 or assigns.

26 (E) For the purposes of this Act, a trade-mark shall
27 be deemed to be "used" in this territory when it is placed
28 in any manner on the goods or their containers or on the
29 tags or labels affixed thereto and such goods are sold or

1 otherwise distributed in this territory.

2 (F) The term "Territory" as used herein shall be
3 deemed to mean the Territory of Alaska.

4 (G) The term "Auditor" as used herein shall be deemed
5 to mean the Auditor as an officer, or the Office of the
6 Auditor, as the context may require.

7 Section 2. REGISTRABILITY:

8 A trade-mark by which the goods of any applicant for
9 registration may be distinguished from the goods of others shall
10 not be registered if it

11 (a) consists of or comprises immoral, deceptive or
12 scandalous matter; or

13 (b) consists of or comprises matter which may
14 disparage or falsely suggest a connection with persons,
15 living or dead, institutions, beliefs, or national symbols,
16 or bring them into contempt, or disrepute; or

17 (c) consists of or comprises the flag or coat of arms
18 or other insignia of the United States, or of any state or
19 municipality, or of any foreign nation, or any simulation
20 thereof; or

21 (d) consists of or comprises the name, signature or
22 portrait of any living individual, except with his written
23 consent; or

24 (e) consists of a mark, which, (1) when applied to the
25 goods of the applicant, is merely descriptive or
26 deceptively misdescriptive of them, or (2) when applied to
27 the goods of the applicant is primarily geographically
28 descriptive or deceptively misdescriptive of them, or (3)
29 is primarily merely a surname; or

1 (f) consists of or comprises a trade-mark which so
2 resembles a trade-mark registered in this territory or a
3 trade-mark or trade name previously used in this territory
4 by another and not abandoned, as to be likely, when
5 applied to the goods of the applicant, to cause confusion
6 or mistake or to deceive; or

7 (g) consists of or comprises a trade-mark which so
8 resembles a trade-mark registered in the United States
9 Patent Office by another and not abandoned, as to be
10 likely, when applied to the goods of the applicant, to
11 cause confusion or mistake or to deceive, provided,
12 however, that should applicant prove that he is the owner
13 of a concurrent registration in the United States Patent
14 Office of his trade-mark covering an area including this
15 Territory, applicant may register his trade-mark hereunder.

16 Section 3. APPLICATION FOR REGISTRATION:

17 Subject to the limitations set forth in this Act, any
18 person who adopts and uses a trade-mark in this territory may
19 file in the office of the Auditor, on a form to be furnished by
20 the Auditor, an application for registration of that trade-mark
21 setting forth, but not limited to, the following information:

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

25 (b) the goods in connection with which the mark is
26 used and the mode or manner in which the mark is used in
27 connection with such goods and the class in which such
28 goods fall,

29 (c) the date when the trade-mark was first used

1 anywhere and the date when it was first used in this
2 Territory by the applicant or his predecessor in business,
3 and

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

10 (e) a statement that no other person has a
11 registration of the same or a similar trade-mark in the
12 United States Patent Office for the same or similar goods
13 or a statement that applicant is the owner of a concurrent
14 registration in the United States Patent Office of his
15 trade-mark covering an area including this territory.

16 The application shall be signed and verified by the
17 applicant or by a member of the firm or an officer of the
18 corporation or association applying.

19 The application shall be accompanied by a specimen or
20 facsimile of such trade-mark in triplicate.

21 The application for registration shall be accompanied
22 by a filing fee of _____ dollars (\$ _____), payable to the
23 Auditor.

24 **Section 4. CERTIFICATE OF REGISTRATION:**

25 Upon compliance by the applicant with the requirements
26 of this Act, the Auditor shall cause a certificate of
27 registration to be issued and delivered to the applicant. The
28 certificate of registration shall be issued under the signature
29 of the Auditor of Alaska and the seal of the Territory, and it

1 shall show the name and business address and, if a corporation,
2 the state of incorporation, of the person claiming ownership of
3 the trade-mark, the date claimed for the first use of the trade-
4 mark anywhere and the date claimed for the first use of the
5 trade-mark in this territory, the class of goods and a
6 description of the goods on which the trade-mark is used, a
7 reproduction of the trade-mark, the registration date and the
8 term of the registration.

9 Any certificate of registration issued by the Auditor
10 under the provisions hereof or a copy thereof duly certified by
11 the Auditor shall be admissible in evidence as competent and
12 sufficient proof of the registration of such trade-mark in any
13 action or judicial proceedings in any court of this territory.

14 Section 5. DURATION AND RENEWAL:

15 Registration of a trade-mark hereunder shall be
16 effective for a term of ten years from the date of registration
17 and, upon application filed within six months prior to the
18 expiration of such term, on a form to be furnished by the
19 Auditor, the registration may be renewed for a like term. A
20 renewal fee of _____ dollars (\$ _____), payable to the
21 Auditor, shall accompany the application for renewal of the
22 registration.

23 A trade-mark registration may be renewed for
24 successive periods of ten years in like manner.

25 The Auditor shall notify registrants of trade-marks
26 hereunder of the necessity of renewal within the year next
27 preceding the expiration of the ten years from the date of
28 registration by writing to the last known address of the
29 registrants.

1 Any registration in force on the date on which this
2 Act shall become effective shall expire ten years from the date
3 of the registration or of the last renewal thereof or one year
4 after the effective date of this Act, whichever is later, and
5 may be renewed by filing an application with the Auditor on a
6 form furnished by him and paying the aforementioned renewal fee
7 therefor within six months prior to the expiration of the
8 registration.

9 The Auditor shall within six months after the
10 effective date of this Act notify all registrants of trade-
11 marks under previous acts of the date of expiration of such
12 registrations unless renewed in accordance with the provisions
13 of this Act by writing to the last known address of the
14 registrants.

15 Section 6. ASSIGNMENT:

16 Any trade-mark and its registration hereunder shall be
17 assignable with the good will of the business in which the
18 trade-mark is used, or with that part of the good will of the
19 business connected with the use of and symbolized by the
20 trade-mark. Assignment shall be by instruments in writing duly
21 executed and may be recorded with the Auditor upon the payment
22 of a fee of _____ dollars (\$ _____) payable to the Auditor
23 who, upon recording of the assignment, shall issue in the name
24 of the assignee a new certificate for the remainder of the term
25 of the registration or of the last renewal thereof. An
26 assignment of any registration under this Act shall be void as
27 against any subsequent purchaser for valuable consideration
28 without notice unless it is recorded with the Auditor within
29 three months after the date thereof or prior to such subsequent

1 purchase.

2 Section 7. RECORDS:

3 The Auditor shall keep for public examination a record
4 of all trade-marks registered or renewed under this Act.

5 Section 8. CANCELEATION:

6 The Auditor shall cancel from the register:

7 (1) after one year from the effective date of this Act,
8 all registrations under prior acts which are more than ten
9 years old and not renewed in accordance with this Act:

10 (2) any registration concerning which the Auditor
11 shall receive a voluntary request for cancellation thereof
12 from the registrant or the assignee of record;

13 (3) all registrations granted under this Act and not
14 renewed in accordance with the provisions hereof;

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

17 (a) that the registered trade-mark has been
18 abandoned,

19 (b) that the registrant is not the owner of the
20 trade-mark,

21 (c) that the registration was granted improperly,

22 (d) that the registration was obtained
23 fraudulently,

24 (e) that the registered trade-mark is so similar,
25 as to be likely to cause confusion or mistake or to
26 deceive, to a trade-mark registered by another person
27 in the United States Patent Office, prior to the date
28 of the filing of the applicant for registration by the
29 registrant hereunder, and not abandoned; provided,

1 however, that should the registrant prove that he is
2 the owner of a concurrent registration of his trade-
3 mark in the United States Patent Office covering an
4 area including this territory, the registration
5 hereunder shall not be cancelled,

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

8 Section 9. CLASSIFICATION:

9 The following general classes of goods are established
10 for convenience of administration of this Act, but not to limit
11 or extend the applicant's or registrant's rights, and a single
12 application for registration of a trade-mark may include any or
13 all goods upon which the trade-mark is actually being used
14 comprised in a single class, but in no event shall a single
15 application include goods upon which the trade-mark is being
16 used which fall within different classes of goods.

17 The said classes are as follows:

- 18 1 Raw or partly prepared materials
- 19 2 Receptacles
- 20 3 Baggage, animal equipments, portfolios, and
21 pocketbooks
- 22 4 Abrasives and polishing materials
- 23 5 Adhesives
- 24 6 Chemicals and chemical compositions
- 25 7 Cordage
- 26 8 Smokers' articles, not including tobacco products
- 27 9 Explosives, firearms, equipments, and projectiles
- 28 10 Fertilizers
- 29 11 Inks and inking materials

- 1 12 Construction materials
- 2 13 Hardware and plumbing and steam-fitting supplies
- 3 14 Metals and metal castings and forgings
- 4 15 Oils and greases
- 5 16 Paints and painters' materials
- 6 17 Tobacco products
- 7 18 Medicines and pharmaceutical preparations
- 8 19 Vehicles
- 9 20 Linoleum and oiled cloth
- 10 21 Electrical apparatus, machines, and supplies
- 11 22 Games, toys, and sporting goods
- 12 23 Cutlery, machinery, and tools, and parts thereof
- 13 24 Laundry appliances and machines
- 14 25 Locks and safes
- 15 26 Measuring and scientific appliances
- 16 27 Horological instruments
- 17 28 Jewelry and precious-metal ware
- 18 29 Brooms, brushes, and dusters
- 19 30 Crockery, earthenware, and porcelain
- 20 31 Filters and refrigerators
- 21 32 Furniture and upholstery
- 22 33 Glassware
- 23 34 Heating, lighting, and ventilating apparatus
- 24 35 Belting, hose, machinery packing, and non-metallic
tires
- 25 36 Musical instruments and supplies
- 26 37 Paper and stationery
- 27 38 Prints and publications
- 28 39 Clothing

- 1 40 Fancy goods, furnishings, and notions
- 2 41 Canes, parasols, and umbrellas
- 3 42 Knitted, netted and textile fabrics, and
- 4 substitutes therefor
- 5 43 Thread and yarn
- 6 44 Dental, medical, and surgical appliances
- 7 45 Soft drinks and carbonated waters
- 8 46 Foods and ingredients of foods
- 9 47 Wines
- 10 48 Malt beverages and liquors
- 11 49 Distilled alcoholic liquors
- 12 50 Merchandise not otherwise classified
- 13 51 Cosmetics and toilet preparations
- 14 52 Detergents and soaps

15 Section 10. FRAUDULENT REGISTRATION:

16 Any person who shall for himself, or on behalf of any
17 other person, procure the filing or registration of any
18 trade-mark in the office of the Auditor under the provisions
19 hereof, by knowingly making any false or fraudulent
20 representation or declaration, verbally or in writing, or by any
21 other fraudulent means, shall be liable to pay all damages
22 sustained in consequence of such filing or registration, to be
23 recovered by or on behalf of the party injured thereby in any
24 court of competent jurisdiction.

25 Section 11. INFRINGEMENT:

26 Subject to the provisions of Section 13 hereof any
27 person who shall

- 28 (a) use, without the consent of the registrant,
- 29 any reproduction, counterfeit, copy, or colorable

1 imitation of a trade-mark registered under this Act in
2 connection with the sale, offering for sale, or
3 advertising of any goods on or in connection with
4 which such use is likely to cause confusion or mistake
5 or to deceive as to the source of origin of such goods;
6 or

7 (b) reproduce, counterfeit, copy or colorably
8 imitate any such trade-mark and apply such reproduction
9 counterfeit, copy or colorable imitation to labels,
10 signs, prints, packages, wrappers, receptacles, or
11 advertisements intended to be used upon or in
12 connection with the sale or other distribution in this
13 territory of such goods;

14 shall be liable to a civil action by the owner of such
15 registered trade-mark for any or all of the remedies provided in
16 Section 12 hereof, except that under subsection (b) hereof the
17 registrant shall not be entitled to recover profits or damages
18 unless the acts have been committed with knowledge that such
19 trade-mark is intended to be used to cause confusion or mistake
20 or to deceive.

21 Section 12. REMEDIES:

22 Any owner of a trade-mark registered under this Act
23 may proceed by suit to enjoin the manufacture, use, display or
24 sale of any counterfeits or imitations thereof and any court of
25 competent jurisdiction may grant injunctions to restrain such
26 manufacture, use, display, or sale as may be by the said court
27 deemed just and reasonable, and may require the defendants to pay
28 to such owner all profits derived from and/or all damages
29 suffered by reason of such wrongful manufacture, use, display or

1 sale; and such court may also order that any such counterfeits
2 or imitations in the possession or under the control of any
3 defendant in such case, be delivered to an officer of the court,
4 or to the complainant, to be destroyed.

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

8 Section 13. COMMON LAW RIGHTS:

9 Nothing herein shall adversely affect the rights or
10 the enforcement of rights in trade-marks acquired in good faith
11 at any time at common law.

12 Section 14. SEVERABILITY:

13 If any provision hereof, or the application of such
14 provision to any person or circumstance is held invalid, the
15 remainder of this Act shall not be affected thereby.

16 Section 15. TIME OF TAKING EFFECT - REPEAL OF PRIOR ACTS:

17 This Act shall be in force and take effect _____
18 after its enactment but shall not affect any suit, proceeding or
19 appeal then pending. All acts relating to trade-marks and parts
20 of any other acts inconsistent herewith are hereby repealed on
21 the effective date of this Act, provided that as to any suit,
22 proceeding or appeal, and for that purpose only, pending at the
23 time this Act takes effect such repeal shall be deemed not to be
24 effective until final determination of said pending suit, pro-
25 ceeding or appeal.