

1 IN THE HOUSE

BY RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 68

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SECOND LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to provide for the registration and
7 protection of trademarks; repealing Ch. 142,
8 SLA 1959; and providing for an effective date.

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

10 Section 1. DEFINITIONS

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

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

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

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

24 (E) For the purposes of this Act, a trademark shall be
25 deemed to be "used" in this state when it is placed in any manner
26 on the goods or their containers or on the tags or labels affixed
27 thereto and such goods are sold or otherwise distributed in this state.

28 Sec. 2. REGISTRABILITY. A trademark by which the goods of
29 any applicant for registration may be distinguished from the

1 goods of others shall not be registered if it

2 (a) consists of or comprises immoral, deceptive or
3 scandalous matter; or

4 (b) consists of or comprises matter which may dis-
5 parage or falsely suggest a connection with persons, living or
6 dead, institutions, beliefs, or national symbols, or bring them
7 into contempt, or disrepute; or

8 (c) consists of or comprises the flag or coat of arms
9 or other insignia of the United States, or of any state or
10 municipality, or of any foreign nation, or any simulation thereof
11 or

12 (d) consists of or comprises the name, signature or
13 portrait of any living individual, except with his written con-
14 sent; or

15 (e) consists of a mark which, (1) when applied to the
16 goods of the applicant, is merely descriptive or deceptively
17 misdescriptive of them, or (2) when applied to the goods of the
18 applicant is primarily geographically descriptive or deceptively
19 misdescriptive of them, or (3) is primarily merely a surname
20 provided, however, that nothing in this section (e) shall pre-
21 vent the registration of a mark used in this state by the appli-
22 cant which has become distinctive of the applicant's goods.
23 The secretary of state may accept as evidence that the mark has
24 become distinctive, as applied to the applicant's goods, proof of
25 continuous use thereof as a mark by the applicant in this state
26 or elsewhere for the five years next preceding the date of the
27 filing of the application for registration; or

28 (f) consists of or comprises a trademark which so
29 resembles a trademark registered in this state or a trademark

1 goods of others shall not be registered if it

2 (a) consists of or comprises immoral, deceptive or
3 scandalous matter; or

4 (b) consists of or comprises matter which may dis-
5 parage or falsely suggest a connection with persons, living or
6 dead, institutions, beliefs, or national symbols, or bring them
7 into contempt, or disrepute; or

8 (c) consists of or comprises the flag or coat of arms
9 or other insignia of the United States, or of any state or
10 municipality, or of any foreign nation, or any simulation thereof
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13 portrait of any living individual, except with his written con-
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16 goods of the applicant, is merely descriptive or deceptively
17 misdescriptive of them, or (2) when applied to the goods of the
18 applicant is primarily geographically descriptive or deceptively
19 misdescriptive of them, or (3) is primarily merely a surname
20 provided, however, that nothing in this section (e) shall pre-
21 vent the registration of a mark used in this state by the appli-
22 cant which has become distinctive of the applicant's goods.
23 The secretary of state may accept as evidence that the mark has
24 become distinctive, as applied to the applicant's goods, proof of
25 continuous use thereof as a mark by the applicant in this state
26 or elsewhere for the five years next preceding the date of the
27 filing of the application for registration; or

28 (f) consists of or comprises a trademark which so
29 resembles a trademark registered in this state or a trademark

1 or trade name previously used in this state by another and not
2 abandoned, as to be likely, when applied to the goods of the
3 applicant, to cause confusion or mistake or to deceive.

4 Sec. 3. APPLICATION FOR REGISTRATION. Subject to the
5 limitations set forth in this Act, any person who adopts and
6 uses a trademark in this state may file in the office of the
7 secretary of state, on a form to be furnished by the secretary of
8 state, an application for registration of that trademark setting
9 forth, but not limited to, the following information:

10 (a) the name and business address of the person
11 applying for such registration; and, if a corporation, the
12 state of incorporation,

13 (b) the goods in connection with which the mark is
14 used and the mode or manner in which the mark is used in con-
15 nection with such goods and the class in which such goods fall,

16 (c) the date when the trademark was first used any-
17 where and the date when it was first used in this state by the
18 applicant or his predecessor in business, and

19 (d) a statement that the applicant is the owner of
20 the trademark and that no other person has the right to use such
21 trademark in this state either in the identical form thereof or in
22 such near resemblance thereto as might be calculated to deceive
23 or to be mistaken therefor.

24 The application shall be signed and verified by the appli-
25 cant or by a member of the firm or an officer of the corporation
26 or association applying.

27 The application shall be accompanied by a specimen or fac-
28 simile of such trademark in triplicate.

29 The application for registration shall be accompanied by a

1 filing fee of ten dollars (\$10.00), payable to the secretary of
2 state.

3 Sec. 4. CERTIFICATE OF REGISTRATION. Upon compliance by
4 the applicant with the requirements of this Act, the secretary of
5 state shall cause a certificate of registration to be issued and
6 delivered to the applicant. The certificate of registration shall
7 be issued under the signature of the secretary of state and the
8 seal of the state, and it shall show the name and business ad-
9 dress and, if a corporation, the state of incorporation, of the
10 person claiming ownership of the trademark, the date claimed for
11 the first use of the trademark anywhere and the date claimed for
12 the first use of the trademark in this state, the class of goods
13 and a description of the goods on which the trademark is used,
14 a reproduction of the trademark, the registration date and the
15 term of the registration.

16 Any certificate of registration issued by the secretary of
17 state under the provisions hereof or a copy thereof duly certi-
18 fied by the secretary of state shall be admissible in evidence as
19 competent and sufficient proof of the registration of such trade-
20 mark in any action or judicial proceedings in any court of this
21 state.

22 Sec. 5. DURATION AND RENEWAL. Registration of a trademark
23 hereunder shall be effective for a term of ten years from the date
24 of registration and, upon application filed within six months
25 prior to the expiration of such term, on a form to be furnished
26 by the secretary of state, the registration may be renewed for a
27 like term. A renewal fee of ten dollars (\$10.00), payable to
28 the secretary of state, shall accompany the application for renew-
29 al of the registration.

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1 A trademark registration may be renewed for successive
2 periods of ten years in like manner.

3 The secretary of state shall notify registrants of trade-
4 marks hereunder of the necessity of renewal within the year next
5 preceding the expiration of the ten years from the date of reg-
6 istration, by writing to the last known address of the regis-
7 trants.

8 Any registration in force on the date on which this Act
9 shall become effective shall expire five years from the date of
10 the registration and may be renewed by filing an application with
11 the secretary of state on a form furnished by him and paying the
12 aforementioned renewal fee therefor within six months prior to
13 the expiration of the registration.

14 The secretary of state shall within six months after the
15 effective date of this Act notify all registrants of trademarks
16 under previous acts of the date of expiration of such registra-
17 tions unless renewed in accordance with the provisions of this
18 Act, by writing to the last known address of the registrants.

19 Sec. 6. ASSIGNMENT. Any trademark and its registration
20 hereunder shall be assignable with the good will of the business
21 in which the trademark is used, or with that part of the good
22 will of the business connected with the use of and symbolized by
23 the trademark. Assignment shall be by instruments in writing
24 duly executed and may be recorded with the secretary of state
25 upon the payment of a fee of two dollars (\$2.00), payable to
26 the secretary of state who, upon recording of the assignment,
27 shall issue in the name of the assignee a new certificate for the
28 remainder of the term of the registration or of the last renewal
29 thereof. An assignment of any registration under this Act shall

1 be void as against any subsequent purchaser for valuable con-
2 sideration without notice, unless it is recorded with the
3 secretary of state within three months after the date thereof or
4 prior to such subsequent purchase.

5 Sec. 7. RECORDS. The secretary of state shall keep for
6 public examination a record of all trademarks registered or
7 renewed under this Act.

8 Sec. 8. CANCELLATION. The secretary of state shall cancel
9 from the register:

10 (1) all registrations under prior acts which are more than
11 five years old and not renewed in accordance with this Act;

12 (2) any registration concerning which the secretary of
13 state shall receive a voluntary request for cancellation thereof
14 from the registrant or the assignee or record;

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

17 (4) any registration concerning which a court of competent
18 jurisdiction shall find

19 (a) that the registered trademark has been abandoned,

20 (b) that the registrant is not the owner of the
21 trademark,

22 (c) that the registration was granted improperly,

23 (d) that the registration was obtained fraudulently,

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

1 owner of a concurrent registration of his trademark in the United
2 States Patent Office covering an area including this state, the
3 registration hereunder shall not be cancelled.

4 (5) when a court of competent jurisdiction shall order can-
5 cellation of a registration on any ground.

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

14 The said classes are as follows:

- 15 1. Raw or partly prepared materials
- 16 2. Receptacles
- 17 3. Baggage, animal equipments, portfolios, and
18 pocketbooks
- 19 4. Abrasives and polishing materials
- 20 5. Adhesives
- 21 6. Chemicals and chemical compositions
- 22 7. Cordage
- 23 8. Smokers' articles, not including tobacco products
- 24 9. Explosives, firearms, equipments, and projectiles
- 25 10. Fertilizers
- 26 11. Inks and inking materials
- 27 12. Construction materials
- 28 13. Hardware and plumbing and steam-fitting supplies
- 29 14. Metals and metal castings and forgings

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

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- 1 43. Thread and yarn
- 2 44. Dental, medical, and surgical appliances
- 3 45. Soft drinks and carbonated waters
- 4 46. Foods and ingredients of foods
- 5 47. Wines
- 6 48. Malt beverages and liquors
- 7 49. Distilled alcoholic liquors
- 8 50. Merchandise not otherwise classified
- 9 51. Cosmetics and toilet preparations
- 10 52. Detergents and soaps

11 Sec. 10. FRAUDULENT REGISTRATION. Any person who shall
12 for himself, or on behalf of any other person, procure the filing
13 or registration of any trademark in the office of the secretary
14 of state under the provisions hereof, by knowingly making any
15 false or fraudulent representation or declaration, verbally or in
16 writing, or by any other fraudulent means, shall be liable to pay
17 all damages sustained in consequence of such filing or registra-
18 tion, to be recovered by or on behalf of the party injured thereby
19 in any court of competent jurisdiction.

20 Sec. 11. INFRINGEMENT. Subject to the provisions of Sec. 13
21 hereof, any person who shall

22 (a) use, without the consent of the registrant, any
23 reproduction, counterfeit, copy, or colorable imitation of a
24 trademark registered under this Act in connection with the sale,
25 offering for sale, or advertising of any goods on or in connec-
26 tion with which such use is likely to cause confusion or mistake
27 or to deceive as to the source of origin of such goods; or

28 (b) reproduce, counterfeit, copy or colorably imitate any
29 such trademark and apply such reproduction, counterfeit, copy or

1 colorable imitation to labels, signs, prints, packages, wrappers,
2 receptacles, or advertisements intended to be used upon or in
3 conjunction with the sale or other distribution in this state of
4 such goods;

5 shall be liable to a civil action by the owner of such registered
6 trademark for any or all of the remedies provided in Section 12
7 hereof, except that under subsection (b) hereof the registrant
8 shall not be entitled to recover profits or damages unless the
9 acts have been committed with knowledge that such trademark is
10 intended to be used to cause confusion or mistake or to deceive.

11 Sec. 12. REMEDIES. Any owner of a trademark registered under
12 this Act may proceed by suit to enjoin the manufacture, use, dis-
13 play or sale of any counterfeits or imitations thereof and any
14 court of competent jurisdiction may grant injunctions to restrain
15 such manufacture, use, display or sale as may be by the said court
16 deemed just and reasonable, and may require the defendants to pay
17 to such owner all profits derived from and/or all damages suf-
18 fered by reason of such wrongful manufacture, use, display or
19 sale; and such court may also order that any such counterfeits or
20 imitations in the possession or under the control of any defendant
21 in such case, be delivered to an officer of the court, or to the
22 complainant, to be destroyed.

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

26 Sec. 13. COMMON LAW RIGHTS. Nothing herein shall adversely
27 affect the rights or the enforcement of rights in trademarks ac-
28 quired in good faith at any time at common law.

29 Sec. 14. SEVERABILITY. If any provision hereof, or the

1 application of such provision to any person or circumstance is
2 held invalid, the remainder of this Act shall not be affected
3 thereby.

4 Sec. 15. REPEALER. Ch. 142, SLA 1959 is repealed.

5 Sec. 16. SAVING CLAUSE. As to any suit, proceeding, or
6 appeal, and for that purpose only, pending at the time this Act
7 takes effect, such repeal shall be considered not to be effective
8 until final determination of said pending suit, proceeding, or
9 appeal.

10 Sec. 17. EFFECTIVE DATE. This Act takes effect on July 1,
11 1961.

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