CHAPTER 47-22
TRADEMARKS

47-22-01. Definitions.

As used in this chapter, unless the context otherwise requires, the term:

1. "Applicant" embraces the person filing an application for registration of a mark under this chapter and that person's legal representatives, successors, or assigns.
2. "Mark" includes any trademark or service mark entitled to registration under this chapter whether or not registered.
3. "Person" means any individual, firm, partnership, corporation, limited liability company, association, union, or other organization.
4. "Registrant" embraces the person to whom the registration of a mark under this chapter is issued and that person's legal representatives, successors, or assigns.
5. "Service mark" means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.
6. "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 that person and to distinguish them from goods made or sold by others.

For the purposes of this chapter, 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 the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state.

47-22-02. Registrability.

A 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;
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;
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;
4. Consists of or comprises the name, signature, or portrait of any living individual, except with that individual's written consent;
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;
   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 subsection 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 mark that resembles a mark registered in this state or a trade name, corporate name, limited liability company name, limited liability partnership name, limited partnership name, limited liability limited partnership name, or fictitious name registered with the office of the secretary of state, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

47-22-03. Application for registration.

Subject to the limitations set forth in this chapter, any person who adopts and uses a 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 mark setting forth, but not limited to, the following information:

1. The name and business address of the person applying for such registration; if a corporation, the state or country of incorporation and address of the principal place of business; if a limited partnership, the state or country of the organization and address of the principal place of business; and, if a limited liability company, the state or country of organization and the principal place of business;
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, or classes, in which such goods or services fall;
3. The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or the applicant's predecessor in business; and
4. A statement that the applicant is the owner of the mark and that no other person has the right to use such 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.

The application must be signed by the applicant or by a member of the firm, an officer of the corporation or association, or manager of the limited liability company applying.

The application must be accompanied by a specimen or facsimile of such mark in duplicate.

The application for registration must be accompanied by a filing fee of thirty dollars for one class of goods or services and twenty dollars for each additional class, payable to the secretary of state.

47-22-04. Certificate of registration.

Upon compliance by the applicant with the requirements of this chapter, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration must be issued under the signature of the secretary of state and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, and, if a limited liability company, the state of organization, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class, or classes, of goods or services and a description of the goods or services on which the mark is used, a facsimile of the mark, the registration date, and the term of registration.

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 is admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceedings in any court of this state.

47-22-05. Duration and renewal.

Registration of a mark hereunder is effective for a term of ten years from the date of registration and, upon application filed prior to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed in the same manner as a new application for a like term. A renewal fee of thirty dollars for one class of goods or services and twenty dollars for each additional class, payable to the secretary of state, must accompany the application for renewal of the registration.

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

The secretary of state shall notify registrants hereunder of the necessity of renewal at least ninety days before the expiration of the registration by writing to the last-known address of the registrants.

47-22-06. Assignment.

Any mark and its registration hereunder shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected

with the use of and symbolized by the mark. Assignment must be made by the assignor on forms provided by the secretary of state setting forth the name and business address of the assignor and the assignee, the mark certificate number, and the class or classes of goods or services on which the mark will appear. The assignment must be filed by the secretary of state upon the payment of a fee of thirty dollars 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 assignment of any registration under this chapter is 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.

47-22-06.1. Change of name or address of registrant.

Any registrant that effects a name change must record that name change with the secretary of state. The secretary of state must record the name change upon the payment of a fee of thirty dollars and filing of the following:

1. A notarized statement reciting the name change if the registrant is an individual.
2. A certificate of fact reciting the name change duly authenticated by the proper officer of the state or country if the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership incorporated or organized in another state or country and does not have a certificate of authority to transact business in North Dakota.
3. An amendment or application for amended certificate of authority for a registrant that is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership registered with the secretary of state.

The secretary of state shall issue a certificate in the new name of the registrant for the remainder of the term of the registration or of the last renewal thereof.

A registrant must notify the secretary of state when effecting a change of address. A corporate annual report or limited partnership renewal filed by the secretary of state that reflects a change of address of the principal place of business of a registrant may serve as such notice.

47-22-07. Records.

The secretary of state shall keep for public examination a record of all marks registered or renewed under this chapter.

47-22-08. Cancellation.

The secretary of state shall cancel from the register:

1. Any registration concerning which the secretary of state shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record on forms prescribed by the secretary of state.
2. All registrations granted under this chapter and not renewed in accordance with the provisions hereof.
3. Any registration concerning which a state district court shall find any of the following:
   a. That the registered mark has been abandoned.
   b. That the registrant is not the owner of the mark.
   c. That the registration was granted improperly.
   d. That the registration was obtained fraudulently.
   e. That the registration mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a 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 the registrant is the owner of a concurrent registration of the registrant's mark in the United States patent office covering an area including this state, the registration hereunder shall not be canceled.
4. When a district court shall order cancellation of a registration on any ground.

5. Any mark whose registered owner is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership that has ceased to exist for six months.

47-22-09. Classification.

The following general classes of goods and services are established for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used.

The said classes are as follows:

1. Goods.
    a. Raw or partly prepared materials.
    b. Receptacles.
    c. Baggage, animal equipment, portfolios, and pocketbooks.
    d. Abrasives and polishing materials.
    e. Adhesives.
    f. Chemicals and chemical compositions.
    g. Cordage.
    h. Smokers' articles, not including tobacco products.
    i. Explosives, firearms, equipments, and projectiles.
    j. Fertilizers.
    k. Inks and inking materials.
    l. Construction materials.
    m. Hardware and plumbing and steam-fitting supplies.
    n. Metals and metal castings and forgings.
    o. Oils and greases.
    p. Paints and painters' materials.
    q. Tobacco products.
    r. Medicines and pharmaceutical preparations.
    s. Vehicles.
    t. Linoleum and oiled cloth.
    u. Electrical apparatus, machines, and supplies.
    v. Games, toys, and sporting goods.
    w. Cutlery, machinery, and tools, and parts thereof.
    x. Laundry appliances and machines.
    y. Locks and safes.
    z. Measuring and scientific appliances.
    aa. Horological instruments.
    bb. Jewelry and precious-metal ware.
    cc. Brooms, brushes, and dusters.
    dd. Crockery, earthenware, and porcelain.
    ee. Filters and refrigerators.
    ff. Furniture and upholstery.
    gg. Glassware.
    hh. Heating, lighting, and ventilating apparatus.
    ii. Belting, hose, machinery packing, and nonmetallic tires.
    jj. Musical instruments and supplies.
    kk. Paper and stationery.
    ll. Prints and publications.
    mm. Clothing.
    nn. Fancy goods, furnishings, and notions.
    oo. Canes, parasols, and umbrellas.
    pp. Knitted, netted, and textile fabrics, and substitutes therefor.
    qq. Thread and yarn.
    rr. Dental, medical, and surgical appliances.
    ss. Soft drinks and carbonated waters.

tt. Foods and ingredients of foods.
uu. Wines.
vv. Malt beverages and liquors.
ww. Distilled alcoholic liquors.
xx. Merchandise not otherwise classified.
yy. Cosmetics and toilet preparations.
zz. Detergents and soaps.

2. Services.
   a. Miscellaneous.
   b. Advertising and business.
   c. Insurance and financial.
   d. Construction and repair.
   e. Communications.
   f. Transportation and storage.
   g. Material treatment.
   h. Education and entertainment.

47-22-10. Fraudulent registration.

Any person who shall for that person, or on behalf of any other person, procure the filing or registration of any 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.

47-22-11. Infringement.

Subject to the provisions of section 47-22-13, any person who shall:

1. Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter 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 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 connection 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 mark for any or all of the remedies provided in section 47-22-12, except that under subsection 2 the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

47-22-12. Remedies.

Any owner of a mark registered under this chapter 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 or all damages suffered by reason of such wrongful manufacture, use, display, or sale, or either, 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.

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

47-22-13. Common-law rights.

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