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ROLL NUMBER

DESCRIPTION

2280

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2280

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2280**

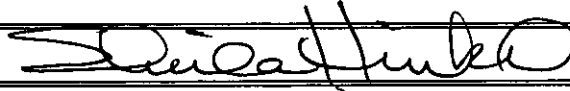
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 24, 2007**

Recorder Job Number: **1814**

Committee Clerk Signature



Minutes:

Larry Rosenow - In Favor

TESTIMONY # 1 Read the testimony.

S Klein: You had a trade name, had cards made, signs, web pages, then you got a call from the law firm in New York, who said, "Don't do that anymore." They had registered prior to when you had registered?

L Rosenow: I found out on the search that they had it since 1972.

S Klein: So what you're asking is that Secretary of State conducts a better search?

L Rosenow: Conducts a search, national, a national search before issuing a ND trademark, otherwise it's worthless.

S Klein: You said trademark or trade name, is there a difference?

L Rosenow: I'm not sure about that.

S Andrist: Is it easy to do a search?

L Rosenow: It took about 1 minute.

S Andrist: Did that satisfy you?

L Rosenow: I found what I needed.

S Wanzek: If there were a provision in law, would that save you a headache?

L Rosenow: They were representing businesses.

S Hacker: What if we had to do it 10 years ago. Would that hold the Secretary of States office liable?

L Rosenow: I look at it as a benefit to the customer.

S Klein: This would be to help people.

S Andrist: Can you register nationally.

L Rosenow: I would do it if I can.

S Andrist: Why register in ND if you don't get any protection?

Al Jaeger – Secretary of State - In Opposition

To register the trademark, it is \$30 to protect it for 10 years. If we don't have a trademark in our records, by law, we have to file your name.

It is too time consuming to check nationally, and costly, "what if you miss one?" this puts the requirement and burden on the state agency. The law is for trade names, registered at the office. You can have a trademark, that is under federal protection.

Trade names are registered at \$25 for a 5 year registration.

Anyone can check on it federally and 24/7 on our website for several years. You log in your name and find similarities in ND names.

Trademarks are \$30. To look for names across the nation would be a HUGE challenge.

S Behm: Are you suggesting he could have looked somewhere else?

A Jaeger: We just followed the laws. If federally files, they're taking a change. They should check nationally.

S Behm: Are you trying to prevent this from having this happen to anyone else? Do they need to check nationwide?

A Jaeger: Yes, if they would

S Potter: Example of Grandma Campbells had nothing to do with the law. Campbell Soup just had better lawyers.

A Jaeger: The name was a federally registered trademark. This bill is for trademark, not tradename.

S Potter: What about other sates.

A Jaeger: I'm not sure if there is registration in NY
If federally registered, they would take precedence.

S Andrist: There is no single site to find a trademark to register?

A Jaeger: You would search a federal website for trademarks.

S Andrist: I might suggest to place a spot on the website for registrants.

A Jaeger: It's on our website now.

CLOSE

Motion Made for DNP by S Potter

Second by S Hacker

Vote DNP passed 5-2

Carrier: S Klein

FISCAL NOTE
Requested by Legislative Council
01/18/2007

Bill/Resolution No.: SB 2280

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$10,500	\$0	\$10,500	\$0	\$10,500	\$0
Expenditures	\$0	\$0	\$159,000	\$0	\$165,000	\$0
Appropriations	\$0	\$0	\$159,000	\$0	\$165,000	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill mandates the Secretary of State to conduct a nationwide search of trademark records. Doing the search would have a major fiscal impact on the agency along with creating a potentially significant liability situation for the state.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Lines 6 thru 9 mandate the Secretary of State to conduct a nationwide search of trademark records. It would entail contacting the appropriate registry in each of the 50 states along with the federal government's registry.

Many states charge a records search fee. The Secretary of State's office averages approximately 300 new and renewed trademarks a biennium. We estimate it would cost \$75,000 a biennium to conduct the nationwide searches. In addition, it would require the hiring of one FTE to conduct them.

When the agency's search is completed, the applicant would then be given the results. Apparently, the applicant would then make a decision on whether or not to proceed with the registry of the trademark in North Dakota.

Because the state is conducting the nationwide search, it could encounter a significant liability situation. For example, in the event the applicant's chosen trademark ultimately faces legal challenges, the applicant could claim the state was at fault because the search did not discover the conflict with another trademark. The potential of such a situation would likely result in the agency's contribution to the state's risk management being increased substantially. This additional expense has not been factored into the estimated expenditures or appropriations.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The base fee to register a trademark for ten years is \$30. The estimated revenue listed above is based on 300 new and renewed trademarks a biennium.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures would cover the fees paid to the applicable registry in other states, the expenses of conducting the

searches, and the hiring of one additional FTE to conduct the searches.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The above estimated appropriation is needed to cover the projected expenditures. The agency could not absorb the additional cost in its present budget.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	01/22/2007

Date: 1-24-07

Roll Call Vote: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2280

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DNP

Motion Made By potter Seconded By Hacker

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur		✓
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel		✓
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 5 No 2

Absent _____

Floor Assignment Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 24, 2007 2:58 p.m.

Module No: SR-16-1144
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2280: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO NOT PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2280 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

SB 2280

Chairman Klein and Committee members
Industry Business and Labor Committee

My name is Larry Rosenow and I am here to testify on Senate Bill No. 2280.

I received a letter from a New York law firm requesting that I stop using a trade name that I had registered in ND since 1991 and had been using as my company name to sell houses for Nelson American Homes. I went to the Secretary of States office regarding this issue and I was told that it was a Federal issue and that they could not help me. I asked them who could and they could not tell me. I proceeded to the Bismarck City Library and they found a site that could help me in about two minutes. (TESS = Trademark Electronic Search System) After getting on the site, it took me about a minute to find the information that I needed. The NY company had the trademark registered since 1972. At this point I am basically out of business until I can get a new name approved and on the web and all of my signs and records changed.. I requested this bill so that this does not happen to anyone else in the future.

Sincerely

Larry Rosenow

#1
2280

Terry Stevenson

From: Terry Stevenson [Terry@nelsonamerican.com]
Sent: Friday, December 22, 2006 12:44 PM
To: 'lp@hrfmlaw.com'
Cc: 'cnelson@nelsonamerican.com'; 'Kirk Davey'; 'dakota2132001@yahoo.com'
Subject: RE: Environmentone trademark infringement

Dear Lee Palmateer:

This email is in response to your letter dated December 20, 2006 regarding the use of the domain name www.environmentone.net on our website.

Nelson American Homes provides links on our website for our Dealers. In this case the name environmentone is owned and used by Mr. Larry Rosenow. It is the responsibility of our Dealers to make sure their business and web names used on our site are legal and not infringing on any trademarks.

Therefore, you'll need to contact Larry Rosenow regarding this matter. We informed him on December 21 of your letter to us. He stated the name is registered with the State of North Dakota and has been for quite some time. He has been copied on this email if you wish to exchange emails with him.

What I have done, is cancelled the domain name on the site that handles all our web accounts until this is resolved. I will fax you a copy of that cancellation with Go Daddy.com as a confirmation that it has been done. Our web person is on vacation until after Christmas therefore we cannot remove any references to environment one until he returns next week.

We have no problems complying with your demands. Mr. Rosenow's contact information is as follows:

Larry Rosenow
PO Box 7063
Bismark, ND 58507
Phone: 701-223-7691
Email: dakota2132001@yahoo.com

Please contact us if you need further clarification of this matter.

Terry Stevenson
Director of Business Operations

Nelson American Homes
3928 Tri-Hill Frontage Road
Great Falls, MT 59404
terry@nelsonamerican.com
office: 406-268-1219
fax: 406-268-1583
cell: 406-799-0014

12/22/2006

HESLIN ROTHENBERG FARLEY & MESITI P.C.

Robert E. Heslin
Jeff Rothenberg
Kevin P. Radigan
Susan E. Farley
Nicholas Mesiti
Philip E. Hansen*
Blanche E. Schiller
Wayne F. Reinke
David P. Miranda
Victor A. Cardona
Brett M. Hutton

* Patent Agent
† Technical Specialist

Of Counsel
Joseph L. Spiegel
Poughkeepsie, NY

INTELLECTUAL PROPERTY LAW
PATENTS • TRADEMARKS • COPYRIGHTS

Attorneys at Law
5 Columbia Circle
Albany, New York 12203
Telephone: (518) 452-5600
Facsimile: (518) 452-5579
www.hrflaw.com

Writer's Direct e-mail: lp@hrflaw.com

December 28, 2006

Kathy Smith Dias
David A. Pascarella
Lee Palmateer
John Pietrangelo*
Stephen M. Hladik
Alana M. Fuierer
John W. Boger
Surinder S. Punia†
Christine A. Ingraham
Shanna K. O'Brien
Erika J. Senska

Of Counsel
Martha L. Boden
Jill M. Breedlove
Lawrence D. Cutter

Regular Mail and E-mail at dakota2132001@yahoo.com

Mr. Larry Rosenow
P.O. Box 7063
Bismark, ND 58507

Re: Environment One® Trademark Infringement
Our File No. 0830.100

Dear Mr. Rosenow:

We are trademark counsel to Environment One Corporation, a wholly owned subsidiary of Precision Castparts Corp., a publicly traded company on the NYSE (symbol PCP). It has come to our attention that you have recently adopted the mark and name ENVIRONMENT ONE (the "Mark") and are using it in connection with the advertisement and sale of panelized homes. This letter is to inform you that your use of the Mark infringes Environment One's trademark rights and to demand that you immediately cease any further use of the Mark on your website or in any other manner.

As you may know, Environment One is a leading global provider of products and services for the disposal of residential sanitary waste (used by many builders and developers in the residential construction industry), as well as utility systems for the protection and performance optimization of electric utility assets. It sells high quality products and has earned an excellent reputation over many years in the industry. Environment One has common law trademark rights to the Mark and formatives thereof, and has several federal registrations, including, but not limited to Registration Nos. 0939627 and 1824179 for ENVIRONMENT ONE® dated August 1, 1972 and March 1, 1994, respectively -- both of which have achieved "incontestable" status. Environment One's reputation, the reputation of its products, and the good will value of the ENVIRONMENT ONE® mark are extremely valuable assets to the company. Therefore, as you can imagine, Environment One views your conduct as a very serious matter and will avail itself of all available legal remedies should it become necessary.

Your use of the Mark constitutes trademark infringement under 15 U.S.C. § 1114, trademark dilution under § 43(c) of the Federal Lanham Act (15 U.S.C. § 1125(c)), unfair competition, and false advertising under § 43(a) of the Lanham Act, false advertising under Federal and State common law, as well as trademark dilution, false advertising and deceptive practices under New York State General Business Law §§ 360-1, 349 and 350 and similar statutes in other states. As a result, you are subject to substantial liability.

Please contact me to confirm that you have complied with these demands. If we do not receive a response from you by **January 5, 2007** we will proceed on the assumption that you do not intend to comply with our demands.

The above demands are made without prejudice to all of Environment One's rights, remedies and causes of action including recovery of damages, injunctive relief and attorneys' fees.

We look forward to your prompt response.

Very truly yours,

HESLIN ROTHENBERG FARLEY & MESITI P.C.

Lee Palmateer
Lee Palmateer

LP:tap

cc: Philip Welsh, Environment One Corporation
George Earle, Environment One Corporation
Emi Donis, Esq., Precision Castparts Corp.
Jeff Rothenberg, Esq.



Trademarks > Trademark Electronic Search System(Tess)

TESS was last updated on Sat Dec 30 04:20:37 EST 2006

TESS HOME	NEW USER	STRUCTURED	FREE FORM	Browser Digi	SEARCH OG	BOTTOM	HELP	Prev Doc	CURR LIST
Next Doc	FIRST DOC	PREV DOC	NEXT DOC	LAST Doc					

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 32 out of 33**

TARR Status	ASSIGN Status	TDR	TTAB Status	(Use the "Back" button of the Internet Browser to return to TESS)
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environment | one

Word Mark	ENVIRONMENT/ONE
Goods and Services	IC 009. US 021. G & S: FIRE DETECTION AND ALARM SYSTEMS. FIRST USE: 19691222. FIRST USE IN COMMERCE: 19691222
	IC 011. US 023. G & S: GRINDER-PUMPS USABLE IN PRESSURE SEWAGE SYSTEMS. FIRST USE: 19700330. FIRST USE IN COMMERCE: 19700701
	(EXPIRED) IC 001 009 010. US 028. G & S: CONDENSATION NUCLEI MONITORS, AND PARTS THEREOF. FIRST USE: 19700310. FIRST USE IN COMMERCE: 19700731
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Design Search Code	
Serial Number	72378413
Filing Date	December 11, 1970
Current Filing Basis	1A
Original Filing Basis	1A
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	0939627

Registration Date August 1, 1972

Owner (REGISTRANT) ENVIRONMENT/ONE CORPORATION CORPORATION NEW YORK 2773
BALLTOWN ROAD NISKAYUNA NEW YORK 12309

Attorney of Record JEFF ROTHERNBERG

Disclaimer THE WORD "ENVIRONMENT" IS DISCLAIMED APART FROM THE MARK AS SHOWN.

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060224.

Renewal 2ND RENEWAL 20060224

Live/Dead Indicator LIVE

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Robert E. Heslin
Jeff Rothenberg
Kevin P. Radigan
Susan E. Farley
Nicholas Mesiti
Philip E. Hansen*
Blanche E. Schiller
Wayne P. Reinke
David P. Miranda
Victor A. Cardona
Brett M. Hutton

* Patent Agent
† Technical Specialist

Of Counsel
Joseph L. Spiegel
Poughkeepsie, NY

INTELLECTUAL PROPERTY LAW

PATENTS • TRADEMARKS • COPYRIGHTS

Attorneys at Law
5 Columbia Circle
Albany, New York 12203
Telephone: (518) 452-5600
Facsimile: (518) 452-5579
www.hrflaw.com

Writer's Direct e-mail: lp@hrflaw.com

December 29, 2006

Kathy Smith Dias
David A. Pascarella
Lee Palmateer
John Pietrangelo*
Stephen M. Hladik
Alana M. Fuierer
John W. Boger
Surinder S. Punia†
Christine A. Ingraham
Shanna K. O'Brien
Erika J. Senska

Of Counsel
Martha L. Boden
Jill M. Breedlove
Lawrence D. Cutter

Regular Mail and E-mail at dakota2132001@yahoo.com

Mr. Larry Rosenow
P.O. Box 7063
Bismark, ND 58507

Re: Environment One® Trademark Infringement
Our File No. 0830.100

Dear Mr. Rosenow:

This follows our telephone conversation today in regard to the above-referenced matter, and is to confirm that you have agreed to immediately cease and desist from any further use of the mark and name ENVIRONMENT ONE or any similar mark or name. You also agreed to cancel your North Dakota State registration of the ENVIRONMENT ONE trademark. It is my understanding that the website www.environmentone.net was your only active advertisement using the trademark, and that the website is no longer in service. You agreed to change your business cards to remove any reference to the ENVIRONMENT ONE mark.

Please contact me as soon as possible if any of the foregoing is inaccurate, and thank you for your prompt response to my December 28, 2006 letter.

Very truly yours,

HESLIN ROTHENBERG FARLEY & MESITI P.C.


Lee Palmateer

LP:tap

cc: George Vorsheim, Environment One Corporation
Philip Welsh, Environment One Corporation
George Earle, Environment One Corporation
Emi Donis, Esq., Precision Castparts Corp.
Jeff Rothenberg, Esq.

Terry Stevenson

From: support@godaddy.com
Sent: Wednesday, December 20, 2006 11:40 AM
To: terry@nelsonamerican.com
Subject: Cancellation Confirmation

ITEM CANCELLATION CONFIRMATION

Dear Curt Nelson,

Per your request, the items listed below have been cancelled from your account, 8321098:

.NET Domain Name Registration - 1 Year: ENVIRONMENTONE.NET

If you feel this cancellation has occurred in error or you need further assistance, our support staff is available 24 hours a day, 7 days a week via:

- + Online Support:
https://www.godaddy.com/gdshop/support.asp?prog_id=GoDaddy&isc=wwbb566
- + Email: support@godaddy.com
- + Phone: (480) 505-8877

Thanks again for being a GoDaddy.com customer.

Sincerely,
GoDaddy.com

Copyright 2006 GoDaddy.com. All rights reserved.

6,972,600 TV

55149

RECEIVED
JAN 03 2007
SEC. OF STATE

January 3, 2007

As owner of the trade name ENVIRONMENT ONE, I wish to cancel the registration effective today.


LARRY GROSENOW

NORTH DAKOTA
Filed 1-3 2007


Secretary of State

JK



ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.nd.gov/sos



PHONE (701) 328-2900

FAX (701) 328-2992

E-MAIL sos@nd.gov

SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 24, 2007

TO: Senator Klein, Chairman,
and Members of the Senate Industry, Business and Labor Committee

FR: Al Jaeger, Secretary of State

RE: SB 2280 – Chapter 47-22 related to Trademarks

Under the current provisions of Chapter 47-22 of the Century Code, a business is not required to file a trademark with the Secretary of State in order to do business in North Dakota. It is voluntary.

Any person or entity that has adopted a mark to distinguish their goods or services from goods or services made or sold by another, may register that mark with the Secretary of State. The mark may be a word, name, symbol, or device, or any combination thereof. A word or slogan is registrable only when it clearly distinguishes products or services from those of another.

The following disclaimer is on the registration form:

The registration of a trademark or service mark with the Secretary of State provides protection of the mark in North Dakota. However, if a mark is registered with the Patent and Trademark Office in Washington, D.C., the federal registration may supersede the protection afforded by state law.

Therefore, this bill places an unprecedented mandate on the Secretary of State. That is, to conduct a nationwide search of trademark registries on behalf of a citizen to determine whether his or her application to file a trademark is not in conflict with a trademark registered in another state or with the federal government. I know of no other law in North Dakota that places a similar mandate on a state agency before that agency can file a document, issue a license, or grant a permit. In addition, we know of no other state in the nation that has a similar mandate of a state agency.

On the fiscal note, I have detailed the fiscal impact on the agency and the potential financial liability this bill could create for the state.

#2
2280



TRADEMARK/SERVICE MARK REGISTRATION
SECRETARY OF STATE
 SFN 13400 (03-06)

For Office Use Only

ID#:	
WO#:	
Filed:	By:
Expiration Date:	

1. FILING FEE

One class of goods or services \$30.00
 Each additional class of goods or services 20.00
 Ten Year Registration

2. Two exact facsimiles of the trademark or service mark must be attached. Colored facsimiles are required if color is a distinguishing characteristic.

SEE INSTRUCTIONS FOR FILING AND MAILING GUIDANCE

For reference, see North Dakota Century Code, Chapter 47-22.

3. Owner:			4. Social Security/Federal ID #:		5. Telephone #:	
6. Address of owner's principal place of business: (Street/RR, PO Box, City, State, Zip+4)					7. Toll-Free Telephone #:	
8. The owner is: (select one)						
<input type="checkbox"/> Corporation incorporated in State of _____		<input type="checkbox"/> Individual/Sole Proprietor				
<input type="checkbox"/> Limited Liability Company organized in State of _____		<input type="checkbox"/> General Partnership (see #9)				
<input type="checkbox"/> Limited Partnership, Limited Liability Partnership, or Limited Liability Limited Partnership organized in State of _____		<input type="checkbox"/> Other. Define (see instructions) _____				
9. If a general partnership, list all partners, their Social Security/Federal ID #'s, and the addresses of their principal places of business:						
		SOCIAL SECURITY/FEDERAL ID #		COMPLETE ADDRESS		
NAME		Street/RR	PO Box	City	State	Zip+4
10. Provide a specific and detailed description of the trademark or service mark as you wish to have it protected including features such as color, words, lettering, pictures or designs, etc.: (The words "see attached facsimile" cannot be accepted.)						
11. The mark is used to promote, or in connection with, the following goods or services:						
12. Classification of goods or services as designated in statutory list: (Provide the actual categories, not just the class number.) (See instructions, page 3)						
13. Describe how the mark is used, or manner in which it is associated with a product or a service, (e.g. on a label, imprinted on the product, used in advertising, on building or vehicle signs, etc.)						
14. Date on which this mark was first used by the applicant or predecessor in business anywhere: (month, day, and year)			15. Date on which this mark was first used by the applicant or predecessor in business in North Dakota: (month, day, and year)			
16. "I (We) own the mark and no other person has the right to use such mark in North Dakota either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor. I (We), the owner(s), say that I (we) have read the foregoing registration, know the contents thereof, and believe the statements made thereon to be true."						
Original Signature		Date		Original Signature		Date
17. Name of person to contact if questions about this registration:			E-mail address:		Daytime telephone #:	

INSTRUCTIONS FOR TRADEMARK OR SERVICE MARK REGISTRATION

Any person or entity that has adopted a mark to distinguish their goods or services from goods or services made or sold by another, may register that mark with the Secretary of State. The mark may be a word, name, symbol, or device, or any combination thereof. A word or slogan is registrable only when it clearly distinguishes products or services from those of another.

The registration of a trademark or service mark with the Secretary of State provides protection of the mark in North Dakota. However, if a mark is registered with the Patent and Trademark Office in Washington, D.C., the federal registration may supersede the protection afforded by state law.

In the event that a mark or name is used that is deemed to be the same as, or deceptively similar, to a trademark or service mark that is already registered, the registrant of such mark may institute a civil suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations. (See North Dakota Century Code, Section 47-22-12.)

The trademark or service mark submitted for registration may not be the same as, or deceptively similar to, another mark or name registered with the Secretary of State. (See North Dakota Century Code, Section 47-22-02.) The Secretary of State may not file any trademark or service mark submitted for filing if the mark is determined to be the same as, or deceptively similar to, a previously filed name or mark.

The following numbers correspond to the numbered sections on the front of this form.

1. The registration fee is \$30 if a trademark or service mark is associated with only one class of goods or services. If associated with more than one class of goods or services, the fee is \$20 for each additional class. (See number 12 to identify the applicable classes). Checks must be payable to "Secretary of State" and must be negotiable U.S. funds. Payment may also be made by credit card using Visa, Master Card, or Discover.
2. Attach two identical facsimiles of the mark to the application. The facsimiles may be in the form of an actual label or tag, or a photograph. If color of the mark is a distinguishing characteristic, colored facsimiles must be provided.
3. Provide the full names of all the owners. If the owner is a corporation, a limited liability company, a limited partnership, a limited liability partnership, or a limited liability limited partnership registered with the Secretary of State, the owner's name must be identical to that as registered.
4. To properly maintain trademark or service mark records, the Social Security or Federal ID number(s) of the owner(s) is requested.

In compliance with the Federal Privacy Act of 1974, the disclosure of the Social Security or Federal ID number on this form is voluntary. The number is not disclosed to the public. It is used by the Secretary of State to maintain accurate trademark and service mark files. Therefore, while voluntary disclosure is requested, failure to do so will not result in rejection of the registration.

5. The telephone number of the owner is required.
6. Provide the complete mailing address of the owner's principal place of business.

In this section, an address must include either a street or rural address and/or a post office box number if required for mailing purposes, in addition to the city, state, and zip code.

If the owner is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership registered with the Secretary of State, the principal place of business address must correspond to that declared in the separate entity registration with the Secretary of State. When notice is received in the form of an annual report of an owner indicating that the address of the principal place of business is changed in the entity registration, such notice automatically effects a change in the trademark or service mark registration.

7. Provide a toll-free telephone number if the applicant has one.
8. Select the organizational structure which best defines the owner.

If the owner is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership include the state of origin. Any such entity created according to North Dakota laws must be in existence and on file with the Secretary of State before a mark will be accepted for registration.

A North Dakota general partnership using a fictitious name must have a Partnership Fictitious Name Certificate on file with the Secretary of State before a mark will be accepted for registration.

If the owner of the mark is an organizational structure defined as "other" and not mentioned above, the acceptance of a registration will be assessed on a case-by-case basis.

9. If the owner is a general partnership, provide the names of all partners, their social security or Federal ID numbers, and the complete addresses of their principal places of business. (See number 6 for definition of complete address.) (See number 4 regarding privacy of social security or Federal ID number.)
10. Provide a specific and detailed description of the mark. Describe the features of the mark including color, words, lettering, pictures, design, size, or any other characteristics of the mark. Attaching a facsimile and stating "see attached" cannot be accepted.
11. Identify the services, goods, or products, that will be associated with the mark.

12. The goods and services associated with a mark are classified by North Dakota Century Code, Section 47-22-09. From the following schedule, identify all the classes of goods or services associated with the mark.

GOODS:

- | | |
|---|---|
| 1) Raw or partly prepared materials. | 27) Horological instruments. |
| 2) Receptacles. | 28) Jewelry and precious-metal ware. |
| 3) Baggage, animal equipment, portfolios and pocketbooks. | 29) Brooms, brushes, and dusters. |
| 4) Abrasives and polishing materials. | 30) Crockery, earthenware, and porcelain. |
| 5) Adhesives. | 31) Filters and refrigerators. |
| 6) Chemicals and chemical compositions. | 32) Furniture and upholstery. |
| 7) Cordage. | 33) Glassware. |
| 8) Smokers' articles, not including tobacco products. | 34) Heating, lighting, and ventilating apparatus. |
| 9) Explosives, firearms, equipments, and projectiles. | 35) Belting, hose, machinery packing and nonmetallic tires. |
| 10) Fertilizers. | 36) Musical instruments and supplies. |
| 11) Inks and inking materials. | 37) Paper and stationery. |
| 12) Construction materials. | 38) Prints and publications. |
| 13) Hardware and plumbing and steam-fitting supplies. | 39) Clothing. |
| 14) Metals and metal castings and forgings. | 40) Fancy goods, furnishings, and notions. |
| 15) Oils and greases. | 41) Canes, parasols, and umbrellas. |
| 16) Paints and painters' materials. | 42) Knitted, netted, and textile fabrics, and substitutes therefor. |
| 17) Tobacco products. | 43) Thread and yarn. |
| 18) Medicines and pharmaceutical preparations. | 44) Dental, medical, and surgical appliances. |
| 19) Vehicles. | 45) Soft drinks and carbonated waters. |
| 20) Linoleum and oiled cloth. | 46) Foods and ingredients of foods. |
| 21) Electrical apparatus, machines, and supplies. | 47) Wines. |
| 22) Games, toys, and sporting goods. | 48) Malt beverages and liquors. |
| 23) Cutlery, machinery, and tools, and parts thereof. | 49) Distilled alcoholic liquors. |
| 24) Laundry appliances and machines. | 50) Merchandise not otherwise classified. |
| 25) Locks and safes. | 51) Cosmetics and toilet preparations. |
| 26) Measuring and scientific appliances. | 52) Detergents and soaps. |

SERVICES:

- | | |
|------------------------------|---------------------------------|
| 1) Miscellaneous services. | 5) Communications. |
| 2) Advertising and business. | 6) Transportation and storage. |
| 3) Insurance and financial. | 7) Materials treatment. |
| 4) Construction and repair. | 8) Education and entertainment. |

13. Describe how the mark is used or associated, (e.g., a tag or label attached to the product, appears on the wrapping of the product, appears on the box in which the product is contained, is in some manner imprinted on the product, is used in advertising, etc.)

14. Provide the date (month, day, and year) on which the mark was first used anywhere.

15. Provide the date (month, day, and year) on which the mark was first used in North Dakota.

16. The application must bear the original signature of the owner and the date on which it was signed.

17. Provide the name, email address, and daytime telephone number of the person to contact for any issues related to this registration.

ASSISTANCE: If assistance is required to complete this registration contact the Secretary of State's Business Division.

EXPEDITING PROCESS: If the registration is being submitted by someone other than the owner, provide a cover letter with the name and telephone number of the responsible individual so that any deficiencies on the form can be remedied by telephone.

AMENDMENT: 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 \$30 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 or registration to transact business in North Dakota.
3. An amendment or application for amended certificate of authority or registration 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.

A registrant must notify the Secretary of State when effecting a change of address. An annual report of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership filed with the Secretary of State that reflects a change of address of the principal office of business of a registrant serves as such notice.

ALVIN A. JAEGER
SECRETARY OF STATE

1E PAGE www.nd.gov/sos



PHONE (701) 328-2900

FAX (701) 328-2992

E-MAIL sos@nd.gov

SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 24, 2007

TO: Senator Klein, Chairman,
and Members of the Senate Industry, Business and Labor Committee

FR: Al Jaeger, Secretary of State

RE: Information on Trade Names

Under the provisions of Chapter 47-25, any person, corporation, or limited liability company that engages in business in North Dakota under a trade name must register that trade name with the Secretary of State. The registration of the trade name is mandated by law and may be required in order to obtain certain licenses or permits, or to obtain certain privileges such as bank accounts in the trade name.

A trade name is defined by law to be a name assumed to identify the business or activities of an individual or organization and which does not include in the name:

- (1) The true name of the organization using the name;
- (2) The first name and surname of each individual using the business name; or
- (3) The surname of each individual, repeating a surname if more than one owner has the same surname. (e.g. a business owned by three Johnson brothers would need to be identified as Johnson, Johnson & Johnson _____)

A name assumed under subparagraph 3, or a name of an organization or association not otherwise registered with the Secretary of State, requires registration as a trade name if a license or permit to conduct business or operations is required by the State of North Dakota.

The trade name registration provides protection of the name. A trade name filed with the Secretary of State prevents the filing of a trademark or another name that is the same as or deceptively similar by any corporation, limited liability company, any other trade name, fictitious partnership name, limited liability partnership, limited liability limited partnership or limited partnership. In the event that a name is used, which is deemed to be the same as or deceptively similar to a trade name that is registered, the registrant of such trade name may institute a civil suit prohibiting the further use of the name.

The registration of a trade name with the Secretary of State provides protection of the trade name in North Dakota. However, if a trademark is registered with the Patent and Trademark Office in Washington, D.C., the federal registration may supersede the protection afforded by state law of the trade name.

SB 2280 pertains to trademarks. If the same mandate were placed on trade names, it would have required a nationwide search of over 3,000 trade names filed in 2006. That number does not include the filing of the names of hundreds of corporations, limited liability companies, partnerships, etc., which also cannot be deceptively similar to each other.

#2B
2280



**TRADE NAME
REGISTRATION**
SECRETARY OF STATE
SFN 13401 (01-2007)

FOR OFFICE USE ONLY

ID Number:	
WO Number:	
Filed:	By:
Expiration Date:	

SEE REVERSE SIDE FOR FEES, FILING AND MAILING INSTRUCTIONS

**1. FILING FEE \$25.00
Five Year Registration**

TYPE OR PRINT LEGIBLY

For reference, see North Dakota Century Code, Chapter 47-25.

2. Trade Name:						
3. Address of the principal place of business: (Street, RR, PO Box)			City:	State:	Zip Code + 4:	
4. The nature of the business transacted: (In detail)						
5. Trade name is used and owned by: (Select one)						
<input type="checkbox"/> Individual		<input type="checkbox"/> Corporation incorporated in state of _____				
<input type="checkbox"/> Husband & Wife		<input type="checkbox"/> Limited Liability Company organized in state of _____				
<input type="checkbox"/> Other - Define (See instructions)						
6. Telephone number of owner:				7. Toll-free telephone number:		
8. The name of the individual(s), corporation, or the limited liability company, using the trade name, their Federal ID/Social Security Number, and the address of their principal place of business.						
NAME		FEDERAL ID/ SOCIAL SECURITY NUMBER	Street/RR	PO Box	City	State Zip Code + 4
9. "I (We), the owner(s), say that I (we) have read the foregoing registration, know the contents thereof, and believe the statements made to be true."						
Signature:				Date:		
Signature:				Date:		
10. Name of person to contact about this form:			E-Mail Address:		Daytime telephone number and extension, if any:	

INSTRUCTIONS FOR TRADE NAME REGISTRATION

Any person, corporation, or limited liability company that engages in business in North Dakota under a trade name must register that trade name with the Secretary of State. The registration of the trade name is mandated by law and may be required in order to obtain certain licenses or permits, or to obtain certain privileges such as bank accounts in the trade name.

A trade name is defined by law to be a name assumed to identify the business or activities of an individual or organization and which does not include in the

- The true name of the organization using the name;
- (2) The first name and surname of each individual using the business name; or
 - (3) The surname of each individual, repeating a surname if more than one owner has the same surname. (e.g. a business owned by three Johnson brothers would need to be identified as Johnson, Johnson & Johnson _____)

A name assumed under subparagraph 3, or a name of an organization or association not otherwise registered with the Secretary of State, requires registration as a trade name if a license or permit to conduct business or operations is required by the State of North Dakota.

The trade name registration provides protection of the name in North Dakota. A trade name filed with the Secretary of State prevents the filing of a trademark or another name that is the same as or deceptively similar by any corporation, limited liability company, any other trade name, fictitious partnership name, limited liability partnership, limited liability limited partnership or limited partnership. In the event that a name is used, which is deemed to be the same as or deceptively similar to a trade name that is registered, the registrant of such trade name may institute a civil suit prohibiting the further use of the name. (See North Dakota Century Code, Section 47-25-01.)

If the trade name submitted for registration is the same as, or similar to a name already registered, the owner of the proposed trade name must obtain a "consent to use of name" from the previously registered entity. The original copy of the "consent to use of name" authorization must be filed with the Secretary of State, along with \$10, before the submitted trade name registration form can be filed.

The registration of the trade name with the Secretary of State provides protection of the trade name in North Dakota. However; if a mark is registered with the Patent and Trademark Office in Washington, D.C., the federal registration may supersede the protection afforded by state law.

The following numbers correspond to the numbered sections on the front of this form.

1. The registration fee is **\$25.00** and the registration period is five years. Checks must be payable to "Secretary of State" and must be for U.S. negotiable funds. Payment may also be made by credit card using VISA, Master Card, or Discover.

Provide the trade name to be registered. The trade name may not contain the word "corporation", "company", "incorporated", "limited liability company", or "limited", or an abbreviation of one of such words unless the trade name is owned by a corporation or limited liability company.

3. Provide the complete address of the principal place of business.

In this section, an address must include either a street address or rural route number and/or a post office box number if required for mailing purposes, in addition to the city, state, and zip code plus 4.

4. Provide a detailed description of the nature of business to be transacted under the trade name.
5. Select the organizational structure which best defines the owner.

If the owner is a corporation or limited liability company, include the state of origin. A domestic corporation or domestic limited liability company must have articles on file and be in existence with the Secretary of State before a trade name will be accepted for registration. **THE REGISTRATION OF A TRADE NAME IS NOT AUTHORITY FOR A FOREIGN CORPORATION OR FOREIGN LIMITED LIABILITY COMPANY TO TRANSACT BUSINESS IN NORTH DAKOTA.** A foreign corporation or foreign limited liability company must secure a certificate of authority before transacting business or obtaining any license or permit in North Dakota.

If the owner is a general partnership, a limited partnership, a limited liability partnership, or a limited liability limited partnership, **DO NOT CONTINUE COMPLETION OF THIS FORM UNLESS A FICTITIOUS NAME CERTIFICATE IS ALREADY FILED.** A general partnership, limited partnership, limited liability partnership, and limited liability limited partnership is required by law to file a Fictitious Name Certificate which achieves the same purpose of name protection (see North Dakota Century Code, Chapter 45-11). A blank form for the Fictitious Name Certificate can be obtained by contacting the Office of the Secretary of State.

If the owner of the trade name is an organizational structure defined as "other" and not mentioned above, the acceptance of a trade name will be assessed on a case-by-case basis. Clearly define any business structure classified as "other".

- 6. The telephone number of the owner's principal place of business is required.
- 7. If the owner has a toll free telephone number, please list.
- 8. Provide the full name(s) of the individual(s), corporation, or limited liability company using the trade name, their Federal ID or social security number(s), and complete mailing address(es) of their principal place of business. If a corporation or limited liability company is the owner or user of the trade name, provide the name of the corporation or limited liability company in this section. Do not list shareholders, officers, or members. (See number 3 for definition of complete address.)

If a corporation or limited liability company is registered with the Secretary of State, the principal place of business address must correspond to that declared in the separate corporate or limited liability company registration with the Secretary of State. Any future name change required for the separate registration of the owner will require a simultaneous change to the trade name registration. When notice is received in the form of an annual report of an owner indicating that the address of the principal place of business is changed in the separate registration, such notice automatically effects a change of address in the Trade Name Registration.

Privacy: In compliance with N.D.C.C. 47-25-08, the social security number or Federal ID number on this form are not disclosed to the public. They are used by the Secretary of State to maintain accurate Trade Name registration files. Therefore, while voluntary disclosure is requested, failure to do so will not result in rejection of the registration.

- 9. The registration must bear signatures of all listed owners and the date when each signed.
- 10. Provide the name, email address, daytime telephone number, and extension, if any, of the person to contact for any issues related to this application. Having a contact person will save you time and money if this office has questions or needs additional information for filing the registration.

EXPEDITING PROCESS: If the trade name registration is being submitted by someone other than the owner, provide a cover letter with the name and telephone number of the responsible individual so that any deficiencies on the form can be remedied by telephone.

EMAIL: Email is not a secure utility for the transmission of private information or credit card authorizations. **DO NOT EMAIL YOUR DOCUMENT TO THE SECRETARY OF STATE.**

FAX FILING: The document and Credit Card Payment Authorization may be faxed to 701-328-2992. A faxed filing does not expedite the process of the registration in the office of the Secretary of State.

SENDING INSTRUCTIONS: Send registration form and \$25.00 to:

Secretary of State
State of North Dakota
600 E Boulevard Ave Dept 108
Bismarck ND 58505-0500

Telephone: 701-328-4284 Toll Free: 800-352-0867 (8-4284) Fax: 701-328-2992 Web Site: www.nd.gov/sos

RENEWALS: Every trade name certificate filed with the Secretary of State must be renewed every five years from the date of the initial filing. Forms for renewal are prescribed by the Secretary of State and will be sent to the address of the principal place of business of the owner at least ninety days before the deadline for filing. To insure delivery of a renewal notice it is imperative that the owner's principal place of business address be maintained current with the Secretary of State.

CANCELLATION: If anyone fails to file the renewal when due, the Secretary of State shall cancel the trade name registration. The registration will also be canceled by the Secretary of State when the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability partnership that has failed to file an assignment and has ceased to exist for six months.



CREDIT CARD PAYMENT AUTHORIZATION
SECRETARY OF STATE
SFN 51478 (06-03)

(All items required to complete transaction)

Name:			
Address:	City:	State:	Zip Code:
<input type="checkbox"/> VISA <input type="checkbox"/> Master Card <input type="checkbox"/> Discover		Signature: (Required by credit card companies)	
Account Number:	V #	Card Expires: Month Year	Date: