## 132.001 Definitions. In this chapter, unless the context indicates otherwise:

1. "Counterfeit mark" means a spurious mark that is identical to or substantially identical to a genuine mark and that is used or intended to be used on or in connection with goods or services for which the genuine mark is registered and in use. “Counterfeit mark” does not mean any mark or designation used in connection with goods or services if, at the time the goods or services were manufactured or produced, the holder of the right to use the mark authorized the manufacturer or producer to use the mark or designation for the type of goods or services manufactured or produced.

2. “Mark” means a label, trademark, trade name, term, design, pattern, model, device, shopmark, drawing, specification, designation or form of advertisement that is adopted or used or shall hereafter adopt or use any mark for the purpose of designating, making known, or distinguishing any goods or service as having been made, prepared or provided by that person and that is registered by that person under s. 132.01.

### History:
- 1985 a. 181; 2011 a. 32.

### 132.01 Marks.
1. Any person, firm, partnership, corporation, association, or union of workingmen, which has heretofore adopted or used or shall hereafter adopt or use any mark for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, service, business, or other product of labor or manufacture as having been made, manufactured, produced, prepared, packed, or put on sale by such person, firm, partnership, corporation, association, or union of workingmen, or by a member or members thereof, he, she, or they, if residents of this or any other state of the United States, or of or comprises a replica or simulation of the flag, coat of arms, or insignia of the United States of America, or of any state or municipality or any foreign nation.

2. A registration recorded or renewed under this section or s. 132.04 or 132.11 on or after May 1, 1990, is effective for 20 years. A registration may be renewed on or after May 1, 1990, for 20-year registration period or 10-year renewal period specified in this paragraph.

3. Application for renewal shall be made within 6 months before the expiration of the 20-year registration period or 10-year renewal period specified in this paragraph.

4. A registration recorded or renewed under this section or on or after May 1, 1990, is effective for 10 years. A registration may be renewed for 10-year periods upon application to the department and payment of the same fee required for a registration. Application for renewal shall be made within 6 months before the expiration of the 10-year period specified in this paragraph.

5. The department shall do all of the following:
   - Cancel from his or her register a registration of a mark that is to be appropriated, the residence, location, or place of business of the person, firm, partnership, corporation, association, or union of workingmen, on whose behalf such mark is to be filed, the class of merchandise and a separate description of the goods to which the same has been or is intended to be appropriated, the residence, location, or place of business of the party, that the party, on whose behalf such mark is to be filed, has the right to the use of the same, and that no other person, or persons, firm, partnership, corporation, association, or union of workingmen has such right either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the originals, copies, photographs, or cuts, counterparts, facsimiles, or drawings filed therewith are correct.
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Any person, firm, partnership, corporation, association or union who claims a right to the use of subject matter conflicting with any registration by another may bring action against such other in the circuit court for the county in which such other resides, or in the circuit court for Dane County, and in any such action the right to the use and registration of such subject matter shall be determined as between the parties, and registration shall be granted or withheld or canceled by the department in accordance with the final judgment in any such action. Nonuser for a period of at least 2 years following the date of commencement of any action in which abandonment is in issue shall be prima facie evidence of abandonment to the extent of such nonuser.

Title to any registration hereunder shall pass to any person, firm or corporation succeeding to the registrant’s business to which such registration pertains. Written assignments of any such registration from a registrant to such a successor may be recorded with and shall be recorded by the department upon payment of the fee specified in sub. (3). When such assignment is recorded, a new registration shall be entered in the name of the assignee, and on such registration and any subsequent certificates or registration of an assigned registration the department shall show the previous ownership and dates of assignment thereof.


A trademark may not be sold independent of its goodwill. However, a mark or name may retain the mark despite the sale of the business that underlies the mark or name if after sale of a business’ assets, the mark or name’s owner: 1) demonstrates intent not to use the mark or name; 2) retains ownership of the goodwill; and 3) resumes operations within a reasonable time.

Every person, association or union adopting or using a mark may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeit mark identical to or substantially identical to that mark.

(a) Except as provided in par. (c), if the person, association or union proves injury and monetary damages by a preponderance of the evidence the court may award the person, association or union actual damages resulting from such manufacture, use, sale or display or an amount not to exceed 3 times the defendant’s profits directly resulting from such wrongful manufacture, use, display or sale.

(b) If the person, association or union proves injury and monetary damages by a preponderance of the evidence the court may award the person, association or union actual damages resulting from such manufacture, use, sale or display or an amount not to exceed 3 times the defendant’s profits directly resulting from such wrongful manufacture, use, sale or display.

(c) If the person, association or union proves a violation by a preponderance of the evidence, the court may award the costs of investigating the violation and of prosecuting the suit, including reasonable investigator and attorney fees.

(d) If the person, association or union proves a violation by a preponderance of the evidence, the court may award the costs of investigating the violation and of prosecuting the suit, including reasonable investigator and attorney fees.

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(x) If the person, association or union proves a violation by a preponderance of the evidence, the court may award the costs of investigating the violation and of prosecuting the suit, including reasonable investigator and attorney fees.

(y) If the person, association or union proves a violation by a preponderance of the evidence, the court may award the costs of investigating the violation and of prosecuting the suit, including reasonable investigator and attorney fees.

(z) If the person, association or union proves a violation by a preponderance of the evidence, the court may award the costs of investigating the violation and of prosecuting the suit, including reasonable investigator and attorney fees.
2. The name of any person in privity with the party.
3. A term or device which is descriptive of, and which is used fairly and in good faith only to describe to users, the party's goods and services or the geographic origin of the party's goods and services.

(e) The mark has been or is used to violate the Sherman act, 15 USC 1 et. seq., the Clayton act, 15 USC 12 et. seq., or ch. 133.

(f) Before the person, association or union registered a mark under s. 132.01 the defendant acquired the right under common law or federal law to manufacture, use, display or sell an identical mark.

History: 1985 a. 181.

For a challenged mark to be "identical to or substantially identical to" a registered mark under sub. (1), it must be an exact copy or substantially indistinguishable from the registered mark. Madison Reprographics v. Cook's Reprographics, 203 Wis. 2d 226, 552 N.W.2d 440 (Ct. App. 1996), 95-2596.

132.04 Filing, publication and cancellation of description; fees. (1) Any person who is the owner of cans, tubs, firkins, boxes, bottles, casks, barrels, kegs, cartons, tanks, fountains, vessels or containers with his or her name, brands, designs, trademarks, devices or other marks of ownership stamped, impressed, labeled, painted on or otherwise marked thereon, may mark with the department and record with the register of deeds of any county in which the person has his or her principal place of business, a written statement or description verified by affidavit of the owner or his or her agent, of the names, brands, designs, trademarks, devices or other marks of ownership used by him or her, and of the articles upon which they are used, or if the principal place of business is outside the state, then a written statement or verified description may be recorded with the register of deeds of any county. The statement shall be published as a class 3 notice, under ch. 985, in the county, and a copy of the publication, proved as provided in s. 985.12, shall also be filed with the department and recorded with the register of deeds.

(2) All such written statements or descriptions and all such certificates of publication so filed or recorded shall be subject at all reasonable hours to public inspection. The department and the register of deeds shall deliver to all applicants certified copies of all such written statements or descriptions or names, brands, designs, trademarks, devices, or other marks of ownership and of all certificates of publication filed or recorded with them and such certified copies shall be admissible in evidence in all prosecutions under ss. 132.04 to 132.08, and shall be prima facie evidence that this section has been complied with, and of the title of the owner named therein to the property upon which the name, brand, design, trademark, device, or other marks of ownership of the owner appear as described therein.

(3) The department shall receive a fee of $15 and the register of deeds shall receive the fee specified in s. 59.43 (2) (ag) or (e) for each statement and certificate of publication filed or recorded and shall also receive the fee specified in s. 59.43 (2) (b) for each certified copy of such statement and certificate of publication, to be paid for by the person filing, recording or applying for the same.

(4) (a) The department and register of deeds shall cancel a statement or description under this section upon the request of the person named in the records of the department or register of deeds as the owner of marks of ownership described in the statement or description.

(b) The department and register of deeds may not charge a fee for canceling a statement or description under par. (a).


132.05 Sale of receptacle by other than owner prohibited. It is unlawful for any person, without the written consent of the owner or the owner's agent, to keep for sale any can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container that is marked or distinguished as described in s. 132.04, a description of which is filed, or recorded and published as provided in s. 132.04, or to use or fill any similar substance, commodity or product as originally contained for the sale of the substance, commodity or product any such can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container or to receive, take, buy, sell, or dispose of or traffic in any such can, tub, firkin, bottle, box, cask, barrel, keg, carton, tank, fountain, vessel or container, or to deface, erase, obliterate, cover up or otherwise remove or conceal any such name, brand, design, trademark, device or other mark thereon, for the purpose of destroying or removing the evidence of the ownership of such article.

History: 1993 a. 301.

132.06 Use of receptacle by other than owner; as to junk dealers. The use by any person, other than the owner or the owner’s agent, of any can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container, as described in s. 132.04, for the sale of any substance, commodity or product, other than that originally contained, or the buying, selling, or trafficking in any such can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container, or the fact that any junk dealer in cans, tubs, firkins, boxes, bottles, casks, barrels, kegs, cartons, tanks, fountains, vessels or containers, shall have in his or her possession any can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container that is marked or stamped as described in s. 132.04, a description of which is filed, recorded and published as provided in s. 132.04, is prima facie evidence that such using, buying, selling or trafficking in or possession of is unlawful within the meaning of ss. 132.04 to 132.08.

History: 1993 a. 301.

132.07 Penalty for unlawful use. Any person or persons or corporation or any officer or agent of any corporation acting for or in the name of such corporation who knowingly and willfully with intent to unlawfully convert to his or her own use violates s. 132.04, 132.05, 132.06 or 132.08 shall be imprisoned for not more than 6 months or fined not more than $10,000 or both.

History: 1985 a. 181.

132.08 Rights of owner to injunction. Every such person or corporation having complied with ss. 132.04 to 132.08, may proceed by suit to enjoin any other person or corporation from filling with any substance, commodity or product for the sale thereof of such substance, commodity or product any can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container, so marked or distinguished as aforesaid or from buying, selling, using or disposing of or trafficking in the same, or from defacing, erasing, obliterating, covering up or otherwise removing any such name, brand, design, trademark, device or other marks of ownership thereon, for the purpose of destroying or removing the evidence of the ownership of such article, and all courts having equity jurisdiction shall have power to grant injunctions according to the course and principles of courts of equity, to restrain such filling for sale or such buying, selling, giving away, using or disposing of, or trafficking in or such defacing, erasing, obliterating, covering up, or otherwise removing or the violation of any right acquired under ss. 132.04 to 132.08, and upon a decree being rendered in any such case against the defendant, the complainant shall be entitled to recover the damages the complainant may have sustained by reason of the said acts of the defendant and the court shall assess the same or cause the same to be assessed under its direction.

132.11 Record of brands, etc. (1) The department shall do all of the following:

(a) Upon application by any person, or firm domiciled in this state or by any corporation created under the laws thereof, or by a foreign corporation licensed to do business therein and engaged in the manufacture or sale of ale, porter, lager beer, soda water, mineral water or other beverages put up in packages, record in a book kept for that purpose a description of the names, brand or trademark used by such person, firm or corporation for marking the casks, barrels, kegs, bottles, jugs, fountains, boxes or other packages containing such beverage.
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(b) Collect a fee of $15 for each such description of name, brand or trademark which he or she is requested to record under par. (a).

c) Cancel the description of a name, brand or trademark recorded under par. (a) upon the request of the person, firm or corporation named in the records of the department as the owner of the name, brand or trademark. The department may not charge a fee for canceling a description under this paragraph.

(2) Except as provided in s. 132.01 (6), nothing in this chapter is intended to be contrary to or to control or modify the provisions of this section.

History: 1989 a. 91, 123, 359; 2011 a. 32.

132.13 Labeling prison products; penalty. (1) All goods, wares, and merchandise made wholly or in part by convict labor in any penitentiary, prison, reformatory or other establishment in which convict labor is employed except convicts or prisoners on parole, extended supervision or probation, shall before being exposed for sale be branded, labeled, marked or tagged as herein provided and shall not be exposed for sale or sold in this state without such brand, label, mark or tag. Such brand, label, mark or tag shall contain at the head or top thereof the words “convict–made” followed by the name of the penitentiary, prison, or other establishment in which it was made in plain English lettering of the style and size known as eighteen point Cheltenham bold type capitals. The brand or mark shall in all cases where the nature of the articles will permit be placed on each individual article or part of such article that is sold, and only where such branding or marking is impossible shall a label or tag be used and where a label is used it shall be securely fastened onto each such article and when a tag is used it shall be a paper tag securely fastened to such article or part of article sold. In addition to the marking of each article or part of article sold a similar brand, mark, label or tag shall be placed upon the outside or upon its box, crate, or other covering. All brands, labels, marks, and tags shall be placed on a conspicuous part of such article or part of article and its container.

(b) Paragraph (a) does not apply to goods, wares and merchandise made under a contract under s. 303.06 (2).

(2) It shall be the duty of the district attorneys of the several counties to enforce this section, whenever any complaint or other evidence leads them to reasonably believe that this section has been violated. The district attorney shall upon receipt of such complaint or other evidence at once institute proper legal proceedings to compel compliance therewith.

(3) Any person who possesses for the purpose of sale or offering for sale any convict–made goods, wares or merchandise without proper branding, marks, labels or tags thereon as required by this section or who removes or defaces such brand, mark, label or tag or who sells a part of such article without attaching such brand, mark, label or tag shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 nor more than $500 or by imprisonment in the county jail for a period of not more than 90 days or by both such fine and imprisonment.


132.16 Lodge names, insignia; registration; fees; penalty. (1) In this section:

(a) “Organization” means any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association; historical, military, or veterans organization; labor union; foundation; federation; or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, whether incorporated or unincorporated, the principles and activities of which are not repugnant to the constitution and laws of the United States or of this state.

(b) “Identifying information” means an organization’s name, badge, motto, button, decoration, charm, emblem, rosette or other insignia.

(1m) Any organization may register with the department a facsimile, duplicate, or description of any of the organization’s identifying information and may, by reregistration, alter or cancel the organization’s identifying information.

(2) Application for registration or reregistration under sub. (1m) shall be made by the organization’s chief officer or officers upon forms provided by the department. The registration shall be for the use, benefit, and on behalf of the organization and the organization’s current and future individual members throughout this state.

(3) The department shall keep a properly indexed file of all registrations under this section, which shall also show any alterations or cancellations by reregistration.

(4) No registration or reregistration shall be granted for any identifying information similar to identifying information already registered under this section.

(5) Upon granting registration under this section, the department shall issue a certificate to the petitioners, setting forth the fact of the registration.

(6) The fees of the department for registration or reregistration under this section, searches made by the department, and certificates issued by the department under this section, shall be the same as provided by law for similar services. The fees collected under this section shall be paid by the department into the state treasury.

(7) Any person who willfully wears, exhibits, displays, prints, or uses for any purpose any identifying information of any organization registered under this section, unless he or she is entitled to do so under the organizations’ constitution and bylaws, rules, and regulations, is guilty of a misdemeanor punishable by a fine not exceeding $100, and, in default of payment, may be committed to jail for a period of not to exceed 60 days.

(8) This section does not apply to any fraternal society whose membership is composed of students attending any public or private school in the state.


132.17 Certain badges; penalty for unauthorized wearing. Any person who shall willfully wear the insignia, rosette, or badge or any imitation thereof, of the military order of the Loyal Legion of the United States, the Grand Army of the Republic, the United Spanish War Veterans, Veterans of Foreign Wars of the United States, the Military Order of Foreign Wars, the American Legion, the Disabled American Veterans, the Thirty–second Division Veteran Association, the American Veterans of World War II (AMVETS), or of the Benevolent and Protective Order of the Elks of the United States, Knights of Columbus, Odd Fellows, Free Masons, Knights of Pythias, or of any other society, order or organization, operating under the lodge system, of 10 years’ standing in this state, or of any duly incorporated fraternal, social, or service organization, or of the division of emergency management in the department of military affairs or shall willfully use the same to obtain aid or assistance thereby within this state, or shall willfully use the name of such society, order or organization, the titles of its officers, or its insignia, unless entitled to use or wear the same under the constitution, bylaws, rules and regulations thereof, shall be imprisoned not more than 30 days or fined not exceeding $20, or both.


132.18 Use of gaseous compounds in containers. (1) No person, firm or corporation, excepting the manufacturer thereof or persons authorized by said manufacturer so to do, shall sell or offer for sale or deliver, carbon dioxide, acetylene, oxygen, hydrogen or any other gas or gaseous compound, shipped, consigned or delivered in steel containers or containers made of other metal, unless such containers shall bear upon the surface thereof, in plainly legible characters, the name, initials or trademark of the manufacturer.
(2) No person, firm or corporation other than such manufacturer or persons authorized by such manufacturer so to do, shall refill or use in any manner such container or receptacle which has imprinted thereon the name, initials or trademark of such manufacturer, for any gas, compound or other material whatsoever.

(3) No person, firm or corporation to whom such product of said manufacturer has been sold or delivered in such containers, shall sell, loan, deliver or permit to be delivered such containers to any persons whomsoever other than such manufacturer or persons authorized by such manufacturer to receive the delivery of such containers.

(4) The foregoing provisions shall not apply to any carbon dioxide or other products above referred to, contained in such containers, unless the title to such containers is retained by said manufacturer or its representative and unless said carbon dioxide and other products contained in said containers were sold and delivered upon the understanding and agreement that the container in which it was delivered shall be returned to such manufacturer or its representative as soon as the contents thereof have been used up by the purchaser.

(5) Any person who shall fail to comply with any of the foregoing provisions of this section shall be punished by imprisonment in the county jail for not more than one year or by a fine not exceeding $1,000, or by both such fine and imprisonment.

132.19 Use of mark without authority. Every person who knowingly and willfully uses or displays the genuine mark of any person, association or union in any manner, or in or about the sale of goods or merchandise not being authorized so to do by such person, association or union, shall be imprisoned for not more than 3 months or fined not more than $100. This section does not apply to the purchase of merchandise in good faith from a distributor or the retail sale of that merchandise in good faith.

**History:** 1985 a. 181.

132.20 Trafficking in counterfeit marks. (1) In this section, “traffic” means any of the following:

(a) Transfer, assign or dispose of.

(b) Advertise, promote or offer to transfer, assign or dispose of.

(c) Receive, possess, transport or exercise control of, with intent to transfer, assign or dispose of.

(d) Assist another person to do any act under pars. (a) to (c).

(2) Any person who, with intent to deceive, traffics or attempts to traffic in this state in a counterfeit mark or in any goods or service bearing or provided under a counterfeit mark is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), if the person is an individual he or she may be fined not more than $250,000 and if the person is not an individual the person may be fined not more than $1,000,000.

(3) It is a defense to liability under this section that before another person registered an identical mark under s. 132.01 a person acquired the right under common law or federal law to traffic in a mark.


132.25 Common law rights. Nothing in this chapter affects any right in a mark which is acquired under common law.

**History:** 1985 a. 181.