CHAPTER 132

TRADEMARKS, BADGES AND LABELED PRODUCTS

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.

(1m) "Department" means the department of financial institutions.

(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 by any person to designate, make known or distinguish 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.

Wisconsin law recognizes a common law and statutory cause of action for infringement of trademarks and trade names. Although Wisconsin has long recognized a cause of action for trademark infringement, Wisconsin courts have recognized that the state's jurisprudence on trademark law is undeveloped. Therefore, the courts look to federal law for guidance and key principles as well as to treatises. Ritter v. Farrow, 2021 WI 14, 395 Wis. 2d 787, 955 N.W.2d 122, 18–1518.

A trademark is a word, name, symbol, device, or other designation, or a combination of such designations, that is distinctive of a person's goods or services and that is used in a manner that identifies those goods or services and distinguishes them from the goods or services of others. In contrast, a trade name is a word, name, symbol, device or other designation, or a combination of such designations, that is distinctive of a person's business or other enterprise and that is used in a manner that identifies that business or enterprise and distinguishes it from the businesses or enterprises of others. In short, a trademark identifies and distinguishes goods and services, while a trade name denotes a business or association. In both cases, the key is whether the designation serves as an indicator of the source; in other words, whether it distinguishes the goods/services/business from others so that consumers can identify the source that is connected to the designation. Ritter v. Farrow, 2021 WI 14, 395 Wis. 2d 787, 955 N.W.2d 122, 18–1518.

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, and such foreign corporations as may have been duly licensed to transact business in the state of Wisconsin, may file an original, a copy, or photographs, or cuts with specifications of the same for record with the department, by leaving 2 such originals, copies, photographs, or cuts with specifications, the same being counterparts, facsimiles, or drawings thereof, with the department and by filing therewith a sworn statement, in such form as may be prescribed by the department, specifying the name 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 such 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.

(2) Where the several parts of a single unit article of trade or commerce are severally marked to distinguish them by the person, firm, partnership, corporation, association, or union of workingmen having the right to manufacture such single unit under a trade name or brand used by him, her or them, such person, firm, partnership, corporation, association, or union may, in filing under this section the designation of such trade name or brand, attach thereto photographs or cuts with specifications of the several parts of the unit to which it is attached or applied, and thereafter no further filing or registration of any such parts so used shall be necessary to protect the owner or lawful use of the trade name or brand of the unit against the use by others of any of the several parts thereof and any such filing shall be construed to be a single filing, and but one filing fee shall be paid therefor.

(3) For an original or renewal registration, or the recording of an assignment, there shall be paid to the department the fee of $15.

(4) Nothing in this section shall be construed as authorizing registration hereunder of names and brands of beverages by the persons, firms or corporations specified in s. 132.11.

(5) The department may not register any mark which consists 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.

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

(b) A registration recorded under this section or s. 132.04 or 132.11 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.

(7) The department shall do all of the following:

(a) Cancel from his or her register any registration that is not effective under sub. (6) and also any registration if a final judgment in any court of competent jurisdiction finds that the registration has been abandoned or that the registrant does not have the right to the exclusive use of the registration.

(b) Cancel from his or her register a registration of a mark under this section upon the request of the registrant of the mark. The department may not charge a fee for canceling a registration under this paragraph.

(8) 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 continuing to 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.

(9) 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 filed 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.

History: 1975 c. 94; 1979 c. 221; 1985 a. 181; 1989 a. 91, 123, 359; 1993 a. 490; 2011 a. 32.

A trademark may not be sold independent of its goodwill. However, a mark or name's owner might retain the mark despite the sale of the business that underlies the mark or name if after sale of a business's assets, the mark or name's owner: 1) demonstrates intent to resume making the substantially same product; 2) retains some portion of the goodwill; and 3) resumes operations within a reasonable time. Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd., 2004 WI App 129, 275 Wis. 2d 397, 685 N.W.2d 853, 03–0773.

A trademark is a form of intangible property that cannot exist separate from the good will of the product or service it symbolizes. Good will is a business value that reflects the basic human propensity to continue doing business with a seller who has offered goods and services that the customer likes and has found adequate to fulfill the customer's needs. It is a well–settled legal principle that trademarks and their associated goodwill pass with the sale of a business. In this case, the sellers' resort management business built up the goodwill of the resort through its activities, all while using the Bibs Resort marks. Therefore, the purchasers became the exclusive owners of the Bibs Resort marks when they purchased the resort management business from the sellers. Ritter v. Farrow, 2021 WI 14, 395 Wis. 2d 787, 955 N.W.2d 122, 18–1518.

132.02 Duplication or reproduction. (1) It shall be unlawful for any person, firm, partnership, corporation, association or union of workingmen, without the consent of the owner of any mark, to remove any such mark attached to merchandise or products of labor, for the purpose of using such merchandise or products of labor as a pattern for the duplicating or reproduction of the same, either in the identical form or in such near resemblance thereto as may be calculated to deceive.

(2) Nothing herein contained shall be taken to prohibit the using of such merchandise or products of labor as a pattern for the reproduction of the same in individual cases of emergency repairs.

(3) It shall be unlawful for any other person to make use, with intent to deceive, of that mark or any counterfeit mark which is identical to or substantially identical to that mark, or to utter or display the same orally, or in any printed or written form in the conduct of his or her business or any business transaction without the express consent, license, and authority of the person, firm, partnership, corporation, association, or union so owning the same, and such unauthorized and unlawful use may be prohibited and prevented by injunction or other proper proceeding in a court of competent jurisdiction without recourse to the penal statute providing a punishment for such unlawful use. In case such association or union of workingmen is not incorporated such actions may be commenced and prosecuted by an officer or member of such association or union on behalf of and for the use of such association or union. This subsection 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; 1991 a. 490.

State action based on an alleged trademark infringement under sub. (3) was not removable to federal court because of federal registration of trademarks. The federal act does not preempt reliance on state trademark laws. Gardner v. Clark Oil & Refining Corp., 383 F. Supp. 151 (1974).

Registration of a mark does not alone confer rights to the claimant. Mil–Mar Shoe Co. v. Shonac Corp., 906 F. Supp. 476 (1995).

21st Century White Collar Crime: Intellectual Property Crimes in the Cyber World. Simon & Jones. Wis. Law. Oct. 2004.

132.03 Penalty. Every person who knowingly and willfully violates s. 132.01 or 132.02, except those provisions relative to emergency repairs, shall be imprisoned for not more than 6 months or fined not more than $10,000 or both.

History: 1985 a. 181.

132.031 Certificate; evidence. The department shall deliver to the person, corporation, association or union so filing or causing to be filed any such mark, or any assignment of such subject matter previously registered, or to any person, corporation, association or union renewing a registration, as many duly attested certificates of the registration or renewal of the same as may be desired. Any such certificate shall, in all suits and prosecutions arising out of or depending upon any rights claimed under such mark, be prima facie evidence of the adoption thereof and of the facts prerequisite to registrations thereof as required by s. 132.01.

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

132.032 Fraudulent filing; remedies. Any person who, for himself, herself or on behalf of any other person, association or union, procures the filing and recording of any mark by making any false or fraudulent representations or declarations, verbally or in writing, or by any other fraudulent means is liable for any damages sustained as a result of that action, to be recovered by or on behalf of the injured party, and shall be imprisoned for not more than 6 months or fined not more than $10,000 or both.

History: 1985 a. 181.

132.033 Suit to enjoin use of mark. (1) 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.

(2) (a) If the person, association or union proves by a preponderance of the evidence that the defendant engaged in a violation of this section which threatens the person, association or union with irreparable injury, a court may grant an injunction to restrain such manufacture, use, display or sale and shall order that all such counterfeit marks in the possession or under the control of any defendant be delivered to the court to be destroyed.

(b) 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.

(c) If the person, association or union proves by a preponderance of the evidence that the defendant acted willfully, the court shall award the greater of actual damages resulting from the manufacture, use, sale or display or an amount equal to 3 times the defendant's profits directly resulting from the manufacture, use, sale or display.

(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.

(3) In case such association or union is not incorporated, such actions may be commenced and prosecuted by an officer or member of such association or union on behalf of and for the use of such association or union.

(4) 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.

(5) Any of the following is a defense to liability under this section:

(a) The registrant fraudulently obtained the mark registration.

(b) The registrant abandoned the mark.

(c) The mark is used by the registrant, or with the permission of the registrant or a person in privity with the registrant, to misrepresent the source of the goods or services in connection with which the mark is used.

(d) The use of the name, term or device alleged to be an infringement is a use, except for a use as a trade or service mark, of any of the following:

1. The party's name in the party's business.

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. State v. Cook's Reprographics, Inc., 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 names, brands, designs, trademarks, devices or other marks of ownership stamped, impressed, labeled, blown in or otherwise marked thereon, may file 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).

History: 1989 a. 91, 123; 1993 a. 301; 1995 a. 201; 2011 a. 32.

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 therein 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 evi-

dence 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.

(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) (a) 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 pasted 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 the brands, 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.

History: 1991 a. 189, 269; 1995 a. 27; 1997 a. 283.

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.

History: 1985 a. 135 s. 83 (4); 1991 a. 189; 1993 a. 482; 2001 a. 107; 2005 a. 22; 2011 a. 32; 2015 a. 195.

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.

History: 1981 c. 314; 1989 a. 31; 1995 a. 247.

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, union or association, 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.

History: 1985 a. 181; 1997 a. 283; 2001 a. 109.

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.