

CHAPTER 132.

TRADE-MARKS.

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132.01 Trade-marks and labels. (1) Any person, firm, copartnership, corporation, association, or union of workmen, which has heretofore adopted or used or shall hereafter adopt or use any label, trade-mark, trade name, term, design, pattern, model, device, shop mark, drawing, specification, designation, or form of advertisement, for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other product of labor or manufacture as having been made, manufactured, produced, prepared, packed, or put on sale by such person, firm, copartnership, corporation, association, or union of workmen, or by a member or members thereof, he 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 in the office of the secretary of state, by leaving two such originals, copies, photographs, or cuts with specifications, the same being counterparts, facsimiles, or drawings thereof, with said secretary and by filing therewith a sworn statement, specifying the name of the person, firm, copartnership, corporation, association, or union of workmen, on whose behalf such label, trade-mark, term, trade name, pattern, model, design, device, shop mark, drawing, specification, designation, or form of advertisement 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 label, trade-mark, trade name, term, design, pattern, model, device, shop mark, drawing, specification, designation, or form of advertisement is to be filed, has the right to the use of the same, and that no other person, or persons, firm, copartnership, corporation, association or union of workmen 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, copartnership, corporation, association, or union of workmen having the right to manufacture such single unit under a trade name or brand used by him or them, such person, firm, copartnership, 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) The papers required to be filed hereunder shall be recorded in a book for that purpose, and there shall be paid to the secretary of state for such recording and filing the fee of three dollars.

(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 section 132.11.

Note: Where findings entitle the plaintiff to an accounting for profits and the interlocutory judgment adjudicated the plaintiff's right to such an accounting, the final judgment denying the plaintiff an accounting for profits for defendants' unfair competition was erroneous. *Kickapoo Development Corporation v. Kickapoo Orchard Co.*, 231 W 458, 285 NW 354.

Secretary of state in considering application for registration of trade-mark may deny same if made by officer of unlicensed foreign corporation for benefit of such corporation. 19 Atty. Gen. 390.

Word "Co-op" cannot be registered as trade-mark in face of 185.22, which expressly regulates use of that word. 22 Atty. Gen. 660.

Secretary of state has no power to allow second registration of same trade name. 22 Atty. Gen. 1010.

Trade-mark cannot be used to advertise or designate particular type of business. 26 Atty. Gen. 285.

The fact that the name of a system of advertising is to be used in connection with the sale of some tangible personal property does not make the name eligible for registration where it appears that such sales are a mere incident of sale of the system. 28 Atty. Gen. 575.

132.02 Duplication or reproduction. (1) It shall be unlawful for any person, firm, copartnership, corporation, association or union of workmen, without the consent of the owner of any such label, trade-mark, trade name, term, design, pattern, model, device, shop mark, drawing, specification, designation, or form of advertisement registered in accordance with the provisions of the preceding section, to remove any such label, trade-mark, trade name, design, shop mark, or other designation, or form of advertisement so registered and 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) And it shall be unlawful for any other person to make use of such label, trade-mark, trade name, term, design, pattern, model, device, shop mark, drawing, specification, designation, or form of advertisement so filed, or any such likeness or imitation thereof, or utter or display the same orally, or in any printed or written form in the conduct of his business or any business transaction without the express consent, license, and authority of the person, firm, copartnership, 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 workmen 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.

132.03 Penalty. (1) Every person who shall knowingly and wilfully violate sections 132.01 or 132.02, except only those provisions relative to emergency repairs, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not more than six months or by a fine of not more than two hundred dollars.

(2) Nothing contained in sections 132.01, 132.02 and 132.03 shall require a new filing or registration in cases to which this act applies where there has heretofore been a compliance with section 132.01, or any acts amendatory thereof, by any person or persons, firm, copartnership, corporation, association, or union of workmen.

132.04 Filing of description with secretary of state; publication of; fees. Any and all persons or corporations who may be the owners of cans, tubs, firkins, boxes, bottles, casks, barrels, kegs, cartons, tanks, fountains, vessels or containers with his, her, its or their names, brands, designs, trade-marks, devices or other marks of ownership stamped, impressed, labeled, blown in or otherwise marked thereon, may file with the secretary of state and also with the register of deeds of any county in which any such person or persons or corporations may have his, her, its or their principal place of business, a written statement or description verified by affidavit of such owner or his, her or its agent, of the names, brands, designs, trade-marks, devices or other marks of ownership so used by him, her, it or them, and of the said article or articles upon which the same are used, or if such principal place of business shall be without the state, then such written statement or description so verified may be filed with the register of deeds of any county of this state. Said statement shall be published once a week for three successive weeks in a newspaper printed in the English language and of general circulation in said county, a copy of which publication, proved in the same manner as proof of publication is now required to be made by law, when no special mode of proving the same is provided, shall also be filed with the secretary of state and with such register of deeds. All such written statements or descriptions and all such certificates of publication so filed with the register of deeds shall be recorded at large by him in a book to be kept by him and such book shall be subject at all reasonable hours to the inspection of all persons who may choose to inspect the same. The secretary of state and the register of deeds shall deliver to any person who may apply therefor copies of all such written statements or descriptions of names, brands, designs, trade-marks, devices, or other marks of ownership and of all certificates of publication so filed with them, duly certified to by them in the usual manner, and such certified copies shall be admissible in evidence in all prosecutions under sections 132.04 to 132.08, inclusive, and shall be prima facie evidence that the provisions of this section have been complied with, and of the title of the owner or owners named therein, to the property upon which the name, brand, design,

trade-mark, device or other marks of ownership of such owner or owners may appear as described therein. The secretary of state shall receive a fee of three dollars and the register of deeds shall receive a fee of one dollar for each statement and certificate of publication filed and also a fee of one dollar for each certified copy of such statement and certificate of publication, to be paid for by the person filing or applying for the same.

Note: More than one mark of ownership may be contained in written statement or description filed by owner with secretary of state. 20 Atty. Gen. 351.

Secretary of state may not file purported cancellation nor reregister trade-mark in name of another. Registration of trade-mark confers no right of user or right of exclusion but serves merely as public record, available to all, that another claims particular trade-mark to be pre-empted. 21 Atty. Gen. 121.

132.05 Sale of receptacle by other than owner prohibited. It is hereby declared to be unlawful for any person or persons or corporation without the written consent of the owner or owners thereof, to hereafter keep for sale any can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container so marked or distinguished as aforesaid, of which a description shall have been filed and published as provided in section 132.04, or to use or fill with any similar substance, commodity or product as originally contained therein for the sale of such 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, trade-mark, device or other mark thereon, for the purpose of destroying or removing the evidence of the ownership of such article.

132.06 Use of receptacle by other than owner; as to junk dealers. The using by any person or persons or corporation other than the owner or owners thereof, or his, her, its or their agent, of any such can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container, for the sale therein of any substance, commodity or product, other than that originally therein 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 or dealers in cans, tubs, firkins, boxes, bottles, casks, barrels, kegs, cartons, tanks, fountains, vessels or containers, shall have in his or her possession any such can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container, so marked or stamped, and a description of which shall have been filed and published as provided in section 132.04, shall be, and it hereby is, declared to be, prima facie evidence that such using, buying, selling or trafficking in or possession of is unlawful within the meaning of sections 132.04 to 132.08, inclusive.

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 shall knowingly and wilfully with intent to unlawfully convert to his own use violate any of the provisions of sections 132.04 to 132.08, inclusive, shall be punished by imprisonment in the county jail not more than six months, or by fine of not more than two hundred dollars, or by both such fine and imprisonment.

132.08 Rights of owner to injunction. Every such person or corporation having complied with the provisions of sections 132.04 to 132.08, inclusive, as aforesaid, 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, trade-mark, 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 the provisions of sections 132.04 to 132.08, inclusive, 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.

132.09 Certificate; evidence. Said secretary shall deliver to the person, association or union so filing or causing to be filed any such label, trade-mark, term, design, device or form of advertisement so many duly attested certificates of the filing and recording of the same as may be desired, and shall receive for each such certificate a fee of one dollar. Any such certificate shall, in all suits and prosecutions arising out of or depend-

ing upon any rights claimed under such label, trade-mark, term, design, device or form of advertisement be sufficient proof of the adoption thereof. The secretary of state shall not record any label, trade-mark, term, design, device or form of advertisement that may reasonably be mistaken for anything theretofore filed in his office under the provisions of this chapter.

Note: Registered trade-mark may not be reregistered. 20 Atty. Gen. 1081; 21 Atty. Gen. 387. Name "Sailor Boy Ice Cream Bar" would infringe trade name "Soldier Boy Ice Cream Bar." 22 Atty. Gen. 341.

132.10 Fraudulent filing; damages. Any person who shall for himself or on behalf of any other person, association or union procure the filing of any label, trade-mark, term, design, device or form of advertisement under the provisions of the preceding section by making any false or fraudulent representations or declarations, verbally or in writing, or by any other fraudulent means shall be liable for any damages sustained in consequence thereof, to be recovered by or on behalf of the party injured thereby, and shall also be punished as provided by law.

132.11 Record of brands, etc. The secretary of state shall, on 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 trade-mark used by such person, firm or corporation for marking the casks, barrels, kegs, bottles, jugs, fountains, boxes or other packages containing such beverage. Before any such record shall be made there shall be paid said secretary a fee of five dollars for each and every such description of name, brand or trade-mark which he is requested to have recorded. Nothing elsewhere in this chapter contained is intended to be contrary to or to control or modify the provisions of this section.

Note: Trade-mark "Old Gold Lager" for beer may be registered by secretary of state even though trade-mark "Old Gold" has been previously registered for food products. 22 Atty. Gen. 525.

132.12 Suit to enjoin use of trade-mark may be brought and injunction issued. Every person, association or union adopting or using a label, trade-mark, term, design, device or form of advertisement, as provided in section 132.01, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, and may award the complainant damages resulting from such manufacture, use, sale or display as may be deemed just and reasonable by said court, including all profits derived from such wrongful manufacture, use, display or sale; such court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant be delivered to an officer of the court to be destroyed. 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.

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 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.

(2) It shall be the duty of the industrial commission and 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 has in his possession 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 one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail for a period of not more than ninety days or by both such fine and imprisonment. [1935 c. 178]

Note: Section 132.13, Stats. 1933, was invalid because arbitrary and discriminatory. State v. Whitfield, 216 W 577, 257 NW 601. This section is not to be construed so as to restrict rights of state. Prison-made binder twine must be labeled as such on each ball of twine. 24 Atty. Gen. 442.

132.14 [Repealed by 1935 c. 178]

132.16 Lodge names, insignia; registration; fees; penalty. (1) 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, may register, in the office of the secretary of state, a facsimile, duplicate, or description of its name, badge, motto, button, decoration, charm, emblem, rosette or other insigne, and may, by reregistration, alter or cancel the same.

(2) Application for such registration, alteration, or cancellation, shall be made by the chief officer or officers of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or associations, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, upon blanks to be provided by the secretary of state; and such registration shall be for the use, benefit, and on behalf of all associations, degrees, branches, subordinate lodges, and auxiliaries of said 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, and the individual members and those hereafter to become members thereof, throughout this state.

(3) The secretary of state shall keep a properly indexed record of such registration, which record shall also show any altered or canceled registration.

(4) No registration shall be granted, or alteration permitted, to 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, having a name, badge, motto, button, decoration, charm, emblem, rosette, or other insigne, similar to, imitating, or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette, or other insigne whatsoever, already registered pursuant to the provisions of this section.

(5) Upon granting registration as aforesaid, the secretary of state shall issue his certificate to the petitioners, setting forth the fact of such registration.

(6) The fees of the secretary of state for registration, alteration, and cancellation of insignia, searches made by him, and certificates issued by him, pursuant to this section, shall be the same as provided by law for similar services. The fees collected under this act shall be paid by the secretary of state into the state treasury.

(7) Any person who shall wilfully wear, exhibit, display, print, or use, for any purpose, the badge, motto, button, decoration, charm, emblem, rosette, or other insigne of any such association or organization, herein mentioned, duly registered hereunder, unless he or she shall be entitled to use and wear the same under the constitution and by-laws, rules, and regulations of such association and organization, shall be guilty of misdemeanor, and, upon conviction, shall be punished by a fine not exceeding one hundred dollars, and, in default of payment, committed to jail for a period of not to exceed sixty days.

(8) The provisions of this section shall not apply to any fraternal society whose membership shall be composed of students attending any public or private school in the state. [1933 c. 129]