

CHAPTER 333

TRADE NAMES, TRADEMARKS, SERVICE MARKS, INSIGNIA
REGISTRATION

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333.01 COMMERCIAL BUSINESS TRADE NAMES; CERTIFICATE, PUBLICATION. No person or persons shall hereafter carry on or conduct or transact a commercial business in this state under any designation, name, or style, which does not set forth the full individual name of every person interested in such business unless such person or persons shall file in the office of the clerk of the district court of the county or counties in which the person or persons conduct or transact, or intend to conduct or transact, such business, a certificate setting forth the name under which the business is conducted or transacted, or is to be conducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the postoffice address or addresses of such person or persons. The certificate shall be executed and duly acknowledged by one of the persons conducting, or intending to conduct, the business. The certificate shall be published in a qualified newspaper in the county where the certificate is filed for two successive days in a daily newspaper, or for two successive weeks in a weekly newspaper.

[1911 c 271 s 1; 1959 c 658 s 1] (7346)

333.02 FILING OF CERTIFICATE. Persons conducting or transacting any business under any designation, name, or style referred to in section 333.01 shall, before commencing such business, file such certificate and proof of publication in the manner prescribed in section 333.01.

[1911 c 271 s 2; 1959 c 658 s 2] (7347)

333.03 CHANGE OF OWNERSHIP, NEW CERTIFICATE. On each change in ownership of any business described in section 333.01, a new certificate must be filed with the clerk of court, either by one of the retiring or incoming owners of the business, setting forth the full individual name or names, together with the postoffice address or addresses of the new owners thereof. The new certificate shall be published in the manner provided in Minnesota Statutes, Section 333.01. Until the new certificate and proof of publication are filed, the person or persons whose names appear as owners upon the certificate heretofore filed shall continue liable to all persons who extend credit to the business, except only in the case of creditors who have actual notice or knowledge of such change of ownership.

[1911 c 271 s 3; 1959 c 658 s 3] (7348)

333.04 CLERK OF DISTRICT COURT; DUTIES, FEES. The several clerks of the district courts of this state shall keep an alphabetical list of all persons filing certificates provided for in section 333.01, and for the indexing and filing of such certificates they shall receive a fee of \$1. A copy of such certificate, duly certified to by the clerk of the district court in whose office the same is filed, shall

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be presumptive evidence in all courts of law in this state of the facts therein contained.

[1911 c 271 s 4; 1959 c 658 s 4] (7849)

NOTE: Section 333.04 is also amended by Laws 1959, Chapter 250, Section 3, which instead of an expressed amount for the fee, states "the fee provided by law". For fees see section 357.021.

333.05 EXCEPTIONS. Sections 333.01 to 333.06 shall not apply to corporations, domestic or foreign, nor to copartnerships in which one of the individual names of all of the members thereof appear in the copartnership name of designation.

[1911 c. 271 s. 5] (7350)

333.06 PLEADING FAILURE TO FILE CERTIFICATE; COSTS. If any person or persons conducting a business contrary to the terms of sections 333.01 to 333.06 shall, prior to the filing of the certificate and proof of publication therein prescribed, commence a civil action in any court of this state on account of any contract made by, or transaction had on behalf of the business, the defendant may plead such failure in abatement of the action; and all proceedings had in the action shall thereupon be stayed until the certificate provided for by sections 333.01 to 333.06 is duly filed, and the defendant, in case he prevails in the action, shall also be entitled to tax \$5 costs, in addition to such other statutory costs as are now allowed by law, and, in case he does not prevail in the action, shall be entitled to deduct \$5 from the judgment otherwise recoverable therein.

[1911 c 271 s 7; 1959 c 658 s 5] (7352)

333.07 LODGE AND SOCIETY EMBLEMS MAY BE REGISTERED. 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 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 insignia, and may, by reregistration, alter or cancel the same.

[1933 c. 295 s. 1] (7352-1)

333.08 APPLICATION FOR REGISTRATION. Application for such registration, alteration, or cancelation, shall be made by the chief officer or officers of the 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, 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 such 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 thereafter to become members thereof, throughout this state.

[1933 c 295 s 2] (7352-2)

333.09 SECRETARY OF STATE TO KEEP RECORD AND INDEX. The secretary of state shall keep a properly indexed record of the registration provided for by sections 333.07 to 333.12, which record shall also show any altered or canceled registration.

[1933 c. 295 s. 3] (7352-3)

333.10 DUPLICATES NOT REGISTERED. 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 insignia, similar to, imitating, or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette, or other insignia, already registered pursuant to the provisions of sections 333.07 to 333.12.

[1933 c. 295 s. 4] (7352-4)

333.11 ISSUANCE OF CERTIFICATES. Upon granting registration the secre-

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tary of state shall issue his certificate to the petitioners, setting forth the fact of such registration.

[1933 c. 295 s. 5] (7352-5)

333.12 FEES. The fees of the secretary of state for registration, alteration, cancelation, searches made by him, and certificates issued by him, pursuant to sections 333.07 to 333.11, shall be \$10. The fees so collected shall be paid by the secretary of state into the state treasury.

[1933 c 295 s 7; 1955 c 820 s 36] (7352-7)

333.13 VIOLATIONS; PENALTIES. Any person or persons carrying on or conducting or transacting a business, as provided by sections 333.01 to 333.06, who shall fail to comply with the provisions of sections 333.01 to 333.06, shall be guilty of a misdemeanor.

Any person who shall wilfully wear, exhibit, display, print, or use, for any purpose, the badge, motto, button, decoration, charm, emblem, rosette, or other insignia of any association or organization mentioned in section 333.07, duly registered, unless entitled to use and wear the same under the constitution and by-laws, rules, and regulations of such association or organization, shall be guilty of a misdemeanor; and upon conviction shall be punished by a fine of not exceeding \$100 and in default of payment committed to jail for a period of not to exceed 60 days.

[1911 c. 271 s. 6; 1933 c. 295 s. 6] (7351, 7352-6)

333.14 USE OF NAME AND MARK "AQUATENNIAL" LIMITED. Any person, firm, copartnership, association, society, or corporation, except as authorized by Minneapolis aquatennial association, who shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use in any manner the name and mark "aquatennial" of the Minneapolis aquatennial association or any other name or mark so nearly resembling the name and mark "aquatennial" as to be calculated to deceive the public with respect to the corporation, or who, except as authorized by the corporation, shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use in any manner any other name, mark, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase used by the Minneapolis aquatennial association in carrying out its purpose or any name, mark, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase confusingly similar thereto, calculated to deceive the public with respect to the corporation, or who, except as authorized by the corporation, shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use the corporate name of the corporation, or a name so nearly resembling it as to be calculated to deceive the public with respect to the corporation, shall be guilty of a misdemeanor.

[1941 c. 202 s. 1]

333.15 THREATENED USE MAY BE RESTRAINED. When there shall be an actual or threatened violation of section 333.14, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain the actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact so using or threatening to use the name and mark "AQUATENNIAL" or any other name or mark confusingly similar thereto, or any other name, mark, emblem, insignia, or badge, designation, or distinguishing descriptive word or phrase used by the corporation in carrying out its purposes or confusingly similar to any such other name, mark, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase used by the corporation in carrying out its purposes, or the corporate name of the corporation or a confusingly similar name, an injunction may be issued by the court or justice enjoining and restraining such actual or threatened violation without requiring proof that any person has in fact been misled or deceived thereby.

[1941 c. 202 s. 2]

333.16 VESTED RIGHTS NOT AFFECTED. The provisions of sections 333.14 and 333.15 shall not be deemed or construed to divest, interfere, affect, or conflict with any established or vested right or prohibit the use thereof.

[1941 c. 202 s. 3]

333.17 USE OF CERTAIN TERMS FORBIDDEN. No person, firm, corporation or association, selling or offering for sale, any commodity, shall use, or cause, or permit to be used as the name or designation, or as a part of the name or designation, of any business, any of the following words, terms or expressions, viz.: "Army," "Navy," "Marine," "Coastguard," "Post Exchange," "Government," "G. I.," "P.X.," or any other word, term, or expression denoting the United States Government, or relating to an agency or activity of the United States Government, provided however, that any person, firm, corporation or association, engaged in the manufacture or sale of marine equipment, or engaged in the business of marine insurance, may use the word "Marine" as a part of its business name.

Any person, firm, corporation, or association, violating the provisions of this section is guilty of a misdemeanor.

[1945 c. 212]

333.18 TRADEMARKS AND SERVICE MARKS; DEFINITIONS. Subdivision 1. (1) The term "trademark" as used in sections 333.18 to 333.31 means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(2) The term "service mark" as used in sections 333.18 to 333.31 means a word, name, symbol, or device or any combination thereof adopted and used by a person to identify his services and to distinguish them from services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce.

(3) The term "certification mark" means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

(4) The term "collective mark" means a trademark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization.

Subd. 2. The term "person" as used herein means any individual, firm, partnership, corporation, association, union or other organization.

Subd. 3. The term "applicant" as used herein embraces the person filing an application for registration of a mark under sections 333.18 to 333.31, his legal representatives, successors or assigns.

Subd. 4. The term "registrant" as used herein embraces the person to whom the registration of a mark under sections 333.18 to 333.31 is issued, his legal representatives, successors or assigns.

Subd. 5. (1) For the purposes of sections 333.18 to 333.31, a trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto or on displays associated with the goods and such goods are sold or otherwise distributed in this state.

(2) For the purpose of sections 333.18 to 333.31, a service mark shall be deemed to be "adopted and used" when it is adopted and used in connection with the rendering, selling, or advertising of services in this state to identify the services of one person and distinguish them from the services of others, and such services are rendered.

[1959 c 600 s 1]

333.19 UNREGISTRABLE MATTER; COLLECTIVE AND CERTIFICATION MARKS. Subdivision 1. A trademark or service mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it;

(1) consists of or comprises immoral, deceptive or scandalous matter; or

(2) consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or

(3) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(4) consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or

(5) consists of a mark which, (a) when applied to the goods or used to identify the services of the applicant, is merely descriptive or deceptively misdescriptive of the, or (b) when applied to the goods or used to identify the services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (c) is primarily merely a surname provided, however, that nothing in this subsection (5) shall prevent the resignation of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or used to identify the services, proof of substantially exclusive and continuous use thereof as a mark by the applicant in this state for the five years next preceding the date of the filing of the application for registration; or

(6) consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or used to identify the services of the applicant, to cause confusion or mistake or to deceive.

Subd. 2. Subject to the provisions relating to the registration of trademarks and service marks, so far as they are applicable, collective and certification marks, used in this state, shall be registrable under sections 333.18 to 333.31, in the same manner and with the same effect as are trademarks and service marks, by persons, and nations, states, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided herein in the case of trademarks or service marks, except when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used.

[1959 c 600 s 2]

333.20 APPLICATION; FORM, SIGNATURE, SPECIMEN OF MARK, FEE.

Subdivision 1. Subject to the limitations set forth in sections 333.18 to 333.31, any person who adopts and uses a trademark or a service mark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth, but not limited to, the following information:

(1) the name and business address of the person applying for such registration; and, if a corporation, the state of incorporation,

(2) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall,

(3) the date when the mark was first used in this state by the applicant or his predecessor in business, and

(4) a statement that the applicant believes that he is the owner of the mark and that no other person has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

Subd. 2. The application shall be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

Subd. 3. The application shall be accompanied by a specimen or facsimile of such mark in triplicate.

Subd. 4. The application for registration shall be accompanied by a filing fee of \$15, payable to the secretary of state; provided, however, that a single credit of \$10 shall be given each applicant applying for re-registration of a mark hereunder for each \$10 filing fee paid by applicant for registration of the same trademark prior to the effective date of sections 333.18 to 333.31.

[1959 c 600 s 3]

333.21 CERTIFICATE OF REGISTRATION, ISSUANCE, EVIDENTIARY

EFFECT. Subdivision 1. Upon a finding by the secretary of state that the mark and application for registration comply with the requirements of sections 333.18 to 333.31, he shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and shall show the registrant's name and business address and, if a corporation, the state of incorporation, the

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date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services in connection with which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

Subd. 2. Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such mark, in any action or judicial proceedings in any court of this state and shall be prima facie evidence of registrant's ownership and exclusive right to use the mark on or in connection with the goods or services described in the certificate.

[1959 c 600 s 4]

333.22 TERM OF REGISTRATION; RENEWAL, NOTICE, FEE. Subdivision 1. Registration of a mark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term or a renewal thereof, on a form to be furnished by the secretary of state, the registration may be renewed for additional ten year terms provided that the mark is in use by the applicant at the time of the application for renewal and that there are no intervening rights. A renewal fee of \$10 payable to the secretary of state shall accompany the application for renewal of the registration.

Subd. 2. The secretary of state shall notify each registrant of a mark hereunder of the necessity of renewal thereof by writing to the last known address of the registrant approximately one year prior to the registration's expiration date.

Subd. 3. Any registration in force on the date on which Laws 1959, Chapter 600 shall become effective, shall expire two years after and may be renewed by filing an application with the secretary of state on a form furnished by him and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration provided the mark is in use at the time of application for renewal and there are no intervening rights.

Subd. 4. The secretary of state shall, within six months after the date on which Laws 1959, Chapter 600 shall become effective notify all registrants of trademarks under previous acts of the date of expiration of such registrations, unless renewed in accordance with the provisions of sections 333.18 to 333.31, by writing to the last known address of the registrants.

[1959 c 600 s 5]

333.23 CONVEYANCES OF MARKS; RECORDATION, FEE, NECESSITY. The secretary of state shall record written and verified conveyances of any mark along with that part of the goodwill of the business in connection with which the mark is used, and of the corresponding application or registration which is presented to him for recording along with a payment of a fee of \$3 and shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under sections 333.18 to 333.31 shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase.

[1959 c 600 s 6]

333.24 SECRETARY OF STATE'S RECORD OF MARKS. The secretary of state shall keep for public examination a record of all marks registered or renewed under sections 333.18 to 333.31 in accordance with the classification hereinafter set forth. Such record of registration shall be constructive notice of registrant's claim of ownership of the mark registered.

[1959 c 600 s 7]

333.25 CANCELLATION OF MARKS. Subdivision 1. The secretary of state shall cancel from the register:

(1) after two years from the effective date of Laws 1959, Chapter 600, all registrations under prior acts which are not renewed in accordance with sections 333.18 to 333.31;

(2) any registration concerning which the secretary of state shall receive a voluntary request for cancellation thereof from the registrant;

(3) all registrations granted under sections 333.18 to 333.31 and not renewed in accordance with the provisions thereof;

(4) in compliance with an order of a district court, any registration concerning which the court shall find:

- a. that the registered mark has been abandoned,
- b. that the registrant is not the owner of the mark,
- c. that the registration was granted improperly,
- d. that the registration was obtained fraudulently,
- e. that the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person previously in this state or in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that he is the prior user of the mark or that he is the owner of a concurrent registration of his mark in the United States Patent Office covering an area including this state, the registration hereunder shall not be cancelled.

(5) When a district court shall order cancellation of a registration on any ground.

Subd. 2. No registration shall be cancelled after the mark has had substantially exclusive and continuous use by the registration for five years following the registration of said mark except for the reasons set forth in subdivision 1, subsections (1), (2) and (3) and subsections (4)a, b and d thereof, or unless a mark has been registered in this state prior to use of registrant's mark or a mark has been registered in the United States Patent Office with the publication date thereof prior to the date of use of registrant's mark, which marks when used on or in connection with the goods or services of the respective registrants would be likely to cause confusion, mistake or deception, or unless the mark is the common descriptive name of any article, substance or service.

[1959 c 600 s 8]

333.26 CLASSIFICATION SYSTEM. For convenience of administration of sections 333.18 to 333.31, but not to limit or extend the applicant's or registrant's rights, the secretary of state shall adopt the classification system in effect in the United States Patent Office on the effective date of Laws 1959, Chapter 600, and shall revise this classification system to conform with said United States Patent Office system as and if changes are made therein. A single application for registration of a mark may include any or all goods or services with which the mark is actually being used comprised in a single class, but in no event shall a single application include goods or service with which the mark is being used which fall within different classes.

[1959 c 600 s 9]

333.27 IMPROPER REGISTRATION; LIABILITY. Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any mark in the office of the secretary of state under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any district court.

[1959 c 600 s 10]

333.28 IDENTICAL OR SIMILAR MARKS; LIABILITY FOR MISUSE. Subject to the provisions of section 333.30 any person who shall (a) use without the consent of the registrant any mark on or in connection with rendering of services, selling, offering for sale, or advertising of any goods or services, which mark is identical to or so similar to the registered mark as to be likely to cause confusion or mistake on the part of a purchaser of the goods or services or to deceive such a purchaser as to the source or origin of the goods or services; or (b) reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution of such goods or the sale or rendering of services; shall be liable to a civil action by the owner of such registered mark for any or all of the remedies provided in section 333.29, except that under subsection (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

[1959 c 600 s 11]

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333.29 REMEDIES. Subdivision 1. Any district court may grant injunctions to restrain infringement of registrant's rights and may require the defendants to pay the registrant all benefits derived from and/or damages suffered by reason of such infringement. The prevailing party may, in the discretion of the court, be awarded a reasonable attorney's fee to be taxed by the court as a part of the costs and merged into the judgment.

Subd. 2. The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

[1959 c 600 s 12]

333.30 MARKS ACQUIRED AT COMMON LAW. Nothing herein shall adversely affect a person's rights or the enforcement of his rights in a mark acquired in good faith at any time at common law, except that his rights as against the registrant of the same or confusingly similar mark are limited to the areas of his use established prior to the registration date and areas in which his mark has become known prior to the registration date.

[1959 c 600 s 13]

333.31 SERVICE OF PROCESS UPON NONRESIDENT REGISTRANTS. Service in duplicate of any paper relating to a nonresident's registration under sections 333.18 to 333.31, on the secretary of state, shall constitute service on said nonresident registrant. The secretary of state shall forward one copy of such paper to said registrant at his last known address.

[1959 c 600 s 16]