

No. 27, S.]

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CHAPTER 259.

AN ACT to amend 132.01 (1) and (3), 132.09; and to create 132.01 (5) to (9) of the statutes, relating to trade-marks.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 132.01 (1) and (3) of the statutes are amended to read:

132.01 (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, *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, 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 2 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, *in such form as may be prescribed by the secretary of state*, specifying the name of the person, firm, co-partnership, 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 work-

ingmen 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.

(3) The papers required to be filed *or recorded* hereunder shall be recorded in a * * * register for that purpose * * *. For an original or renewal registration, or the recording of an assignment, there shall be paid to the secretary of state * * * the fee of \$3.

SECTION 2. 132.01 (5) to (9) are created to read:

132.01 (5) The secretary of state shall not register any label, trade-mark, term, design, device or form of advertisement 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) Registrations recorded under this section shall be effective for 20 years, and shall be renewable for like periods upon application to the secretary of state and payment of the fee specified in subsection (3). Registrants of labels, trade-marks, terms, trade names, patterns, models, designs, devices, shop marks, drawings, specifications, designations or forms of advertising heretofore recorded under this section shall be notified by the secretary of state at their last-known address of the necessity of renewal and notice shall also be given by publication in the official paper once each month for 3 months following January 1, 1946. Application for renewal may be made within one year following January 1, 1946 or within the 6 months period next preceding the expiration of 20 years from the date of registration.

(7) The secretary of state shall cancel from his register all registrations more than 20 years old and not renewed in accordance with subsection (6) and also any registration to the extent to which the final judgment in any court of competent jurisdiction shall find that the registration has been abandoned or that the registrant does not have the right to the exclusive use thereof.

(8) Any person, firm, copartnership, corporation, association or union of working men 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 cancelled by the secretary of state 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 secretary of state upon payment of the fee specified in subsection (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 secretary of state shall show the previous ownership and dates of assignment thereof.

SECTION 3. 132.09 of the statutes is amended to read:

132.09. Said secretary shall deliver to the person, *corporation*, association or union so filing or causing to be filed any such label, trade-mark, term, design, device or form of advertisement, *or any assignment of such subject matter previously registered, or to any person, corporation, association, or union renewing a registration*, so many duly attested certificates of the * * * *registration or renewal* of the same as may be desired, and shall receive for each such certificate a fee of \$1. Any such certificate shall, in all suits and prosecutions arising out of or depending upon any rights claimed under such label, trade-mark, term, design, device or form of advertisement be * * * *prima facie evidence* of the adoption thereof *and of the facts prerequisite to registrations thereof as required by section 132.01.* * * *

Approved June 5, 1945.