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H.P. 688

House of Representatives, March 12, 2013

An Act To Prevent Fraudulent Trademark Registration

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative NEWENDYKE of Litchfield.
Cosponsored by Senator BURNS of Washington and
Representatives: DAVIS of Sangerville, DUNPHY of Embden, LOCKMAN of Amherst,
MacDONALD of Old Orchard Beach.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA §1522, sub-§1**, as amended by PL 2005, c. 543, Pt. D, §§7 to 9
3 and affected by §18, is further amended to read:

4 **1. Registrability.** A mark ~~shall~~ may not be registered if it:

5 A. Consists of or comprises deceptive matter;

6 B. Consists of or comprises matter ~~which~~ that may falsely suggest a connection with
7 persons, living or dead, or institutions;

8 C. Consists of or comprises the flag or coat of arms or other insignia of the United
9 States or of any state or municipality or of any foreign nation or any simulation
10 thereof;

11 D. Consists of or comprises the name, signature or portrait of any living individual,
12 except with that individual's written consent, which ~~shall~~ must be filed together with
13 the application for registration under this section;

14 E. Consists of a mark that, when applied to the goods or services of the applicant, is
15 merely descriptive or deceptively misdescriptive of them or, when applied to the
16 goods or services of the applicant, is primarily geographically descriptive or
17 deceptively misdescriptive of them, except as indications of regional origin may be
18 registrable under subsection 3, or is primarily merely a surname, ~~provided~~ except that
19 nothing in this paragraph may prevent the registration of a mark used in this State by
20 the applicant that has become distinctive of the applicant's goods or services. The
21 Secretary of State may accept as evidence that the mark has become distinctive, as
22 applied to the applicant's goods or services, proof of continuous use thereof as a mark
23 by the applicant in this State or elsewhere for the 5 years next preceding the date of
24 the filing of the application for registration;

25 F. Consists of or comprises a mark that so resembles a mark used or registered in this
26 State or a mark or trade name previously used in this State by another and not
27 abandoned, as to be likely, when applied to the goods or services of the applicant, to
28 cause confusion or mistake or to deceive, unless the ~~registered~~ owner or holder of the
29 other mark executes and files with the Secretary of State proof of authorization of the
30 use of a similar mark by the applicant seeking to use the similar mark;

31 G. Is not distinguishable from the real, assumed, fictitious, reserved or registered
32 name of a corporation, limited liability company, limited liability partnership, limited
33 partnership or limited liability limited partnership, unless the corporation, limited
34 liability company, limited liability partnership, limited partnership or limited liability
35 limited partnership executes and files with the Secretary of State proof of
36 authorization of the use of a mark similar to the real, assumed, fictitious, reserved or
37 registered name of a corporation, limited liability company, limited liability
38 partnership, limited partnership or limited liability limited partnership by the
39 applicant seeking to use the mark;

40 H. Consists of or comprises language that is obscene, contemptuous, profane or
41 prejudicial;

- 1 I. Inappropriately promotes abusive or unlawful activity; or
2 J. Notwithstanding paragraph G, is identical to a corporate, limited liability
3 company, limited liability partnership, limited partnership or limited liability limited
4 partnership name, unless the corporation, limited liability company, limited liability
5 partnership, limited partnership or limited liability limited partnership is the same
6 entity as the applicant that is seeking to register the mark and files proof of ownership
7 with the Secretary of State.

8 The Secretary of State shall make the final determination regarding the availability of a
9 mark for filing after performing a brief search on the Internet to determine that the
10 information provided on an application under subsection 2 is accurate.

11 **Sec. 2. 10 MRSA §1522, sub-§2**, as amended by PL 2003, c. 673, Pt. WWW, §1
12 and affected by §37, is further amended to read:

13 **2. Application for registration.** Subject to the limitations set forth in this chapter,
14 any person who adopts and uses a mark in this State may file in the office of the Secretary
15 of State, on a form to be furnished by the Secretary of State, an application for
16 registration of that mark setting forth, but not limited to, the following information:

17 A. The name and business address of the person applying for the registration and, if
18 a corporation, the state of incorporation;

19 B. The goods or services in connection with which the mark is used and the mode or
20 manner in which the mark is used in connection with the goods or services and the
21 class in which the goods or services fall;

22 C. The date when, to the best of the applicant's knowledge and belief, the mark was
23 first used anywhere and the date when it was first used in this State by the applicant
24 or the applicant's predecessor in business; and

25 D. A statement that to the best of the applicant's knowledge and belief, the applicant
26 is the owner of the mark and that no other person has the right to use the mark in this
27 State as a mark or as a trade name or as a corporate name either in the identical form
28 thereof or in such near resemblance thereto as to be likely, when applied to the goods
29 or services of the other person, to cause confusion or to cause mistake or to deceive.

30 The application must be signed and verified by the applicant or by a member of the firm
31 or an officer of the corporation or association applying.

32 ~~The execution of an application containing false statements constitutes unsworn~~
33 ~~falsification under Title 17-A, section 453.~~

34 The application must be accompanied by a specimen or facsimile of the mark in
35 triplicate.

36 The application for registration must be accompanied by a filing fee of \$60 for the first
37 class and \$10 for each additional class, payable to the Treasurer of State.

38 **Sec. 3. 10 MRSA §1528**, as enacted by PL 1979, c. 572, §2, is repealed and the
39 following enacted in its place:

