

§1522. Registration

1. Registrability. A mark shall not be registered if it:

A. Consists of or comprises deceptive matter; [PL 1979, c. 572, §2 (NEW).]

B. Consists of or comprises matter which may falsely suggest a connection with persons, living or dead, or institutions; [PL 1979, c. 572, §2 (NEW).]

C. 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; [PL 1979, c. 572, §2 (NEW).]

D. Consists of or comprises the name, signature or portrait of any living individual, except with that individual's written consent, which shall be filed together with the application for registration under this section; [PL 1979, c. 572, §2 (NEW).]

E. Consists of a mark that, when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them or, when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under subsection 3, or is primarily merely a surname, provided that nothing in this paragraph may prevent the registration of a mark used in this State by the applicant that 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 services, proof of continuous use thereof as a mark by the applicant in this State or elsewhere for the 5 years next preceding the date of the filing of the application for registration; [PL 2005, c. 543, Pt. D, §7 (AMD); PL 2005, c. 543, Pt. D, §18 (AFF).]

F. Consists of or comprises a mark that 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 services of the applicant, to cause confusion or mistake or to deceive, unless the registered owner or holder of the other mark executes and files with the Secretary of State proof of authorization of the use of a similar mark by the applicant seeking to use the similar mark; [PL 1993, c. 616, §1 (AMD).]

G. Is not distinguishable from the real, assumed, fictitious, reserved or registered name of a corporation, limited liability company, limited liability partnership, limited partnership or limited liability limited partnership, unless the corporation, limited liability company, limited liability partnership, limited partnership or limited liability limited partnership executes and files with the Secretary of State proof of authorization of the use of a mark similar to the real, assumed, fictitious, reserved or registered name of a corporation, limited liability company, limited liability partnership, limited partnership or limited liability limited partnership by the applicant seeking to use the mark; [PL 2005, c. 543, Pt. D, §8 (AMD); PL 2005, c. 543, Pt. D, §18 (AFF).]

H. Consists of or comprises language that is obscene, contemptuous, profane or prejudicial; [PL 1997, c. 633, §1 (AMD).]

I. Inappropriately promotes abusive or unlawful activity; or [PL 1997, c. 633, §1 (AMD).]

J. Notwithstanding paragraph G, is identical to a corporate, limited liability company, limited liability partnership, limited partnership or limited liability limited partnership name, unless the corporation, limited liability company, limited liability partnership, limited partnership or limited liability limited partnership is the same entity as the applicant that is seeking to register the mark and files proof of ownership with the Secretary of State. [PL 2005, c. 543, Pt. D, §9 (AMD); PL 2005, c. 543, Pt. D, §18 (AFF).]

The Secretary of State shall make the final determination regarding the availability of a mark for filing.

[PL 2003, c. 344, Pt. A, §6 (AMD); PL 2005, c. 543, Pt. D, §§7-9 (AMD); PL 2005, c. 543, Pt. D, §18 (AFF).]

2. Application for registration. Subject to the limitations set forth in this chapter, any person who adopts and uses a 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:

- A. The name and business address of the person applying for the registration and, if a corporation, the state of incorporation; [PL 1997, c. 376, §1 (AMD).]
- B. 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 the goods or services and the class in which the goods or services fall; [PL 1979, c. 572, §2 (NEW).]
- C. The date when, to the best of the applicant's knowledge and belief, the mark was first used anywhere and the date when it was first used in this State by the applicant or the applicant's predecessor in business; and [PL 1997, c. 376, §1 (AMD).]
- D. A statement that to the best of the applicant's knowledge and belief, the applicant is the owner of the mark and that no other person has the right to use the mark in this State as a mark or as a trade name or as a corporate name either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of the other person, to cause confusion or to cause mistake or to deceive. [PL 1997, c. 376, §1 (AMD).]

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

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

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

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

[PL 2003, c. 673, Pt. WWW, §1 (AMD); PL 2003, c. 673, Pt. WWW, §37 (AFF).]

3. Collective marks and certification marks. Collective marks and certification marks, including indications of regional origin used in commerce, shall be registrable in the same manner and with the same effect as trademarks and service marks by persons and by governmental entities, as defined in Title 14, section 8102, subsections 2, 3 and 4.

[PL 1981, c. 684, §5 (NEW).]

SECTION HISTORY

PL 1979, c. 572, §2 (NEW). PL 1981, c. 684, §§3-5 (AMD). PL 1987, c. 561, §1 (AMD). PL 1993, c. 316, §§4,5 (AMD). PL 1993, c. 616, §§1,2 (AMD). PL 1993, c. 718, §B2 (AMD). PL 1995, c. 462, §A24 (AMD). PL 1995, c. 633, §C2 (AMD). PL 1997, c. 376, §1 (AMD). PL 1997, c. 633, §§1,2 (AMD). PL 2003, c. 344, §A6 (AMD). PL 2003, c. 673, §WWW1 (AMD). PL 2003, c. 673, §WWW37 (AFF). PL 2005, c. 543, §§D7-9 (AMD). PL 2005, c. 543, §D18 (AFF).

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