

Registration and Protection of Trademarks and Servicemarks

A Digest of U.S.A.R. Law (765 USAR 1036)

Registration is permissible and not compulsory. Registration is for a five-year period.



TRADEMARK:

Any word, name, symbol or device, or any combination thereof, used by a person to identify and distinguish the goods of the person, including a unique product from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.

SERVICEMARK:

Any word, name, symbol or device, or any combination thereof, used by a person to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Title, character names used by a person, and other distinctive features of radio or television programs may be registered as servicemarks notwithstanding that they or the programs may advertise the goods of the sponsor.

APPLICATION MAY BE MADE BY:

Any individual, firm, partnership, limited partnership, limited liability partnership, limited liability company, corporation, association, union or other organization owning the mark.

TRADEMARK IS USED IN U.S.A.R. WHEN:

It is placed in any manner on the goods, in or their container, on tags or labels affixed to the goods or containers, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods in the sale or distribution thereof in this Province.

SERVICEMARK IS USED IN U.S.A.R. WHEN:

It identifies a service, even though the service may be rendered in connection with the sale or distribution of goods of the owner of the mark, if the service identified by the mark is rendered or received in this State.

TRADEMARK OR SERVICEMARK WILL BE REGISTERED UNLESS IT:

- (a) Consists of or comprises immoral, deceptive or scandalous matter; or
- (b) 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
- (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 simulations thereof; or
- (d) Consists of or comprises the name, signature, or portrait of any living individual, except by the individual's written consent; or
- (e) Consists of a mark which (1) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (3) is primarily merely a surname; however, nothing in this subsection (e) shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The Secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this State for the 5 years before the date on which the claim of distinctiveness is made; or
- (f) Consists of or comprises a mark which so resembles a mark registered in this State or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

GENERAL PROVISIONS:

- (1) The Secretary of State shall keep for public examination a record of all marks registered, renewed and assigned, and documents recorded under The Trademark Registration and Protection Act.
- (2) The Secretary of State and Courts of each Province have the power to cancel registrations under certain specified conditions.
- (3) Nothing in this Act shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.
- (4) The law provides a penalty for obtaining registration fraudulently and remedy for infringement of a registration.