

Chapter 647

Trade-marks and Merchandise Brands

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CROSS REFERENCES

Brands, marks and labels of:

Agricultural and horticultural products, Ch. 632
Apiary equipment, Ch. 602
Caustics and corrosives, 453.240
Commercial feeds, 633.020 to 633.060
Commercial fertilizers, 633.320 to 633.360
Convict-made goods, 421.350 to 421.365
Dairy products and substitutes, Ch. 621
Forest products and booming equipment, Ch. 532
Livestock, Ch. 604
Particular items, Chs. 616, 634, 648, 649, 661

647.020

Voluntary filing of private brand of bottles or other containers, 616.625

647.990

Penalty for:

Interference with apiary brand or serial number, 602.150
Interference with serial numbers of articles, 165.175
Use of another's trade-mark, brand, etc., 165.185, 616.630

647.010 Definitions. (1) As used in this chapter:

(a) "Article of merchandise" signifies any goods, wares, works of art, commodity, compound, mixture or other preparation or thing, which may be lawfully kept or offered for sale.

(b) "Person" means person, partnership, firm or private corporation.

(2) A "trade-mark" is a mark used to indicate the maker, owner, or seller of an article of merchandise and includes among other things, any name of a person, partnership, firm, or private corporation, or any letter, word, device, emblem, figure, seal, stamp, brand, wrapper, ticket, stopper, label or other mark, lawfully adopted by him, and usually affixed to any article of merchandise to denote that the article was imported, manufactured, produced, sold, compounded, bottled, packed or otherwise prepared by him. "Trade-mark" also includes a signature or mark, used or commonly placed by a painter, sculptor or other artist upon a painting, drawing, engraving, statue or other work of art to indicate that the work of art was designed or executed by him.

(3) An "imitation of trade-mark" is that which so far resembles a genuine trade-mark as to be likely to induce the belief that it is genuine, whether by use of words or letters, similar in appearance or in sound, or by any sign, device or other means.

(4) A trade-mark is "affixed" to an article of merchandise when it is placed in any manner in or upon the article itself, or upon a box, bale, barrel, bottle, case, cask, platter or other vessel or package, or a cover, wrapper, stopper, brand, label, or other thing in, by, or with which the goods are packed, enclosed or otherwise prepared for sale or disposition.

647.020 Application for registration for exclusive use of trade-mark. Any person desiring to secure within Oregon the exclusive use of any trade-mark for any article of merchandise, shall make application to the Secretary of State upon a blank furnished for that purpose for the registration of the trade-mark. The application shall be accompanied by particular description or a facsimile of the trade-mark he desires to use and the description of the articles of merchandise to which the trade-mark is to be applied.

647.030 Recording trade-mark. (1) If a claim or application has not already been

filed with the Secretary of State for the same or a similar trade-mark, or a trade-mark so closely resembling the one applied for as to cause confusion, the secretary shall immediately file the application and record the trade-mark in a book especially provided and kept by him for such purpose. The book shall be at all times subject to public inspection and examination.

647.040 Filing fee. Upon the filing of a trade-mark by the Secretary of State, the owner or person offering it for filing shall pay a fee of \$10 for the filing and recording. No trade-mark shall be filed until the fee is paid.

647.050 Grounds for refusal to record trade-mark. (1) If the same or any similar trade-mark or a trade-mark so closely resembling the trade-mark offered for filing and record as to be likely to cause confusion or be misleading is already filed, the Secretary of State shall so inform the applicant and shall not file or record the trade-mark.

(2) No trade-mark shall be granted for a word or generic term which, by general or common use, is descriptive of or characterizes a particular article to which it pertains rather than its origin or proprietorship.

(3) No person shall file or use as a trade-mark the name of any foreign or domestic corporation of record under the laws of Oregon at the time of making the application for trade-mark. If in the opinion of the Secretary of State any trade-mark offered for filing and record so closely resembles the name of a foreign or domestic corporation of record under the laws of Oregon as to be likely to cause confusion, he shall so inform the applicant and shall not file the trade-mark.

647.060 Certificate of recordation; evidentiary effect of certificate. (1) The Secretary of State shall, upon filing the trade-mark as provided in ORS 647.030, deliver to the person filing it a certificate, under the seal of the state, of the record of the trade-mark and articles of merchandise to which it is applied.

(2) The certificate granted by the Secretary of State under this section and proof of publication as provided in ORS 647.070 are prima facie evidence of the ownership of any trade-mark therein described by the person therein named in any prosecution or action under any of the statutes of this state, where proof of such ownership and use is neces-

sary, and in any action or proceeding brought for the purpose of recovering damages for violation of the trade-mark or preventing infringement thereof. This chapter shall not prevent the proof of any such trade-mark, and the use thereof in any other lawful manner, in use prior to May 20, 1911.

647.070 Publication of notice of registration. Upon the filing of a trade-mark by the Secretary of State, the owner thereof shall cause to be published in some newspaper published in the county in which the principal office or place of business of the owner is located, once a week for three successive weeks, a notice setting forth the description of the trade-mark and articles of merchandise to which it is to be applied, together with the name of the person owning the trade-mark. After registration and publication of notice as provided in this chapter, the person is the proprietor and exclusive owner of the trade-mark.

647.080 Revocation of registration and registration in name of subsequent applicant upon proof of prior adoption of trade-mark.

(1) The Secretary of State shall not record, register or file any trade-mark so similar to any other trade-mark heretofore filed or registered as would be calculated to deceive, unless it is proved to his satisfaction that the person last applying for the registration of the trade-mark is entitled thereto and the rightful owner thereof by prior adoption, in which case the date of the adoption shall determine the ownership and shall be proved by affidavits of persons conversant with such dates.

(2) If the Secretary of State is satisfied after hearing the affidavits referred to in subsection (1) of this section that the person last applying for registry is entitled by priority of adoption to register the trade-mark, he shall revoke the first registry and register the trade-mark in the name of the person last applying therefor.

647.090 Court directing revocation of registration. Any court of competent jurisdiction may, in an action brought for that purpose by any person aggrieved thereby against any person who has already filed or registered any trade-mark, direct the revocation of the registration if the court determines that the person who has already registered the trade-mark is not the rightful owner of the trade-mark.

647.100 Infringement of mark prohibited. No person shall:

(1) Use or cause to be used any trade-mark owned by another.

(2) Use words or letters similar in appearance or in sound, or by any sign, device or other means imitate such trade-mark without the owner's consent.

(3) Have in his possession a counterfeit trade-mark, knowing it to be a counterfeit, or die, plate, brand or anything for the purpose of falsely making or imitating a trade-mark without the owner's consent.

(4) Knowingly sell or expose for sale any article of merchandise to which such false or imitation trade-mark is attached without the consent of the owner of the trade-mark.

647.110 Forfeiture of property bearing imitative mark. Any person who uses or causes to be used any name, brand, mark or description, whether by the use of words or letters similar in appearance or sound, or who by any sign, device or other means imitates a trade-mark filed and recorded, upon any article of merchandise for the purpose of deception or profit, shall forfeit to the use of the owner of the trade-mark so taken or substituted the property or article upon which the trade-mark is placed or used, or the value thereof, to be recovered by the trade-mark owner in any court having jurisdiction of the subject matter.

647.120 Application of chapter to previous filings. Any person, who filed prior to May 20, 1911, under the provisions of law existing at the time of such filing need not again file and publish such descriptions in order to be entitled to the benefits of this chapter.

647.130 Injunctive relief. Nothing in this chapter shall affect the power of courts of equity to perpetually restrain by injunction the improper use of any trade-mark secured by the provisions of this chapter or other provisions of law.

647.990 Penalties. Violation of ORS 647.100 is punishable, upon conviction, by a fine of not less than \$50 nor more than \$100, or by imprisonment in the county jail for not less than 20 days nor more than 50 days, or by both.