Chapter 647

1965 REPLACEMENT PART

Trade and Service Marks

647.005 Chapter definitions
647.015 Application for registration; fee
647.025 Classes of goods and services
647.035 Marks ineligible for registration
647.045 Certificate of registration; evidentiary effect
647.055 Period of registration; renewal; fee; registrations in force on August 9, 1961; record of registrations
647.065 Assignment of registered mark; fee
647.075 Cancellation of registrations
647.085 Liability for fraudulent registration
647.095 Liability for infringement of mark; limitation
647.105 Remedies for infringement
647.115 Effect of chapter on marks acquired at common law

CROSS REFERENCES

Brands, marks and labels of:
- **Agricultural and horticultural products, Ch. 632**
- **Apiary equipment, Ch. 602**
- Bread, 625.220
- **Caustics and corrosives, 453.240**
- Commercial fertilizers, 633.361
- **Dairy products and substitutes, Ch. 621**
- **Economic poisons, Ch. 634**
- **Forest products and booming equipment, Ch. 532**
- Inmate-made goods, 421.350 to 421.365
- **Livestock, Ch. 604**
- **Parakeets, 596.480**
- **Particular items, Chs. 616, 648, 649, 661**
  647.095

Penalty for:
- Counterfeiting or unlawfully using union label, 661.210, 661.220
- **Interference with apiary brand or serial number, 602.150**
- **Interference with serial numbers of articles, 165.175**
- Use of another's mark, brand, etc., 165.185

647.005 Chapter definitions. (1) As used in this chapter:

(a) "Applicant" embraces the person filing an application for registration of a mark under this chapter, his legal representatives, successors or assigns.

(b) "Mark" includes any trade-mark or service mark entitled to registration under this chapter whether registered or not.

(c) "Person" means any individual, firm, partnership, corporation, association, union or other organization.

(d) "Registrant" embraces the person to whom the registration of a mark under this chapter is issued, his legal representatives, successors or assigns.

(e) "Trade-mark" means any word, name, symbol or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(f) "Trade name" means a word, name, symbol, device or any combination thereof used by a person to identify his business, vocation or occupation and distinguish it from the business, vocation or occupation of others.

(g) "Service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(2) For the purposes of this chapter, a mark shall be deemed to be "used" in this state (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state, and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

[1961 c.497 §1; 1965 c.511 §1]

647.010 [Repealed by 1961 c.497 §16]

647.015 Application for registration; fee. (1) 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 such registration; and, if a corporation, the state of incorporation.

(b) The goods or services in connection with which the mark is used and mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall.

(c) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business.

(d) A statement that the applicant believes he is the owner of the mark and that no other person has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

(2) The application for registration shall be:

(a) Signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

(b) Accompanied by a specimen or facsimile of the mark.

(c) Accompanied by a filing fee of $10 payable to the Secretary of State.

[1961 c.497 §3; 1965 c.511 §2]

647.020 [Repealed by 1961 c.497 §16]

647.025 Classes of goods and services. The general classes of goods and services listed in this section are established for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights. A single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used comprised in a single class, but in no event shall a single application include goods or services upon which the mark is being used which fall within different classes of goods or services. The classes of goods and services are as follows:

Class	Goods
1	Raw or partly prepared materials.
2	Receptacles.
3	Baggage, animal equipments, portfolios and pocketbooks.
4	Abrasives and polishing materials.
5	Adhesives.
6	Chemicals and chemical compositions.
7	Cordage.
8	Smokers' articles, not including tobacco products.
9	Explosives, firearms, equipments and projectiles.
10	Fertilizers.

11 Inks and inking materials.
12 Construction materials.
13 Hardware and plumbing and steam-fitting supplies.
14 Metals and metal castings and forgings.
15 Oils and greases.
16 Paints and painters' materials.
17 Tobacco products.
18 Medicines and pharmaceutical preparations.
19 Vehicles.
20 Linoleum and oilcloth.
21 Electrical apparatus, machines and supplies.
22 Games, toys and sporting goods.
23 Cutlery, machinery and tools, and parts thereof.
24 Laundry appliances and machines.
25 Locks and safes.
26 Measuring and scientific appliances.
27 Horological instruments.
28 Jewelry and precious-metal ware.
29 Brooms, brushes and dusters.
30 Crockery, earthenware and porcelain.
31 Filters and refrigerators.
32 Furniture and upholstery.
33 Glassware.
34 Heating, lighting and ventilating apparatus.
35 Belting, hose, machinery packing and nonmetallic tires.
36 Musical instruments and supplies.
37 Paper and stationery.
38 Prints and publications.
39 Clothing.
40 Fancy goods, furnishings and notions.
41 Canes, parasols and umbrellas.
42 Knitted, netted and textile fabrics, and substitutes therefor.
43 Thread and yarn.
44 Dental, medical and surgical appliances.
45 Soft drinks and carbonated waters.
46 Foods and ingredients of foods.
47 Wines.
48 Malt beverages and liquors.
49 Distilled alcoholic liquors.
50 Merchandise not otherwise classified.
51 Cosmetics and toilet preparations.
52 Detergents and soaps.

Class	Services
100	Miscellaneous.
101	Advertising and business.
102	Insurance and financial.
103	Construction and repair.
104	Communications.
105	Transportation and storage.
106	Material treatment.
107	Education and entertainment.

[1961 c.497 §9; 1965 c.511 §3]

647.030 [Repealed by 1961 c.497 §16]

647.035 Marks ineligible for registration. A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive or scandalous matter; or

(2) 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

(3) 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; or

(4) Consists of or comprises the name, signature or portrait of any living individual except with his written consent; or

(5) Consists of or comprises a mark which 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; or

(6) Consists of a mark which (a) when applied to the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them, or (b) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (c) is primarily merely a surname. However, nothing in this subsection shall prevent the registration of a mark used in this state by the applicant which 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 five years next preceding the date of the filing of the application for registration.

[1961 c.497 §2; 1965 c.511 §4]

647.040 [Amended by 1959 c.261 §1; repealed by 1961 c.497 §16]

647.045 Certificate of registration; evidentiary effect. (1) Upon compliance by the applicant with the requirements of this chapter, the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the state.

(2) The certificate of registration shall show:

(a) The name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the mark.

(b) The date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state.

(c) The class of goods or services and a description of the goods or services on which the mark is used.

(d) A reproduction of the mark.

(e) The registration date and the term of the registration.

(3) Any certificate of registration issued by the Secretary of State under this chapter, or a copy thereof duly certified by the Secretary of State, shall be prima facie evidence in any action or judicial proceeding in any court of this state of:

(a) The validity of the registration of the mark.

(b) Registrant's ownership of the mark.

(c) Registrant's exclusive right to use the mark in trade within the state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein.

[1961 c.497 §4; 1965 c.511 §5]

647.050 [Repealed by 1961 c.497 §16]

647.055 Period of registration; renewal; fee; registrations in force on August 9, 1961; record of registrations. (1) Registration of a mark under this chapter shall be effective for a term of 10 years from the date of registration and, if the mark is then still in use, upon application filed within six months prior to the expiration of such term, on a form to be furnished by the Secretary of State, the registration may be renewed for a like term. A renewal fee of $10 payable to the Secretary of State shall accompany the application for renewal of the registration. A mark registration may be renewed for successive periods of 10 years in like manner.

(2) The Secretary of State shall notify registrants of marks under this chapter of the necessity of renewal within the year next preceding the expiration of the 10 years from the date of registration by writing to the last-known address of the registrants.

(3) Any registration in force on August 9, 1961, shall expire 10 years from the date of registration or of the last renewal thereof or one year after August 9, 1961, whichever is later, and may be renewed by filing an application with the Secretary of State on a form furnished by him and paying the renewal fee required by subsection (1) of this section therefor within six months prior to the expiration of the registration.

(4) All applications for renewals under this chapter, whether of registrations made under chapter 511, Oregon Laws 1965, or of registrations effected under any prior Act, shall include a statement that the mark is still in use in this state.

(5) The Secretary of State shall keep for public examination a record of all marks registered or renewed under this chapter.

[1961 c.497 §§5, 7; 1965 c.511 §6]

647.060 [Repealed by 1961 c.497 §16]

647.065 Assignment of registered mark; fee. Any mark and its registration under this chapter shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the Secretary of State upon the payment of a fee of $10 payable to the Secretary of State who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the Secretary of State within three months after the date thereof or prior to such subsequent purchase.

[1961 c.497 §6; 1965 c.511 §7]

647.070 [Repealed by 1961 c.497 §16]

647.075 Cancellation of registrations. The Secretary of State shall cancel from the register:

(1) After one year from August 9, 1961, all registrations under prior laws which are more than 10 years old and not renewed in accordance with this chapter.

(2) Any registration concerning which

the Secretary of State receives a voluntary request for cancellation thereof from the registrant or the assignee of record.

(3) All registrations granted under this chapter and not renewed in accordance with the provisions of this chapter.

(4) Any registration when a court of competent jurisdiction orders cancellation of such registration on any ground.

(5) Any registration concerning which a court of competent jurisdiction finds that the:

(a) Registered mark has been abandoned.

(b) Registrant is not the owner of the mark.

(c) Registration was granted improperly.

(d) Registration was obtained fraudulently.

[1961 c.497 §8; 1965 c.511 §8]

647.080 [Repealed by 1961 c.497 §16]

647.085 Liability for fraudulent registration. Any person who for himself, or on behalf of any other person, procures the filing or registration of any mark in the office of the Secretary of State under the provisions of this chapter, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, is liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

[1961 c.497 §10; 1965 c.511 §9]

647.090 [Repealed by 1961 c.497 §16]

647.095 Liability for infringement of mark; limitation. (1) Subject to the provisions of ORS 647.115 and subsection (2) of this section, a person is liable to a civil action by the owner of a registered mark for any or all of the remedies provided in ORS 647.105 if such person:

(a) Uses, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered under this chapter in connection with the sale, offering for sale or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(b) Reproduces, counterfeits, copies or colorably imitates any such mark and applies such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services.

(2) The registrant is not entitled to recover profits or damages under paragraph (b) of subsection (1) of this section unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

[1961 c.497 §11; 1965 c.511 §10]

647.100 [Repealed by 1961 c.497 §16]

647.105 Remedies for infringement. (1) Any owner of a mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may:

(a) Grant injunctions to restrain such manufacture, use, display or sale as may be by the court deemed just and reasonable;

(b) Require the defendants to pay to such owner all profits derived from or all damages suffered by reason of such wrongful manufacture, use, display or sale, or both such profits and damages; and

(c) Order that any such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed.

(2) The enumeration of any right or remedy in this chapter does not affect a registrant's right to prosecute under any penal law of this state.

[1961 c.497 §12; 1965 c.511 §11]

647.110 [Repealed by 1961 c.497 §16]

647.115 Effect of chapter on marks acquired at common law. Nothing in this chapter shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

[1961 c.497 §14; 1965 c.511 §12]

647.120 [Repealed by 1961 c.497 §16]

647.130 [Repealed by 1961 c.497 §16]

647.140 to 647.980 [Reserved for expansion]

647.990 [Repealed by 1961 c.497 §16]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 15, 1965.

Sam R. Haley
Legislative Counsel