

Section 1. Minnesota Statutes 1957, Section 465.09, is amended to read:

**465.09 Damages, notice of claim.** Every person who claims damage from any city, village or borough for or on account of any loss or injury sustained by reason of any defect in any bridge, street, sidewalk, road, park, ferry-boat, public works or any grounds or places whatsoever, or by reason of the negligence of any of its officers, agents, servants or employees, shall cause to be presented to the common council or other governing body within 30 days after the alleged loss or injury, a written notice stating the time, place and circumstances thereof, and the amount of compensation or other relief demanded. *Failure to state the amount of compensation or other relief demanded shall not invalidate the notice; but in such case, on demand by the city, village or borough, the claimant shall furnish full information regarding the nature and extent of the injuries and damages, within 15 days after such demand.* No action therefor shall be maintained unless such notice has been given; *and unless the action is commenced within one year after such notice. The time for giving such notice shall not include any period of time next succeeding the occurrence of the injury and not in excess of 90 days during which the person injured is incapacitated from giving such notice by reason of the injury sustained.*

Approved April 24, 1959.

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## CHAPTER 600—S. F. No. 232

[Coded in Part]

*An act to provide for the registration and protection of trademarks and service marks and to repeal all existing laws inconsistent herewith.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [333.18] **Trademarks and service marks; definitions.** Subdivision 1. (1) The term "trademark" as used herein 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.

(2) The term "service mark" as used herein means a word, name, symbol or device or any combination thereof.

adopted and used by a person to identify his services and to distinguish them from services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce.

(3) The term "certification mark" means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

(4) The term "collective mark" means a trademark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization.

Subd. 2. The term "person" as used herein means any individual, firm, partnership, corporation, association, union or other organization.

Subd. 3. The term "applicant" as used herein embraces the person filing an application for registration of a mark under this Act, his legal representatives, successors or assigns.

Subd. 4. The term "registrant" as used herein embraces the person to whom the registration of a mark under this Act is issued, his legal representatives, successors or assigns.

Subd. 5. (1) For the purposes of this Act, a trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto or on displays associated with the goods and such goods are sold or otherwise distributed in this state.

(2) For the purpose of this Act, a service mark shall be deemed to be "adopted and used" when it is adopted and used in connection with the rendering, selling, or advertising of services in this state to identify the services of one person and distinguish them from the services of others, and such services are rendered.

Sec. 2. [333.19] **Unregistrable matter; collective and certification marks.** Subdivision 1. A trademark or service 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 a mark which, (a) when applied to the goods or used to identify the services of the applicant, is merely descriptive or deceptively misdescriptive of the, or (b) when applied to the goods or used to identify the services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (c) is primarily merely a surname provided, however, that nothing in this subsection (5) shall prevent the resignation 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 used to identify the services, proof of substantially exclusive and continuous use thereof as a mark by the applicant in this state for the five years next preceding the date of the filing of the application for registration; or

(6) 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 used to identify the services of the applicant, to cause confusion or mistake or to deceive.

Subd. 2. Subject to the provisions relating to the registration of trademarks and service marks, so far as they are applicable, collective and certification marks, used in this state, shall be registrable under this act, in the same manner and with the same effect as are trademarks and service marks, by persons, and nations, states, municipalities, and the like,

exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided herein in the case of trademarks or service marks, except when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used.

**Sec. 3. [333.20] Application; form, signature, specimen of mark, fee.** Subdivision 1. Subject to the limitations set forth in this act, any person who adopts and uses a trademark or a service 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:

(1) the name and business address of the person applying for such registration; and, if a corporation, the state of incorporation,

(2) 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 such goods or services and the class in which such goods or services fall,

(3) the date when the mark was first used in this state by the applicant or his predecessor in business, and

(4) a statement that the applicant believes that 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.

Subd. 2. The application shall be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

Subd. 3. The application shall be accompanied by a specimen or facsimile of such mark in triplicate.

Subd. 4. The application for registration shall be accompanied by a filing fee of \$15, payable to the Secretary of State; provided, however, that a single credit of \$10 shall be given each applicant applying for re-registration of a mark hereunder for each \$10 filing fee paid by applicant for registration of the same trademark prior to the effective date of this Act.

Sec. 4. [333.21] **Certificate of registration, issuance, evidentiary.** Subdivision 1. Upon a finding by the Secretary of State that the mark and application for registration comply with the requirements of this Act, he 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, and shall show the registrant's name and business address and, if a corporation, the state of incorporation, the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services in connection with which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

Subd. 2. Any certificate of registration issued by the Secretary of State under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such mark, in any action or judicial proceedings in any court of this state and shall be prima facie evidence of registrant's ownership and exclusive right to use the mark on or in connection with the goods or services described in the certificate.

Sec. 5. [333.22] **Term of registration; renewal, notice, fee.** Subdivision 1. Registration of a mark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term or a renewal thereof, on a form to be furnished by the secretary of state, the registration may be renewed for additional ten year terms provided that the mark is in use by the applicant at the time of the application for renewal and that there are no intervening rights. A renewal fee of \$10 payable to the secretary of state shall accompany the application for renewal of the registration.

Subd. 2. The Secretary of State shall notify each registrant of a mark hereunder of the necessity of renewal thereof by writing to the last known address of the registrant approximately one year prior to the registration's expiration date.

Subd. 3. Any registration in force on the date on which this act shall become effective shall expire two years after the effective date of this Act, and may be renewed by filing an application with the Secretary of State on a form furnished by him and paying the aforementioned renewal fee

therefor within six months prior to the expiration of the registration provided the mark is in use at the time of application for renewal and there are no intervening rights.

Subd. 4. The Secretary of State shall within six months after the effective date of this act notify all registrants of trademarks under previous acts of the date of expiration of such registrations, unless renewed in accordance with the provisions of this Act, by writing to the last known address of the registrants.

Sec. 6. [333.23] **Conveyances of marks; recordation, fee, necessity.** The Secretary of State shall record written and verified conveyances of any mark along with that part of the goodwill of the business in connection with which the mark is used, and of the corresponding application or registration which is presented to him for recording along with a payment of a fee of \$3 and 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 act 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.

Sec. 7. [333.24] **Secretary of State's record of marks.** The Secretary of State shall keep for public examination a record of all marks registered or renewed under this Act in accordance with the classification hereinafter set forth. Such record of registration shall be constructive notice of registrant's claim of ownership of the mark registered.

Sec. 8. [333.25] **Cancellation of marks.** Subdivision 1. The Secretary of State shall cancel from the register:

(1) after two years from the effective date of this Act, all registrations under prior acts which are not renewed in accordance with this Act;

(2) any registration concerning which the Secretary of State shall receive a voluntary request for cancellation thereof from the registrant;

(3) all registrations granted under this Act and not renewed in accordance with the provisions thereof;

(4) in compliance with an order of a district court, any registration concerning which the court shall find:

- a. that the registered mark has been abandoned,
- b. that the registrant is not the owner of the mark,
- c. that the registration was granted improperly,
- d. that the registration was obtained fraudulently,
- e. that the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person previously in this state or in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that he is the prior user of the mark or that he is the owner of a concurrent registration of his mark in the United States Patent Office covering an area including this state, the registration hereunder shall not be cancelled.

(5) When a district court shall order cancellation of a registration on any ground.

Subd. 2. No registration shall be cancelled after the mark has had substantially exclusive and continuous use by the registration for five years following the registration of said mark except for the reasons set forth in Section 8, Subdivision 1, Subsections (1), (2) and (3) and Subsections (4)a, b and d thereof, or unless a mark has been registered in this state prior to use of registrant's mark or a mark has been registered in the United States Patent Office with the publication date thereof prior to the date of use of registrant's mark, which marks when used on or in connection with the goods or services of the respective registrants would be likely to cause confusion, mistake or deception, or unless the mark is the common descriptive name of any article, substance or service.

Sec. 9. [333.26] Classification system. For convenience of administration of this Act, but not to limit or extend the applicant's or registrant's rights, the Secretary of State shall adopt the classification system in effect in the United States Patent Office on the effective date of this Act and shall revise this classification system to conform with said United States Patent Office system as and if changes are made therein. A single application for registration of a mark may include any or all goods 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 service with which the mark is being used which fall within different classes.

**Sec. 10. [333.27] Improper registration; liability.** Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any mark in the office of the Secretary of State under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequent of such filing or registration, to be recovered by or on behalf of the party injured thereby in any district court.

**Sec. 11. [333.28] Identical or similar marks; liability for misuse.** Subject to the provisions of Section 13 hereof any person who shall (a) use without the consent of the registrant any mark on or in connection with rendering of services, selling, offering for sale, or advertising of any goods or services, which mark is identical to or so similar to the registered mark as to be likely to cause confusion or mistake on the part of a purchaser of the goods or services or to deceive such a purchaser as to the source or origin of the goods or services; or (b) reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable limitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution of such goods or the sale or rendering of services; shall be liable to a civil action by the owner of such registered mark for any or all of the remedies provided in Section 12 hereof, except that under subsection (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

**Sec. 12. [333.29] Remedies.** Subdivision 1. Any district court may grant injunctions to restrain infringement of registrant's rights and may require the defendants to pay the registrant all benefits derived from and/or damages suffered by reason of such infringement. The prevailing party may, in the discretion of the court, be awarded a reasonable attorney's fee to be taxed by the court as a part of the costs and merged into the judgment.

**Subd. 2.** The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

**Sec. 13. [333.30] Marks acquired at common law.** Nothing herein shall adversely affect a person's rights or the enforcement of his rights in a mark acquired in good faith at any time at common law, except that his rights as against

the registrant of the same or confusingly similar mark are limited to the areas of his use established prior to the registration date and areas in which his mark has become known prior to the registration date.

Sec. 14. If any provision hereof, or the application of such provision to any person or circumstances is held invalid, the remainder of this Act shall not be affected thereby.

Sec. 15. This Act shall be in force and take effect immediately after its enactment but shall not affect any suit, proceeding or appeal then pending. All acts relating to marks and parts of any other acts inconsistent herewith are hereby repealed on the effective date of this Act, provided that as to any suit, proceeding or appeal, and for that purpose only, pending at the time this Act takes effect such repeal shall be deemed not to be effective until final determination of said pending suit, proceeding or appeal.

Sec. 16. [333.31] **Service of process upon non-resident registrants.** Service in duplicate of any paper relating to a non-resident's registration under this Act, on the Secretary of State, shall constitute service on said non-resident registrant. The Secretary of State shall forward one copy of such paper to said registrant at his last known address.

Approved April 24, 1959.

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CHAPTER 601—S. F. No. 1078

[Coded]

*An act relating to savings banks; amending Minnesota Statutes 1957, Section 50.14, by adding a subdivision thereto.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1957, Section 50.14, is amended by adding a subdivision to read:

*Subd. 15. Class thirteen shall be obligations payable in United States dollars issued or fully guaranteed by International Bank for Reconstruction and Development so long as the total amount of the liabilities of the International Bank for Reconstruction and Development does not exceed the amount of the United States' subscription to the capital of the aforesaid bank.*

Approved April 24, 1959.

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