

CHAPTER 333

TRADE NAMES; REGISTRATION OF INSIGNIA

333.01 COMMERCIAL BUSINESS TRADE NAMES; CERTIFICATE

The certificate executed and filed with the clerk of the district court pursuant to chapter 333 is presumptive evidence of the names of the persons conducting the business under the trade name. Section 333.03 imposes liability upon the individual's name in the certificate to all persons who extend credit to the business until a new certificate is filed showing changes of ownership. Except only in the case of creditors who have actual notice or knowledge of such change of ownership, the burden of proof is on the defendants to show that the plaintiff fell within the exception. *Hart Publications v Kaplan*, 228 M 512, 37 NW(2d) 814.

The statute does not require the issuance of a license to operate and conduct a collection agency, but requires a bond for the protection of the public, the sufficiency of which is determined by the secretary of state. The law contemplates that the agency operate under one name and under one main office but it may have branch offices under the same identical name, incidental thereto for convenience in facilitating the operation of its affairs and only one bond is required. OAG July 22, 1948 (828-B).

Section 333.01 prohibits any person or persons from carrying on or conducting a commercial business under a name which does not set forth the full and individual name of every person interested in such business, unless such person or persons filed in the office of the district court of the county in which the business is transacted a certificate setting forth the name under which the business is conducted. This is modified to some extent by section 333.05, while section 333.13 provides that a person carrying on such business should she fail to comply with the provisions of section 333.01 shall be guilty of a misdemeanor. This prohibition only applies where the business carried on is a commercial business there having been no prosecution under section 333.13. OAG Aug. 12, 1948 (920-D).

Even though he does not grow the stock he sells, a dealer in nursery stock is not prohibited from using the word nursery in his trade name. OAG Feb. 16, 1948 (923).

333.04 CLERKS OF COURT; DUTIES, FEES

The certificate executed and filed with the clerk of the district court pursuant to chapter 333 is presumptive evidence of the names of the persons conducting the business under the trade name. Section 333.03 imposes liability upon the individual's name in the certificate to all persons who extend credit to the business until a new certificate is filed showing changes of ownership. Except only in the case of creditors who have actual notice or knowledge of such change of ownership, the burden of proof is on the defendants to show that the plaintiff fell within the exception. *Hart Publications v Kaplan*, 228 M 512, 37 NW(2d) 814.

333.05 EXCEPTIONS

Sections 333.01 to 333.06 do not apply if the partnership name contains the full name of one of the individuals comprising the partnership. OAG Aug. 12, 1948 (920-D).

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MINNESOTA STATUTES 1953 ANNOTATIONS

903

MONEY, RATES OF INTEREST 334.01

333.01 shall be guilty of a misdemeanor. This prohibition only applies where the business carried on is a commercial business there having been no prosecution under section 333.13. OAG Aug. 12, 1948 (920-D).

333.06 PLEADING FAILURE TO FILE CERTIFICATE; COSTS

Where the evidence established that plaintiff had negotiated and performed his contract in his individual name distinct from an electrical business which he conducted under a trade name; and where the title of the action incorrectly included such trade name as part of plaintiff's designation therein, the trial court did not err in ordering the trade name deleted therefrom to conform with the proof. *Heyn v Braun*, M, 59 NW(2d) 327.

333.13 VIOLATIONS; PENALTIES

Section 333.01 prohibits any person or persons from carrying on or conducting a commercial business under a name which does not set forth the full and individual name of every person interested in such business, unless such person or persons filed in the office of the district court of the county in which the business is transacted a certificate setting forth the name under which the business is conducted. This is modified to some extent by section 333.05, while section 333.13 provides that a person carrying on such business should she fail to comply with the provisions of section 333.01 shall be guilty of a misdemeanor. This prohibition only applies where the business carried on is a commercial business there having been no prosecution under section 333.13. OAG Aug. 12, 1948 (920-D).

REGISTRATION OF INSIGNIA

333.17 USE OF CERTAIN TERMS FORBIDDEN

In an action under the Declaratory Judgments Act brought by a corporation organized after the enactment of M.S.A., Section 333.17, which reads in part: "no person, firm, corporation or association, selling or offering for sale, any commodity, shall use, or cause, or permit to be used as the name or designation, or as a part of the name or designation, of any business, any of the following words, * * * : 'Army,' 'Navy,' * * *," to have said statute declared invalid as unconstitutional, held that said Act is valid, having been enacted by the legislature in the proper exercise of the police power. *North Star Army Store v Clark*, 231 M 55, 42 NW(2d) 414.

CHAPTER 334

MONEY, RATES OF INTEREST

334.01 RATE OF INTEREST

HISTORY. RS 1851 c 35 s 1, 2; PS 1858 c 30 s 1, 2; 1860 c 56 s 1; GS 1866 c 23 s 1; 1877 c 15 s 1; GS 1878 c 73 s 1; 1879 c 66 s 1; 1887 c 66; GS 1878 Vol 2 (1888 Supp) c 23 s 1; GS 1894 s 2212; 1899 c 122; RL 1905 s 2733; GS 1913 s 5805; 1923 c 70 s 1; GS 1923 s 7036; MS 1927 s 7036.

Equity powers of the bankruptcy court; allowability of interest on interest. 32 MLR 174.

Installment plans as usurious. 36 MLR 744.

Even though the contract itself contains no protection governing the payment of interest, equity imposes the obligation. *Lund v Larson*, 222 M 438, 24 NW(2d) 827.

Where the amount of the liability has not been ascertained there is no liability for interest thereon prior to the time of the ascertainment of the liability; and where