333.19 UNREGISTRABLE MATTER; COLLECTIVE AND CERTIFICATION MARKS.

Subdivision 1. **Registration prohibition.** 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 must 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 of this insignia; or

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

(5) consists of a mark which, (i) when applied to the goods or used to identify the services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (ii) when applied to the goods or used to identify the services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (iii) is primarily merely a surname provided, however, that nothing in this clause (5) 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 used to identify the services, proof of substantially exclusive and continuous use 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 corporate, limited liability company, limited liability partnership, cooperative, or limited partnership name in use or reserved in this state by another, 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. The secretary of state may require the applicant to obtain affidavits by both the applicant and by the holder of the previously registered name or mark in making this determination.

Subd. 2. **Registration of collective and certification marks.** 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 sections 333.18 to 333.31, 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.

History: *1959 c 600 s 2; 1981 c 270 s 138; 1984 c 618 s 44; 1986 c 444; 1998 c 315 s 2; 1999 c 133 s 8*