

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

August 13, 1980

James S. Henderson
Deputy Secretary of State
State Office Building
Second Floor
Station 101
Augusta, ME 04333

Dear Mr. Henderson:

You have asked a question concerning the relationship of the Maine Trademark Law, 10 M.R.S.A. §1521 et seq., to the Maine Business Corporation Act, 13-A M.R.S.A. The Trademark Law provides that any person who uses a trademark in this State may file with the Secretary of State an application for registration of the mark. 10 M.R.S.A. §1522(2). The Business Corporation Act states that no foreign corporation shall do business in this State without authorization. 13-A M.R.S.A. §1201(1). Your question, as I understand it, is whether the Secretary of State is legally compelled to refuse the registration of marks by foreign corporations not authorized to do business in Maine. My answer is that, in the absence of a binding judicial decision, the Secretary of State is not legally compelled either to refuse registration of marks claimed by unauthorized corporations or to register such marks.

The Business Corporation Act requires, generally, that foreign corporations obtain authorization from the Secretary of State before they do business in Maine. 13-A M.R.S.A. §1201. However, the law provides certain exceptions to the authorization requirement:

"Without excluding other activities which may not constitute doing business in this State, a foreign corporation shall not be deemed to be doing business in this State, for purposes of this chapter, solely by reason of carrying on in this State any one or more of the following activities . . ."
13-A M.R.S.A. §1201(3).

August 13, 1980

None of the exceptions enumerated in the statute mention the registration of trademarks. However, it is clear that the list is not intended to be all-inclusive. The reason for this approach is expressed in the comments to § 106 of the Model Business Corporation Act, the content of which is very similar to § 1201(3):

"The Model Act expressly recognizes that there may be activities not enumerated that also fall short of transacting business for qualification purposes. An attempt to make a complete list of excluded activities is not feasible."
2 Model Business Corporation Act
Annotated (1971), 622.

Our research has failed to reveal any cases concerning the issue of whether registration of a mark constitutes "doing business" in the sense requiring authorization of a foreign corporation. The Secretary of State, as the authority responsible for administering both the Trademark Law and the Business Corporation Act, has the power to interpret these laws in the first instance. Woodcock v. Atlass, 359 A.2d 69, 71 (Me. 1976); State ex rel. Brennan v. R. D. Realty Corp., 349 A.2d 201, 206 (Me. 1975). Therefore, in the absence of useful legislative history or legal precedent, the Secretary of State has the discretion to determine whether foreign corporations not authorized to do business in this State may register their marks.

I hope that the foregoing information has been helpful. Please contact this Office if further assistance can be provided.

Very truly yours,

Peter Bickerman

PETER B. BICKERMAN
Assistant Attorney General

PBB:mfe