

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
109TH LEGISLATURE
FIRST REGULAR SESSION

R.
D.
COMMITTEE AMENDMENT "A " to S.P. 43, L.D. 29, Bill,
"AN ACT to Provide for the Registration and Protection of
Trademarks."

Amend the Bill by inserting after the enacting clause
the following:

'Sec. 1. 5 MRSA §86, 3rd ¶, as amended by PL 1969,
c. 225, §1, is repealed as follows:

~~For-filing-and-recording-a-certificate-of-trademark;
\$10,-for-recording-assignment-of-trademark-rights,-\$5,-for-the
certificate-of-the-record-of-a-label,-trademark,-device-or-
form-of-advertisement-adopted-any-association-or-union-of
workingmen,-\$2.'~~

Further amend the Bill in section 1 in that part
designated "§1521." by inserting after subsection 1 the
following:

'2. Corporate name. "Corporate name" includes any
corporate name, reserved name, registered name or assumed name
as those terms are used in Title 13-A, sections 301, 302, 303
and 307 respectively and includes any corporate name, reserved
name or registered name as those terms are used in Title 13-A,
sections 301, 302 and 303 respectively.'

Further amend the Bill in section 1 in that part designated
"§1521." by renumbering subsections 2 to 7 to be subsections
3 to 8.

Further amend the Bill in section 1 in that part designated
"§1522." in subsection 1 by striking out all of paragraphs A and B
and inserting in their place the following:

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- 'A. Consists of or comprises deceptive matter;
 - B. Consists of or comprises matter which may falsely suggest a connection with persons, living or dead, or institutions;'

Further amend the Bill in section 1 in that part designated "§1522." in subsection 1 by striking out all of paragraph D and inserting in its place the following:

- 'D. Consists of or comprises the name, signature or portrait of any living individual, except with that individual's written consent, which shall be filed together with the application for registration under this section;'

Further amend the Bill in section 1 in that part designated "§1522." in subsection 1, paragraph E by striking out in the last line (same in L.D.) the underlined word "or"

Further amend the Bill in section 1 in that part designated "§1522." in subsection 1, paragraph F by striking out in the last line (same in L.D.) the underlined word and punctuation "deceive." and inserting in its place the underlined words and punctuation 'deceive; or

Further amend the Bill in section 1 in that part designated "§1522." in subsection 1 by inserting after paragraph F the following:

- 'G. Consists of or comprises any corporate name.'

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Further amend the Bill in section 1 in that part designated "§1522." in subsection 2, paragraph C in the first line by striking out the underlined words "when the mark" and inserting in their place the following: 'when, to the best of the applicant's knowledge and belief, the mark'

Further amend the Bill in section 1 in that part designated "§1522." in subsection 2, paragraph D in the first line (same in L.D.) by striking out the underlined word "is" and inserting in its place the underlined words 'believes himself to be' and in the 3rd line (same in L.D.) by inserting after the underlined word "State" the underlined words 'as a mark or as a trade name or as a corporate name'

Further amend the Bill in section 1 in that part designated "§1522." in the last line (next to last line L.D.) by striking out the underlined figure "\$10" and inserting in its place the underlined figure '\$25'

Further amend the Bill in section 1 in that part designated "§1524." in the 6th line (5th line in L.D.) by striking out the underlined figure "\$10" and inserting in its place the underlined figure '\$25'

Further amend the Bill in section 1 in that part designated "§1524." in the last paragraph, next to last line (same in L.D.) by inserting after the underlined word "writing" the underlined words 'by first class mail'

Further amend the Bill in section 1 in that part designated "§1525." by inserting at the beginning of the 2nd line (same in L.D.) the following: '1. Recording.'

Further amend the Bill in section 1 in that part designated "§1525." in the 7th line (6th line in L.D.) by striking out the underlined figure "\$5" and inserting in its place the underlined figure '\$20' and in the 9th line (7th line in L.D.) by striking out the underlined words "the assignment" and inserting in their place the underlined words 'an assignment'

Further amend the Bill in section 1 in that part designated "§1525." by inserting at the end the following:

'2. Corporate name. Any holder of a certificate of registration issued pursuant to section 1523 may grant to any domestic or foreign corporation authorized to do business in this State the exclusive right to the use of a name similar to the mark shown on the certificate.'

Further amend the Bill in section 1 in that part designated "§1527." in subsection 1, paragraph D, subparagraph (4) by striking out at the end the underlined word "and" and inserting in its place the underlined word 'or'

Further amend the Bill in section 1 in that part designated "§1527." in subsection 2, paragraph A by striking out all of the first line and inserting in its place the following:

'Goods and services:'

Further amend the Bill in section 1 in that part designated "§1527." in subsection 2, paragraph A, subparagraph (33) by striking out at the end the underlined word "and"

Further amend the Bill in section 1 in that part designated "§1527." in subsection 2, paragraph A by inserting after subparagraph (34) the following:

'(35) Merchandise not otherwise classified;

(36) Advertising and business;

(37) Insurance and financial;

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- (38) Construction and repair;
- (39) Communication;
- (40) Transportation and storage;
- (41) Material treatment;
- (42) Education and entertainment; and
- (43) Services not otherwise classified.'

Further amend the Bill in section 1 in that part designated "§1527." in subsection 2 by striking out all of paragraph B.

Further amend the Bill in section 1 in that part designated "1528." in the 4th line (same in L.D.) by striking out the underlined word "section" and inserting in its place the underlined word 'chapter'

Further amend the Bill in section 1 in that part designated "§1531." by inserting at the beginning of the 2nd line (same in L.D.) the underlined figure and word '1. Generally.'

Further amend the Bill in section 1 in that part designated "§1531." in the 8th line (6th line in L.D.) by inserting after the underlined word "from" the underlined word 'and'

Further amend the Bill in section 1 in that part designated "§1531." in the 2nd paragraph by inserting at the beginning of the first line the underlined figure and word '2. Statutory damages.' and in the last line (same in L.D.) by striking out the underlined words and figure "in the amount of \$2,000" and inserting in its place the underlined words and figure 'in an amount not to exceed \$2,000'

Further amend the Bill in section 1 in that part designated "§1531." by striking out all of the 3rd paragraph and inserting in its place the following:

'3. Attorney's fees and costs. The Superior Court shall award the prevailing party his costs and, in exceptional cases only, may award him reasonable attorney's fees.'

Further amend the Bill in section 1 in that part designated "§1531." in the last paragraph by inserting at the beginning of the first line the underlined figure and words '4. Criminal prosecution.'

Further amend the Bill by inserting after section 5 the following:

'Sec. 6. 13-A MRSA §301, sub-§1, ¶B, as amended by PL 1971, c. 565, §9-A, is further amended to read:

B. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this State or any foreign corporation authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Act, or the name of a corporation which has in effect a registration of its corporate name as provided in this Act, or the assumed name of a corporation as provided for in section 307, unless such other corporation executes and files with the Secretary of State as provided in sections 104 and 106 proof of a resolution of its board of directors authorizing the use of a similar name by the corporation seeking to use such similar name; and

Sec. 7. 13-A MRSA §301, sub-§1, ¶C is enacted to read:

C. Shall not be the same as, or deceptively similar to, any trade mark or service mark registered under Title 10, chapter 301-A.

Sec. 8. 13-A MRSA §301, sub-§5, first sentence, as enacted by PL 1975, c. 439, §3, is amended to read:

Any corporation may grant to any domestic corporation or any foreign corporation authorized to transact business in this State, or to any person, by executing and filing with the Secretary of State, as provided in sections 104 and 106, proof of a resolution of its board of directors making such grant, the exclusive right thereafter to authorize the use of a name similar to that of the granting corporation by any other corporation or corporations, or person for use as a name or as a trade mark or service mark as defined in Title 10, chapter 301-A.

Sec. 9. 13-A MRSA §303, sub-§1, as enacted by PL 1971, c. 439, §1, is amended to read:

1. Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this Act, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this State, or the name of any foreign corporation authorized to transact business in this State, or any corporate name reserved or registered under this Act, or any trade mark or service mark registered under Title 10, chapter 301-A.

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Sec. 10. 13-B MRSA §301, sub-§1, ¶¶ A and B, as enacted
 by PL 1977, c. 525, §13, are amended to read:

A. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose for which a corporation may not be organized under this Act; and

B. Shall not be the same as, or deceptively similar to, the name of any domestic business or nonprofit corporation existing under the laws of this State or any foreign business or nonprofit corporation authorized to carry on activities in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Act, or the name of a business or nonprofit corporation which has in effect a registration of its corporate name as provided in this Act, unless such other corporation executes and files with the Secretary of State proof of a resolution of its board of directors authorizing the use of a similar name by the corporation seeking to use such similar name; and

Sec. 11. 13-B MRSA §301, sub-§1, ¶C is enacted to read:

C. Shall not be the same as, or deceptively similar to, any trade mark or service mark registered under Title 10, chapter 301-A.

Sec. 12. 13-B MRSA §301, sub-§3, first sentence, as enacted
 by PL 1977, c. 525, §13, is amended to read:

Any ~~corporation~~ corporation may grant to any domestic business or nonprofit corporation or any foreign business or nonprofit corporation authorized to carry on activities in this State, or to any person, by executing and filing with the Secretary

of State as provided in sections 104 and 106 proof of a resolution of its board of directors making such grant, the exclusive right thereafter to authorize the use of a name similar to that of the granting corporation by any other corporation or corporations, or person for use as a name or as a trade mark or service mark as defined in Title 10, chapter 301-A.

Sec. 13. 13-B MRSA §303, sub-§1, as enacted by PL 1977, c. 525, §13, is amended to read:

1. Name registered. Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this Act, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic business or nonprofit corporation existing under the laws of this State, or the name of any foreign business or nonprofit corporation authorized to carry on activities in this State, or any corporate name reserved or registered under Title 13-A or this section or section 302, or any trade mark or service mark registered under Title 10, chapter 301-A.'

Further amend the Bill in section 7 in the 2nd line (first and 2nd lines in L.D.) by striking out the words/^{and figures}"90 days after adjournment of the Legislature" and inserting in their place the following: 'January 1, 1980'

Further amend the Bill by renumbering the sections to read consecutively.

Statement of Fact

This amendment deletes minor, ambiguous restrictions on registrability of marks; prohibits registration of marks which consist of corporate names; raises the registration fee from \$10 to \$25 and the fee for recording assignments from \$5 to \$20; limits elective statutory damages to \$2,000; provides for the award of attorney's fees in exceptional cases of mark infringement; amends Titles 13-A and 13-B to conform to the changes concerning corporate names and changes the effective date to January 1, 1980.

Reported by the Committee on Business Legislation.

Reproduced and distributed pursuant to Senate Rule 11-A.

June 1, 1979

(Filing No. S-294)