

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**  
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

**SECOND SPECIAL SESSION**

September 25, 1981

AND

**THIRD SPECIAL SESSION**

December 9, 1981

AND

**SECOND REGULAR SESSION**

January 6, 1982 to April 13, 1982

AND AT THE

**FOURTH SPECIAL SESSION**

April 28, 1982 to April 29, 1982

AND AT THE

**FIFTH SPECIAL SESSION**

May 13, 1982

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 164, SUBSECTION 6.

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J.S. McCarthy Co.  
Augusta, Maine  
1981

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
SECOND AND THIRD SPECIAL SESSIONS

and

SECOND REGULAR SESSION

and

FOURTH AND FIFTH SPECIAL SESSIONS

of the

ONE HUNDRED AND TENTH LEGISLATURE

1981

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## CHAPTER 684

H.P. 2163 - L.D. 2063

### AN ACT to Provide the Authority to the Commissioner of Marine Resources to Register a Trademark.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, ambiguities exist in the law relating to the development, design and registration of trademarks by the Commissioner of Marine Resources; and

Whereas, these uncertainties make it extremely difficult to interpret legislative intent in this area; and

Whereas, it is vitally necessary that these uncertainties and confusion be resolved in order to prevent any injustice or hardship on the citizens of Maine ; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §1521, sub-§§1-A and 1-B are enacted to read:

1-A. Certification mark. "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.

1-B. Collective mark. "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.

Sec. 2. 10 MRSA §1521, sub-§3, as enacted by PL 1979, c. 572, §2, is repealed and the following enacted in its place:

3. Mark. "Mark" includes any trademark, service mark, certification mark or collective mark entitled to be registered under this chapter, whether registered or not.

Sec. 3. 10 MRSA §1522, sub-§1, first sentence, as enacted by PL 1979, c. 572, §2, is repealed and the following enacted in its place:

A mark shall not be registered if it:

Sec. 4. 10 MRSA §1522, sub-§1, ¶E, first sentence, as enacted by PL 1979, c. 572, §2, is repealed and the following enacted in its place:

Consists of a mark which, when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them or, when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under subsection 3, or is primarily merely a surname, provided that nothing in this paragraph may prevent the registration of a mark used in this State by the applicant which has become distinctive of the applicant's goods or services;

Sec. 5. 10 MRSA §1522, sub-§3 is enacted to read:

3. Collective marks and certification marks. Collectivemarks and certification marks, including indications of regional origin used in commerce, shall be registrable in the same manner and with the same effect as trademarks and service marks by persons and by governmental entities, as defined in Title 14, section 8102, subsections 2, 3 and 4.

Sec. 6. 10 MRSA §1527, sub-§1, ¶D, sub-¶¶(4) and (5), as enacted by PL 1979, c. 572, §2, are amended to read:

(4) That the registration was obtained fraudulently; or

(5) 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 in the United States Patent and Trademark Office prior to the date of the filing of the application for registration by the registrant and not abandoned; provided, that, should the registrant prove

that he is the owner of a concurrent registration of his mark in the United States Patent and Trademark Office covering an area including this State, the registration shall not be cancelled; and or

Sec. 7. 10 MRSA §1527, sub-§1, ¶D, sub-¶(6) is enacted to read:

(6) That, in the case of a certification mark, the registrant does not control, or is not able legitimately to exercise control over, the use of the mark; engages in the production or marketing of any goods or services to which the certification mark is applied; permits the use of the certification mark for purposes other than to certify; or discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which the mark certifies; and

Sec. 8. 12 MRSA §6022, sub-§14 is enacted to read:

14. Brands, labels and marks. The commissioner may develop, design and register brands, labels or marks, as that term is used in Title 10, section 1521, subsection 3, for identifying marine resource products packed in accordance with official grades and standards established by the department and shall furnish information to packers and shippers as to where these labels and marks may be obtained. A written application to the commissioner requesting permission to use these brands, labels or marks and a written acceptance thereto from the commissioner shall be a condition precedent to the use of these brands, labels or marks. The right to use these brands, labels or marks may be suspended or revoked by the commissioner according to the procedures set forth in section 6101, subsections 6 to 8, whenever it appears on investigation that they have been used to identify marine resource products not conforming to the grades or standards indicated.

**Sec. 9. Validation clause.** Collective marks and certification marks registered by the Secretary of State as trademarks or service marks prior to the effective date of this Act shall be deemed validly registered, subject to all requirements of Title 10, chapter 301-A, as amended by this Act.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.