

ACT 26

S.B. NO. 1992-80

A Bill for an Act Relating to Trademarks, Prints, Labels, and Trade Names.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 482, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated as and to read:

“**Sec. 482-1 Definitions.** As used in this chapter, unless the context otherwise requires:

- (1) "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.
- (2) "Trademark" means a mark used by a person to identify goods and distinguish them from the goods of others.
- (3) "Trade name" means a word or name used by a person to identify his business, vocation or occupation and distinguish it from the business, vocation or occupation of others.
- (4) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity."

SECTION 2. Section 482-1, Hawaii Revised Statutes, is amended to read:

"Sec. 482-2 Certificate. (a) Any person desiring to secure the exclusive use of any print, label, or trademark intended to be attached or applied to any goods or manufactured articles or to bottles, boxes, or packages containing the goods or manufactured articles to indicate the name of the manufacturer, and any person desiring to secure the exclusive use of a service mark, or a trade name, may obtain a certificate of the registration of the print, label, trademark, service mark or trade name in the manner hereinafter provided.

(b) Before any person may receive a certificate of registration of a print, label or trademark, he shall file in the office of the director of the regulatory agencies an application for the registration of such print, label or trademark, with a declaration, certified by the applicant, stating that he is the sole and original proprietor or the assign of such proprietor of this print, label or trademark, and describing the goods or manufactured articles for which the print, label or trademark is used, and stating the manner in which the print, label or trademark is used. Before any person may receive a certificate of registration of a service mark or trade name, he shall file in the office of the director an application for the registration thereof, with a declaration, certified, as aforesaid, stating that he is the sole and original proprietor of the service mark or trade name, or the assign of the proprietor and setting forth the nature of the business in which the service mark or trade name is used. The application shall be accompanied by two exact copies of the print, label, trademark, service mark or trade name. Upon filing the application, the applicant shall pay to the director a fee of \$10."

SECTION 3. Section 482-2, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 482-3, Hawaii Revised Statutes, is amended to read:

"Sec. 482-3 Record; issuance and effect of certificate. Upon receiving the application so accompanied and the payment of the fee, the director of regulatory agencies shall cause the print, label, trademark, service mark or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall secure to the applicant the exclusive use of the print, label, trademark, service mark or trade name throughout the State, for the term of ten years from the date thereof; provided that the print, label, trademark, service mark, or trade name is continued in actual use by the applicant in the State or elsewhere in the United States or is registered in the name of the applicant in the patent office of the United States."

SECTION 5. Section 482-4, Hawaii Revised Statutes, is amended to read:

“Sec. 482-4 Certain prints, labels, trademarks, service mark, union labels and trade names not to be adopted or used. (a) It is unlawful for any person to adopt or use a print, label, trademark, service mark or trade name, which is identical with any registered print, label, trademark, service mark or trade name or so similar as to be confused therewith, or any print, label, trademark, service mark or trade name identical with or similar to the name of any copartnership or corporation registered in accordance with chapter 416 or chapter 418 or chapter 425; and the director of regulatory agencies shall not register any such print, label, trademark, service mark or trade name.

(b) When a bona fide labor union, or association of employees has adopted a device in the form [of]† a label, brand, mark, name, or other character for the purpose of designating the products of the members of the union or association and the device has been registered pursuant to sections 482-2 and 482-3, then it shall be unlawful for any person to adopt, print, distribute, or otherwise use the device or one so similar as to be confused therewith, and the director of regulatory agencies shall not register any such similar device. Any person, except the director of regulatory agencies, found to be in violation of this subsection may, in addition to any other penalty assessed or otherwise imposed by law, be required to pay all costs and attorney’s fees incurred in seeking enforcement of this subsection, and may be ordered by the court to pay damages to the bona fide labor union or association of employees involved in such amount as may be determined by the court; provided that the damages ordered shall not be less [than]†† \$250 nor more than \$5,000.”

SECTION 6. Section 482-5, Hawaii Revised Statutes, is amended to read:

Sec. 482-5 Penalty. Any person using such identical or similar print, label, trademark, service mark or trade name as set forth in section 482-4, shall be fined not more than \$1,000.”

SECTION 7. Section 482-6, Hawaii Revised Statutes, is amended to read:

“Sec. 482-6 Revocation of certificate; nonuse. If any print, label, trademark, service mark or trade name is not used by the registrant in accordance with the declaration either in the State or elsewhere in the United States for a period of three hundred and sixty-five consecutive days, and the print, label, service mark, trademark, or trade name has not been registered in the name of the registrant in the patent office of the United States, the certificate of registration shall be subject to revocation.

Any person desiring such revocation shall file a verified petition in the office of the director of regulatory agencies, setting forth facts indicating such nonuse for a period of three hundred and sixty-five consecutive days immediately preceding the date of the filing of the petition, and alleging the nonregistration in the patent office of the United States. The petitioner shall at his expense notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5, and the registrant shall be given the opportunity of a full hearing in accordance with chapter 91.

†Bracketed word added by Revisor.

††“Than” substituted for “then” to correct obvious clerical error.

After granting an opportunity for hearing to the petitioner and the registrant, the director shall grant or deny the petition for revocation, as the facts shall warrant.”

SECTION 8. Section 482-7, Hawaii Revised Statutes, is amended to read:

“**Sec. 482-7 Application of law; reissue on nonuser.** Sections 482-1 to 482-9 are applicable to all registrations filed in the office of the director of regulatory agencies; the intent hereof being that all prints, labels, trademarks, service marks, or trade names not used by the applicant in the State or elsewhere in the United States and not registered in the name of the applicant in the patent office of the United States may be immediately reissued to such applicant who is actually using the same.

The fact that a print, label, trademark, service mark, or trade name has not been used in the State for a period of one year shall be prima facie proof of the fact that the same has not been used elsewhere for such period.”

SECTION 9. Section 482-8, Hawaii Revised Statutes, is amended to read:

“**Sec. 482-8 Revocation of certificate; ownership.** Any person claiming to be the owner of a print, label, service mark, trademark, or trade name for which a certificate of registration pursuant to this chapter has been issued to any other person shall file a verified petition in the office of the director of regulatory agencies for the revocation of the registration of such print, label, service mark, trademark, or trade name. The petition shall set forth facts in support of the ownership by such petitioner of such print, label, service mark, trademark, or trade name and in support of the claim of the petitioner that the certificate of registration should be revoked.

The petitioner shall at his expense notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5 and the registrant shall be given the opportunity of a full hearing in accordance with chapter 91.

After granting an opportunity for hearing to the petitioner and the registrant, the director shall grant or deny the petition for revocation, as the facts warrant.”

SECTION 10. Section 482-9, Hawaii Revised Statutes, is amended to read:

“**Sec. 482-9 Appeal.** Any person aggrieved by any action of the director of regulatory agencies under this chapter in issuing a certificate of registration of a print, label, trademark, service mark, or trade name or in revoking any such certificate of registration or in denying an application may, within thirty days after the action by the director, or in the event no order has been entered either granting or denying the application within four months after the filing of the application, commence proceedings to obtain judicial review thereof by the circuit court of the first circuit by filing in the court a notice of appeal. The trial by the circuit court of any such proceeding shall be de novo. Proceedings for review by the supreme court may be had and taken in the same manner as is provided for a review of a judgment of a circuit court.”

SECTION 11. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 12. This Act shall take effect upon approval.

(Approved April 22, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.