

State of Arizona  
House of Representatives  
Forty-third Legislature  
Second Regular Session  
1998

## HOUSE BILL 2440

### AN ACT

CHANGING THE DESIGNATION OF TITLE 44, CHAPTER 10, ARTICLE 3, ARIZONA REVISED STATUTES, TO "REGISTRATION AND PROTECTION OF TRADEMARKS AND SERVICE MARKS"; AMENDING SECTIONS 44-1441 THROUGH 44-1455, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 10, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 44-1448.01; RELATING TO TRADEMARKS AND SERVICE MARKS.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Heading change

3 The article heading of title 44, chapter 10, article 3, Arizona Revised  
4 Statutes, is changed from "REGISTRATION AND PROTECTION OF TRADEMARKS" to  
5 "REGISTRATION AND PROTECTION OF TRADEMARKS AND SERVICE MARKS".

6 Sec. 2. Section 44-1441, Arizona Revised Statutes, is amended to read:

7 44-1441. Definitions

8 A. In this article, unless the context otherwise requires:

9 1. "Applicant" means the person filing an application for registration  
10 of a ~~trademark~~ MARK under this article, ~~his~~ OR THE PERSON'S legal  
11 representatives, successors or assigns.

12 2. "DILUTION" MEANS THE LESSENING OF THE CAPACITY OF A FAMOUS MARK TO  
13 IDENTIFY AND DISTINGUISH GOODS OR SERVICES, REGARDLESS OF THE PRESENCE OR  
14 ABSENCE OF:

15 (a) COMPETITION BETWEEN THE OWNER OF THE FAMOUS MARK AND OTHER  
16 PARTIES, OR

17 (b) LIKELIHOOD OF CONFUSION, MISTAKE, OR DECEPTION.

18 3. "MARK" MEANS ANY TRADEMARK OR SERVICE MARK.

19 ~~2-~~ 4. "Person" means any individual, firm, partnership, corporation,  
20 association, union or other organization.

1           ~~3.~~ 5. "Registrant" means the person to whom the registration of a  
2 ~~trademark~~ MARK under this article is issued, ~~his~~ OR THE PERSON'S legal  
3 representatives, successors or assigns.

4           6. "SERVICE MARK" MEANS ANY WORD, NAME, SYMBOL OR DEVICE OR ANY  
5 COMBINATION OF THESE ITEMS THAT IS ADOPTED AND USED BY A PERSON TO IDENTIFY  
6 SERVICES PROVIDED OR SOLD BY THAT PERSON AND TO DISTINGUISH THE SERVICES FROM  
7 SERVICES PROVIDED OR SOLD BY OTHERS.

8           ~~4.~~ 7. "Trademark" means any word, name, symbol, ~~or~~ or device or any  
9 combination ~~thereof~~ OF THESE ITEMS THAT IS adopted and used by a person to  
10 identify goods made or sold by ~~him~~ THAT PERSON and to distinguish ~~them~~ THE  
11 GOODS from goods made or sold by others.

12           ~~B. A trademark shall be deemed to be "used" in this state when it is  
13 placed in any manner on the goods or their containers or on the tags or  
14 labels affixed thereto and such goods are sold or otherwise distributed in  
15 this state.~~

16           B. THE TERMS "USE" AND "USED" MEAN THE BONA FIDE USE OF A MARK IN THE  
17 ORDINARY COURSE OF TRADE, AND NOT MADE MERELY TO RESERVE A RIGHT IN A MARK.  
18 FOR THE PURPOSE OF THIS ARTICLE, A MARK SHALL BE DEEMED TO BE IN USE:

19           1. ON GOODS WHEN IT IS PLACED IN ANY MANNER ON THE GOODS OR OTHER  
20 CONTAINERS OR THE DISPLAYS ASSOCIATED THEREWITH OR ON THE TAGS OR LABELS  
21 AFFIXED THERETO, OR IF THE NATURE OF THE GOODS MAKES SUCH PLACEMENT  
22 IMPRACTICABLE, THEN ON DOCUMENTS ASSOCIATED WITH THE GOODS OR THEIR SALE, AND  
23 THE GOODS ARE SOLD, TRANSPORTED OR DISTRIBUTED IN THIS STATE; AND

24           2. ON SERVICES WHEN IT IS USED OR DISPLAYED IN THE SALE OR ADVERTISING  
25 OF SERVICES AND THE SERVICES ARE RENDERED IN THIS STATE.

26           C. A MARK SHALL BE DEEMED TO BE "ABANDONED" WHEN EITHER OF THE  
27 FOLLOWING OCCURS:

28           1. WHEN ITS USE HAS BEEN DISCONTINUED WITH INTENT NOT TO RESUME SUCH  
29 USE. INTENT NOT TO RESUME MAY BE INFERRED FROM CIRCUMSTANCES. NONUSE FOR  
30 THREE CONSECUTIVE YEARS SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ABANDONMENT.

31           2. WHEN ANY COURSE OF CONDUCT OF THE OWNER, INCLUDING ACTS OF OMISSION  
32 AS WELL AS COMMISSION, CAUSES THE MARK TO LOSE ITS SIGNIFICANCE AS A MARK.

33           Sec. 3. Section 44-1442, Arizona Revised Statutes, is amended to read:

34           44-1442. Registrability

35           A ~~trademark~~ MARK by which the goods OR SERVICES of any applicant for  
36 registration may be distinguished from the goods OR SERVICES of others shall  
37 not be registered if it:

38           1. Consists of or comprises immoral, deceptive or scandalous matter.

39           2. Consists of or comprises matter which may disparage or falsely  
40 suggest a connection with persons, living or dead, institutions, beliefs, or  
41 national symbols, or bring them into contempt, or disrepute.

1           3. Consists of or comprises the flag or coat of arms or other insignia  
2 of the United States, or of any state or municipality, or of any foreign  
3 nation, or any simulation thereof.

4           4. Consists of or comprises the name, signature or portrait of any  
5 living individual, except with his written consent.

6           5. Consists of a mark which:

7           (a) When ~~applied to~~ USED ON OR IN CONNECTION WITH the goods OR  
8 SERVICES of the applicant, is merely descriptive or deceptively  
9 misdescriptive of them.

10          (b) When ~~applied to~~ USED ON OR IN CONNECTION WITH the goods OR  
11 SERVICES of the applicant, is primarily geographically descriptive or  
12 deceptively misdescriptive of them.

13          (c) Is primarily merely a surname, but nothing in this paragraph shall  
14 prevent the registration of a mark which has become distinctive of the  
15 applicant's goods OR SERVICES in this state. The secretary of state may  
16 accept as prima facie evidence that a mark has become distinctive of the  
17 applicant's goods in this state, ~~—~~ proof of substantially exclusive and  
18 continuous use of such mark in this state by the applicant during the  
19 five-year period preceding the execution of the application for registration.

20          6. Consists of or comprises a ~~trademark which~~ MARK THAT so resembles  
21 a ~~trademark~~ MARK registered in this state or a ~~trademark~~ MARK or trade name  
22 previously used in this state by another and not abandoned, ~~as to be likely,~~  
23 AND THAT when applied to the goods OR SERVICES of the applicant, IS LIKELY  
24 to cause confusion or mistake or to deceive.

25          Sec. 4. Section 44-1443, Arizona Revised Statutes, is amended to read:

26          44-1443. Application for registration; fee

27          A. Subject to the limitations set forth in this article, any person  
28 WHO IS DOMICILED IN THIS STATE AND who adopts and uses a trademark OR SERVICE  
29 MARK, OR ANY PERSON WHO ADOPTS AND USES A TRADEMARK OR SERVICE MARK in this  
30 state, may file in the office of the secretary of state, on a form to be  
31 furnished by the secretary of state, an application for registration of that  
32 ~~trademark~~ MARK setting forth, but not limited to, the following information:

33           1. The name and business address of the person applying for such  
34 registration and, if a corporation, the state of incorporation.

35           2. The goods OR SERVICES in connection with which the mark is used,  
36 the mode or manner in which the mark is used in connection with such goods  
37 OR SERVICES and the class in which such goods OR SERVICES fall.

38           3. The date when the ~~trademark~~ MARK was first used anywhere, and the  
39 date when it was first used in this state by the applicant or his predecessor  
40 in business.

41           4. A statement that the applicant is the owner of the ~~trademark~~ MARK  
42 and that no other person has the right to use such ~~trademark~~ MARK in this

1 state either in the identical form thereof or in such near resemblance  
2 thereto as might be calculated to deceive or to be mistaken therefor.

3 B. The application shall be:

4 1. Signed and verified by the applicant, or by a member of the firm  
5 or any officer of the corporation or association applying.

6 2. Accompanied by a specimen or facsimile of such ~~trademark~~ MARK in  
7 triplicate.

8 Sec. 5. Section 44-1444, Arizona Revised Statutes, is amended to read:  
9 44-1444. Certificate of registration; admissibility as evidence

10 A. Upon compliance by the applicant with the requirements of this  
11 article, the secretary of state shall cause a certificate of registration to  
12 be issued and delivered to the applicant. The certificate shall be issued  
13 under the signature of the secretary of state and the seal of the state, and  
14 it shall show:

15 1. The name and business address and, if a corporation, the state of  
16 incorporation, of the person claiming ownership of the ~~trademark~~ MARK.

17 2. The date claimed for the first use of the ~~trademark~~ MARK anywhere  
18 and the date claimed for the first use of the ~~trademark~~ MARK in this state.

19 3. The class of goods ~~OR SERVICES~~ and a description of the goods ~~OR~~  
20 ~~SERVICES~~ on which the ~~trademark~~ MARK is used.

21 4. A reproduction of the ~~trademark~~ MARK.

22 5. The registration date and the term of the registration.

23 B. A certificate of registration issued by the secretary of state  
24 under the provisions of this article or a copy thereof duly certified by the  
25 secretary of state shall be admissible in evidence as competent and  
26 sufficient proof of the registration of such ~~trademark~~ MARK in any action or  
27 judicial proceedings in any court of competent jurisdiction in this state.

28 Sec. 6. Section 44-1445, Arizona Revised Statutes, is amended to read:  
29 44-1445. Duration of registration; renewal notice; application

30 and fee

31 A. Registration of a ~~trademark~~ MARK under the provisions of this  
32 article shall be effective for a term of ten years from the date of  
33 registration. Upon application filed within three months prior to the  
34 expiration of such term, on a form to be furnished by the secretary of state,  
35 the registration may be renewed for a like term. A ~~trademark~~ MARK  
36 registration may be renewed for successive periods of ten years in ~~A~~  
37 like manner.

38 B. The secretary of state shall notify registrants of ~~trademarks,~~  
39 ~~registered MARKS~~ under this article, ~~of the necessity of renewal within the~~  
40 year next preceding the expiration of the ten years from the date of  
41 registration by writing to the last known address of the registrants.

42 C. Any registered ~~trademark in force on the date on which this article~~  
43 ~~becomes effective shall expire~~ MARK EXPIRES ten years from the date of the

1 registration, or of the last reregistration thereof, ~~or two years after the~~  
2 ~~effective date of this article, whichever is later,~~ and may be reregistered  
3 by filing an application with the secretary of state on a form furnished by  
4 ~~him~~ THE SECRETARY OF STATE and paying the renewal fee therefor within three  
5 months prior to the expiration of the registration.

6 ~~D. The secretary of state shall, within six months after the effective~~  
7 ~~date of this article, notify all registrants of trademarks under previous~~  
8 ~~acts of the date of expiration of such registrations, unless reregistered in~~  
9 ~~accordance with the provisions of this article, by sending such information~~  
10 ~~to the last known address of the registrants by mail.~~

11 Sec. 7. Section 44-1446, Arizona Revised Statutes, is amended to read:

12 44-1446. Assignment of mark and registration

13 Any ~~trademark~~ MARK and its registration under the provisions of this  
14 article shall be assignable with the goodwill of the business in which the  
15 ~~trademark~~ MARK is used or with that part of the goodwill of the business  
16 connected with the use of and symbolized by the ~~trademark~~ MARK. Assignment  
17 shall be by instruments in writing duly executed and may be recorded with the  
18 secretary of state who upon recording of the assignment shall issue in the  
19 name of the assignee a new certificate for the remainder of the term of the  
20 registration or of the last reregistration thereof. An assignment of any  
21 registration under this article shall be void as against any subsequent  
22 purchaser for valuable consideration without notice, unless it is recorded  
23 with the secretary of state within three months after the date thereof or  
24 prior to such subsequent purchase.

25 Sec. 8. Section 44-1447, Arizona Revised Statutes, is amended to read:

26 44-1447. Records

27 The secretary of state shall keep for public examination a record of  
28 all ~~trademarks~~ MARKS registered or renewed under this article.

29 Sec. 9. Section 44-1448, Arizona Revised Statutes, is amended to read:

30 44-1448. Cancellation of registrations

31 The secretary of state shall cancel from the register:

32 ~~1. After two years from the effective date of this article, all~~  
33 ~~registrations under prior acts which are more than ten years old and not~~  
34 ~~reregistered in accordance with this article.~~

35 ~~2-~~ 1. Any registration concerning which the secretary of state ~~shall~~  
36 ~~receive~~ RECEIVES a voluntary request for cancellation thereof from the  
37 registrant or the assignee of record.

38 ~~3-~~ 2. All registrations granted under this article and not  
39 reregistered in accordance with the provisions hereof.

40 ~~4-~~ 3. Any registration concerning which a court of competent  
41 jurisdiction ~~shall find~~ FINDS:

42 (a) That the registered ~~trademark~~ MARK has been abandoned.

43 (b) That the registrant is not the owner of the ~~trademark~~ MARK.

1 (c) That the registration was granted improperly.

2 (d) That the registration was obtained fraudulently.

3 (e) That the registered ~~trademark~~ MARK is so similar to a ~~trademark~~  
4 MARK registered by another person in the United States patent office, prior  
5 to the date of the filing of the application for registration by the  
6 registrant under this article, and not abandoned, that it might cause  
7 confusion or mistake, or a person to be deceived, but if the registrant  
8 proves that he is the owner of a concurrent registration of his ~~trademark~~  
9 MARK in the United States patent office covering an area including this  
10 state, the registration under this article shall not be canceled.

11 (f) THAT THE MARK IS OR HAS BECOME THE GENERIC NAME FOR THE GOODS OR  
12 SERVICES, OR A PORTION THEREOF, FOR WHICH IT HAS BEEN REGISTERED.

13 ~~5-~~ 4. When a court of competent jurisdiction ~~shall order~~ ORDERS  
14 cancellation of a registration on any ground.

15 Sec. 10. Title 44, chapter 10, article 3, Arizona Revised Statutes,  
16 is amended by adding section 44-1448.01, to read:

17 44-1448.01. Injury to business reputation; dilution

18 A. THE OWNER OF A MARK WHICH IS FAMOUS IN THIS STATE SHALL BE  
19 ENTITLED, SUBJECT TO THE PRINCIPLES OF EQUITY AND UPON SUCH TERMS AS THE  
20 COURT DEEMS REASONABLE, TO AN INJUNCTION AGAINST ANOTHER PERSON'S COMMERCIAL  
21 USE OF A MARK OR TRADE NAME, IF SUCH USE BEGINS AFTER THE MARK HAS BECOME  
22 FAMOUS AND CAUSES DILUTION OF THE DISTINCTIVE QUALITY OF THE MARK, AND TO  
23 OBTAIN SUCH OTHER RELIEF AS IS PROVIDED IN THIS SECTION. IN DETERMINING  
24 WHETHER A MARK IS DISTINCTIVE AND FAMOUS, A COURT MAY CONSIDER FACTORS SUCH  
25 AS, BUT NOT LIMITED TO:

26 1. THE DEGREE OF INHERENT OR ACQUIRED DISTINCTIVENESS OF THE MARK IN  
27 THIS STATE.

28 2. THE DURATION AND EXTENT OF USE OF THE MARK IN CONNECTION WITH THE  
29 GOODS AND SERVICES WITH WHICH THE MARK IS USED.

30 3. THE DURATION AND EXTENT OF ADVERTISING AND PUBLICITY OF THE MARK  
31 IN THIS STATE.

32 4. THE GEOGRAPHICAL EXTENT OF THE TRADING AREA IN WHICH THE MARK IS  
33 USED.

34 5. THE CHANNELS OF TRADE FOR THE GOODS OR SERVICES WITH WHICH THE MARK  
35 IS USED.

36 6. THE DEGREE OF RECOGNITION OF THE MARK IN THE TRADING AREAS AND  
37 CHANNELS OF TRADE IN THIS STATE USED BY THE MARK'S OWNER AND THE PERSON  
38 AGAINST WHOM THE INJUNCTION IS SOUGHT.

39 7. THE NATURE AND EXTENT OF USE OF THE SAME OR SIMILAR MARK BY THIRD  
40 PARTIES.

41 8. WHETHER THE MARK IS SUBJECT OF A STATE REGISTRATION IN THIS STATE,  
42 OR A FEDERAL REGISTRATION UNDER THE ACT OF MARCH 3, 1881, OR UNDER THE ACT  
43 OF FEBRUARY 20, 1905, OR ON THE PRINCIPAL REGISTER.

1 B. IN AN ACTION BROUGHT UNDER THIS SECTION, THE OWNER OF A FAMOUS MARK  
2 SHALL BE ENTITLED ONLY TO INJUNCTIVE RELIEF IN THIS STATE, UNLESS THE PERSON  
3 AGAINST WHOM THE INJUNCTIVE RELIEF IS SOUGHT WILFULLY INTENDED TO TRADE ON  
4 THE OWNER'S REPUTATION OR TO CAUSE DILUTION OF THE FAMOUS MARK. IF SUCH  
5 WILFUL INTENT IS PROVEN, THE OWNER SHALL ALSO BE ENTITLED TO THE REMEDIES SET  
6 FORTH IN THIS CHAPTER, SUBJECT TO THE DISCRETION OF THE COURT AND THE  
7 PRINCIPLES OF EQUITY.

8 C. THE FOLLOWING SHALL NOT BE ACTIONABLE UNDER THIS SECTION:

9 1. FAIR USE OF A MARK BY ANOTHER PERSON IN COMPARATIVE COMMERCIAL  
10 ADVERTISING OR PROMOTION TO IDENTIFY THE COMPETING GOODS OR SERVICES OF THE  
11 OWNER OF THE FAMOUS MARK.

12 2. NONCOMMERCIAL USE OF THE MARK.

13 3. ALL FORMS OF NEWS REPORTING AND NEWS COMMENTARY.

14 Sec. 11. Section 44-1449, Arizona Revised Statutes, is amended to  
15 read:

16 44-1449. Classification of goods or services

17 A single application for registration of a ~~trademark~~ MARK may include  
18 any or all goods AND SERVICES upon which the ~~trademark~~ MARK is actually being  
19 used comprised in a single class, but in no event shall a single application  
20 include goods OR SERVICES upon which the ~~trademark~~ MARK is being used which  
21 fall within different classes of goods OR SERVICES. The following general  
22 classes of goods AND SERVICES are established for convenience of  
23 administration of this article, but not to limit or extend the applicant's  
24 or registrant's rights:

25 ~~1. Raw or partly prepared materials.~~

26 ~~2. Receptacles.~~

27 ~~3. Baggage, animal equipments, portfolios and pocketbooks.~~

28 ~~4. Abrasives and polishing materials.~~

29 ~~5. Adhesives.~~

30 ~~6. Chemicals and chemical compositions.~~

31 ~~7. Cordage.~~

32 ~~8. Smokers' articles, not including tobacco products.~~

33 ~~9. Explosives, firearms, equipments and projectiles.~~

34 ~~10. Fertilizers.~~

35 ~~11. Inks and inking materials.~~

36 ~~12. Construction materials.~~

37 ~~13. Hardware and plumbing and steam-fitting supplies.~~

38 ~~14. Metals and metal castings and forgings.~~

39 ~~15. Oils and greases.~~

40 ~~16. Paints and painters' materials.~~

41 ~~17. Tobacco products.~~

42 ~~18. Medicines and pharmaceutical preparations.~~

43 ~~19. Vehicles.~~

- 1           ~~20. Linoleum and oiled cloth.~~
- 2           ~~21. Electrical apparatus, machines and supplies.~~
- 3           ~~22. Games, toys and sporting goods.~~
- 4           ~~23. Cutlery, machinery, tools and parts thereof.~~
- 5           ~~24. Laundry appliances and machines.~~
- 6           ~~25. Locks and safes.~~
- 7           ~~26. Measuring and scientific appliances.~~
- 8           ~~27. Horological instruments.~~
- 9           ~~28. Jewelry and precious metalware.~~
- 10          ~~29. Brooms, brushes and dusters.~~
- 11          ~~30. Crockery, earthenware and porcelain.~~
- 12          ~~31. Filters and refrigerators.~~
- 13          ~~32. Furniture and upholstery.~~
- 14          ~~33. Glassware.~~
- 15          ~~34. Heating, lighting and ventilating apparatus.~~
- 16          ~~35. Belting, hose, machinery packing and nonmetallic tires.~~
- 17          ~~36. Musical instruments and supplies.~~
- 18          ~~37. Paper and stationery.~~
- 19          ~~38. Prints and publications.~~
- 20          ~~39. Clothing.~~
- 21          ~~40. Fancy goods, furnishings and notions.~~
- 22          ~~41. Canes, parasols and umbrellas.~~
- 23          ~~42. Knitted, netted and textile fabrics and substitutes therefor.~~
- 24          ~~43. Thread and yarn.~~
- 25          ~~44. Dental, medical and surgical appliances.~~
- 26          ~~45. Soft drinks and carbonated waters.~~
- 27          ~~46. Foods and ingredients of foods.~~
- 28          ~~47. Wines.~~
- 29          ~~48. Malt beverages and liquors.~~
- 30          ~~49. Distilled alcoholic liquors.~~
- 31          ~~50. Merchandise not otherwise classified.~~
- 32          ~~51. Cosmetics and toilet preparations.~~
- 33          ~~52. Detergents and soaps.~~

34           1. CHEMICAL PRODUCTS USED IN INDUSTRY, SCIENCE, PHOTOGRAPHY,  
35           AGRICULTURE, HORTICULTURE OR FORESTRY; ARTIFICIAL AND SYNTHETIC RESINS;  
36           PLASTICS FOR INDUSTRIAL USE IN THE FORM OF POWDERS, LIQUIDS OR PASTES;  
37           NATURAL AND ARTIFICIAL MANURES; FIRE EXTINGUISHING COMPOSITIONS; TEMPERING  
38           SUBSTANCES AND CHEMICAL PREPARATIONS FOR SOLDERING; CHEMICAL SUBSTANCES FOR  
39           PRESERVING FOODSTUFFS; TANNING SUBSTANCES; ADHESIVE SUBSTANCES USED IN  
40           INDUSTRY.

41           2. PAINTS, VARNISHES AND LACQUERS; PRESERVATIVES AGAINST RUST AND  
42           AGAINST DETERIORATION OF WOOD; COLORING MATTERS AND DYESTUFFS; MORDANTS;  
43           NATURAL RESINS; METALS IN FOIL AND POWDER FORM FOR PAINTERS AND DECORATORS.

1           3. BLEACHING PREPARATIONS AND OTHER SUBSTANCES FOR LAUNDRY USE;  
2 CLEANING, POLISHING, SCOURING AND ABRASIVE PREPARATIONS; SOAPS; PERFUMERY,  
3 ESSENTIAL OILS, COSMETICS AND HAIR LOTIONS; DENTIFRICES.

4           4. INDUSTRIAL OILS AND GREASES EXCEPT OILS AND FATS AND ESSENTIAL  
5 OILS; LUBRICANTS; DUST LAYING AND ABSORBING COMPOSITIONS; FUELS, INCLUDING  
6 MOTOR SPIRIT AND ILLUMINANTS; CANDLES, TAPERS, NIGHT-LIGHTS AND WICKS.

7           5. PHARMACEUTICAL, VETERINARY AND SANITARY SUBSTANCES; INFANTS' AND  
8 INVALIDS' FOOD; PLASTERS AND MATERIAL FOR BANDAGING; MATERIAL FOR STOPPING  
9 TEETH, DENTAL WAX AND DISINFECTANTS; PREPARATIONS FOR KILLING WEEDS AND  
10 DESTROYING VERMIN.

11           6. UNWROUGHT AND PARTLY WROUGHT COMMON METALS AND THE METALS' ALLOYS;  
12 ANCHORS, ANVILS, BELLS AND ROLLED AND CAST BUILDING MATERIALS; RAILS AND  
13 OTHER METALLIC MATERIALS FOR RAILWAY TRACKS; CHAINS, EXCEPT DRIVING CHAINS  
14 FOR VEHICLES; NONELECTRIC CABLES AND WIRES; LOCKSMITHS' WORK; METALLIC PIPES  
15 AND TUBES; SAFES AND CASH BOXES; STEEL BALLS; HORSESHOES; NAILS AND SCREWS;  
16 OTHER GOODS IN NONPRECIOUS METAL THAT ARE NOT INCLUDED IN OTHER CLASSES;  
17 ORES.

18           7. MACHINES AND MACHINE TOOLS; MOTORS, EXCEPT MOTORS FOR LAND  
19 VEHICLES; MACHINE COUPLINGS AND BELTING, EXCEPT COUPLINGS AND BELTING FOR  
20 LAND VEHICLES; LARGE SIZE AGRICULTURAL IMPLEMENTS; INCUBATORS.

21           8. HAND TOOLS AND INSTRUMENTS; CUTLERY, FORKS AND SPOONS; SIDE ARMS.

22           9. SCIENTIFIC, NAUTICAL, SURVEYING AND ELECTRICAL APPARATUS AND  
23 INSTRUMENTS, INCLUDING WIRELESS APPARATUS AND INSTRUMENTS; PHOTOGRAPHIC,  
24 CINEMATOGRAPHIC, OPTICAL, WEIGHING, MEASURING, SIGNALING, CHECKING,  
25 SUPERVISION, LIFE-SAVING AND TEACHING APPARATUS AND INSTRUMENTS; COIN OR  
26 COUNTERFREED APPARATUS; TALKING MACHINES; CASH REGISTERS; CALCULATING  
27 MACHINES; FIRE EXTINGUISHING APPARATUS.

28           10. SURGICAL, MEDICAL, DENTAL AND VETERINARY INSTRUMENTS AND APPARATUS,  
29 INCLUDING ARTIFICIAL LIMBS, EYES AND TEETH.

30           11. INSTALLATIONS FOR LIGHTING, HEATING, STEAM GENERATING, COOKING,  
31 REFRIGERATING, DRYING, VENTILATING, WATER SUPPLY AND SANITARY PURPOSES.

32           12. VEHICLES; APPARATUS FOR LOCOMOTION BY LAND, AIR OR WATER.

33           13. FIREARMS; AMMUNITION AND PROJECTILES; EXPLOSIVE SUBSTANCES;  
34 FIREWORKS.

35           14. PRECIOUS METALS AND THE METALS' ALLOYS; GOODS IN PRECIOUS METALS  
36 OR COATED WITH PRECIOUS METALS, EXCEPT CUTLERY, FORKS AND SPOONS; JEWELRY AND  
37 PRECIOUS STONES; HOROLOGICAL AND OTHER CHRONOMETRIC INSTRUMENTS.

38           15. MUSICAL INSTRUMENTS EXCEPT TALKING MACHINES AND WIRELESS APPARATUS.

39           16. PAPER AND PAPER ARTICLES AND CARDBOARD AND CARDBOARD ARTICLES;  
40 PRINTED MATTERS, NEWSPAPERS AND PERIODICALS AND BOOKS; BOOKBINDING MATERIAL;  
41 PHOTOGRAPHS; STATIONERY AND STATIONERY ADHESIVE MATERIALS; ARTISTS'  
42 MATERIALS; PAINTBRUSHES; TYPEWRITERS AND OFFICE REQUISITES, EXCEPT FURNITURE;  
43 INSTRUCTIONAL AND TEACHING MATERIAL, EXCEPT INSTRUCTIONAL AND TEACHING  
44 APPARATUS; PLAYING CARDS; PRINTERS' TYPE AND CLICHES OR STEREOTYPE.

1           17. GUTTA PERCHA, INDIA RUBBER, BALATA AND SUBSTITUTES AND ARTICLES  
2 MADE FROM THESE SUBSTANCES AND NOT INCLUDED IN OTHER CLASSES; PLASTICS IN THE  
3 FORM OF SHEETS, BLOCKS AND RODS FOR USE IN MANUFACTURING; MATERIALS FOR  
4 PACKING, STOPPING OR INSULATING; ASBESTOS, MICA AND ASBESTOS OR MICA  
5 PRODUCTS; NONMETALLIC HOSE PIPES.

6           18. LEATHER, IMITATIONS OF LEATHER AND ARTICLES MADE FROM LEATHER AND  
7 IMITATIONS OF LEATHER THAT ARE NOT INCLUDED IN OTHER CLASSES; SKINS AND  
8 HIDES; TRUNKS AND TRAVELING BAGS; UMBRELLAS, PARASOLS AND WALKING STICKS;  
9 WHIPS, HARNESSSES AND SADDLERY.

10           19. BUILDING MATERIALS, NATURAL AND ARTIFICIAL STONE, CEMENT, LIME,  
11 MORTAR, PLASTER AND GRAVEL; PIPES OF EARTHENWARE OR CEMENT; ROADMAKING  
12 MATERIALS; ASPHALT, PITCH AND BITUMEN; PORTABLE BUILDINGS; STONE MONUMENTS;  
13 CHIMNEY POTS.

14           20. FURNITURE, MIRRORS AND PICTURE FRAMES; ARTICLES OF WOOD, CORK,  
15 REEDS, CANE, WICKER, HORN, BONE, IVORY, WHALEBONE, SHELL, AMBER,  
16 MOTHER-OF-PEARL, MEERSCHAUM OR CELLULOID, SUBSTITUTES FOR ALL OF THESE  
17 MATERIALS, OR OF PLASTICS AND THAT ARE NOT INCLUDED IN OTHER CLASSES.

18           21. SMALL DOMESTIC UTENSILS AND CONTAINERS, EXCEPT UTENSILS AND  
19 CONTAINERS OF PRECIOUS METALS OR UTENSILS AND CONTAINERS COATED WITH PRECIOUS  
20 METALS; COMBS AND SPONGES; BRUSHES, EXCEPT PAINTBRUSHES; BRUSHMAKING  
21 MATERIALS; INSTRUMENTS AND MATERIAL FOR CLEANING PURPOSES AND STEEL WOOL;  
22 UNWORKED OR SEMIWORKED GLASS, EXCEPT GLASS USED IN BUILDING; GLASSWARE,  
23 PORCELAIN AND EARTHENWARE THAT IS NOT INCLUDED IN OTHER CLASSES.

24           22. ROPES, STRING, NETS, TENTS, AWNINGS, TARPULINS, SAILS AND SACKS;  
25 PADDING AND STUFFING MATERIALS, INCLUDING HAIR, KAPOK, FEATHERS AND SEAWEED;  
26 RAW, FIBROUS TEXTILE MATERIALS.

27           23. YARNS AND THREADS.

28           24. TISSUES THAT ARE PIECE GOODS; BED AND TABLE COVERS; TEXTILE  
29 ARTICLES THAT ARE NOT INCLUDED IN OTHER CLASSES.

30           25. CLOTHING, INCLUDING BOOTS, SHOES AND SLIPPERS.

31           26. LACE, EMBROIDERY, RIBANDS AND BRAID; BUTTONS, PRESS BUTTONS, HOOKS,  
32 EYES, PINS AND NEEDLES; ARTIFICIAL FLOWERS.

33           27. CARPETS, RUGS, MATS AND MATTING; LINOLEUMS AND OTHER MATERIALS FOR  
34 COVERING EXISTING FLOORS; NONTEXTILE WALL HANGINGS.

35           28. GAMES AND PLAYTHINGS; GYMNAS TIC AND SPORTING ARTICLES, EXCEPT  
36 GYMNAS TIC AND SPORTING CLOTHES; ORNAMENTS AND DECORATIONS FOR CHRISTMAS  
37 TREES.

38           29. MEATS, FISH, POULTRY AND GAME; MEAT EXTRACTS; PRESERVED, DRIED AND  
39 COOKED FRUITS AND VEGETABLES; JELLIES AND JAMS; EGGS, MILK AND OTHER DAIRY  
40 PRODUCTS; EDIBLE OILS AND FATS; PRESERVES AND PICKLES.

41           30. COFFEE, TEA, COCOA, SUGAR, RICE, TAPIOCA, SAGO AND COFFEE  
42 SUBSTITUTES; FLOUR AND PREPARATIONS MADE FROM CEREALS; BREAD, BISCUITS,  
43 CAKES, PASTRY AND CONFECTIONERY; ICES; HONEY AND TREACLE; YEAST AND BAKING  
44 POWDER; SALT, MUSTARD, PEPPER, VINEGAR, SAUCES AND SPICES.

1           31. AGRICULTURAL, HORTICULTURAL AND FORESTRY PRODUCTS AND GRAINS THAT  
2 ARE NOT INCLUDED IN OTHER CLASSES; LIVING ANIMALS; FRESH FRUITS AND  
3 VEGETABLES; SEEDS; LIVE PLANTS AND FLOWERS; FOODSTUFFS FOR ANIMALS; MALT.

4           32. BEER, ALE AND PORTER; MINERAL WATERS, AERATED WATERS AND OTHER  
5 NONALCOHOLIC DRINKS; SYRUPS AND OTHER PREPARATIONS FOR MAKING BEVERAGES.

6           33. WINES, SPIRITS AND LIQUEURS.

7           34. RAW OR MANUFACTURED TOBACCO; SMOKERS' ARTICLES; MATCHES.

8           35. COMPUTERS AND COMPUTER SOFTWARE.

9           36. ADVERTISING AND BUSINESS.

10          37. INSURANCE AND FINANCIAL.

11          38. CONSTRUCTION AND REPAIR.

12          39. COMMUNICATION.

13          40. TRANSPORTATION AND STORAGE.

14          41. MATERIAL TREATMENT.

15          42. EDUCATION AND ENTERTAINMENT.

16          43. MISCELLANEOUS.

17          Sec. 12. Section 44-1450, Arizona Revised Statutes, is amended to  
18 read:

19           44-1450. Fraudulent registration; damages

20           Any person who for himself, or on behalf of any other person, procures  
21 the filing or registration of any ~~trademark~~ MARK in the office of the  
22 secretary of state under the provisions of this article by knowingly making  
23 any false or fraudulent representation or declaration, verbally or in  
24 writing, or by any other fraudulent means, shall be liable to pay all damages  
25 sustained in consequence of such filing or registration, to be recovered by  
26 or on behalf of the party injured thereby in any court of competent  
27 jurisdiction.

28          Sec. 13. Section 44-1451, Arizona Revised Statutes, is amended to  
29 read:

30           44-1451. Remedies for infringement

31           A. Subject to ~~the provisions of~~ section 44-1452, the owner of a  
32 ~~trademark~~ MARK registered under this article may proceed by civil action  
33 against any person who, without the consent of the registrant:

34           ~~1. Advertises for sale, offers for sale, sells, or distributes in this~~  
35 ~~state goods bearing the registered mark or a mark similar thereto if such~~  
36 ~~advertising for sale, offering for sale, sale or distribution is likely to~~  
37 ~~cause confusion or mistake or to deceive persons as to the source or origin~~  
38 ~~of such goods.~~

39           1. USES IN THIS STATE THE REGISTERED MARK OR A MARK SIMILAR TO THE  
40 REGISTERED MARK ON OR IN CONNECTION WITH ANY GOODS OR SERVICES OR ANY  
41 CONTAINER FOR GOODS IN ANY MANNER THAT IS LIKELY TO CAUSE CONFUSION, CAUSE  
42 A MISTAKE OR DECEIVE A PERSON AS TO EITHER:

1 (a) THE AFFILIATION, CONNECTION OR ASSOCIATION OF SUCH PERSON WITH  
2 ANOTHER PERSON.

3 (b) THE ORIGIN, SPONSORSHIP OR APPROVAL OF THE GOODS, SERVICES OR  
4 COMMERCIAL ACTIVITIES BY THE OWNER OF THE REGISTERED MARK.

5 2. Reproduces, counterfeits, copies or colorably imitates a registered  
6 mark in any manner whatsoever if such reproductions, counterfeits, copies or  
7 colorable imitations are for usage in contravention of paragraph 1 of this  
8 subsection.

9 3. SUCH DISTRIBUTION OR USE SHALL BE DEEMED TO CAUSE INJURY IN THIS  
10 STATE.

11 4. DISTRIBUTES OR USES AN UNAUTHORIZED COPY OF COMPUTER SOFTWARE IF  
12 THE PERSON KNOWS THAT THE COPY IS AN UNAUTHORIZED COPY AND WHEN USED THE COPY  
13 DEPICTS, INCORPORATES OR DISPLAYS OR CAUSES TO BE DEPICTED, INCORPORATED OR  
14 DISPLAYED A MARK THAT HAS BEEN REGISTERED UNDER THIS ARTICLE FOR COMPUTER  
15 SOFTWARE.

16 5. KNOWINGLY OBLITERATES, COVERS, REMOVES OR OTHERWISE ALTERS THE MARK  
17 OF ANOTHER PERSON.

18 B. In any such action, the court:

19 1. May grant injunctions to restrain any of such acts as the court  
20 deems just and reasonable.

21 2. May also require the defendant to pay to the plaintiff, subject to  
22 the principles of equity:

23 (a) THE defendant's profits.

24 (b) Any damages sustained by the plaintiff.

25 (c) The costs of the action, provided that no profits or damages shall  
26 be awarded in the case of an action brought under ~~paragraph 2,~~ subsection A,  
27 PARAGRAPH 2 of this section, unless the acts were committed with knowledge  
28 that the usage would be in contravention of SUBSECTION A, paragraph 1 OF THIS  
29 SECTION.

30 3. SHALL, IF THE USE IS OTHER THAN A PERSONAL, NONCOMMERCIAL USE, AND  
31 OTHERWISE MAY, GRANT TO A PREVAILING PLAINTIFF IN AN ACTION BROUGHT UNDER  
32 SUBSECTION A, PARAGRAPH 3 OF THIS SECTION THE PLAINTIFF'S REASONABLE ATTORNEY  
33 FEES AND, AT THE PLAINTIFF'S ELECTION AND IN LIEU OF THE DEFENDANT'S PROFITS  
34 OR ACTUAL DAMAGES, PRESUMED DAMAGES THAT ARE EQUAL TO FIVE HUNDRED DOLLARS  
35 FOR EACH COPY OR THE MANUFACTURER'S SUGGESTED RETAIL PRICE FOR EACH COPY,  
36 WHICHEVER IS GREATER.

37 ~~3-~~ 4. May also order the cancellation or transfer of a registration  
38 or that any reproductions, copies, counterfeits, or colorable imitations of  
39 the registered mark in the possession or under the control of the defendant  
40 be destroyed or delivered ~~up~~ for destruction.

41 5. MAY ALSO ORDER THE CONFISCATION OR DESTRUCTION OF ANY UNAUTHORIZED  
42 COPY OF COMPUTER SOFTWARE THAT WHEN USED DEPICTS OR DISPLAYS OR CAUSES TO BE  
43 DEPICTED OR DISPLAYED A REGISTERED MARK.

1 C. The enumeration of any right or remedy provided in this article  
2 shall not affect a registrant's right to prosecution under any penal law of  
3 this state.

4 Sec. 14. Section 44-1452, Arizona Revised Statutes, is amended to  
5 read:

6 44-1452. Common law rights

7 Nothing in this article shall adversely affect the rights or the  
8 enforcement of rights in ~~trademarks~~ MARKS acquired in good faith at any time  
9 at common law.

10 Sec. 15. Section 44-1453, Arizona Revised Statutes, is amended to  
11 read:

12 44-1453. Counterfeiting or using counterfeit of label, mark or  
13 form of advertising adopted by corporation,  
14 association or union; classification

15 A person who counterfeits, imitates or knowingly uses the counterfeit  
16 or imitation of a label, ~~trademark~~ MARK or form of advertisement which  
17 indicates that the goods to which such label, ~~trademark~~ MARK or form of  
18 advertisement is attached were manufactured by a corporation, AN association  
19 or members of a union of working persons, which label, ~~trademark~~ MARK or form  
20 of advertisement has been adopted by a corporation, association or union of  
21 working persons for its own protection, is guilty of a class ~~3 misdemeanor~~  
22 6 FELONY.

23 Sec. 16. Section 44-1454, Arizona Revised Statutes, is amended to  
24 read:

25 44-1454. Counterfeit of mark with intent to pass off goods or  
26 services; classification

27 A person who knowingly reproduces, copies, forges, counterfeits or  
28 imitates a ~~trademark~~ MARK usually affixed by ~~any person to his~~ A REGISTRANT  
29 TO THE REGISTRANT'S goods OR USED IN CONNECTION WITH THE REGISTRANT'S  
30 SERVICES, with intent to pass off the goods OR SERVICES to which such ~~forged~~  
31 ~~or counterfeited trademark~~ MARK is affixed or USED OR intended to be affixed  
32 OR USED as the goods OR SERVICES of ~~such~~ THAT person, is guilty of a class  
33 ~~2 misdemeanor~~ 5 FELONY.

34 Sec. 17. Section 44-1455, Arizona Revised Statutes, is amended to  
35 read:

36 44-1455. Sale or keeping for sale of goods bearing counterfeit  
37 trademark; use of unauthorized copy of computer  
38 software; violation; classification

39 A person who knowingly sells or keeps for sale goods upon or to which  
40 a counterfeited trademark is affixed, intending to represent such goods as  
41 genuine goods of another, knowing the trademark to be counterfeit, OR  
42 KNOWINGLY USES, OTHER THAN FOR PERSONAL, NONCOMMERCIAL USE, AN UNAUTHORIZED  
43 COPY OF COMPUTER SOFTWARE THAT WHEN USED DEPICTS, INCORPORATES OR DISPLAYS

1 OR CAUSES TO BE DEPICTED, INCORPORATED OR DISPLAYED A MARK THAT HAS BEEN  
2 REGISTERED UNDER THIS ARTICLE FOR COMPUTER SOFTWARE is guilty of a class ~~2~~  
3 ~~misdemeanor~~ 5 FELONY.