

ANNOTATED CODE OF **MARYLAND**
BUSINESS REGULATION.
TITLE 1. DEFINITIONS; GENERAL PROVISIONS.
Subtitle 4. Trademarks, Service Marks, and Trade Names.

Current through End of 1998 Reg. Sess.

s 1-404 Registration authorized.

(a) In general. -- If a person uses a mark in the State, the person may register the mark in accordance with this subtitle.

(b) Exceptions. -- A person may not register a mark that:

(1) is deceptive, immoral, or scandalous;

(2) may disparage, falsely suggest a connection with, or bring into contempt or disrepute:

(i) a belief;

(ii) an individual, living or dead;

(iii) an institution; or

(iv) a national symbol;

(3) is, simulates, or includes a coat of arms, flag, or other insignia of a government;

(4) is or includes the name, portrait, or signature of a living individual, except with the written consent of the individual; or

(5) is likely, when applied to the goods or services of the person, to confuse or deceive because the mark resembles:

(i) another mark registered in the State; or

(ii) a mark or trade name that another person has used in the State and has not abandoned.

(c) Limited exception. -- (1) Unless the mark has become distinctive of the person's goods or services, a person may not register a mark that:

(i) only describes or deceptively misdescribes goods or services;

(ii) primarily describes or deceptively misdescribes the geographic origin of goods or services;

or

(iii) is primarily merely a surname.

(2) As evidence that a mark has become distinctive of the goods or services of a person, the Secretary of State may accept proof that the person has used the mark as a mark in the State or elsewhere continuously for at least 5 years immediately before the day on which the person applies for registration.

(d) Registration of trade name prohibited. -- A person may not register a trade name that is not a mark.

(An. Code 1957, art. 41, ss 3-101, 3-102, 3-103; 1992, ch. 4, s 2.)

NOTES, REFERENCES, AND ANNOTATIONS

Baltimore City and other governmental entities are "persons" within the meaning of the Maryland Trademark Law and, as such, are entitled to register a mark used in Maryland. 67 Op. Att'y Gen. 380 (1982).

Acceptance by Secretary of State. -- Under Article 27, s 62, 1951 Code, repealed by Acts 1954, ch. 63, the mere fact that the Secretary of State had accepted a name for registration as a trademark was not determinative of

whether or not that name constituted a valid, technical trademark. *Sherwood Co. v. Sherwood Distilling Co.*, 177 Md. 455, 9 A.2d 842 (1939).

Proof of continuous use as evidence of distinctiveness. -- The Secretary of State may accept five years' continuous use by the applicant as evidence that the mark has become distinctive. Such proof is not, however, conclusive evidence even for purposes of registration and the validity of a trademark is clearly subject to attack in litigation. *A. & H. Transp., Inc. v. Save Way Stations, Inc.*, 214 Md. 325, 135 A.2d 289 (1957).

Invalid trademark. -- The term "Savon Gas" used on gasoline filling stations did not constitute a valid, technical trademark. *A. & H. Transp., Inc. v. Save Way Stations, Inc.*, 214 Md. 325, 135 A.2d 289 (1957).

The name "Darling" as applied to women's wear is not distinctive, unique or fanciful, and thus not subject to exclusive appropriation as a technical trademark. *Chayt v. Darling Retail Shops Corp.*, 175 F. Supp. 462 (D. Md. 1959).

Slogan "Baltimore's Best/Baltimore is Best" is not disqualified from registration on the basis of its evident geographically descriptive nature, because the mark conveys a distinctive secondary meaning. 67 Op. Att'y Gen. 380 (1982).

Code, Business Regulation, s 1-404
MD BUS REG s 1-404