



GOV. MSG. NO. 750

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 23, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 23, 2008, the following bill was signed into law:

HB3085 HD2 SD1

A BILL FOR AN ACT RELATING TO BUSINESS
REGISTRATION.
(ACT 108)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO BUSINESS REGISTRATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 482, Hawaii Revised Statutes, is
2 amended by adding a new part to read as follows:

3 **"PART . MISCELLANEOUS**

4 **§482-A Penalties for signing false documents.** (a) A
5 person commits an offense if the person signs a document the
6 person knows is false in any material respect with intent that
7 the document be delivered to the director for filing. An
8 offense under this subsection shall be a class C felony and may
9 carry a fine not to exceed \$10,000.

10 (b) A person commits a misdemeanor if the person
11 negligently and without intent to defraud signs a document that
12 is false in any material respect with intent that the document
13 be delivered to the director for filing. The misdemeanor may
14 carry a fine not to exceed \$2,000.

15 **§482-B Liability for fraudulent registration.** Any person
16 who knowingly makes a false or fraudulent representation or
17 declaration in registration documents filed with the director
18 shall be liable for all damages sustained as a result of the



1 registration documents as determined by a court of competent
2 jurisdiction.

3 **§482-C Common law rights.** Nothing in this chapter shall
4 adversely affect common law rights in trade names, entity names,
5 service marks, or trademarks, or the enforcement of those
6 rights.

7 **§482-D Severability.** If any provision of this chapter is
8 deemed to be invalid, the remaining provisions of this chapter
9 shall continue to be effective."

10 SECTION 2. Chapter 482, Hawaii Revised Statutes, is
11 amended by designating section 482-1 as part I, entitled
12 "General Provisions".

13 SECTION 3. Chapter 482, Hawaii Revised Statutes, is
14 amended by designating sections 482-2 through 482-9 as part II,
15 entitled "Trade Names".

16 SECTION 4. Chapter 482, Hawaii Revised Statutes, is
17 amended by designating section 482-21 through 482-37 as part
18 III, entitled "Trademarks and Service Marks".

19 SECTION 5. Chapter 482, part I, Hawaii Revised Statutes,
20 is amended by amending the title to read as follows:

21 **"PART I. [~~TRADE-NAMES~~] GENERAL PROVISIONS"**



1 SECTION 6. Chapter 482, part II, Hawaii Revised Statutes,
2 is amended by amending the title to read as follows:

3 "PART II. [~~TRADEMARKS AND SERVICE MARKS~~] TRADE NAMES"

4 SECTION 7. Section 482-1, Hawaii Revised Statutes, is
5 amended by adding a new definition to be appropriately inserted
6 and to read as follows:

7 "Entity means a corporation, partnership, limited
8 liability company, or any other type of business entity
9 recognized in this State."

10 SECTION 8. Section 482-3, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Upon receiving the application accompanied by the
13 fee, the director shall cause the trade name to be recorded and
14 shall issue [~~to the applicant~~] a certificate of registration[~~-~~]
15 to the applicant; provided that the director shall not register
16 any trade name that is substantially identical with any
17 registered trade name, the name of any entity registered or
18 authorized to transact business in accordance with the laws of
19 the State, or any mark registered in the State, except as
20 ordered by the director in accordance to section 482-8.5 or
21 unless the registered owner of the registered trade name, entity
22 name, or mark consents in writing. The certificate of



1 registration shall be constructive notice to all persons of the
2 applicant's claim of the use of the trade name throughout the
3 State, for the term of five years from the date thereof;
4 provided that the ~~[director shall not register any trade name~~
5 ~~which is substantially identical with any registered trade name~~
6 ~~or with the name of any corporation, partnership, limited~~
7 ~~partnership, limited liability partnership, or limited liability~~
8 ~~company registered in accordance with chapters 414, 414D, 415A,~~
9 ~~425, 425E, and 428, provided further that the]~~ trade name is
10 continued in actual use by the applicant in this State. The
11 acceptance of an application and issuance of a certificate of
12 registration by the director shall not abrogate or limit any
13 common law or other right of any ~~[person to any corporation,~~
14 ~~partnership, limited partnership, limited liability partnership,~~
15 ~~or limited liability company name, or trade name.]~~ person
16 claiming to be the legal owner of a trade name."

17 SECTION 9. Section 482-4, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) It shall be unlawful for any person to adopt or use a
20 trade name or entity name that ~~[is substantially identical or~~
21 ~~confusingly similar]~~ infringes on any person's ownership rights
22 to any registered trade name, mark, or the name of any



1 ~~[corporation, partnership, or limited liability company existing~~
2 ~~or registered,]~~ entity registered or authorized to transact
3 business in accordance with the laws of this State, or a name
4 the exclusive right to which is, at the time, reserved in this
5 State. In addition to the revocation of a trade name
6 registration or administrative order of abatement provisions in
7 sections 482-8 and 482-8.5, respectively, any person whose
8 ownership rights to a trade name, mark, or entity name are
9 infringed upon by the adoption or use of a confusingly similar
10 trade name or entity name may seek injunctive relief in a court
11 of competent jurisdiction or the imposition of a fine that shall
12 not exceed \$2,000, or both."

13 SECTION 10. Section 482-8, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§482-8 Revocation of ~~[certificate, ownership,]~~ trade name**
16 **registration.** (a) Any person claiming to be the owner of a
17 trade name or mark whose common law rights are infringed upon,
18 or any entity registered or authorized to transact business
19 under the laws of this State whose common law right to its
20 entity name are infringed upon, by a trade name for which a
21 certificate of registration pursuant to this chapter has been
22 issued to any other person ~~[shall]~~ may file a ~~[verified]~~



1 petition in the office of the director for the revocation of the
2 registration of [~~such~~] that trade name. The petition shall set
3 forth the facts [~~in support of the ownership by such petitioner~~
4 ~~of such trade name and in support of the claim of the~~
5 ~~petitioner~~] and authority supporting the claim that the
6 petitioner has common law rights of ownership of the trade name,
7 mark, or entity name, that these rights are being infringed upon
8 by the other registered trade name that is confusingly similar
9 to the petitioner's trade name, mark, or entity name, and that
10 the certificate of registration should be revoked.

11 (b) Any person with a registered trade name in this State,
12 or any entity registered or authorized to transact business
13 under the laws of this State, claiming that another subsequently
14 registered trade name is substantially identical to its
15 registered trade name or entity name, respectively, may file a
16 petition in the office of the director for the revocation of the
17 registration of the subsequently registered trade name. The
18 petition shall set forth the facts and authority supporting the
19 claim that the petitioner's registered trade name or entity name
20 is substantially identical to the subsequently registered trade
21 name, the petitioner's trade name or entity name was registered
22 before the subsequently registered trade name, and the



1 registration of the subsequently registered trade name should be
2 revoked.

3 (c) The petitioner [~~shall~~], at the petitioner's expense,
4 shall notify the registrant of the hearing in the manner
5 prescribed by the director and section 91-9.5 and the registrant
6 shall be given the opportunity [~~of~~] for a hearing in accordance
7 with chapter 91.

8 [~~e~~] (d) After granting an opportunity for hearing to the
9 petitioner and the registrant, the director shall grant or deny
10 the petition for revocation, as the facts shall warrant."

11 SECTION 11. Section 482-8.5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§482-8.5 Administrative order of abatement [~~for~~**
14 **~~infringement of trade name.] against a registered or authorized~~**
15 **entity.** (a) Any [~~individual or sole proprietor with a~~
16 ~~currently registered trade name in this State]~~ person claiming
17 to be the owner of a trade name or mark who believes that the
18 name of any entity registered or authorized to transact business
19 under the laws of this State is [~~substantially identical to, or~~
20 confusingly similar to~~[-]~~ its trade name or mark may file a
21 petition with the director for an administrative order of
22 abatement to address the infringement of its trade name~~[-]~~ or



1 mark. The petition shall set forth the facts and authority
2 ~~[that support the petitioner's claim]~~ supporting the claim that
3 the petitioner has common law rights of ownership of the trade
4 name or mark, that these rights are being infringed upon by a
5 registered or authorized entity whose name is confusingly
6 similar to the petitioner's trade name or mark, and that further
7 use of the entity name should be abated.

8 (b) Any person with a registered trade name in this State
9 claiming that another subsequently registered name of any entity
10 registered or authorized to transact business under the laws of
11 this State is substantially identical to its registered trade
12 name may file a petition with the director for an administrative
13 order of abatement against the use of the subsequently
14 registered entity name. The petition shall set forth the facts
15 and authority supporting the claim that the petitioner's
16 registered trade name is substantially identical to the
17 subsequently registered entity name, the petitioner's trade name
18 was registered before the subsequently registered entity name,
19 and further use of the subsequently registered entity name
20 should be abated.

21 (c) The petitioner, at the petitioner's expense, shall
22 notify the registrant of the hearing in the manner prescribed by



1 chapter 91 and the registrant shall be given an opportunity to
2 respond to the petition at the hearing. The notice shall be
3 made and the hearing held in accordance with the contested case
4 provisions of chapter 91.

5 ~~(b)~~ (d) In addition to any other remedy or sanction
6 allowed by law, the order of abatement may:

7 (1) Allow the entity to retain its registered name, but
8 require the entity to:

9 (A) Register a new trade name with the director; and

10 (B) Transact business in this State under the new
11 trade name; or

12 (2) Require the entity to change its registered name, and
13 to:

14 (A) ~~Register~~ File a ~~new trade~~ name change with
15 the director; and

16 (B) Transact business in this State under the new
17 ~~trade~~ name.

18 If the entity fails to comply with the order of abatement within
19 sixty days, the director may involuntarily dissolve or terminate
20 the entity, or cancel or revoke the entity's registration or
21 certificate of authority after the time to appeal has lapsed and
22 no appeal has been timely filed. The director shall mail notice



1 of the dissolution, termination, or cancellation to the entity
2 at its last known mailing address. The entity shall wind up its
3 affairs in accordance with this chapter or chapter 414, 414D,
4 415A, 425, 425E, or 428, as applicable.

5 ~~[(e)]~~ (e) Any person aggrieved by the director's order
6 under this section may obtain judicial review in accordance with
7 chapter 91 by filing a notice of appeal in circuit court within
8 thirty days after the issuance of the director's order. Review
9 of any final decision of the circuit court shall be governed by
10 chapter 602."

11 SECTION 12. Section 482-21, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§482-21 Registrability.** A mark by which the goods or
14 services of any applicant for registration may be distinguished
15 from the goods or services of others shall not be registered if
16 it:

- 17 (1) Consists of or comprises immoral, deceptive, or
18 scandalous matter;
- 19 (2) Consists of or comprises matter which may disparage or
20 falsely suggest a connection with persons, living or
21 dead, institutions, beliefs, or national symbols, or
22 bring them into contempt, or disrepute;



- 1 (3) Consists of or comprises the flag or coat of arms or
2 other insignia of the United States, or of any state
3 or municipality, or of any foreign nation, or any
4 simulation thereof;
- 5 (4) Consists of or comprises the name, signature, or
6 portrait identifying a particular living individual,
7 except by the individual's written consent;
- 8 (5) Consists of a mark that:
- 9 (A) When used on or in connection with the goods or
10 services of the applicant, is merely descriptive
11 or deceptively misdescriptive of them;
- 12 (B) When used on or in connection with the goods or
13 services of the applicant is primarily
14 geographically descriptive or deceptively
15 misdescriptive of them; or
- 16 (C) Is primarily a surname;
17 provided that nothing in this paragraph shall prevent
18 the registration of a mark used by the applicant which
19 has become distinctive of the applicant's goods or
20 services. The director may accept as evidence that the
21 mark has become distinctive as used on or in
22 connection with the applicant's goods or services,



1 proof of continuous use thereof as a mark by the
2 applicant in this State for the five years before the
3 date on which the claim of distinctiveness is made;
4 [~~or~~]

5 (6) Consists of a mark which so resembles a mark
6 registered in this State or a mark or trade name
7 previously used by another and not abandoned, as to be
8 likely, when used on or in connection with the goods
9 or services of the applicant, to cause confusion or
10 mistake or to deceive~~[or]~~; or

11 (7) Consists of a mark that is substantially identical
12 with any registered trade name or the name of any
13 entity registered or authorized to transact business
14 in accordance with the laws of this State."

15 SECTION 13. Section 482-31, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~[§]§482-31[§]~~ **Infringement.** Subject to section ~~[482-35,]~~
18 ~~482-~~, any person who:

19 (1) Uses, without the consent of the registrant, any
20 reproduction, counterfeit, copy, or colorable
21 imitation of a mark registered under this part in
22 connection with the sale, distribution, offering for



1 sale, or advertising of any goods or services on or in
2 which such use is likely to cause confusion or
3 mistake, or to deceive, as to the source of origin of
4 such goods or services; or
5 (2) Reproduces, counterfeits, copies, or colorably
6 imitates a mark registered under this part and applies
7 such reproduction, counterfeit, copy, or colorable
8 imitation to labels, signs, prints, packages,
9 wrappers, receptacles, or advertisements intended to
10 be used on or in connection with the sale or other
11 distribution in this State of such goods or services;
12 shall be liable in a civil action by the registrant for any and
13 all of the damages and remedies provided in section 482-33;
14 provided that under paragraph (2) the registrant shall not be
15 entitled to recover profits or damages unless the acts have been
16 committed with the intent to cause confusion, mistake, or to
17 deceive."

18 SECTION 14. Section 482-3.5, Hawaii Revised Statutes, is
19 repealed.

20 ~~["§482-3.5] Penalty. (a) Any person who signs and~~
21 ~~certifies as correct any application filed pursuant to this~~



1 ~~chapter, knowing the same to be false in any material~~
2 ~~particular, shall be fined not more than \$5,000.~~

3 ~~(b) Any person who negligently but without intent to~~
4 ~~defraud signs and certifies as correct any application filed~~
5 ~~pursuant to this chapter, which application is false in any~~
6 ~~material particular, shall be guilty of a misdemeanor, and upon~~
7 ~~conviction shall be punished by a fine not exceeding \$500."]~~

8 SECTION 15. Section 482-5, Hawaii Revised Statutes, is
9 repealed.

10 ~~["**482-5 Penalty.** Any person using such substantially~~
11 ~~identical or confusingly similar trade name as set forth in~~
12 ~~section 482-4, shall be fined not more than \$1,000."]~~

13 SECTION 16. Section 482-30, Hawaii Revised Statutes, is
14 repealed.

15 ~~["**[482-30] Fraudulent registration.** Any person who~~
16 ~~knowingly makes a false or fraudulent representation or~~
17 ~~declaration in registration documents filed with the director~~
18 ~~shall be liable for all damages sustained as a result of the~~
19 ~~registration documents as determined by a court of competent~~
20 ~~jurisdiction."]~~

21 SECTION 17. Section 482-35, Hawaii Revised Statutes, is
22 repealed.



1 ~~["482-35 Common law rights. Nothing herein shall~~
2 ~~adversely affect the rights or the enforcement of rights in~~
3 ~~marks acquired in good faith at any time at common law."]~~

4 SECTION 18. Section 482-37, Hawaii Revised Statutes, is
5 repealed.

6 ~~["482-37 Severability. If any provision of this part~~
7 ~~is deemed to be invalid, the remaining provisions of this~~
8 ~~chapter shall continue to be effective."]~~

9 SECTION 19. In codifying the new sections added by
10 section 1 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

13 SECTION 20. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 21. This Act shall take effect upon its approval.

APPROVED this 23 day of MAY, 2008



GOVERNOR OF THE STATE OF HAWAII

