
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 as follows:

3 1. By adding a new part to read as follows:

4 **"PART IV. MISCELLANEOUS PROVISIONS**

5 **§482-A Penalties for signing false documents.** (a) Any
6 person who signs a document the person knows is false in any
7 material respect with intent that the document be delivered to
8 the director for filing shall be guilty of a class C felony.
9 The class C felony may carry a fine not to exceed \$10,000.

10 (b) Any person who negligently and without intent to
11 defraud signs a document that is false in any material respect
12 with intent that the document be delivered to the director for
13 filing shall be guilty of a misdemeanor. 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 2. By designating sections 482-21 to 482-37 as part III
8 and adding a title before section 482-21 to read:

9 **"PART III. TRADEMARKS AND SERVICE MARKS"**

10 3. By designating section 482-1 as part I and amending the
11 title of part I to read:

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

13 4. By designating sections 482-2 to 482-9 as part II and
14 amending the title of part II to read:

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

16 SECTION 2. Section 482-1, Hawaii Revised Statutes, is
17 amended by adding a new definition to section 482-1 to be
18 appropriately inserted and to read:

19 "Entity" means a corporation, partnership, limited
20 liability company, and any other type of business entity
21 recognized by this State."



1 SECTION 3. Section 482-3, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) Upon receiving the application accompanied by the
4 fee, the director shall cause the trade name to be recorded and
5 shall issue ~~[to the applicant]~~ a certificate of registration~~[-]~~
6 to the applicant; provided that the director shall not register
7 any trade name that is substantially identical with any
8 registered trade name, the name of any entity registered or
9 authorized to transact business in accordance with the laws of
10 this State, or any mark registered in this state, except as
11 ordered by the director in accordance with section 482-8.5 or
12 unless the registered owner of the registered trade name, entity
13 name, or mark consents in writing. The certificate of
14 registration shall be constructive notice to all persons of the
15 applicant's claim of the use of the trade name throughout the
16 ~~[State,]~~ state for the term of five years from the date thereof;
17 provided that the ~~[director shall not register any trade name~~
18 ~~which is substantially identical with any registered trade name~~
19 ~~or with the name of any corporation, partnership, limited~~
20 ~~partnership, limited liability partnership or limited liability~~
21 ~~company registered in accordance with chapters 414, 414D, 415A,~~
22 ~~425, 425E, and 428, provided further that the]~~ trade name is



1 continued in actual use by the applicant in this [~~State.~~] state.
2 The acceptance of an application and issuance of a certificate
3 of registration by the director shall not abrogate or limit any
4 common law or other right of any [~~person to any corporation,~~
5 ~~partnership, limited partnership, limited liability partnership,~~
6 ~~or limited liability company name, or trade name.~~] person
7 claiming to be the legal owner of a trade name."

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

10 "(a) It shall be unlawful for any person to adopt or use a
11 trade or entity name that [~~is substantially identical or~~
12 ~~confusingly similar~~] infringes on any other person's ownership
13 rights to any registered trade name, mark, or the name of any
14 [~~corporation, partnership, or limited liability company existing~~
15 ~~or~~] entity registered[~~,~~] or authorized to transact business in
16 accordance with the laws of this State, or a name the exclusive
17 right to which is, at the time, reserved in this [~~State.~~] state.
18 In addition to the revocation of a trade name or order of
19 abatement provisions in sections 482-8 and 482-8.5,
20 respectively, any person whose ownership rights to a trade name
21 or entity name are infringed upon by the adoption or use of a
22 confusingly similar name may either seek injunctive relief in a



1 court of competent jurisdiction, the imposition of a fine which
2 shall not exceed \$2,000, or both."

3 SECTION 5. Section 482-8, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§482-8 Revocation of [~~certificate, ownership.~~] trade name**
6 **registration.** (a) Any person claiming to be the owner of a
7 trade name or mark whose common law rights are infringed, or any
8 entity registered or authorized to transact business under the
9 laws of this State whose common law rights to its entity name
10 are infringed, by a trade name for which a certificate of
11 registration pursuant to this chapter has been issued to any
12 other person [~~shall~~] may file a [~~verified~~] petition in the
13 office of the director for the revocation of the registration of
14 [~~such~~] the trade name. The petition shall set forth the facts
15 [~~in support of the ownership by such petitioner of such trade~~
16 ~~name and in support~~] and authority supporting the claim that the
17 petitioner has common law rights of the ownership [~~by such~~
18 ~~petitioner of such~~] of the trade name, mark, or entity name,
19 that these rights are being infringed upon by a subsequently
20 registered trade name that is confusingly similar to the
21 petitioner's name or mark, and [~~in support of the claim of the~~



1 ~~petitioner]~~ that the certificate of registration of the
2 registered trade name should be revoked.

3 (b) Any person with a registered trade name in this state,
4 or any entity registered or authorized to transact business
5 under the laws of this State, claiming that another subsequently
6 registered trade name is substantially identical to its
7 registered trade name or entity name may file a petition in the
8 office of the director for the revocation of the registration of
9 the subsequently registered trade name. The petition shall set
10 forth the facts and authority supporting the claim that the
11 petitioner's registered trade name or entity name is
12 substantially identical to the challenged trade name, the
13 petitioner's trade name or entity name was registered before the
14 challenged trade name, and the challenged trade name
15 registration should be revoked.

16 ~~(b)~~ (c) The petitioner shall, at the petitioner's
17 expense, notify the registrant of the hearing in the manner
18 prescribed by the director and section 91-9.5 and the registrant
19 shall be given the opportunity of a hearing in accordance with
20 chapter 91.



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

4 SECTION 6. Section 482-8.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§482-8.5 Administrative order of abatement** [~~for~~
7 ~~infringement of trade name.~~] against a registered or qualified
8 entity. (a) Any [~~individual or sole proprietor with a~~
9 ~~currently registered trade name in this State~~] person claiming
10 to be the owner of a trade name or mark who believes that the
11 name of any entity registered or authorized to transact business
12 under the laws of this State is [~~substantially identical to, or~~]
13 confusingly similar to[~~7~~] its trade name or mark may file a
14 petition with the director for an administrative order of
15 abatement to address the infringement of its trade name[~~7~~] or
16 mark. The petition shall set forth the facts and authority
17 [~~that support the petitioner's claim~~] supporting the claim that
18 the petitioner has common law rights of ownership of the trade
19 name or mark, that these rights are being infringed upon by a
20 registered or qualified entity whose name is confusingly similar
21 to the petitioner's trade name or mark, and that further use of
22 the entity name should be abated.



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

13 (c) The petitioner, at the petitioner's expense, shall
14 notify the registrant of the hearing in the manner prescribed by
15 chapter 91 and the registrant shall be given an opportunity to
16 respond to the petition at the hearing. The notice shall be
17 made and the hearing held in accordance with the contested case
18 provisions of chapter 91.

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

21 (1) Allow the entity to retain its registered name, but
22 require the entity to:



- 1 (A) Register a new trade name with the director; and
- 2 (B) Transact business in this [~~State~~] state under the
- 3 new [~~trade~~] name; or
- 4 (2) Require the entity to change its registered name, and
- 5 to:
- 6 (A) [~~Register~~] File a [~~new-trade~~] name change with
- 7 the director; and
- 8 (B) Transact business in this [~~State~~] state under the
- 9 new [~~trade~~] name.

10 If the entity fails to comply with the order of abatement within

11 sixty days, the director may involuntarily dissolve or terminate

12 the entity, or cancel or revoke the entity's registration or

13 certificate of authority after the time to appeal has lapsed and

14 no appeal has been timely filed. The director shall mail notice

15 of the dissolution, termination, or cancellation to the entity

16 at its last known mailing address. The entity shall wind up its

17 affairs in accordance with this chapter or chapter 414, 414D,

18 415A, 425, 425E, or 428, as applicable.

19 [~~(e)~~] (e) Any person aggrieved by the director's order

20 under this section may obtain judicial review in accordance with

21 chapter 91 by filing a notice of appeal in circuit court within

22 thirty days after the issuance of the director's order. Review



1 of any final decision of the circuit court shall be governed by
2 chapter 602."

3 SECTION 7. Section 482-21, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§482-21 Registrability.** A mark by which the goods or
6 services of any applicant for registration may be distinguished
7 from the goods or services of others shall not be registered if
8 it:

- 9 (1) Consists of or comprises immoral, deceptive, or
10 scandalous matter;
- 11 (2) Consists of or comprises matter which may disparage or
12 falsely suggest a connection with persons, living or
13 dead, institutions, beliefs, or national symbols, or
14 bring them into contempt, or disrepute;
- 15 (3) Consists of or comprises the flag or coat of arms or
16 other insignia of the United States, or of any state
17 or municipality, or of any foreign nation, or any
18 simulation thereof;
- 19 (4) Consists of or comprises the name, signature, or
20 portrait identifying a particular living individual,
21 except by the individual's written consent;
- 22 (5) Consists of a mark that:



- 1 (A) When used on or in connection with the goods or
2 services of the applicant, is merely descriptive
3 or deceptively misdescriptive of them;
- 4 (B) When used on or in connection with the goods or
5 services of the applicant is primarily
6 geographically descriptive or deceptively
7 misdescriptive of them; or
- 8 (C) Is primarily a surname;
9 provided that nothing in this paragraph shall prevent
10 the registration of a mark used by the applicant which
11 has become distinctive of the applicant's goods or
12 services. The director may accept as evidence that
13 the mark has become distinctive as used on or in
14 connection with the applicant's goods or services,
15 proof of continuous use thereof as a mark by the
16 applicant in this [~~State~~] state for the five years
17 before the date on which the claim of distinctiveness
18 is made; [~~or~~]
- 19 (6) Consists of a mark which so resembles a mark
20 registered in this [~~State~~] state or a mark or trade
21 name previously used by another and not abandoned, as
22 to be likely, when used on or in connection with the



1 goods or services of the applicant, to cause confusion
2 or mistake or to deceive[-]; or

3 (7) Consists of a mark which is substantially identical
4 with any registered trade name or the name of any
5 entity registered or authorized to transact business
6 in accordance with the laws of this State."

7 SECTION 8. Section 482-31, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[~~f~~]**§482-31**[~~†~~] **Infringement.** Subject to section [~~482-35,~~]
10 482-C, any person who:

11 (1) Uses, without the consent of the registrant, any
12 reproduction, counterfeit, copy, or colorable
13 imitation of a mark registered under this part in
14 connection with the sale, distribution, offering for
15 sale, or advertising of any goods or services on or in
16 which such use is likely to cause confusion or
17 mistake, or to deceive, as to the source of origin of
18 such goods or services; or

19 (2) Reproduces, counterfeits, copies, or colorably
20 imitates a mark registered under this part and applies
21 such reproduction, counterfeit, copy, or colorable
22 imitation to labels, signs, prints, packages,



1 wrappers, receptacles, or advertisements intended to
2 be used on or in connection with the sale or other
3 distribution in this [~~State~~] state of such goods or
4 services[+],
5 shall be liable in a civil action by the registrant for any and
6 all of the damages and remedies provided in section 482-33;
7 provided that under paragraph (2) the registrant shall not be
8 entitled to recover profits or damages unless the acts have been
9 committed with the intent to cause confusion, mistake, or to
10 deceive."

11 SECTION 9. Section 482-3.5, Hawaii Revised Statutes, is
12 repealed.

13 ["~~§482-3.5 Penalty.~~ (a) ~~Any person who signs and~~
14 ~~certifies as correct any application filed pursuant to this~~
15 ~~chapter, knowing the same to be false in any material~~
16 ~~particular, shall be fined not more than \$5,000.~~

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



1 SECTION 10. Section 482-5, Hawaii Revised Statutes, is
2 repealed.

3 [~~"**482-5 Penalty.** Any person using such substantially~~
4 ~~identical or confusingly similar trade name as set forth in~~
5 ~~section 482-4, shall be fined not more than \$1,000."~~]

6 SECTION 11. Section 482-30, Hawaii Revised Statutes, is
7 repealed.

8 [~~"**482-30 Fraudulent registration.** Any person who~~
9 ~~knowingly makes a false or fraudulent representation or~~
10 ~~declaration in registration documents filed with the director~~
11 ~~shall be liable for all damages sustained as a result of the~~
12 ~~registration documents as determined by a court of competent~~
13 ~~jurisdiction."~~]

14 SECTION 12. Section 482-35, Hawaii Revised Statutes, is
15 repealed.

16 [~~"**482-35 Common law rights.** Nothing herein shall~~
17 ~~adversely affect the rights or the enforcement of rights in~~
18 ~~marks acquired in good faith at any time at common law."~~]

19 SECTION 13. Section 482-37, Hawaii Revised Statutes, is
20 repealed.



1 [~~"§482-37 Severability. If any provision of this part is~~
2 ~~deemed to be invalid, the remaining provisions of this chapter~~
3 ~~shall continue to be effective."~~]

4 SECTION 14. In codifying the new sections added by section
5 1 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 15. This Act does not affect rights and duties
9 that matured, penalties that were incurred, and proceedings that
10 were begun, before its effective date.

11 SECTION 16. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 17. This Act shall take effect on July 1, 2034.



Report Title:

Trade Names and Marks

Description:

Reorganizes and resolves inconsistencies, gaps, and ambiguities in the law relating to registration and protection of trademarks, tradenames, and service marks. (HB3085 HD2)

