

CHAPTER 1254

CHATTEL LOANS

H. F. 1030

AN ACT to correct an erroneous reference in the chattel loan statutes.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Section five hundred thirty-six point twenty (536.20),
 2 Code 1966, as amended by Acts of the Sixty-third General Assembly,
 3 First Session, chapter two hundred seventy-three (273), is further
 4 amended by striking from the last line the words and figures "sections
 5 429.11 to 429.13, inclusive" and inserting in lieu thereof the words
 6 and figures "chapter five hundred thirty-six A (536A)".

Approved January 28, 1970.

CHAPTER 1255

REGISTRATION OF MARKS

S. F. 417

AN ACT to provide for the registration and protection of marks.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. **Definitions.** As used in this Act, unless the context
 2 otherwise requires:
 3 1. "Applicant" means a person filing an application for registra-
 4 tion of a mark under this Act, his legal representative, successor, or
 5 assignee.
 6 2. "Mark" means a word, name, symbol, device, or any combination
 7 of the foregoing in any form or arrangement used as a certification
 8 mark, collective mark, service mark, or trademark.
 9 a. "Certification mark" means a mark used in connection with the
 10 goods or services of a person other than the certifier to indicate geo-
 11 graphic origin, material, mode of manufacture, quality, accuracy, or
 12 other characteristics of the goods or services, or to indicate that the
 13 work or labor on the goods or services was performed by members of
 14 a union or other organization.
 15 b. "Collective mark" means a mark used by members of a coopera-
 16 tive, association, or other collective group or organization to identify
 17 goods or services and distinguish them from those of others, or to
 18 indicate membership in the collective group or organization.
 19 c. "Service mark" means a mark used by a person to identify serv-
 20 ices and to distinguish them from the services of others.
 21 d. "Trademark" means a mark used by a person to identify goods
 22 and to distinguish them from the goods of others.
 23 3. "Person" means an individual, corporation, government or gov-
 24 ernmental subdivision or agency, business trust, estate, trust, part-
 25 nership, unincorporated association, two or more of any of the fore-
 26 going having a joint or common interest, or any other legal or
 27 commercial entity.

28 4. "Registrant" means a person issued a registration of a mark
29 under this Act, his legal representative, successor, or assignee.

30 5. "Trade name" means a word, name, symbol, device, or any com-
31 bination of the foregoing in any form or arrangement used by a person
32 to identify his business, vocation, or occupation, and distinguish it
33 from others.

34 6. "Use" means:

35 a. Placing a mark on goods or containers or associated displays,
36 or on affixed tags or labels, and selling or otherwise distributing the
37 goods in this state.

38 b. Displaying a mark in connection with the sale or advertising of
39 services rendered.

1 **SEC. 2. Registrability.**

2 1. A mark shall not be registered if it:

3 a. Consists of or comprises immoral, deceptive, or scandalous mat-
4 ter, or

5 b. Consists of or comprises matter which may disparage, bring
6 into contempt or disrepute, or falsely suggest a connection with per-
7 sons, living or dead, institutions, beliefs, or national symbols, or

8 c. Consists of or comprises the flag, or coat of arms, or other insig-
9 nia of the United States, or of any state or municipality, or of any
10 foreign nation, or any simulation thereof, or

11 d. Consists of, or comprises the name, signature, or portrait of any
12 living individual, except with his written consent, or

13 e. Is merely descriptive or misdescriptive, or primarily geograph-
14 ically descriptive or geographically misdescriptive as applied to the
15 goods or services of the applicant, or

16 f. Is primarily a surname; except nothing in this paragraph shall
17 prevent the registration of a mark used in this state by the applicant,
18 which has become distinctive of the applicant's goods or services. The
19 secretary of state may accept as evidence that the mark has become
20 distinctive proof of continuous use as a mark by the applicant in this
21 state or elsewhere for the five years preceding the date of the filing
22 of the application for registration, or

23 g. Resembles a mark registered in this state or a mark or trade
24 name previously used in this state by another and not abandoned, so
25 as to be likely, when applied to the goods or services of the applicant,
26 to cause confusion, mistake, or deception of purchasers.

27 2. An applicant dissatisfied with a refusal of the secretary of state
28 to issue registration may bring a civil action in the district court of
29 the state for Polk county. The court shall review the secretary's
30 decision and order registration if registration was improperly refused.

1 **SEC. 3. Application for registration.** Subject to the limitations
2 set forth in this Act, any person who has previously adopted and used
3 a mark in this state may file in the office of the secretary of state, in
4 the manner prescribed by the secretary of state, duplicate originals
5 of an application for the registration of the mark. The application
6 shall include, but not be limited to, the following:

7 1. The name and business address of the applicant, and if a cor-
8 poration, the state of incorporation.

9 2. The goods or services in connection with which the mark is in

10 use, the mode or manner in which the mark is used in connection with
11 those goods or services, and the class or classes in which such goods
12 or services fall, as described in regulations promulgated by the sec-
13 retary of state.

14 3. The date on which the mark was first used anywhere by the
15 applicant or his predecessor in interest, and the date on which it was
16 first used in this state.

17 4. A statement that the applicant is the owner of the mark in this
18 state and that no other person has the right to use a mark in this
19 state which purchasers would be likely to confuse or mistake for the
20 applicant's mark.

21 5. The signature and verification of the applicant, a specimen or
22 facsimile of the mark illustrating its present mode of use, and a filing
23 fee of ten dollars for each class of goods or services for which regis-
24 tration is sought.

1 **SEC. 4. Certificate of registration.** The secretary of state shall
2 issue a certificate of registration to the applicant upon compliance
3 with the requirements of this Act. The certificate of registration
4 shall be issued over the signature and seal of the secretary of state
5 or his designee, bear the date of registration, and be affixed to a
6 duplicate original application or a copy. A duplicate original appli-
7 cation shall be retained by the secretary of state with respect to each
8 registered mark. The retained duplicate original application or a
9 copy shall be available for public examination.

10 Except as provided in section fourteen (14) of this Act, a certifi-
11 cate of registration by the secretary of state, affixed to a duplicate
12 original application or to a copy, shall be prima facie evidence of the
13 validity of registration and of the registrant's right to use the mark
14 throughout this state in the manner described in the certificate of
15 registration.

1 **SEC. 5. Duration and renewal.** Registration of a mark under this
2 Act shall be effective for a term of ten years and may be renewed for
3 successive ten-year periods. A renewal fee of ten dollars shall accom-
4 pany an application for renewal of registration. Application for re-
5 newal shall be made within six months prior to the expiration of the
6 registration on a form furnished by the secretary of state and shall
7 include a verified statement that the mark is still in use in this state.

8 The secretary of state shall notify a registrant of the pending ex-
9 piration of his registration. However, the failure of a registrant to
10 receive due notice from the secretary of state shall not prevent ex-
11 piration of a registration.

12 The term of any registration in force on the date on which this Act
13 becomes effective shall not be affected by this Act, but any registra-
14 tion in force on said date can only be renewed under this Act.

1 **SEC. 6. Assignment.** Any mark registered under this Act shall
2 be assignable with the good will of the business in which the mark is
3 used. A mark connected with a part of the good will of a business can
4 be assigned with that part of the good will of the business. Assign-
5 ment of a registration can only be effected by filing duplicate originals
6 of an assignment, signed by the registrant, with the secretary of state
7 together with a filing fee of three dollars. After filing the assignment,

8 the secretary of state shall issue to the assignee, for the remainder of
9 the term of the assigned registration, a new certificate attached to one
10 of the duplicate originals.

1 **SEC. 7. Cancellation.** The secretary of state shall cancel from the
2 register:

3 1. Any registration under a prior law which has expired without
4 being renewed under this Act.

5 2. Any registration concerning which the secretary of state re-
6 ceives a voluntary request for cancellation from the registrant or the
7 assignee of record.

8 3. Any registration granted under this Act and not renewed in ac-
9 cordance with its provisions.

10 4. Any registration which a district court, in an action involving
11 the registration and from which no appeal is or can be taken, finds:

12 *a.* That the registered mark has been abandoned, or

13 *b.* That the registrant is not the owner of the mark, or

14 *c.* That the registration was granted contrary to the provisions of
15 this Act, or

16 *d.* That the registration was obtained fraudulently, or

17 *e.* That the registered mark has become incapable of serving as a
18 mark, or

19 *f.* That the registered mark is so similar to a mark registered in
20 the United States patent office by another party to the litigation and
21 not abandoned prior to the date of first use by the registrant under
22 this Act as to be likely to cause confusion, mistake, or deception of
23 purchasers. However, registration under this Act shall not be can-
24 celed if the registrant under this Act proves that he has a concurrent
25 registration for his mark in the United States patent office for an
26 area including this state.

27 5. Any registration that a district court, from which no appeal is
28 or can be taken, orders canceled on any ground.

1 **SEC. 8. Classification.** The secretary of state shall establish a
2 classification of goods and services for convenience in the administra-
3 tion of this Act which shall not limit an applicant's or registrant's
4 rights except as expressly provided by this Act.

1 **SEC. 9. Fraudulent registration.** Any person who, either for him-
2 self or on behalf of any other person, shall procure the registration
3 of any mark under this Act by knowingly making any false or fraudu-
4 lent representation or declaration or by any other fraudulent means
5 is liable for the damages caused by the fraudulent registration and in
6 an action to recover these damages the court shall order cancellation
7 of the fraudulently obtained registration.

1 **SEC. 10. Infringement.**

2 Subject to the provisions of section fourteen (14) of this Act, any
3 person who without the consent of the registrant uses any reproduc-
4 tion, counterfeit, copy, or colorable imitation of a mark registered
5 under this Act in a manner which is likely to cause confusion, mis-
6 take, or deception of purchasers; or reproduces, counterfeits, copies,
7 or colorably imitates any registered mark and applies such reproduc-
8 tion, counterfeit, copy, or colorable imitation to labels, signs, prints,
9 packages, wrappers, receptacles, or advertisements intended to be

10 used in a manner which is likely to cause confusion, mistake, or de-
11 ception of purchasers in this state; shall be liable in a civil action by
12 the registrant of the mark, for any or all of the remedies provided in
13 section eleven (11) of this Act.

1 **SEC. 11. Remedies.**

2 1. The registrant of a mark that has been infringed may be granted
3 an injunction against an infringer in accordance with the principles
4 of equity. The court in its discretion may allow the registrant to
5 recover the damages caused by the infringement or the profits of the
6 infringer attributable to the infringement, or both. The court may
7 order any counterfeits or imitations in the possession or under the
8 control of an infringer to be destroyed and in exceptional cases the
9 court may also award reasonable attorney fees to the prevailing party.

10 2. Dilution of distinctiveness of a mark registered under this Act
11 shall be a ground for injunctive relief according to the principles of
12 equity.

1 **SEC. 12. Defenses.**

2 A registrant shall not use the letter "R" enclosed in a circle, thus ®,
3 "Registered in the U.S. Patent Office" or "Reg. U.S. Patent Off." to
4 give notice of registration under this Act. Use of false notice of fed-
5 eral registration is an affirmative defense which precludes recovery
6 of damages, profits, or injunctive relief under this Act for the period
7 during which false notice of federal registration is used.

1 **SEC. 13. Application.** This Act does not affect:

2 1. Rights, or the enforcement of rights, in marks or trade names
3 acquired in good faith at any time at common law.

4 2. Rights, or the enforcement of rights in marks acquired under
5 federal law.

6 3. Publishers, broadcasters, printers, or other persons engaged in
7 the dissemination of information or reproduction of printed or pic-
8 torial matter who publish, broadcast, or reproduce material without
9 knowledge of its infringing character.

10 4. Use of the Iowa certification mark as provided in section twenty-
11 eight point seven (28.7), subsection four (4) of the Code.

12 5. Marks for dairy products, as provided for in sections one hun-
13 dred ninety-two point twenty-three (192.23) through one hundred
14 ninety-two point thirty-nine (192.39), inclusive, of the Code.

1 **SEC. 14. Time of taking effect.** This Act shall be in force and
2 take effect January 1, 1971, but shall not affect any suit, proceeding,
3 or appeal then pending.

1 **SEC. 15.** Chapter five hundred forty-eight (548), Code 1966, is
2 repealed except that registrations under chapter five hundred forty-
3 eight (548) in force on said date shall continue to be governed by
4 chapter five hundred forty-eight (548) until expiration of the regis-
5 trations or renewal of the registrations under this Act, whichever is
6 sooner.

1 **SEC. 16.** Sections seven hundred thirteen point seventeen (713.17)
2 through seven hundred thirteen point twenty-one (713.21), inclusive,
3 Code 1966, are repealed except that registrations under section seven

4 hundred thirteen point eighteen (713.18), Code 1966, shall continue to
5 be in force until January 1, 1972 or until registered under this Act,
6 whichever is sooner.

1 SEC. 17. Section one hundred ninety-two point twenty-three
2 (192.23), Code 1966, is amended by striking from line one (1) the
3 words "The Iowa trade-" and inserting in lieu thereof the words "The
4 Iowa certification".

1 SEC. 18. Section one hundred ninety-two point twenty-four
2 (192.24), Code 1966, is amended by striking from lines thirteen (13)
3 and sixteen (16) the word "trade-mark" and inserting in lieu thereof
4 the words "certification mark".

1 SEC. 19. Section one hundred ninety-two point twenty-five
2 (192.25), Code 1966, is amended by striking from line four (4) the
3 word "trade-mark" and inserting in lieu thereof the words "certifi-
4 cation mark".

1 SEC. 20. Section one hundred ninety-two point twenty-six
2 (192.26), Code 1966, is amended by striking from lines three (3),
3 eight (8) and thirteen (13) the word "trade-mark" and inserting in
4 lieu thereof the words "certification mark".

1 SEC. 21. Section one hundred ninety-two point twenty-seven
2 (192.27), Code 1966, is amended by striking from lines two (2) and
3 three (3) the word "trade-mark" and inserting in lieu thereof the
4 words "certification mark".

1 SEC. 22. Section one hundred ninety-two point twenty-eight
2 (192.28), Code 1966, is amended by striking from lines three (3),
3 four (4), seven (7) and nine (9) the word "trade-mark" and insert-
4 ing in lieu thereof the words "certification mark".

1 SEC. 23. Section one hundred ninety-two point twenty-nine
2 (192.29), Code 1966, is amended by striking from lines two (2),
3 three (3) and five (5) the word "trade-mark" and inserting in lieu
4 thereof the words "certification mark".

1 SEC. 24. Section one hundred ninety-two point thirty (192.30),
2 Code 1966, is amended by striking from line six (6) the word "trade-
3 mark" and inserting in lieu thereof the words "certification mark".

Approved March 4, 1970.