

**Delaware Division of Corporations
401 Federal Street – Suite 4
Dover, DE 19901
Phone: 302-739-3073
Fax: 302-739-3812**

TRADEMARK AND/OR SERVICE MARK

Dear Sir or Madam:

As requested, enclosed is a blank form of Application for Registration of Trademark and/or Service Mark. The fee for filing the application is \$25.00, and the fee for the Certificate of Registration, which will be issued by the Secretary of State, is \$10.00. Please make check, in the amount of \$35.00, payable to the "Delaware Secretary of State."

Registration of a mark under the provisions of the Delaware Code shall remain effective for a term of ten years from the date of registration, unless otherwise canceled. Upon application filed within six months prior to the expiration of such term, the registration may be renewed for another ten-year period. The proper Application for Renewal of Registration of Trademark or Service Mark will be furnished by the Division of Corporations.

It is necessary that a specimen or facsimile of the mark, in DUPLICATE, accompany the Application for Registration, one of which will be attached to the Application for filing in this Department, and the other will be attached to the Certificate of Registration issued by the Secretary of State and returned to the applicant.

In order to properly and efficiently process your documents, please prepare them using *black ink*. If you have any questions or concerns regarding the registration of the mark, feel free to contact our office.

Please return all items to the attention of TRADEMARK FILINGS.

Sincerely,

**Department of State
Division of Corporations**

Special Instructions – Application for Registration of Trademark/Service Mark

This form is to be used as a Template only. The following instructions will help you in correctly completing your Registration Application. The instructions will be numbered to correspond with the article it is referencing.

- 1. The name of the applicant that owns the Mark.*
- 2. List the complete business address of the owner of the Mark.*
- 3. List whether the applicant is an individual or if it is a business entity, the type of entity.*
- 4. State of formation for business entities.*
- 5. (a) A complete description of the Mark as it will be listed on the records of the Division of Corporations.
(b) The goods or services used in connection with the Mark.
(c) The mode or manner of use for the Mark as it relates to the goods or services listed in 5(b).
(d) The classification number and name of the goods or services as registered with the Secretary of State.*
- 6. (a) The date the Mark was first used anywhere; the month and year must be listed.
(b) The date the Mark was first used in the State of Delaware; the month and year must be listed.*

Please feel free to call our office at 302-739-3073 for assistance in completing this form.

Sincerely,

Delaware Division of Corporations

State of Delaware
Application for Registration of
Trademark or Service Mark

1. Name of Applicant:
2. Business Address:

Zip code:
3. State whether applicant is an individual, partnership, limited liability company, corporation, union, association or other organization:
4. If a business entity, list the State of Formation:
5. TRADEMARK or SERVICE MARK:(Specify filing type*)
 - (a) Please describe mark in detail:
 - (b) Goods or services in connection with which the mark is used:
 - (c) Mode or manner in which the mark is used in connection with such goods or services:
 - (d) Class in which such goods or services fall: No.
Name of class:
6. Date of first use of mark by applicant or predecessor:
 - (a) Anywhere:
 - (b) In Delaware:

Signature of Applicant

Official Capacity

STATE OF _____ SS:
COUNTY OF _____

_____, being duly sworn, deposes and says that
he is _____, of the afore named applicant,
that the statements contained in the foregoing statement are true and that he verily believes that said
applicant is the owner of the mark sought to be registered and that no other person has the right in the
State of Delaware to use such mark either in the identical form thereof or in such resemblance
thereto, as might be calculated to deceive or to be mistaken therefor.

SIGNATURE OF APPLICANT

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

NOTARY SEAL

Classifications

Trademarks

CLASS 1 (Chemicals)
CLASS 2 (Paints)
CLASS 3 (Cosmetics and cleaning preparations)
CLASS 4 (Lubricants and fuels)
CLASS 5 (Pharmaceuticals)
CLASS 6 (Metal goods)
CLASS 7 (Machinery)
CLASS 8 (Hand tools)
CLASS 9 (Electrical and scientific apparatus)
CLASS 10 (Medical apparatus)
CLASS 11 (Environmental control apparatus)
CLASS 12 (Vehicles)
CLASS 13 (Firearms)
CLASS 14 (Jewelry)
CLASS 15 (Musical Instruments)
CLASS 16 (Paper goods and printed matter)
CLASS 17 (Rubber goods)
CLASS 18 (Leather goods)
CLASS 19 (Nonmetallic building materials)
CLASS 20 (Furniture and articles not otherwise classified)
CLASS 21 (Housewares and glass)
CLASS 22 (Cordage and fibers)
CLASS 23 (Yarns and threads)
CLASS 24 (Fabrics)
CLASS 25 (Clothing)
CLASS 26 (Fancy goods)
CLASS 27 (Floor coverings)
CLASS 28 (Toys and sporting goods)
CLASS 29 (Meats and processed foods)
CLASS 30 (Staple foods)
CLASS 31 (Natural agricultural products)
CLASS 32 (Light beverages)
CLASS 33 (Wine and spirits)
CLASS 34 (Smokers' articles)

SERVICE MARKS

CLASS 35 (Advertising and business)
CLASS 36 (Insurance and financial)
CLASS 37 (Building construction and repair)
CLASS 38 (Telecommunications)
CLASS 39 (Transportation and storage)
CLASS 40 (Treatment of materials)
CLASS 41 (Education and entertainment)
CLASS 42 (Computer, scientific & legal)
CLASS 43 (Hotels and Restaurants)
CLASS 44 (Medical, beauty & agricultural)
CLASS 45 (Personal)

CLASSIFICATIONS in Detail

TRADEMARK

1.	Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.
2.	Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.
3.	Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
4.	Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.
5.	Pharmaceutical, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.
6.	Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.
7.	Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.
8.	Hand tools and implements (hand-operated); cutlery; side arms; razors.
9.	Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.
10.	Surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; suture materials.
11.	Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.
12.	Vehicles; apparatus for locomotion by land, air, or water.
13.	Firearms; ammunition and projectiles; explosives; fireworks.
14.	Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.
15.	Musical instruments.

16.	Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks.
17.	Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.
18.	Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
19.	Building materials (non-metallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.
20.	Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.
21.	Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel-wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.
22.	Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.
23.	Yarns and threads, for textile use.
24.	Textiles and textile goods, not included in other classes; beds and table covers.
25.	Clothing, footwear, headgear.
26.	Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.
27.	Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
28.	Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.
29.	Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.
30.	Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

31.	Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.
32.	Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
33.	Alcoholic beverages (except beers).
34.	Tobacco; smokers' articles; matches.

SERVICE MARK

35.	Advertising; business management; business administration; office functions.
36.	Insurance; financial affairs; monetary affairs; real estate affairs.
37.	Building construction; repair; installation services.
38.	Telecommunications.
39.	Transport; packaging and storage of goods; travel arrangement
40.	Treatment of materials.
41.	Education; providing of training; entertainment; sporting and cultural activities.
42.	Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services.
43.	Services for providing food and drink; temporary accommodations.
44.	Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.
45.	Personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals.

TITLE 6

Commerce and Trade

SUBTITLE II

Other Laws Relating to Commerce and Trade

CHAPTER 33. TRADEMARKS, BRANDS AND LABELS

§ 3301. Short title.

This chapter may be known and cited as the "Delaware Trademark Act."

60 Del. Laws, c. 612, § 1.;

§ 3302. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

(1) "Applicant" shall mean any person filing an application for registration of a trademark under this chapter, the applicant's legal representatives, successors or assigns.

(2) "Mark" shall include any trademark or service mark entitled to registration under this chapter, whether registered or not.

(3) "Person" shall mean any individual, firm, partnership, corporation, association, union or other organization.

(4) "Registrant" shall mean the person to whom the registration of a trademark under this chapter is issued, that person's legal representatives, successors or assigns.

(5) "Service mark" shall mean a mark used in the sale or advertising of services to identify the services of 1 person and distinguish them from the services of others.

(6) "Trademark" shall mean any word, name, symbol or device or any combination thereof adopted and used by a person to identify goods made or sold by that person, and to distinguish them from goods made or sold by others.

(7) "Trade name" shall mean a word, name, symbol, device or any combination thereof used by a person to identify a business, vocation or occupation and distinguish it from the business, vocation or occupation of others.

(8) For the purposes of this chapter, a trademark shall be deemed to be "used" in this State:

a. On goods, when it is placed in any manner on the goods, their containers or the displays associated therewith, or on labels affixed thereto and such goods are sold or otherwise distributed within this State; and

b. On services, when the trademark is used or displayed in the sale or advertising of services and the services are rendered in this State.

60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.;

§ 3303. Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive or scandalous matter;

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or national symbols, or bring them into contempt or disrepute;

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation or any simulation thereof;

(4) Consists of or comprises the name, signature or portrait of any living individual, except with that individual's written consent;

(5) Consists of a mark which:

a. When applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

b. When applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them; or

c. Is primarily merely a surname (provided, however, that nothing in this section shall prevent the registration of a mark used in this State by the applicant which is or has become distinctive of the applicant's goods or services); or

(6) Consists of or comprises a mark which so resembles a mark registered in this State or a trademark or trade name previously used in this State by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause mistake, or to confuse or deceive.

60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.;

§ 3304. Application for registration.

(a) Subject to the limitations set forth in this chapter, any person who adopts and uses a mark in this State may file in the office of the Secretary of State, on a form to be furnished by the Secretary of State, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for such registration, and if a corporation, the state of incorporation;

(2) The goods or services in connection with which the mark is used, the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere, and the date when it was first used in this State by the applicant or the applicant's predecessor in business; and

(4) A statement that the applicant is the owner of the mark and that no other person has the right to use such mark in this State, either in the identical form thereof or in such near resemblance thereto, as might be calculated to deceive or to be mistaken therefor.

(b) The application shall be signed and verified by the applicant, by a member of the firm or by an officer of the corporation or association applying therefor. The application shall be accompanied by a specimen or facsimile of such mark in duplicate. The application for registration shall be accompanied by a filing fee of \$25 payable to the Secretary of State.

60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.;

§ 3305. Certificate of registration.

(a) Upon compliance by the applicant with the requirements of this chapter, the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the State, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere, the date claimed for the first use of the mark in this State, the class of goods or services, a description of the goods or services on which the mark is used, a reproduction of the mark, the registration date and the term of the registration period.

(b) Any certificate of registration issued by the Secretary of State under this chapter or a copy thereof duly certified by the Secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceeding in any court of this State.

(c) A certificate of registration will be issued by the Secretary of State upon receipt of a \$10 fee payable to the Secretary of State.

60 Del. Laws, c. 612, § 1.;

§ 3306. Duration and renewal.

(a) Registration of a mark under this chapter shall be effective for a term of 10 years from the date of registration and, upon application filed within 6 months prior to the expiration of such term, on a form to be furnished by the Secretary of State, the registration may be renewed for a like term. A renewal fee of \$25, payable to the Secretary of State, shall accompany the application for renewal of the registration. A trademark registration may be renewed for successive periods of 10 years in like manner.

(b) The Secretary of State shall notify registrants of marks hereunder of the necessity of renewal within the year next preceding expiration of the 10 years from the date of registration by writing to the last known address of a registrant.

(c) Any registration in force on the date on which this chapter shall become effective shall expire 10 years from the date of the registration, the last renewal thereof or 1 year after the effective date of this chapter, whichever is later, and may be renewed by filing an application with the Secretary of State on a form furnished by the secretary and paying the aforementioned renewal fee thereof within 6 months prior to the expiration of the registration.

(d) All applications for renewals under this chapter, whether of registrations made hereunder or of registrations effected under any prior act, shall include a statement that the mark is still in use in this State.

(e) The Secretary of State shall, within 6 months after such effective date, notify all registrants of marks registered under previous acts of the date of expiration of such registrations, unless renewed in accordance with this chapter, by writing to the last known address of the registrants.

60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.;

§ 3307. Assignment.

Any mark and its registration hereunder shall be assignable, with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed, and may be recorded with the Secretary of State upon the payment of a fee of \$25, payable to the Secretary of State who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration, or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the Secretary of State within 3 months after the date thereof, or prior to such subsequent purchase.

60 Del. Laws, c. 612, § 1.;

§ 3308. Records.

The Secretary of State shall keep for public examination a record of all marks registered or renewed under this chapter.

60 Del. Laws, c. 612, § 1.;

§ 3309. Cancellation.

The Secretary of State shall cancel from the register:

(1) After 1 year from the effective date of this chapter, all registrations under prior acts which are more than 10 years old, and not renewed in accordance with this chapter;

(2) Any registration concerning which the Secretary of State shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(3) All registrations granted under this chapter and not renewed in accordance with this chapter;

(4) Any registration concerning which a court of competent jurisdiction shall find:

- a. That the registered mark has been abandoned;
- b. That the registrant is not the owner of the mark;
- c. That the registration was granted improperly;
- d. That the registration was obtained fraudulently; or

e. That the registered mark is so similar, as to be likely to cause confusion or to deceive, to a mark registered by another person in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove ownership of a concurrent registration of the mark in the United States Patent Office covering an area including this State, the registration hereunder shall not be cancelled; or

(5) When a court of competent jurisdiction shall order cancellation of a registration on any ground.

60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.;

§ 3310. Classification.

Classification shall be as that which is enforced at the time of application under the classification system used by the United States Patent Office.

60 Del. Laws, c. 612, § 1.;

§ 3311. Fraudulent registration.

Any person who shall for himself or herself, or on behalf of any other person, procure the filing or registration of any mark in the office of the Secretary of State under this chapter, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.;

§ 3312. Infringement.

Subject to common-law rights as set forth in § 3315 of this title, any person who shall:

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered under this chapter in connection with the sale, offering for sale or advertising of any goods or services, or in connection with which such use is likely to cause confusion or to deceive as to the source or origin of such goods or services; or

(2) Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in conjunction with the sale or other distribution in this State of such goods or services; shall be liable to a civil action by the owner of such registered mark for any or all of the remedies provided in § 3314 of this title, except that under subdivision (2) of this section, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or to deceive.

60 Del. Laws, c. 612, § 1.;

§ 3313. Injury to business reputation; dilution.

Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under this chapter, or a mark valid at common law or a trade name valid at common

law, shall be a ground for injunctive relief notwithstanding the absence of competition between the parties, or the absence of confusion as to the source of goods or services.

60 Del. Laws, c. 612, § 1.;

§ 3314. Remedies, including injunctions against forged or counterfeited trademarks, service marks, or copyrighted or registered designs.

(a) The State finds and declares that the citizens of this State have a right to receive those goods and services which they reasonably believe they are purchasing or for which they contract. The State further finds that the manufacture and sale of counterfeit goods or goods which are not what they purport to be and the offering of services through the use of counterfeit service marks constitutes a fraud on the public and results in economic disruption to the legitimate businesses of this State. Moreover, those individuals and businesses doing business in Delaware who have, through their labors, developed intellectual property rights associated with their goods or services sold to the public also deserve protection. In order to protect the citizens of this State and those who do business in this State, it is necessary to take appropriate actions to remove counterfeit goods from the channels of commerce and prevent the manufacture, sale and distribution of such goods or the offering of such services through the use of counterfeit service marks.

(b) As used in this chapter, the term "forged or counterfeited trademark, service mark, or copyrighted or registered design" means (1) any mark or design which is identical to, substantially indistinguishable from, or an imitation of a trademark, service mark, or copyrighted or registered design which is registered for those types of goods or services with the Secretary of State pursuant to this chapter or registered on the Principal Register of the United States Patent and Trademark Office or registered under the laws of any other state, whether or not the offender knew such mark or design was so registered or protected, if the use by such offender of such trademark, service mark, or copyrighted or registered design has not been expressly authorized by the owner thereof, and (2) any mark or design which is designed to, is reasonably likely to, or does give the impression that the mark or design, or the good or product to which the mark or design is affixed, is authorized by or produced by an owner of a trademark or service mark or copyrighted or registered design registered under this chapter or on the Principal Register of the United States Patent and Trademark Office or registered under the laws of any other state.

(c) As used in this chapter, the terms "counterfeits" and "counterfeit goods" mean any product or good bearing or to which is affixed a forged or counterfeited trademark, service mark, or copyrighted or registered design.

(d) As used in this chapter, "Court" means the Court of Chancery.

(e) Any owner of a trademark or service mark or copyrighted or registered design registered under this chapter or on the Principal Register of the United States Patent and Trademark Office or registered under the laws of any other state may proceed by action to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof; and the Court may grant such relief, including orders restraining or enjoining such manufacture, use, display or sale as the Court may deem just and reasonable, and the Court may further require the defendants to pay to such plaintiff all profits derived from such wrongful manufacture, use, display or sale, or both profits and damages.

(f) If, in any action brought under this section, the Court determines that a trademark or service mark or copyrighted or registered design is counterfeit, the Court may order the

destruction of all such forged or counterfeited trademarks or service marks or copyrighted or registered designs and all goods, articles or other matter bearing the forged or counterfeited trademarks or service marks or copyrighted or registered designs which are in the possession or control of the Court or any party to the action; or, after obliteration of the forged or counterfeited trademark or service mark or copyrighted or registered design, the Court may order the transfer of any of those materials to the State, a civil claimant, a charitable institution or any other appropriate person.

(g)(1) The Court, upon application, including an ex parte application, in an action against persons known or unknown to enjoin either or both (i) the manufacture, use, display or sale of counterfeits, or (ii) the unauthorized sale of any goods or products upon the plaintiff's property, whether counterfeit or not, may, as a preliminary matter, order seizure of the counterfeit goods upon a showing of good cause and upon the posting of a bond in an amount deemed appropriate by the Court. If it appears from an ex parte application that there is good reason for proceeding without notification to the defendant (including, for example, that the defendant may flee with or without the allegedly counterfeit goods or that the identity of the defendant is unknown), the Court may proceed ex parte. In determining "good cause," the Court may grant an order of seizure in advance of such unlawful acts where they are reasonably anticipated to occur and the plaintiff demonstrates a particular need for such advance relief. A copy of the order of seizure shall be served at the time of seizure upon any person from whom seizure is effected. The order shall specifically set forth:

- a. The date or dates on which the seizure is ordered to take place;
- b. A description of the goods to be seized;
- c. The identity of the persons or class of persons to effect seizure, which persons may include officers of the Court, police officers and other law enforcement officials, persons licensed under Chapter 13 of Title 24, and such other persons as the Court may, in its discretion, decide are appropriate;
- d. A description of the location or locations at which seizure is to occur; and
- e. A hearing date not more than 10 court days after the last date on which seizure is ordered at which any person from whom goods are seized may appear and seek release of the seized goods.

(2) The persons effecting seizure shall seize those articles which are, in the judgment of such persons, described in the order.

(3) The order of seizure shall include a statement advising the person from whom the goods are seized that a bond has been filed and informing such person of the right to object to the bond, at the hearing called for in the order, on the grounds that the surety or the amount of the bond is insufficient.

(h)(1) Any applicant who causes seizure of goods which are subsequently determined not to be counterfeits shall be liable, except as provided in subsections (h)(2) and (h)(3) of this section below, in an amount equal to the following:

- a. Any direct damages proximately caused to any person having a financial interest in the seized noncounterfeit goods; provided however, that in the event of a claim for lost

profits, such damages may only be awarded upon a showing that the amount sought is reasonable and not speculative;

b. Costs incurred in defending against seizure of noncounterfeit goods; and

c. Upon a showing that the person causing the seizure to occur acted in bad faith, expenses, including reasonable attorneys' fees expended in defending against the seizure of any noncounterfeit or noninfringing goods.

(2) If in the course of seizing the noncounterfeit goods, counterfeit goods were also seized, no damages may be recovered unless the Court concludes that such a result would be grossly inequitable.

(3) If the non-counterfeit goods were seized on the plaintiff's property, no damages may be recovered unless the person from whom such goods were seized demonstrates to the Court that the sale of such goods was authorized in writing by the plaintiff and the sale otherwise complied with all applicable laws.

(4) A person seeking a recovery pursuant to this subsection may join any surety on a bond posted pursuant to this section, and any judgment of liability shall bind the person liable and the surety jointly and severally; provided, however, that the liability of the surety shall be limited to the amount of the bond.

(i) The enumeration of any right or remedy in this chapter shall not affect a person's right to prosecute under any penal law of this State or the laws of any other state or federal government.

60 Del. Laws, c. 612, § 1; 71 Del. Laws, c. 195, § 1.;

§ 3315. Common-law rights.

Nothing herein shall adversely affect the rights or the enforcement of the rights in marks acquired in good faith at any time at common law.

60 Del. Laws, c. 612, § 1.;

§§ 3321-3323; 3331-3336.

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