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Business and Professions; Trademarks

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34. Thrift Funds of Baton Rouge Inc. v. Jones, 274 So.2d 150, 155 (La.Sup.Ct. 1973); cert. den., 414 U.S. 820 (1973).
35. Garret v. Coast and Southern Federal S. & L. Ass'n., 9 Cal.3d 731, 739, 108 Cal.Rptr. 845, 850, 511 P.2d 1197, 1202 (1973).
36. Ch. 498 §1¶1 (adding to NRS Ch. 99).
37. Id. §2 (amending NRS 99.050).

BUSINESS AND PROFESSIONS; TRADEMARKS

Adds to NRS Chapter 600

SB 90 (Committee on Commerce and Labor); STATS 1979, Chy 357

Chapter 357 provides for the registration of trademarks, trade names and service marks and substantially adopts the Model State Trademark Bill.¹

Under the common law, the exclusive right to a trademark emanated from its use and not from its adoption or its registration.² Chapter 357 follows the common law concept by providing that a mark must be used in the state as a prerequisite for registration and that continued use is a requirement for renewal for registration.³ This chapter also expressly provides that a person maintains his rights and remedies under the common law,⁴ such as for "passing off" and unfair competition.⁵

Chapter 357 sets out the application and renewal procedures required to register a trademark in Nevada.⁶ After all the required information has been supplied, the secretary of state will issue a certificate of registration.⁷ This is not a grant of a trademark, but merely gives notice of his claim of ownership to the mark.⁸ The registration provides a public record of marks used in Nevada which can be searched before adopting new marks.⁹ The certificate will be admissible into evidence to raise a "disputable presumption" that the registrant is the owner of the mark.¹⁰

Registration is for a ten year period and marks registered under prior acts, as well as marks registered under this chapter, may be renewed for additional ten year periods.¹¹ Registration may be assigned by an instrument in writing which is recorded with the secretary of state.¹² The assignment is void against any bona fide purchaser unless it is recorded within three months after the assignment or is recorded before the bona fide purchase.¹³ The registration may be canceled if it is

not properly renewed, upon the request of the registrant or if a court orders it to be canceled.¹⁴

Marks are unregistrable if they contain: (a) immoral, deceptive or scandalous material; (b) disparaging or false terms; (c) the insignia of the United States or of any state, municipality or foreign country; (d) the name, signature, or portrait of any living individual without his consent; (e) geographically descriptive or misdescriptive terms; or (4) marks that are confusingly similar to marks previously registered or used in Nevada by another and not abandoned.¹⁵

Liability for trademark infringement and unfair competition is governed by the law where the wrong is committed.¹⁶ The remedies for violation of this chapter are that: (a) any person who attempts to procure or procures the registration is liable for all damages; (b) any person who uses any mark without permission is liable in a civil suit for all lost profits and damages; and (c) any person who reproduces any mark is liable for all damages but not for profits, unless he had knowledge that the mark was intended to cause confusion, mistake or deception.¹⁷ Additionally, the injured party may: (a) obtain an injunction to prevent further use of the marks; (b) have all the marks still in the offending party's possession or control delivered for destruction; or (c) prosecute under Nevada's penal law.¹⁸

Don H. Gallian

FOOTNOTES

1. The MODEL STATE TRADEMARK BILL was prepared by the Model State Trademark Association in 1949 and has been adopted by forty-one states. The bill provides for state registration of trademarks which do not qualify for federal registration under the Lanham Act (15 U.S.C. §§1051 to 1127) because activities under the trademark are confined within the boundaries of one state. See generally Sherman, Registration of Trademarks Under State Law, 59 A.B.A.J. 515 (1973).
2. See United Drug Company v. Rectanus Company, 248 U.S. 90, 100 (1918); Trade-Mark Cases, 100 U.S. 82, 94 (1879).
3. See 1979 Nev. Stats. ch. 357 (hereinafter "Ch. 357") §§14, ¶15, 12 ¶1(c) (adding to NRS Ch. 600).

4. Id. §22 (adding to NRS Ch. 600).
5. See Sutton, California "Model Trademark Act; A Comparison with Federal Law, 2 U.S.F.L.R. 198, 199 (1968).
6. Ch. 357 §§12, 14 (adding to NRS Ch. 600).
7. Id. §13 ¶1 (adding to NRS Ch. 600).
8. Hot Shoppes, Inc. v. Hot Shoppe, Inc., 203 F. Supp. 777, 781-82 (D.N.C. 1962); Abner's Beef House Corp. v. Abner's Int'l, Inc., 227 So. 2d 865, 867 (Sup. Ct. Fla. 1969).
9. Ch. 357 §16 (adding to NRS Ch. 600).
10. Compare 15 U.S.C. §§1065 to 1115 (1946) (incontestable and conclusive evidence) with Ch. 357 §13 ¶2 (adding to NRS Ch. 600) (disputable presumption).
11. Compare 15 U.S.C. §§1058, 1059 (1946) (twenty years registration period) with Ch. 357 §14 (adding to NRS Ch. 600) (ten year registration period).
12. Ch. 357 §15 (adding to NRS Ch. 600).
13. Id.
14. Id. §17 (adding to NRS Ch. 600).
15. Id. §11 (adding to NRS Ch. 600).
16. Wells Fargo & Co. v. Wells Fargo Express Co., 358 F. Supp. 1065, 1077 (D. Nev. 1973).
17. Compare 15 U.S.C. §1114(1) (1946) (remedies for infringement) with Ch. 357 §§19, 20 (adding to NRS Ch. 600).
18. Ch. 357 §22 (adding to NRS Ch. 600).

BUSINESS AND PROFESSIONS; UNIFORM DISPOSITION OF
UNCLAIMED PROPERTY ACT

Adds to NRS Title 10

Amends NRS 32.020 and 607.170

Repeals NRS 78.292, 645A.180, 673.339, 678.660, 689.395, 697A.010 to 697A.130, inclusive

AB 85 (Robinson, May and Barengo); STATS 1979, Ch 682

(Effective January 1, 1980)

Chapter 682 enacts, with some modifications, the Revised Uniform Disposition of Unclaimed Property Act.¹ This Chapter is experimental and unless extended will