WEST VIRGINIA CODE: §47-2-1

§47-2-1. Definitions.

As used in this article:

(1) The term “trademark” means any word, name, symbol or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.

(2) The term “service mark” means any word, name, symbol or device or any combination thereof used by a person to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

(3) The term “mark” includes any trademark or service mark, entitled to registration under this article whether registered or not.

(4) The term “trade name” means any name used by a person to identify a business or vocation of such person.

(5) The term “person” and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this article includes a juristic person as well as a natural person. The term “juristic person” includes a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law.

(6) The term “applicant” embraces the person filing an application for registration of a mark under this article, and the legal representatives, successors or assigns of that person.

(7) The term “registrant” as used herein embraces the person to whom the registration of a mark under this article is issued, and the legal representatives, successors or assigns of that person.

(8) The term “use” means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this article, a mark is considered to be in use: (A) On goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state; and (B) on services when it is used or displayed in the sale or advertising of services and the

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services are rendered in this state.

(9) A mark is considered to be "abandoned" when either of the following occurs:

(A) When its use has been discontinued with intent not to resume that use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute *prima facie* evidence of abandonment.

(B) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(10) The term "secretary" means the Secretary of State or the designee of the secretary charged with the administration of this article.

(11) The term "dilution" means the lessening of the capacity of registrant's mark to identify and distinguish goods or services, regardless of the presence or absence of: (A) Competition between the parties; or (B) likelihood of confusion, mistake or deception.

(12) "Retail value" means:

(A) For items that bear a counterfeit mark and are components of a finished product, the regular selling price of the finished product in which the component would be utilized.

(B) For items that bear a counterfeit mark other than items described in paragraph (A) of this subdivision and for services that are identified by a counterfeit mark, the regular selling price of the item or service.

(13) "Sign" means the action of affixing a person's signature to any document or record, whether by manual, written or approved electronic means.

(14) "Signature" means any mark, symbol, facsimile or electronic mark or symbol, that depicts a person's name on any document or record, affixed to the document or record by the person with the intent to authenticate, assert, certify or agree to the matters, validity, information or attestation set forth in the document or record.

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