

2012 Kansas Statutes

81-202. Definitions. As used in K.S.A. 2012 Supp. 81-201 through 81-220:

(a) "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 or sold by others, and to indicate the source of the goods, even if that source is unknown.

(b) "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, such titles, names or features, or the programs, may advertise the goods of the sponsor.

(c) "Mark" includes any trademark or service mark entitled to registration under this act whether registered or not.

(d) "Trade name" means any name used by a person to identify a business or vocation of such person.

(e) "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 act 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.

(f) "Applicant" means the person filing an application for registration of a mark under this act, and the legal representatives, successors, or assigns of such person.

(g) "Registrant" means the person to whom the registration of a mark under this act is issued, and the legal representatives, successors, or assigns of such person.

(h) "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 act, a mark shall be deemed to be in use: (1) On goods when it is placed in any manner on the goods or other containers or the displays associated with such goods or containers or on the tags or labels affixed to such goods or containers, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or the good's sale, and the goods are sold or transported in commerce in this state; and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(i) A mark shall be deemed to be "abandoned" when either of the following occurs: (1) When the mark's use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment; or (2) 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.

(j) "Secretary" means the secretary of state.

(k) "Dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of: (1) Competition between the owner of the famous mark and other parties; or (2) likelihood of confusion, mistake, or deception.

History: L. 1999, ch. 85, § 2; July 1.