

RCW 19.77.140 Trademark imitation. (1) Subject to the provisions of RCW 19.77.900 any person who shall:

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

(b) Reproduce, counterfeit, copy or colorably imitate any such trademark 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 connection with the sale or other distribution of goods or services in this state on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive as to the source or origin of such goods or services

shall be liable to a civil action by the registrant for any or all of the remedies provided in RCW 19.77.150, except that under (b) of this subsection the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

(2) In determining whether, under this chapter, there is a likelihood of confusion, mistake, or deception between marks when used in association with goods or services, the court shall consider all relevant factors, including, but not limited to the following:

(a) The similarity or dissimilarity of the marks in their entirety to appearance, sound, meaning, connotation, and commercial impression;

(b) The similarity or dissimilarity of the goods or services and nature of the goods and services;

(c) The similarity or dissimilarity of trade channels;

(d) The conditions under which sales are made and buyers to whom sales are made;

(e) The fame of the marks;

(f) The number and nature of similar marks in use on similar goods or services;

(g) The nature and extent of any actual confusion;

(h) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion;

(i) The variety of goods or services on which each of the marks is or is not used;

(j) The nature and extent of potential confusion, i.e., whether de minimis or substantial;

(k) Any other established fact probative of the effect of use.

[2003 c 34 § 5; 1989 c 72 § 9; 1955 c 211 § 14.]