

OKLAHOMA STATUTES
TITLE 78. TRADE MARKS AND LABELS

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§78-21. Definitions.

(A) The term "trademark" as used herein means any word, name, symbol, emblem, or device or any combination thereof adopted and used by a person to identify goods made or sold or services rendered by him and to distinguish them from goods made or sold or services rendered by others.

(B) The term "person" as used herein means any individual, firm, partnership, corporation, association, union or other organization.

(C) The term "applicant" as used herein embraces the person filing an application for registration of a trademark under this act, his legal representatives, successors or assigns.

(D) The term "registrant" as used herein embraces the person to whom the registration of a trademark under this act is issued, his legal representatives, successors or assigns.

(E) For the purposes of this act, a trademark shall be deemed to be "used" in this state (1) when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state, or (2) when it is used in any manner in connection with the sale or advertising of services in this state.

(F) The term "emblem" as referred to in section (A) shall be deemed any badge, motto, button, decoration, charm, rosette or such other insignia.

Laws 1959, p. 368, § 1.

§78-22. Registrability.

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

(a) consists of or comprises immoral, deceptive or scandalous matter; or

(b) 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; or

(c) 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; or

(d) consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or

(e) consists of a mark which, (1) when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (2) when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, or (3) is primarily merely a surname; provided, however, that nothing in this subsection shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The Secretary of State may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the five (5) years next preceding the date of the filing of the application for registration; or

(f) consists of or comprises a trademark which so resembles a trademark registered in this state or a trademark 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 confusion or mistake or to deceive.

Added by Laws 1959, p. 369, § 2. Amended by Laws 1996, c. 69, § 30, eff. Nov. 1, 1996.

§78-23. Application for registration.

A. Subject to the limitations set forth in this title, any person who adopts and uses a trademark 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 trademark setting forth, but not limited to, the following information:

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

2. The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with the goods or services and the class in which the goods or services are categorized;

3. The date when the trademark was first used anywhere and the date when it was first used in this state by the applicant or the predecessor in business; and

4. A statement that the applicant is the owner of the trademark and that no other person has the right to use such trademark 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 by the applicant or by a member of the firm or an officer of the corporation or association applying.

C. The application shall be accompanied by a specimen or facsimile of such trademark, which shall be in a form compatible with electronic scanning.

D. The application for registration shall be accompanied by a filing fee of Fifty Dollars (\$50.00), payable to the Secretary of State.

E. Any signature on any instrument authorized to be filed with the Secretary of State under this act may be a facsimile.
Added by Laws 1959, p. 369, § 3. Amended by Laws 1984, c. 1, § 85, emerg. eff. Jan. 30, 1984; Laws 1984, c. 229, § 24, operative July 1, 1984; Laws 1994, c. 267, § 5, eff. July 1, 1994; Laws 1996, c. 69, § 31, eff. Nov. 1, 1996; Laws 2001, c. 406, § 25, emerg. eff. June 4, 2001.

§78-24. Certificate of registration.

Upon compliance by the applicant with the requirements of this act, 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 class of goods or services and a description of the goods or services on which the trademark is used, the trademark and its description, the registration date and the term of the registration.

Any certificate of registration issued by the Secretary of State under the provisions hereof or a copy thereof duly certified by the Secretary of State shall be admissible in evidence as competent and sufficient proof of the registration of such trademark in any action or judicial proceedings in any court of this state.

Added by Laws 1959, p. 370, § 4. Amended by Laws 1996, c. 69, § 32, eff. Nov. 1, 1996.

§78-25. Duration and renewal.

A. Registration of a trademark pursuant to the provisions of this title shall be effective for an initial term of ten (10) years from the date of registration and, upon application filed within six (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 successive periods of five (5) years. A renewal fee of Twenty-five Dollars (\$25.00), payable to the Secretary of State, shall accompany the application for renewal of the registration.

B. A trademark registration may be renewed for successive periods of five (5) years in the same manner as the initial renewal. Laws 1959, p. 370, § 5; Laws 1984, c. 1, § 86, emerg. eff. Jan. 30, 1984; Laws 1985, c. 220, § 24, eff. Nov. 1, 1985; Laws 1994, c. 267, § 6, eff. July 1, 1994.

§78-26. Assignment.

Any trademark and its registration shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. 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 Twenty-five Dollars (\$25.00), 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 pursuant to the provisions of this title shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the Secretary of State within three (3) months after the date of the assignment or prior to such subsequent purchase. Laws 1959, p. 370, § 6; Laws 1984, c. 1, § 87, emerg. eff. Jan. 30, 1984; Laws 1994, c. 267, § 7, eff. July 1, 1994.

§78-27. Records.

The Secretary of State shall keep for public examination a record of all trademarks registered or renewed under this act. Laws 1959, p. 371, § 7.

§78-28. Cancellation.

A. The Secretary of State shall cancel from the register:

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

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 act and not renewed in accordance with the provisions hereof;

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

- a. that the registered trademark has been abandoned,
- b. that the registrant is not the owner of the trademark,
- c. that the registration was granted improperly,
- d. that the registration was obtained fraudulently;

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

B. At the time of filing a cancellation, a fee in the amount of Twenty-five Dollars (\$25.00) shall be paid to the Secretary of State. Laws 1959, p. 371, § 8; Laws 1994, c. 267, § 8, eff. July 1, 1994.

§78-29. Classification.

The following general classes of goods and services are established for convenience of administration of this act, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a trademark may include any or all goods upon which or services with which the trademark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the Secretary of State shall require payment of a fee for each class.

The said classes are as follows:

(a) Goods

1. Raw or partly prepared materials
2. Receptacles
3. Baggage, animal equipments, portfolios, and pocketbooks
4. Abrasives and polishing materials
5. Adhesives
6. Chemicals and chemical compositions
7. Cordage
8. Smokers' articles, not including tobacco products
9. Explosives, firearms, equipments, and projectiles
10. Fertilizers
11. Inks and inking materials
12. Construction materials
13. Hardware and plumbing and steamfitting supplies
14. Metals and metal castings and forgings
15. Oils and greases
16. Paints and painters' materials
17. Tobacco products
18. Medicines and pharmaceutical preparations
19. Vehicles
20. Linoleum and oiled cloth
21. Electrical apparatus, machines, and supplies
22. Games, toys, and sporting goods
23. Cutlery, machinery, and tools, and parts thereof
24. Laundry appliances and machines
25. Locks and safes
26. Measuring and scientific appliances
27. Horological instruments
28. Jewelry and precious metalware
29. Brooms, brushes, and dusters
30. Crockery, earthenware, and porcelain
31. Filters and refrigerators

- 32. Furniture and upholstery
- 33. Glassware
- 34. Heating, lighting, and ventilating apparatus
- 35. Belting, hose, machinery packing, and nonmetallic tires
- 36. Musical instruments and supplies
- 37. Paper and stationery
- 38. Prints and publications
- 39. Clothing
- 40. Fancy goods, furnishings, and notions
- 41. Canes, parasols, and umbrellas
- 42. Knitted, netted and textile fabrics, and substitutes therefor
- 43. Thread and yarn
- 44. Dental, medical, and surgical appliances
- 45. Soft drinks and carbonated waters
- 46. Foods and ingredients of foods
- 47. Merchandise not otherwise classified
- 48. Cosmetics and toilet preparations
- 49. Detergents and soaps

(b) Services

- 100. Miscellaneous
- 101. Advertising and business
- 102. Insurance and financial
- 103. Construction and repair
- 104. Communication
- 105. Transportation and storage
- 106. Material treatment
- 107. Education and entertainment.

Added by Laws 1959, p. 371, § 9. Amended by Laws 1996, c. 69, § 33, eff. Nov. 1, 1996.

§78-30. Fraudulent registration.

Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any trademark in the office of the Secretary of State under the provisions hereof, 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.

Laws 1959, p. 372, § 10.

§78-31. Infringement.

Subject to the provisions of Section 13 hereof, 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 act in connection with the sale, offering for sale, or advertising of any goods on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods; 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 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 trademark for any or all of the remedies provided in Section 12 hereof, except that under subsection (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such trademark is intended to be used to cause confusion or mistake or to deceive.

Laws 1959, p. 372, § 11.

§78-32. Remedies.

Any owner of a trademark registered under this act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.
Laws 1959, p. 372, § 12.

§78-33. Common law rights.

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

Laws 1959, p. 373, § 13.

§78-34. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.

§78-41. Repealed by Laws 1976, c. 127, § 1.

§78-42. Repealed by Laws 1976, c. 127, § 1.

§78-43. Repealed by Laws 1976, c. 127, § 1.

§78-44. Repealed by Laws 1976, c. 127, § 1.

§78-45. Repealed by Laws 1976, c. 127, § 1.

§78-51. Citation.

This act may be cited as the Oklahoma Deceptive Trade Practices Act.

Laws 1965, c. 234, § 1.

§78-52. Definitions.

As used in this act, unless the context otherwise requires:

1. "Article" means a product as distinguished from a trademark, label, or distinctive dress in packaging;
2. "Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization;
3. "Collective mark" means a mark used by members of a cooperative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization;
4. "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service;
5. "Local telephone directory" means a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one telephone company;
6. "Local telephone number" means a telephone number that has the three-number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term also includes 800, 888, other toll free exchange numbers, and 900 exchange numbers listed in a local telephone directory;
7. "Mark" means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement;
8. "Person" means an individual, corporation, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

9. "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others;

10. "Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others;

11. "Trade name" means a word, name, symbol, device, or any combination of the foregoing in any form of arrangement used by a person to identify his business, vocation, or occupation and to distinguish it from the business, vocation, or occupation of others. Added by Laws 1965, c. 234, § 2. Amended by Laws 1998, c. 162, § 1, eff. July 1, 1998.

§78-53. Acts constituting deceptive trade practices - Prima facie evidence of intent to injure competitors.

A. A person engages in a deceptive trade practice when in the course of business, vocation, or occupation, the person:

1. Passes off goods or services as those of another;

2. Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods or services;

3. Knowingly makes a false representation as to affiliation, connection, association with, or certification by another;

4. Uses deceptive representations or designations of geographic origin in connection with goods or services;

5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits or quantities of goods or services or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

6. Represents that goods are original or new if they are not;

7. Represents that goods or services are a particular standard, quality, or grade, or that goods are a particular style or model, if they are another;

8. Disparages the goods, services, or business of another by false or misleading representation of fact;

9. Advertises goods or services which differ from those offered for sale in the advertisements;

10. Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

11. Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

12. Advertises the price of an item after deduction of a rebate unless the actual selling price is advertised and clear and conspicuous notice is given in the advertisement that a mail-in rebate is required to achieve the lower net price;

13. Misrepresents the geographic location of the supplier by listing a fictitious business name or an assumed business name in a local telephone directory if:

- a. the name misrepresents the geographic location of the supplier,
 - b. the listing fails to identify the locality and state of the business of the supplier,
 - c. calls to the local telephone number are routinely forwarded or otherwise transferred to a business location that is outside the calling area covered by the local telephone directory, or
 - d. the business location of the supplier is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory;
- or

14. Lists a fictitious business name or assumed business name in a directory assistance database if:

- a. the name misrepresents the geographic location of the supplier,
- b. calls to the local telephone number are routinely forwarded or otherwise transferred to a business location that is outside the local calling area, or
- c. the business location of the supplier is located in a county that is not contiguous to a county in the local calling area.

B. Evidence that a person has engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

C. The deceptive trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.

Added by Laws 1965, c. 234, § 3. Amended by Laws 1997, c. 139, § 1, eff. Nov. 1, 1997; Laws 1998, c. 162, § 2, eff. July 1, 1998; Laws 2004, c. 169, § 3, emerg. eff. April 27, 2004.

§78-54. Remedies.

A. Any person damaged or likely to be damaged by a deceptive trade practice of another may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such deceptive trade practice. Proof of actual monetary damages, loss of profits or intent shall not be required. If in such action damages are alleged and proved, the plaintiff, in addition to injunctive relief, shall be entitled to recover from the defendant the actual damages sustained by the person.

B. With respect to the deceptive trade practices described in paragraphs 13 and 14 of subsection A of Section 53 of this title, the Attorney General or a district attorney of this state is authorized to bring actions seeking the following relief:

- 1. Injunctions directed against persons engaged in such deceptive trade practices;

2. Recovery of the money unlawfully received from aggrieved consumers by persons engaged in the deceptive trade practices to be held in escrow for distribution to the aggrieved consumers; and

3. Recovery by the state of the reasonable expenses incurred in the investigation of the deceptive trade practices.

C. In any action instituted under the provisions of this act, the court may, in its discretion, award reasonable attorneys' fees to the prevailing party. If in any such action the court finds either (1) that the defendant has willfully engaged in a deceptive trade practice or (2) that the plaintiff has acted in bad faith in instituting the action, the court shall award reasonable attorneys' fees to the prevailing party.

D. The relief provided for in this section is in addition to and not in exclusion of remedies otherwise available against the same conduct pursuant to the common law or other statutes of this state.

E. Any duly organized and existing trade association, whether incorporated or not, is hereby authorized to institute and prosecute a suit or suits for injunctive relief hereunder as the real party in interest, for or on behalf of one or more of its members, when a deceptive trade practice directly or indirectly affects or threatens to affect or injure such member or members.

Added by Laws 1965, c. 234, § 4. Amended by Laws 1998, c. 162, § 3, eff. July 1, 1998.

§78-55. Exceptions.

A. This act does not apply to:

1. Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;

2. Publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast, or reproduce material without knowledge of its deceptive character;

3. Actions or appeals pending on the date that this act becomes effective; or

4. Motor vehicle dealers who are new car franchise dealers covered under the provisions of the Motor Vehicle Commission Law as set forth in Sections 561 through 580.2 of Title 47 of the Oklahoma Statutes, inclusive.

B. This act shall be interpreted to apply to the use by a person of any service mark, trademark, certification mark, collective mark, trade name, or other trade identification which was used and not abandoned prior to the effective date of this act, if the use was in good faith and is otherwise lawful except for the provisions of this act.

C. For purposes of paragraphs 13 and 14 of subsection A of Section 53 of this title, a telephone company or other provider of a

telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone or directory assistance service is the same person as the supplier who has committed the deceptive act.

Added by Laws 1965, c. 234, § 5. Amended by Laws 1998, c. 162, § 4, eff. July 1, 1998.

§78-56. Collection of unwanted clothing via public receptacle for resale.

A. It shall be an unfair business practice for a for-profit entity or natural person to collect donations of unwanted clothing and household items via a public receptacle and resell the donated items for profit unless the donation receptacle prominently displays a disclosure label printed in bold letters at least one (1) inch high and one (1) inch wide stating: "DONATIONS ARE NOT FOR CHARITABLE ORGANIZATIONS AND WILL BE RESOLD FOR PROFIT".

B. It shall be an unfair business practice for a for-profit entity or natural person to collect donations of unwanted clothing and household items via a public receptacle and resell the donated items if some or all of the proceeds from the sale are directly given to a not-for-profit entity unless the donation receptacle prominently displays a disclosure label printed in bold letters at least one (1) inch high and one (1) inch wide stating: "DONATIONS TO THE FOR-PROFIT ENTITY: (name of the for-profit entity or individual) ARE SOLD FOR PROFIT AND (percentage of proceeds donated to the not-for-profit entity) OF ALL PROCEEDS IS DONATED TO (name of the nonprofit beneficiary organization)".

C. It shall be an unfair business practice for a for-profit entity or natural person to collect donations of unwanted clothing and household items via a public receptacle and resell the donated items, if the not-for-profit entity is paid a flat fee, not contingent upon the proceeds generated by the sale of the collected goods, and one hundred percent (100%) of the proceeds from the sale of the items is retained by the for-profit entity, unless the donation receptacle prominently displays a disclosure label printed in bold letters at least one (1) inch high and one (1) inch wide stating: "THIS DONATION RECEPTACLE IS OPERATED BY THE FOR-PROFIT ENTITY: (name of the for-profit entity or individual) ON BEHALF OF (name of the nonprofit beneficiary organization)". Donations are sold for-profit by (name of the for-profit entity or individual) and a flat fee (insert fee arrangement) is paid to (name of the not-for-profit beneficiary or organization).

D. As used in this section:

1. "Public receptacle" means a large container, or donation bin, commonly placed in a parking lot for the purpose of encouraging individuals to donate clothing or other items;

2. "Disclosure label" means a printed or typed notice permanently affixed to a public receptacle on the side and front which is easily readable and legible.

E. 1. In addition to the requirements provided for in this section, every disclosure label shall include an address and telephone number of the entity benefiting from the donation;

2. For purposes of this subsection, a post office box shall not be considered sufficient for the address on the disclosure label.

F. Nothing in this section shall apply to paper, glass, plastic, or aluminum products that are donated for the purpose of being recycled in the manufacture of other products.

Added by Laws 2008, c. 361, § 1, eff. Nov. 1, 2008.

§78-71. Short title.

This act shall be known and may be cited as the "American Indian Arts and Crafts Sales Act of 1974".

Laws 1974, c. 149, § 1, emerg. eff. May 3, 1974.

§78-72. Purpose.

The purpose of the American Indian Arts and Crafts Sales Act of 1974 is to protect the public, under the police powers of the state, from false representation in the sale of authentic and imitation American Indian arts and crafts.

Laws 1974, c. 149, § 2, emerg. eff. May 3, 1974.

§78-73. Definitions.

As used in the American Indian Arts and Crafts Sales Act of 1974, unless the context otherwise requires, the following terms or phrases shall have the following meanings:

1. "American Indian tribe" means any Indian tribe federally recognized by the Bureau of Indian Affairs of the United States Department of the Interior;

2. "American Indian" means a person who is a citizen or is an enrolled member of an American Indian tribe;

3. "Imitation American Indian arts and crafts" means any basic article purporting to be of American Indian style, make, origin or design which is not made by American Indian labor and workmanship;

4. "Authentic American Indian arts and crafts" means any article of American Indian style, make, origin or design which is made wholly or in part by American Indian labor and workmanship to include, but not be limited to, any Kachina doll, rosette, necklace, choker, barrette, hair tie, medallion, pin, pendant, bolo tie, belt, belt buckle, cuff links, tie clasp, tie bar, ring, earring, purse, blanket, shawl, moccasin, drum, pottery or any visual or performing

arts or literature which is not an imitation American Indian art or craft; and

5. "Merchant" means any person engaged in the sale to the public of imitation American Indian arts and crafts or authentic American Indian arts and crafts.

Added by Laws 1974, c. 149, § 3, emerg. eff. May 3, 1974. Amended by Laws 2016, c. 391, § 1.

§78-74. Sale of imitation American Indian arts and crafts as being authentic prohibited.

It is unlawful to distribute, trade, sell or offer for sale or trade within this state any article represented as being made by American Indians unless the article actually is made or assembled by American Indian labor or workmanship. All articles purporting to be of silver shall be made of coin or sterling silver.

Added by Laws 1974, c. 149, § 4, emerg. eff. May 3, 1974. Amended by Laws 2016, c. 391, § 2.

§78-75. Penalties.

Any merchant who knowingly and willfully tags or labels any article as being an American Indian art or craft when it does not meet the specifications of the American Indian Arts and Crafts Sales Act of 1974 shall be guilty of violating the provisions of the Act and shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00), or by imprisonment for not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment.

Added by Laws 1974, c. 149, § 5, emerg. eff. June 1, 1974. Amended by Laws 2016, c. 391, § 3.

§78-81. Definitions.

The term "honey", "liquid or extracted honey", "strained honey" or "pure honey" as used in this act, shall mean the nectar of plants or flowers that has been transformed by, and is the natural product of the honeybee, either in the honeycomb or taken from the honeycomb and marketed in a liquid, candied or granulated condition.

Laws 1975, c. 68, § 1.

§78-82. Substitutes and mixtures not to be labeled as honey.

(a) No person shall sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey branded as "honey", "liquid or extracted honey", "strained honey" or "pure honey" which is not pure honey.

(b) No person, firm, association, company or corporation shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled as and for honey which shall be made up of honey mixed with any other substance or ingredient.

(c) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed, there shall be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are the other ingredients, but it shall not be sold, exposed for sale, or offered for sale as honey; nor shall such compound or mixture be branded or labeled with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled with the word "honey", unless such article is pure honey.

Laws 1975, c. 68, § 2.

§78-83. Word "imitation" not to be used.

The word "imitation" shall not be used in the name of a product which is in semblance of honey whether or not it contains any honey. The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product and the relative position of the word "honey" in the product name, and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product.

Laws 1975, c. 68, § 3.

§78-83.1. Imported honey - Labeling - Exemptions.

No person shall sell, keep for sale, or expose or offer for sale, any honey as defined by Section 81 of this title which originates from a country other than the United States of America, unless there is printed on the package containing such honey a statement specifying the country from which the honey originated. Any honey imported into this state in violation of the provisions of this section shall be subject to confiscation by the State Department of Health. Except as otherwise provided by federal law inventories of honey imported into this state prior to November 1, 1984, from any country other than the United States of America shall not be required to comply with the provisions of this section.

Added by Laws 1984, c. 67, § 1, eff. Nov. 1, 1984.

§78-84. Penalty.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished as and for a misdemeanor.

Laws 1975, c. 68, § 4.

§78-85. Short title.

Sections 1 through 11 of this act shall be known and may be cited as the "Uniform Trade Secrets Act".

Added by Laws 1986, c. 85, § 1, eff. Nov. 1, 1986.

§78-86. Definitions.

As used in the Uniform Trade Secrets Act, unless the context requires otherwise:

1. "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.
2. "Misappropriation" means:
 - a. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
 - b. disclosure or use of a trade secret of another without express or implied consent by a person who:
 - (1) used improper means to acquire knowledge of the trade secret; or
 - (2) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
 - (a) derived from or through a person who had utilized improper means to acquire it; or
 - (b) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (c) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 - (3) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.
3. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
4. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that:
 - a. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
 - b. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Added by Laws 1986, c. 85, § 2, eff. Nov. 1, 1986.

§78-87. Injunctions - Court orders.

A. Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

B. In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of a misappropriation that renders a prohibitive injunction inequitable.

C. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Added by Laws 1986, c. 85, § 3, eff. Nov. 1, 1986.

§78-88. Damages.

A. Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

B. If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made pursuant to the provisions of subsection A of this section.

Added by Laws 1986, c. 85, § 4, eff. Nov. 1, 1986.

§78-89. Attorney's fees.

The court may award reasonable attorney's fees to the prevailing party if:

1. A claim of misappropriation is made in bad faith; or
2. A motion to terminate an injunction is made or resisted in bad faith; or
3. Willful and malicious misappropriation exists.

Added by Laws 1986, c. 85, § 5, eff. Nov. 1, 1986.

§78-90. Means of preserving trade secrets.

In an action brought pursuant to the provisions of the Uniform Trade Secrets Act, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings pursuant to the provisions of Section 3203 of Title 12 of the Oklahoma Statutes, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. Added by Laws 1986, c. 85, § 6, eff. Nov. 1, 1986.

§78-91. Limitation of actions.

An action for misappropriation must be brought within three (3) years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

Added by Laws 1986, c. 85, § 7, eff. Nov. 1, 1986.

§78-92. Operation and effect of act - Exemptions.

A. Except as provided for in subsection B of this section, the Uniform Trade Secrets Act displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

B. The Uniform Trade Secrets Act does not affect:

1. contractual remedies, whether or not based upon misappropriation of a trade secret; or
2. other civil remedies that are not based upon misappropriation of a trade secret; or
3. criminal remedies, whether or not based upon misappropriation of a trade secret.

Added by Laws 1986, c. 85, § 8, eff. Nov. 1, 1986.

§78-93. Application and construction of act.

The Uniform Trade Secrets Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Added by Laws 1986, c. 85, § 9, eff. Nov. 1, 1986.

§78-94. Exemptions.

The Uniform Trade Secrets Act shall not be construed to apply:

1. to a misappropriation occurring prior to the effective date of this act; or
2. with respect to a continuing misappropriation that began prior to the effective date of this act, to the continuing misappropriation that occurs after the effective date of this act.

Added by Laws 1986, c. 85, § 10, eff. Nov. 1, 1986.

§78-95. Repealed by Laws 1989, c. 154, § 2, operative July 1, 1989.

§78-101. Short title.

This act shall be known and may be cited as the "Truth in Music Advertising Act".

Added by Laws 2009, c. 105, § 1, eff. Nov. 1, 2009.

§78-102. Definitions.

As used in this act:

1. "Performing group" means a vocal or instrumental group seeking to use the name or another group that has previously released a commercial sound recording under that name;

2. "Recording group" means a vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group; and

3. "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken or other sounds regardless of the nature of the material object, such as a disk, tape or other phono record, in which the sounds are embodied.

Added by Laws 2009, c. 105, § 2, eff. Nov. 1, 2009.

§78-103. Advertising or conducting live musical performance or production using false, deceptive, or misleading affiliation, connection or association between performing and recording group - Exceptions.

It shall be unlawful for any person to advertise or conduct a live musical performance or production in this state through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group. This section does not apply if any of the following apply:

1. The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office;

2. At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group;

3. The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public;

4. The advertising does not relate to a live musical performance or production taking place in this state; and

5. The performance or production is expressly authorized by the recording group.

Added by Laws 2009, c. 105, § 3, eff. Nov. 1, 2009.

§78-104. Injunctions.

A. Whenever the Attorney General or a district attorney has reason to believe that any person is advertising or conducting or is about to advertise or conduct a live musical performance or production in violation of Section 3 of this act and that proceedings would be in the public interest, the Attorney General or district attorney may bring an action in the name of the state against the person to restrain by temporary or permanent injunction that practice.

B. Whenever any court issues a permanent injunction to restrain and prevent violations of this act as authorized in subsection A of this section, the court may in its discretion direct that the defendant restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any violation of this act, under terms and conditions to be established by the court.

Added by Laws 2009, c. 105, § 4, eff. Nov. 1, 2009.

§78-105. Civil penalty.

A person who violates Section 3 of this act shall be liable to the State of Oklahoma for a civil penalty of not less than Five Thousand Dollars (\$5,000.00) nor more than Fifteen Thousand Dollars (\$15,000.00) per violation, which civil penalty shall be in addition to any other relief which may be granted under Section 4 of this act. Each performance or production declared unlawful by Section 3 of this act shall constitute a separate violation.

Added by Laws 2009, c. 105, § 5, eff. Nov. 1, 2009.