

**OPINION  
57-214**

June 1, 1957 (OPINION)

TRADEMARKS

RE: Application for - Classification of Goods

This is in reply to your letter of 23 May 1957 in regard to section 9 (the classification section) of the new trademark law (House Bill No. 622 of the 1957 session of the legislative assembly).

An examination of same indicates it to be in substance an adaptation of the system presently used by the federal government to the state trademark registration system.

See 15 U.S.C.A., section 1112, providing:

CLASSIFICATION OF GOODS AND SERVICES: REGISTRATION IN PLURALITY OF CLASSES. The Commissioner shall establish a classification of goods and services for convenience of Patent Office Administration, but not to limit or extend the applicant's rights. The applicant may register his mark in one application for any or all of the goods or services included in one class, upon or in connection with which he is actually using the mark. The Commissioner may issue a single certificate for one mark registered in a plurality of classes upon payment of a fee equaling the sum of the fees for each registration in each class."

See also Title 37 C.F.R., section 100 (Rules of Practice in Trademark Cases), which by Commissioner's rule adopts substantially the classification embodied in section 9, House Bill No. 622, 1957 session, North Dakota Legislative Assembly.

We find no federal decisions, cited in U.S.C.A., specifically attacking this system on the basis of the fees charged. Quite possibly, the practice of the federal officers charged with the administration of federal trademark system has disclosed a necessity of adopting such a classification system for practical administration of such system. Apparently, the legislative assembly of this state has determined that a similar system is desirable for this state.

As you point out, under the wording of the state enactment it would be necessary that your office have an application for every classification of goods to which the trademark is to be applicable and would have to charge a fee of twenty dollars for each such application. Under the federal enactment, while one application would apparently be sufficient to cover several classes, it would appear that the fee would nevertheless be determined by multiplying the basic fee by the number of classes it is intended to cover.

The question of whether there has actually been an infringement of a particular appropriated trademark will inevitably be connected with the question of whether or not the allegedly infringing goods are

within the same class within which the trademark has been appropriated. See 52 Am. Jur. sections 28 and 29. But see 52 Am. Jur. section 95 et seq. For this reason it would appear to this office that in the event of difficulties as to such trademark the examination of the secretary of state's records will necessarily involve such examination as to each class (although not necessarily the classes specified in the act by reason of the specification that such classes are "not to limit or extend the applicant's or registrant's right") of goods within which the trademark is registered. Quite probably, this state does not have a great volume of trademarks registered when compared to the volume of trademarks registered in the United States Patent Office, and for this reason it is perhaps not essential that at the present time such trademarks be registered under separate classes, with provision for duplication of fees where one trademark will be in several classes. However, we are not prepared to state that the circumstances are such that such classification, and such duplication of fees in individual instances, are of such an arbitrary nature as to raise any doubts as to either validity of the statutory enactment or as to the proper construction of the plain words of the statute.

It is, therefore, our conclusion that your question, "\* \* \*Would we have to have an application for every classification of goods and would we have to charge a fee of twenty dollars for each application?", must necessarily be answered in the affirmative.

LESLIE R. BURGUM

Attorney General