

81-214. Injury to business reputation; dilution. (a) The owner of a mark which is famous in this state shall be entitled, subject to the principles of equity and upon such terms as the court seems reasonable, to an injunction against another person's commercial use of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this section. In determining whether a mark is distinctive and famous, a court may consider factors such as, but not limited to:

- (1) The degree of inherent or acquired distinctiveness of the mark in this state;
- (2) the duration and extent of use of the mark in connection with the goods and services with which the mark is used;
- (3) the duration and extent of advertising and publicity of the mark in this state;
- (4) the geographical extent of the trading area in which the mark is used;
- (5) the channels of trade for the goods or services with which the mark is used;
- (6) the degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought;
- (7) the nature and extent of use of the same or similar mark by third parties; and
- (8) whether the mark is the subject of a state registration in this state, or a federal registration under the act of March 3, 1881, or under the act of February 20, 1905, or on the principal register.

(b) In an action brought under this section, the owner of a famous mark shall be entitled only to injunctive relief in this state, unless the person against whom the injunctive relief is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If such willful intent is proven, the owner also shall be entitled to the remedies set forth in this act, subject to the discretion of the court and the principles of equity.

(c) The following shall not be actionable under this section:

- (1) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark;
- (2) noncommercial use of the mark; and
- (3) all forms of news reporting and news commentary.

History: L. 1999, ch. 85, § 14; July 1.