

Trademark Laws: South Carolina

by Bill Killough and Jason Smith, Hellman Yates, with Practical Law Intellectual Property & Technology

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A Q&A guide to South Carolina laws protecting trademarks. This Q&A addresses state laws governing trademark registration, infringement, dilution, counterfeiting, unfair competition, and deceptive trade practices. Answers to questions can be compared across a number of jurisdictions (see Trademark Laws: State Q&A Tool).

State Trademark Registration Statute

1. Does your state have a state trademark registration statute? If so, please:

- Identify the statute.
- Identify the state agency responsible for administering trademark applications and registrations.
- Describe the key substantive state trademark registration requirements.
- Describe the key benefits of state registration.

South Carolina has:

- A trademark registration statute (S.C. Code Ann. §§ 39-15-1105 to 39-15-1195) that is a version of the Model Trademark Act.
- An agricultural and horticultural brands registration statute (S.C. Code Ann. §§ 39-15-410 to 39-15-520).

State Agency

The [South Carolina secretary of state](#) (SCSOS) administers the South Carolina state trademark registrations.

Key Substantive Registration Requirements

Types of Marks Covered

The statute provides for registration of a word, name, symbol, or device that functions as a trademark or service mark (S.C. Code Ann. § 39-15-1105(7), (9)).

Use Requirements and Intent-to-Use Applications

A mark must be adopted and used in South Carolina before filing an application for registration (S.C. Code Ann. § 39-15-1115(A)(3), (E)).

Statutory Bars to Registration

The South Carolina statute sets out substantially the same statutory bars to registration as those set out in the Model Trademark Act and the Lanham Act. Marks that cannot be registered include those that consist of or include:

- Immoral, deceptive, or scandalous matter.
- Matter which may disparage or falsely suggest a connection with:
 - a person (living or dead);
 - an institution;
 - a belief; or
 - a national symbol.
- The flag, coat of arms, or other insignia of:
 - the US;
 - a state or municipality; or
 - another nation.
- The name, signature, or portrait identifying a particular living individual, except if the individual gave written consent.
- Those which are merely:
 - descriptive or deceptively misdescriptive of the goods or services for which the mark is used;



- geographically descriptive or deceptively misdescriptive of the goods or services for which the mark is used; or
- primarily a proper name or surname.
- Those that may cause confusion, mistake, or deception with another mark that is:
 - registered in South Carolina; or
 - previously used in South Carolina and not abandoned.

(S.C. Code Ann. § 39-15-1110(A).)

However, the US Supreme Court has struck down Lanham Act provisions barring registration of immoral, disparaging, and scandalous marks as unconstitutional under the First Amendment (see *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019); *Matal v. Tam*, 137 S. Ct. 1744 (2017)). For more information, see [Practice Note, Acquiring Trademark Rights and Registrations: Immoral, Scandalous, and Other Restricted Matter](#).

A registration is cancelled if:

- The registrant sends a cancellation request to the SCSOS.
- The registration is not renewed as specified under South Carolina law (see Question 2: Renewal Requirements).
- A court finds that:
 - the mark has been abandoned;
 - the registrant is not the mark owner;
 - the registration was granted improperly;
 - the registration was obtained fraudulently;
 - the mark is or has become the generic name for the goods or services or a portion of the goods or services for which it has been registered; or
 - the mark is similar enough to an unabandoned mark registered with the US Patent and Trademark Office (USPTO) before the registrant filed for registration in South Carolina that it would likely cause confusion. If the registrant proves that the registrant owns a concurrent registration of a mark in the USPTO covering an area which includes South Carolina, however, the registration may not be cancelled for that area.
- A court orders that the mark be cancelled.

(S.C. Code Ann. § 39-15-1145.)

Other Key Substantive Registration Requirements

The South Carolina statute generally follows the Model Trademark Act regarding substantive registration

requirements. To register a mark, the application must include:

- The applicant's name, business address, and:
 - the state of incorporation, if the applicant is a corporation; or
 - the state in which the partnership is organized and the general partners' names, if the applicant is a partnership.
- Information on how the mark is used, including:
 - the goods or services for which the mark is used;
 - the mode or manner in which the mark is used for the goods or services; and
 - the class of the goods or services.
- The date when the mark was first used by the applicant or predecessor in interest:
 - anywhere; and
 - in South Carolina.
- A statement that:
 - the applicant is the owner of the mark;
 - the mark is in use; and
 - to the knowledge of the person verifying the application, no other person has registered the mark in South Carolina or with the USPTO, or has the right to use a similar or identical mark.
- The applicant, member, or officer's:
 - signature; and
 - verification by oath, affirmation, or declaration.
- Three specimens showing the mark as actually used.
- The application fee (currently \$15 per class), payable to the SCSOS.

(S.C. Code Ann. § 39-15-1115(A), (D), and (E).)

The SCSOS may require the applicant to provide additional information, including:

- A statement on whether the applicant or a predecessor in interest has filed an application to register the mark with the USPTO. If so, the applicant must provide the details of the USPTO application, including:
 - the filing date and serial number of each application;
 - the application status; and

- the reasons the mark did not register in the USPTO, if applicable.
- A drawing of the mark.

(S.C. Code Ann. § 39-15-1115(B), (C).)

Key Benefits of State Registration

Procedural

The certificate of registration issued under the statute (or a certified copy) is admissible in evidence as competent and sufficient proof of the registration of the mark in any action or judicial proceeding in South Carolina (S.C. Code Ann. § 39-15-1125(B)).

Substantive

The statute does not specify any specific substantive benefits. A registration owner may, however, file a claim in state court to enjoin the manufacture, use, display, or sale of a counterfeit or imitation of the registered mark. If the court rules in favor of the mark owner, the defendant may be required:

- To pay the owner either or both:
 - profits derived from the infringement; or
 - damages suffered.
- To destroy materials bearing the counterfeit or imitation mark in the defendant's possession or control.
- If the defendant acted knowingly or in bad faith, to pay either or both:
 - a judgment of up to three times the profits and damages; or
 - attorneys' fees.

(S.C. Code Ann. § 39-15-1170(A).)

2. Indicate the term of a state trademark registration and the key registration renewal requirements.

Registration Term

A trademark registered under the South Carolina trademark registration statute:

- Has a term of five years.
- May be renewed for additional five-year periods, if a renewal is filed within the six months preceding expiration.

(S.C. Code Ann. § 39-15-1130(A).)

Renewal Requirements

A registration may be renewed if the renewal application:

- Is filed within six months before the registration's expiration.
- Contains:
 - a verified statement that the mark has been and is still in use; and
 - a specimen showing actual use of the mark.

The mark owner must also pay the renewal fee (currently \$15 per class), to the [South Carolina secretary of state](#). (S.C. Code Ann. § 39-15-1130.)

3. Describe the key requirements for assignment of state trademark applications and registrations.

A South Carolina state trademark and its registration may be assigned with the good will of the business in which the mark is used or part of the good will of the business related to the use of and symbolized by the mark (S.C. Code Ann. § 39-15-1135(A)). The registration may be assigned by:

- Filing an [assignment form](#) with the South Carolina secretary of state's office.
- Paying a recording fee (currently \$3).

(S.C. Code Ann. § 39-15-1135.)

After the assignment is recorded, the secretary of state will issue, in the assignee's name, a new certificate for the remainder of the term of the registration or the registration's last renewal. An assignment of a registration is void against a subsequent purchaser for valuable consideration without notice unless it is recorded within three months after the date of the assignment or before the subsequent purchase. (S.C. Code Ann. § 39-15-1135.)

The assignment form must, among other things:

- Be signed by the assignor.
- Describe the mark to be assigned.
- Include three specimens.
- Include a copy of the contract or document providing for the assignment.
- Include a statement that the applicant acknowledges:
 - the contents of the application;
 - the trademarks submitted are true and correct; and

- the applicant is the owner of the trademark and it is in use.

(S.C. Code Ann. § 39-15-1135; [South Carolina Trademark Registration Assignment Form.](#))

An applicant may also record a certificate of change of name of the person to whom the mark was issued or for whom an application was filed with the secretary of state after paying a recording fee. The secretary may issue a certificate of registration of an assigned application in the assignee's name. (S.C. Code Ann. § 39-15-1135(B).) Other instruments, including licenses, security interests, or mortgages relating to the trademark registration may be recorded at the secretary of state's discretion if the instrument is in writing and properly executed (S.C. Code Ann. § 39-15-1135(C)).

Acknowledgment is prima facie evidence of the execution of an assignment (or other instrument). Recordation by the secretary is prima facie evidence of execution. (S.C. Code Ann. § 39-15-1135(D).)

State Statutory and Common Law Trademark Infringement Causes of Action

4. Does your state have a statute that provides a trademark infringement cause of action? If so, describe:

- The elements of the cause of action.
- The available remedies.
- Any statutory defenses or exemptions.

Sections 39-15-1160 to 39-15-1170 of the South Carolina Code provide causes of action for infringement of state-registered trademarks.

Elements of the Cause of Action

South Carolina law provides state trademark registrants with an infringement cause of action against any person who, without the registrant's consent, either:

- Uses a reproduction, counterfeit, copy, or colorable imitation of a mark registered under the statute in connection with the sale, distribution, offering for sale, or advertising of goods or services where the use is likely to cause confusion about the source of origin of the goods or services.

- Reproduces, counterfeits, copies, or colorably imitates a mark and applies the reproduction, counterfeit, copy, or colorable imitation to a label, sign, print, package wrapper, receptacle, or advertisement intended for use, or in connection with selling or distributing the goods or services in South Carolina.

(S.C. Code Ann. §§ 39-15-1160(A) and 39-15-1170.)

South Carolina law also provides a cause of action for dilution (see Question 6).

Remedies

For the use of a reproduction, counterfeit, copy, or colorable imitation of a registered mark where the use may cause confusion about the goods and services' origins, the defendant may be required:

- To pay the mark owner either or both:
 - profits derived from the infringement; or
 - damages suffered.
- To destroy materials bearing the counterfeit or imitation mark in the defendant's possession or control.
- If the defendant acted knowingly or in bad faith, to pay either or both:
 - a judgment of at most three times the profits and damages; or
 - attorneys' fees.

(S.C. Code Ann. § 39-15-1170(A).)

If the defendant reproduces, counterfeits, copies, or colorably imitates a registered mark and applies the infringing mark to a label, sign, print, package wrapper, receptacle, or advertisement intended to be used on or in connection with the sale or other distribution in South Carolina of the goods or services, then the mark owner cannot obtain damages unless the defendant acted with an intent to confuse or deceive (S.C. Code Ann. § 39-15-1160(B)).

Statutory Defenses or Exemptions

The trademark statute does not specify any defenses. Defendants may claim that the mark owner had:

- Cancelled the registered trademark under Section 39-15-1145 of the South Carolina Code.
- Obtained a trademark registration by knowingly making a false or fraudulent representation as specified under Section 39-15-1155 of the South Carolina Code.

5. Does your state recognize a claim for common law trademark infringement? If so, describe:

- The elements of the cause of action.
- Any significant differences between the state common law claim and a claim for infringement of an unregistered mark under Section 43(a) of the Lanham Act.

South Carolina recognizes a common law trademark infringement claim (*Taylor v. Hoppin' Johns, Inc.*, 405 S.E.2d 410, 412-13 (S.C. Ct. App. 1991)).

Elements of a Cause of Action

South Carolina courts have not specified the elements required or any distinctions from other jurisdictions for a common law trademark infringement claim. In *Taylor v. Hoppin' Johns, Inc.*, however, the South Carolina Court of Appeals upheld a lower court's decision holding the defendants liable for common law trademark infringement because the defendants appropriated the mark to the detriment of the mark owner and the mark owner's business. The court also noted that the mark owner showed a likelihood of public confusion. (*Taylor*, 405 S.E.2d at 413.)

Key Lanham Act Distinctions

South Carolina courts have not specified any distinctions between the state common law claim and a claim under the Lanham Act.

State Anti-Dilution Law

6. Does your state have an anti-dilution statute or recognize a dilution cause of action under common law? If so, please describe for any statute or common law claim:

- Whether it protects both registered and unregistered marks.
- The nature of dilution protected against, including whether the law protects against any dilution by blurring or dilution by tarnishment.
- Whether distinctiveness, strength, or fame of the trademark is required for a mark to be protected in your jurisdiction.

Statute

South Carolina's anti-dilution statute is codified in Section 39-15-1165 of the South Carolina Code.

Registration Requirements

The South Carolina anti-dilution law protects famous marks registered in South Carolina (S.C. Code Ann. § 39-15-1165(A)).

Nature and Types of Dilution Recognized

There is no South Carolina case law on trademark dilution. The anti-dilution statute only specifies that a mark owner has a cause of action for another's use of a similar mark when:

- The other party uses a similar mark after the owner's mark becomes famous in South Carolina.
- The use causes dilution of the famous mark's distinctive quality.

(S.C. Code Ann. § 39-15-1165(A).)

South Carolina law defines dilution as the lessening of the registered mark's capacity to "identify and distinguish goods or services, regardless of the presence or absence of competition between the parties or the likelihood of confusion, mistake, or deception" (S.C. Code Ann. § 39-15-1105(2)).

Distinctiveness, Strength, or Fame

The South Carolina anti-dilution statute requires that the mark be famous in South Carolina to be protected. When determining whether a mark is famous, factors to be considered include:

- The mark's distinctiveness in South Carolina.
- The duration and extent of the mark's use in connection with the goods and services.
- The duration and extent of the mark's advertising and publicity in South Carolina.
- The geographical extent of the trading area in which the mark is used.
- The channels of trade for the goods or services with which the registrant's mark is used.
- The degree of recognition of the registrant's mark in trading areas and channels of trade in South Carolina.
- The nature and extent of use of the same or similar mark by third parties.

(S.C. Code Ann. § 39-15-1165(A).)

Common Law

There is no South Carolina case law on common law trademark dilution.

7. For the anti-dilution law listed in Question 6, please list the elements of a cause of action, including whether a claim requires any of:

- Actual or likelihood of dilution.
- Likelihood of confusion.
- Competition between the parties.

Statute

Actual or Likelihood of Dilution

The South Carolina anti-dilution statute only specifies that a mark owner has a cause of action for another's use of a similar mark when:

- The other party uses a similar mark after the mark owner's mark becomes famous in South Carolina.
- The use causes dilution of the famous mark's distinctive quality.

(S.C. Code Ann. § 39-15-1165(A).)

Therefore, the statute seems to suggest that there must be actual dilution of a distinctive quality of the registrant's mark.

Likelihood of Confusion

The statute does not specify whether confusion is a condition for bringing a claim. The South Carolina trademark statute, however, specifically excludes confusion from its definition of dilution (S.C. Code Ann. § 39-15-1105(2)).

Competition between the Parties

The statute does not specify whether competition is a condition for bringing a claim. The South Carolina trademark statute, however, specifically excludes competition from its definition of dilution (S.C. Code Ann. § 39-15-1105(2)).

Common Law

There is no South Carolina case law on common law trademark dilution.

8. For the anti-dilution law listed in Question 6, please describe any tests set out in the statute or applied by courts to assess likely or actual dilution.

Statute

The South Carolina anti-dilution statute only specifies that the other party's use of a similar mark must be after the famous mark becomes famous in South Carolina (S.C. Code Ann. § 39-15-1165(A)). The statute does not specify any test used to determine likely or actual dilution.

Common Law

There is no South Carolina case law on common law trademark dilution.

9. For the anti-dilution law listed in Question 6, please describe any available remedies for violations.

Statute

Available relief for acts of dilution includes:

- Injunctive relief.
- Damages, but only if the defendant willfully intended to trade on the registrant's reputation or to cause dilution of the owner's mark.

(S.C. Code Ann. § 39-15-1165(B).)

Common Law

There is no South Carolina case law on common law trademark dilution.

10. For the anti-dilution law listed in Question 6, what statutory exemptions or defenses are available to defend against these claims?

Statute

Section 39-15-1165 of the South Carolina Code does not specify any exemptions or defenses against trademark dilution claims.

Common Law

There is no South Carolina case law on common law trademark dilution.

11. For the anti-dilution law in Question 6, please describe any significant distinctions between the applicable state law and the federal Trademark Dilution Revision Act, including differences in the available remedies.

Statute

Likelihood of Dilution Factors

Unlike the Lanham Act, the South Carolina anti-dilution statute does not specify any factors in assessing dilution by blurring (15 U.S.C. § 1125(c)(2)(B)). The South Carolina statute is also silent on whether a claim requires a showing of actual or likely dilution.

Common Law

There is no South Carolina case law on common law trademark dilution.

Anti-Counterfeiting Statute

12. Does your state have a civil anti-counterfeiting statute with a private right of action? If so, please identify the statute and describe:

- Standing requirements.
- Available remedies.
- Any statutory exemptions or defenses.

South Carolina does not have a specific anti-counterfeiting statute with a private right of action. State law provides a cause of action relating to counterfeits and imitations of marks registered under the South Carolina state registration statute (S.C. Code Ann. § 39-15-1160(A)).

Standing Requirements

Only the registrant of a mark registered under the South Carolina trademark registration statute may sue under Section 39-15-1160 of the South Carolina Code.

Remedies

For the manufacture, use, display, or sale of a counterfeit or imitation of the registered mark which may cause confusion about the goods and services' origins, the defendant may be required:

- To pay the owner either or both:
 - profits derived from the counterfeiting; or
 - damages suffered.
- To destroy materials bearing the counterfeit or imitation mark in the defendant's possession or control.
- If the defendant acted knowingly or in bad faith, to pay either or both:
 - a judgment of up to three times the profits and damages; or
 - attorneys' fees.

(S.C. Code Ann. § 39-15-1170(A).)

If the defendant reproduces, counterfeits, copies, or colorably imitates a mark and applies that mark to a label, sign, print, package wrapper, receptacle, or advertisement intended to be used on or in connection with the sale or other distribution in South Carolina of the goods or services, the mark owner can only obtain damages if the defendant acted with intent to confuse or deceive (S.C. Code Ann. § 39-15-1160(B)).

Statutory Exemptions or Defenses

The South Carolina statute does not specify any exemptions or defenses.

State Unfair Competition and Deceptive Trade Practices Statutes

13. Does your state have any unfair competition or deceptive trade practices statutes with a private right of action? If so, please identify the statute(s) and describe for each:

- The types of acts or practices it prohibits.
- The standing requirements for a private action.
- The remedies available for violations.
- Any statutory exemptions or defenses to private claims.

South Carolina Unfair Trade Practices Act: S.C. Code Ann. §§ 39-5-10 to 39-5-560

Prohibited Conduct

This law prohibits:

- Unfair methods of competition in the conduct of any trade or commerce.
- Unfair or deceptive acts or practices in the conduct of any trade or commerce.

(S.C. Code Ann. § 39-5-20.)

South Carolina courts look to federal case law and Federal Trade Commission interpretations of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) (S.C. Code Ann. § 39-5-20).

Standing Requirements for a Private Action

Any person who suffers any ascertainable loss of money or property (real or personal) because another person used an unfair or deceptive method, act, or practice may bring an action to recover actual damages (S.C. Code Ann. § 39-5-140(a)). The loss of money or property must both:

- Be due to unfair competition or unfair or deceptive acts or practices in the conduct of trade or commerce (S.C. Code Ann. § 39-5-20).
- Have an adverse impact on the public resulting from the conduct (*Florence Paper Co. v. Orphan*, 379 S.E.2d 289, 291 (S.C. 1989)).

A person may only bring claims individually (S.C. Code Ann. § 39-5-140(a)).

Remedies

A person who is successful in the claim may obtain:

- Actual damages.
- Treble damages and other necessary and proper relief if the violation was willful.
- Reasonable attorneys' fees and costs.

(S.C. Code Ann. § 39-5-140(a).)

It is unclear whether a person may obtain an injunction under this law. Section 39-5-50(a) of the South Carolina Code provides that a court may issue an injunction for an unfair or deceptive trade practice if the [South Carolina attorney general](#) (SCAG) brought the claim. Section 39-5-50(b) of the South Carolina Code provides that a court may order "additional orders or judgments" to restore any

person who has suffered ascertainable loss because of an unfair or deceptive trade practice, including an order to revoke the violator's license or certificate authorizing the violator to do business in South Carolina. It is unclear whether "additional orders or judgments" applies generally or only to actions by the SCAG. In *Johnson v. Collins Entertainment Co.*, the US Court of Appeals for the Fourth Circuit stated that private plaintiffs are not likely to be able to obtain an injunction under the South Carolina Unfair Trade Practices Act (199 F.3d 710, 726 (4th Cir. 1999)).

While an action by a private party requires the traditional showing of an injury, an action brought by the attorney general on behalf of the state contains no actual injury element. If the state can show that the defendant's representation had a "tendency to deceive," it is not required to show actual deception, appreciable injury-in-fact, or that the representations adversely impacted the marketplace. (*State ex rel. Wilson v. Ortho-McNeil-Janssen Pharm., Inc.*, 777 S.E.2d 176, 193 (S.C. 2015)).

For musical performance advertisements, a court may:

- Issue a permanent injunction.
- Restore money or property that a party obtained from violating this law.

(S.C. Code Ann. § 39-5-38(D).)

Statutory Exemptions or Defenses to Private Claims

Exemptions or defenses to private claims include:

- Actions or transactions permitted under South Carolina or federal laws or regulations, including those administered under the FTC.
- Acts by a newspaper, periodical, radio, or television station publisher, owner, agent, or employee when publishing or disseminating an advertisement, when the owner, agent, or employee did **not**:
 - know that the advertisement was false, misleading, or deceptive; and
 - have a direct financial interest in the sale or distribution of the advertised product or service.
- Unfair trade practices covered and regulated under the South Carolina Insurance Law (S.C. Code Ann. §§ 38-57-10 to 38-57-320).
- Any challenged practices that are subject to and comply with statutes administered by the FTC and the rules, regulations, and decisions interpreting these statutes.

(S.C. Code Ann. § 39-5-40.)

The person claiming the exemption or defense has the burden of proving the exemption or defense (S.C. Code Ann. § 39-5-40).

14. For each statute listed in Question 13, please describe the elements of a cause of action.

South Carolina Unfair Trade Practices Act: S.C. Code Ann. §§ 39-5-10 to 39-5-560

Under the South Carolina Unfair Trade Practices Act (SCUTPA), a trade practice is unfair when it is either:

- Against public policy.
- Immoral.
- Unethical.
- Oppressive.

(*Williams-Garrett v. Murphy*, 106 F. Supp. 2d 834, 844 (D.S.C. 2000).)

To bring an action under the SCUTPA, a plaintiff must show that:

- The defendant engaged in an unfair or deceptive act in the conduct of trade or commerce. The plaintiff suffered actual, ascertainable damages (money or property loss) resulting from the defendant's use of the unlawful trade practice.
- The unlawful trade practice negatively impacted the public interest.

(*Health Promotion Specialists, LLC v. South Carolina Bd. of Dentistry*, 743 S.E.2d 808, 816 (S.C. 2013).)

SCUPTA only applies to acts of "trade or commerce," which includes those actions that involve advertisement, sale, or distribution of services or property within a business context (*Health Promotion Specialists, LLC*, 743 S.E.2d at 816).

15. For each statute listed in Question 13, please describe the statute's applicability to trademark infringement and dilution claims.

South Carolina Unfair Trade Practices Act: S.C. Code Ann. §§ 39-5-10 to 39-5-560

The South Carolina Supreme Court has not specified whether a party may state a claim under the South

Carolina Unfair Trade Practices Act (SCUTPA) for trademark matters. There does not appear to be any provisions of the SCUTPA that would prohibit a party from filing a trademark claim under the law.

The South Carolina Court of Appeals has permitted a plaintiff to recover under the SCUTPA for infringement of marks and trade dress (*Global Prot. Corp. v. Halbersberg*, 503 S.E.2d 483, 486 (S.C. Ct. App. 1998)). The US District Court for the District of South Carolina has allowed parties to recover under both federal trademark law and the SCUTPA (*Nexus DX, Inc. v. Barr*, 2011 WL 1261326, *7 (D.S.C. March 31, 2011); *Johnson v. Sosebee*, 397 F. Supp. 2d 706, 712 (D.S.C. 2005); *Raco Car Wash Sys., Inc. v. Smith*, 730 F. Supp. 695, 701-05 (D.S.C. 1989)).

A plaintiff cannot, however, obtain double recovery from both a SCUTPA claim and a trademark infringement claim (*Taylor*, 405 S.E.2d at 412).

16. Please identify the principal common law unfair competition causes of action in your state that are available to trademark owners and for each cause of action describe:

- The elements of the cause of action.
- Any significant distinctions between claims under state common law and claims under the Section 43(a) of the Lanham Act.

Elements of a Common Law Unfair Competition Cause of Action

Under South Carolina law, the test for a common law claim of unfair competition is whether the defendant has created a likelihood of confusion about the source or sponsorship of a product (*Tel. Mfg. Co. v. Sumter Tel Mfg. Co.*, 41 S.E. 322, 334 (S.C. 1902); *Taylor*, 405 S.E.2d at 413).

The South Carolina Court of Appeals does not, however, recognize a common law cause of action for trade dress infringement. In *Global Protection Corp. v. Halbersberg*, the court held that trade dress infringement claims should be brought under either the Lanham Act or the South Carolina Unfair Trade Practices Act or both. (*Global Prot. Corp.*, 503 S.E.2d at 486.)

Key Lanham Act Distinctions

There are no significant distinctions between unfair competition claims under South Carolina law and related claims under Section 43(a) of the federal Lanham Act.

Other Significant State Statutory and Common Law Trademark-related Claims

17. Please describe any significant statutory or common law causes of action in your state available to trademark owners that are not already described in the preceding questions (for example, false advertising and trade libel).

Under Section 39-15-1155 of the South Carolina Code, a person who knowingly makes a false representation to obtain a filing or registration of a mark may be ordered by a state court to pay all damages sustained by an injured party caused by the fraudulently obtained filing or registration.

18. For each statute or common law claim identified in Questions 4, 5, 6, 12, and 13, identify any applicable statute of limitations and how it is calculated.

Statutory and Common Law Trademark Infringement

There is no specific statute of limitations for South Carolina trademark infringement claims.

Dilution

There is no specific statute of limitations for South Carolina dilution claims.

Counterfeiting

There is no specific statute of limitations for South Carolina trademark counterfeiting claims.

Unfair Competition and Deceptive Trade Practices

A party must bring an action under the South Carolina Unfair Trade Practices Act within three years after the unlawful conduct is discovered (S.C. Code Ann. § 39-5-150).

State Criminal Trademark Laws

19. Does your state have any criminal trademark protection statutes? If so, please identify the statute and describe the offense.

Sale of Goods and Services with Counterfeit Mark; Production or Reproduction of Counterfeit Marks: S.C. Code Ann. § 39-15-1190

Under South Carolina law, it is illegal for a person to knowingly and willfully:

- Transport, transfer, distribute, sell, or otherwise dispose of an item with a counterfeit mark.
- Possess with intent to transfer, transport, distribute, sell, or otherwise dispose of an item with a counterfeit mark.
- Use a device to produce or reproduce a counterfeit mark.
- Possess or have control of a device intending to produce or reproduce a counterfeit mark.

(S.C. Code Ann. § 39-15-1190(B), (C).)

A counterfeit mark is defined as a mark that is:

- Identical to or substantially indistinguishable from a registered or unregistered mark.
- Used in connection with the sale or offering for sale of goods or services that are identical to or substantially indistinguishable from, the goods or services with which the registered or unregistered mark is identified.
- Likely to cause confusion.
- Not authorized by the owner of the registered or unregistered mark.

(S.C. Code Ann. § 39-15-1190(A).)

A registered mark is defined as a mark that is registered with the US Patent and Trademark Office or with the [South Carolina secretary of state](#) (SCSOS) (S.C. Code Ann. § 39-15-1190(A)(2)).

An unregistered mark is defined as a symbol, sign, emblem, insignia, trademark, trade name, or word protected by the federal Ted Stevens Olympic and Amateur Sports Act (36 U.S.C. §§ 220501 to 220512) (S.C. Code Ann. § 39-15-1190(A)(4)).

A person who commits one of the acts may face either or both of the following, if the goods or services have a retail sales value of:

- Less than and including \$2,000:
 - misdemeanor charges punishable by a fine of at most \$1,000; or
 - imprisonment of at most one year.

- Between \$2,001 and \$9,999:
 - felony charges punishable by a fine of at most \$10,000; or
 - imprisonment of at most three years.
- Between \$10,000 and \$49,999:
 - felony charges punishable by a fine of at most \$20,000; or
 - imprisonment of at most five years.

(S.C. Code Ann. § 39-15-1190(B)(1)(a).)

For a second or further violation, the person faces felony charges punishable by either or both:

- A fine of between \$1,000 and \$50,000.
- Imprisonment of at most ten years.

(S.C. Code Ann. § 39-15-1190(B)(1)(a)(iv).)

If a person commits one of the acts relating to goods or services with a retail value of \$50,000 or more, the person faces felony charges of trafficking in counterfeit marks. The felony is punishable by:

- For a first offense, either or both:
 - a fine between \$10,000 and \$25,000; or
 - imprisonment of at most five years.
- For a second or further offense, either or both:
 - a fine between \$20,000 and \$50,000; or
 - imprisonment of at most ten years.

(S.C. Code Ann. § 39-15-1190(B)(1)(b).)

Use of Another's Marked Beverage Containers: S.C. Code Ann. § 39-15-10

A person engaged in the business of manufacturing, bottling, or dealing in beer, soda water, or mineral waters cannot use the marked beverage kegs, boxes, crates, or bottles of another without the owner's written consent. A violation is a misdemeanor punishable by either or both:

- A fine between \$10 and \$100.
- Imprisonment between ten and 30 days.

(S.C. Code Ann. § 39-15-10.)

Agricultural or Horticultural Brands or Marks: S.C. Code Ann. §§ 39-15-410 to 39-15-520

Under South Carolina's agricultural and horticultural brands registration statute, a person faces misdemeanor charges for:

- **Unauthorized alteration, change, removal, or obliteration of registered mark or brand.** A person cannot modify or remove a mark or brand from a field container with intent to obtain or prevent the owner from identifying the container. A violation is a misdemeanor punishable by either or both:
 - a fine between \$25 and \$500; or
 - imprisonment between 30 days and one year.(S.C. Code Ann. §§ 39-15-460 and 39-15-480.)
- **Purchase or receipt of containers marked or branded from someone other than the registered owner.** A violation is a misdemeanor punishable by a fine, imprisonment of at most one year, or both (S.C. Code Ann. § 39-15-470).
- **Unauthorized possession of marked or branded containers without the mark owner's consent.** A violation is a misdemeanor punishable by either or both:
 - a fine between \$25 and \$500; or
 - imprisonment between 30 days and one year.(S.C. Code Ann. § 39-15-480.)
- **Taking or sending containers out of South Carolina without the mark owner's consent.** A violation is a misdemeanor punishable by either or both:
 - a fine of at most \$500; or
 - imprisonment of at most one year.(S.C. Code Ann. § 39-15-500.)

Defacing or Destroying a Brand on Timber: S.C. Code Ann. § 9-15-750

For timber, a person cannot:

- Destroy or deface the purchaser or owner's brand from the timber.

- Injure, remove, secrete, take, receive, or attempt to sell or purchase of another's timber which has the other person's brand on the timber.

(S.C. Code Ann. § 39-15-750.)

A violation is a misdemeanor punishable by either or both:

- A fine between \$100 and \$3,000.
- Imprisonment of at least 30 days but not more than three years.

(S.C. Code Ann. § 39-15-750.)

Advertising by Household Goods Carriers: S.C. Code Ann. §§ 39-15-910 to 39-15-920

Household goods carriers in intrastate commerce may only use the name or trade name in which their operating authority is issued from the [South Carolina Public Service Commission](#) (SCPSC) in advertising, soliciting, or handling of intrastate business. Any printed advertising by the carrier must also include the carrier's SCPSC-issued certificate or docket number. If the carrier uses

joint advertising with a national carrier with which it has an affiliation, the advertising must state clearly that the South Carolina carrier does all intrastate hauling. (S.C. Code Ann. § 39-15-910.)

Carriers that violate this law face misdemeanor charges punishable by either:

- A fine of at most \$200.
- Imprisonment for at most 30 days.

(S.C. Code Ann. § 39-15-920.)

Each violation is a separate offense (S.C. Code Ann. § 39-15-920).

Pending Legislation

20. Please describe any legislation pending in your state that would materially impact civil trademark enforcement and protection.

There is no relevant legislation pending in South Carolina.

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