
Ohio

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A. State Trademark Registration Statute

1. Statute

Ohio Revised Code ("ORC") ch. 1329.54 through 1329.68.

2. Model Act Provisions

The Model Act is in effect in Ohio. Application must state that no one has a registration of the same or of a confusingly similar trademark/service mark in the United States Patent & Trademark Office for the same or similar goods. The Ohio statute deviates from the Model Act by not having a dilution provision.

3. Administrator

The Ohio trademark registration statute is administered by the Secretary of State, currently:

Bob Taft
Corporations Department
30 East Broad Street, 14th Floor
Columbus, Ohio 43266-0418
(614) 466-3910

4. Procedure for Applying for Registration

a. Forms

The use of a form prescribed by the Secretary of State or a copy thereof is required.

*Fay, Sharpe, Beall, Fagan, Minnich & McKee specializes in the practice of patent, trademark and copyright protection (domestic and foreign); intellectual property litigation; and licensing and technology transfer of intellectual property assets. The firm has offices in Cleveland, Ohio and Arlington, Virginia, with established associate relationships throughout the United States, Europe, South America, and Asiatic countries including Japan. In addition to practice before the United States federal district courts, members of the firm practice before the United States Supreme Court, the United States Court of Appeals for the Federal Circuit, the International Trade Commission, and the United States Patent and Trademark Office. The author of this entry is Mark S. Suat with acknowledgment given to Todd E. Marlette for his research and preparation.

b. Number of Copies

Only one copy of the form is required.

c. Fee

A \$20 filing fee, payable to the Secretary of State, is prescribed by statute, ORC §1329.56. An expedited filing costs an additional \$10.00, ORC §1329.68.

d. Specimens

The application shall be accompanied by one specimen or facsimile of the trademark or service mark. Photocopies are acceptable if they are capable of being microfilmed.

e. Drawing

A brief description of the trademark or service mark as it appears on the specimen or facsimile is required, but no special drawing is required.

5. Intent to Use Provision

Ohio does not have an intent to use provision.

6. Classification

The Ohio statute prescribes use of the classification system established by the Commissioner of Patents and Trademarks under 15 U.S.C. §1112, namely, the International Classification System. An application may refer to only one class of goods or services. ORC §1329.63. However, all goods and services may be listed for each class application.

7. Search Prior to Application

A preliminary search may be conducted by telephone (614) 466-0590. However, no guarantees are made in regard to its accuracy.

8. Search Prior to Registration

The Secretary of State will conduct a pre-registration state search of all trademark, trade name and corporate registrations. Marks are searched first regardless of class and then class is taken into account on similar marks. The federal trademark search is the applicant's responsibility.

9. Doing Business Requirement

The Ohio Revised Code does not outline a specific doing business requirement. However, an applicant must adopt and use the trademark in the state prior to application. ORC §1329.56.

10. Types of Marks Registrable

Trademarks and service marks can be registered. No separate provi-

sions exist for registration of collective and certification marks, although collective and certification marks are defined at ORC §4165.01(b)(c).

Marks showing ownership are also registrable pursuant to ORC §1329.42. A mark of ownership in Ohio is a name, mark, or device used to indicate ownership of articles or supplies. Registration of such names will be prima facie evidence of ownership of articles and supplies produced with the name, ORC §1329.43. Items so marked are those designed for re-use, including towels, coats, aprons, toilet devices and accessories, and vessels, receptacles, and utensils used as packages or containers. ORC §1329.41.

11. Restrictions

The Ohio statute follows the Model State Trademark Act concerning registration, except it has the following additional provision:

A trademark or service mark which so resembles a trademark or service mark registered in the United States Patent [and Trademark] Office 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; provided, that such applicant prove that he is the owner of a concurrent registration in the United States Patent [and Trademark] Office of his trademark or service mark covering an area including this state, applicant may register a trademark or service mark in accordance with this section. See ORC §1329.55(G).

12. Use in State

Use of a trademark in the State of Ohio is a prerequisite to registration, "subject to limitations set forth in Sections 1329.54 to 1329.67 of the Ohio Revised Code." Any person who adopts and uses a trademark or service mark in this state may file for registration. See ORC §1329.56.

13. Term of Registration

The registration is in the force for ten years from date of registration, ORC §1329.58.

14. Renewal

A renewal application, provided by the Secretary of State, must be filed six months prior to expiration of the term of registration. Each renewal is for a ten-year period. A renewal fee of \$10 must accompany all renewal applications and checks shall be made payable to the Secretary of State. The renewal application must be accompanied by a specimen or facsimile of the trademark. The renewal application must also be signed and verified by the applicant or by a member of the firm or officer of the corporation or association applying. A single copy of the renewal application should be filed.

15. Renewal Form

Section 1329.58 ORC prescribes that a separate *renewal form*, different from the registration form, must be completed.

16. Other Forms

Assignment forms and Change of Address forms are available for trademarks, service marks, marks of ownership, trade names, and fictitious names.

17. Post-Registration Forms

Use of the post-registration form (renewal) is mandatory, as prescribed by ORC §1329.58.

18. Fees After Registration

Renewal, \$10, ORC §1329.58; Assignment, \$10, ORC §1329.60; Change of Business Address, \$3, ORC §1329.60; Expedited Filing, \$10, ORC §1329.68. (These fees are the same for trademarks, service marks, marks of ownership, trade names and fictitious names.)

19. Use Requirement for Renewal

The Ohio statute does not address the issue of non-use of a trademark. However, the trademark renewal form asks how the mark is used and what goods it is used with. There is no provision for excusable non-use.

20. Presumptions

No presumption of doing business in the state is found in the statute.

a.-b. Not applicable.

21. Remedies for Infringement

An owner of a registered trademark may enjoin the manufacture, use, display or sale of counterfeits or imitations of the mark. The owner is also entitled to recovery of damages and profits derived from the infringement. The court may order seizure and destruction of the counterfeit marks. See ORC §1329.66.

22. Persons Entitled to Sue

Persons who may sue for infringement include any owner of a trademark or service mark registered under ORC §§1329.54 to 1329.67. See ORC §1329.66.

B. Dilution

1. Code Section

None.

2. Judicially Created Dilution Doctrine

At one time, a view was taken that a claim of trademark dilution was not recognized in Ohio since the code is silent on the matter. See *Anheuser Busch, Inc. v. Florists Ass'n of Greater Cleveland, Inc.*, 603 F. Supp. 35, 39-40, 224 U.S.P.Q. 493, 497 (N.D. Ohio 1984). However, a recent decision by the Court of Appeals for the Sixth Circuit held that Ohio recognizes the dilution doctrine under its common law. *Ameritech, Inc. v. American Information Technologies Corp.*, 811 F.2d 960 (6th Cir. 1987).

3. Tarnishment

Not addressed by Ohio court decisions as far as it is known.

4. Likelihood of Confusion

The cases cited by the Sixth Circuit in *Ameritech*, 811 F.2d 960 (6th Cir. 1987), which recognized a dilution claim in Ohio, all entailed liability because consumers would likely be confused. However, the relationship between the dilution doctrine and likelihood of confusion was stated in *Worthington Foods, Inc. v. Kellogg Co.*, 732 F. Supp. 1417, 14 U.S.P.Q.2d 1577 (S.D. Ohio 1990), as "the premise of the dilution theory is...that no confusion is possible. Cases in which consumer confusion is likely, therefore, do not directly support the dilution theory."

5. Competition Between the Parties

It seems that non-competition between parties is a requirement for a dilution claim in Ohio. As stated in *Worthington Foods, Inc. v. Kellogg Co.*, 732 F. Supp. 1417, 14 U.S.P.Q.2d 1577 (S.D. Ohio 1990), "the premise of the dilution theory is...that products do not compete." The Sixth Circuit in *Ameritech* noted several prior cases recognizing dilution claims in the context of unrelated businesses. *National City Bank of Cleveland v. National City Window Cleaning Co.*, 180 N.E.2d 20 (Ohio App. 1962), *rev'd on other grounds*, 174 Ohio St. 510, 190 N.E.2d 437 (1963) (banking concern's trade name diluted by window cleaning business' use of similar name); *Guild & Landis, Inc. v. Liles & Landis Liquidators, Inc.*, 2 Ohio Misc. 169, 207 N.E.2d 798 (C.P. 1959) (Insurance business' trade name diluted by appliance company's use). The Ohio Supreme Court observed in *National City Bank*, 174 Ohio St. at 513-14, 190 N.E.2d at 439:

[T]he use of the same or very similar names in entirely unrelated businesses may in and of itself prove injurious to the originator of the name. Such practice operates to whittle away and disperse in the mind of the public the identity of the name in relation to the one who invented it.

6. Fame or Distinctiveness

In order to proceed on a dilution claim, a party must have a distinctive mark. *Worthington Foods, Inc. v. Kellogg Co.*, 732 F. Supp. 1417, 14 U.S.P.Q.2d 1577 (S.D. Ohio 1990) (citing *Ameritech, Inc. v. American Information Technologies Corp.*, 811 F.2d 960, 965 (6th Cir. 1987), and *National City Bank v. National City Window Cleaning Co.*, 174 Ohio St. 510, 513-14, 190 N.E.2d 437, 439 (1963)).

7. Remedies

Injunctive relief is the typical remedy. *National City Bank v. National City Window Cleaning Co.*, 174 Ohio St. 510, 190 N.E.2d 437 (1963); *Henry Furnace Co. v. Kappelman*, 91 Ohio App. 451, 108 N.E.2d 839 (1952).

8. Leading Cases

Worthington Foods, Inc. v. Kellogg Co., 732 F. Supp. 1417, 14 U.S.P.Q.2d 1577 (S.D. Ohio 1990); *Ameritech, Inc. v. American Information Technologies Corp.*, 811 F.2d 960 (6th Cir. 1987); *National City Bank v. National City Window Cleaning Co.*, 174 Ohio St. 510, 190 N.E.2d 437 (1963); *Guild & Landis, Inc. v. Liles & Landis Liquidators, Inc.*, 2 Ohio Misc. 169, 207 N.E.2d 798 (C.P. 1959); *Henry Furnace Co. v. Kappleman*, 91 Ohio App. 451, 108 N.E.2d 839 (1952); *Hugo Stein Cloak Co. v. S.B. Stein & Son, Inc.*, 58 Ohio App. 377, 16 N.E.2d 609 (1937).

9. Extraterritorial Effect

Not addressed by Ohio court decisions, as far as it is known.

10. Preemption Cases

Not addressed by Ohio court decisions, as far as it is known.

C. Unfair Business Practices Acts (Little FTC Acts)

1. Code Section

Ohio Revised Code, ch. 1345, Consumer Sales Practices.

2. Scope

The Act is designed to protect consumers from unfair, deceptive, or unconscionable acts or practices by suppliers whether such acts occur before, during, or after the transaction.

3. Prohibited Activities

The following prohibited activities partially overlap the UDTPA but may be somewhat broader: (1) claims that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have; (2) that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not; (3) that the subject of a consumer transaction is new, or unused, if it is not; (4) that the subject of a consumer transaction is available to the consumer for a reason that does not exist; (5) that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not, except that the act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this section; (6) that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends; (7) that replacement or repair is needed, if it is not; (8) that a specific price advantage exists, if it does not; (9) that the supplier has a sponsorship, approval, or affiliation that he does not have; (10) that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations if the representation is false. ORC §1345.02.

In determining whether an act or practice is unconscionable, the following circumstances shall be taken into consideration: (1) whether the supplier has knowingly taken advantage of the inability of the consumer to reasonably protect his interests; (2) whether the supplier knew the price was substantially in excess of similar products that could be obtained elsewhere; (3) whether the supplier knew the consumer would not be able to receive a substantial benefit from the transaction; (4) whether the supplier knew there was no reasonable probability of payment of the obligation in full by the consumer; (5) whether the supplier required terms which were substantially one-sided in favor of the supplier; (6) whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to his detriment; and (7) whether the supplier has refused to make a refund unless the supplier had conspicuously posted a sign stating the supplier's refund policy. ORC §1345.03.

4. Remedies

a. State Administrative Enforcement

The Attorney General upon his own finding of reasonable cause, through his own inquiries or complaints may investigate a supplier believed to be in violation of the code. See ORC 1345.06.

b. Criminal Enforcement

Not applicable.

c. Civil Penalties

The Attorney General may obtain: declaratory judgment; temporary restraining order; preliminary or permanent injunction; class action; or civil penalty of not more than \$25,000 against the supplier. ORC §1345.07. Additional civil penalties of up to \$5,000 per day may be imposed for noncompliance with a temporary restraining order, preliminary or permanent injunction. ORC §1345.07(A)(2).

d. Private Actions and Remedies

Damages (treble damages are allowed but not under class action); rescission; declaratory judgment; injunction.

Attorney's fees may be awarded under prescribed conditions. ORC §1345.09(F).

e. Class Actions

The state may bring a class action on behalf of consumers, *see* ORC §1345.07(3). An individual may bring a class action pursuant to ORC §1345.09(E).

f. Notice

To obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain an act or practice, notice is required by Civil Rule 65. *See* ORC §1345.07(A)(2).

g. Standing

There is no specific statement forbidding a competitor from suing, but the definitions of consumer (§1345.01(D)) and consumer transaction (§1345.01(A)) would seem not to allow such an action.

h. Consumer Products

Consumer products are not defined but consumer transactions are described at ORC §1345.01(A).

i. Jurisdiction of Courts

Courts of common pleas and municipal or county courts have jurisdiction if the claim is within their respective monetary jurisdiction, ORC §1345.04.

j. Rules

The Attorney General shall adopt, amend, and repeal procedural rules and may adopt, amend, and repeal substantive rules defining with reasonable specificity acts or practices that violate ORC §§1345.02 or 1345.03. *See* §1345.05. All rules shall be adopted subject to ORC §119.

k. Administrative Investigative Authority

The Attorney General may administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant matter. *See* ORC §1345.06(B).

5. Administrator

The authority administering the Act is the Attorney General.

6. Leading Cases

Weaver v. J.C. Penney Co., 53 Ohio App. 2d 165, 372 N.E.2d 633 (Cuyahoga Ct. 1977); *Liggins v. May Co.*, 53 Ohio Misc. 21, 373 N.E.2d 404 (1977); *Brown v. Lyons*, 43 Ohio Misc. 14, 332 N.E.2d 380 (C.P. Hamilton Ct. 1974).

D. Uniform Deceptive Trade Practices Act

1. State Statute

Ohio has adopted the UDTPA in substance, ORC §§4165.01 through 4165.04.

See also Section F, False Advertising, below.

2. Standing

Any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, or unincorporated association injured or likely to be damaged by a deceptive trade practice may bring suit. *See* ORC §4165.03.

3. Remedies

Injunction; attorney's fees; damages (monetary relief); any other remedy otherwise available against the same conduct under the common law or other section of the Ohio Revised Code.

See ORC §4165.03.

4. Standard for Granting Relief

The remedies are discretionary. *See* ORC §4165.03. Costs and attorney's fees "may be assessed against a plaintiff if the court finds he knew the action to be groundless" or "may be assessed against a defendant if the court finds" that defendant "willfully engaged in the trade practice knowing it to be deceptive." *See* ORC §4165.03.

5. Leading Cases

George P. Ballas Buick-GMC, Inc. v. Taylor Buick, Inc., 5 Ohio App. 3d 71, 449 N.E.2d 503 (Lucas Ct. 1982); *Lozier v. Kline*, 40 Ohio App. 2d 277, 319 N.E.2d 204, 184 USPQ 369 (Wayne Ct. 1973); *Mr. Gasket Co.*

v. Travis, 35 Ohio App. 2d 65, 299 N.E.2d 906, 179 USPQ 811 (Cuyahoga Ct. 1973); *Straum v. State*, 15 Ohio App. 32 (Cuyahoga Ct. 1921); *Brostus v. State*, 7 Abs. 253, 29 L.R. 174 (App. Cuyahoga 1929); *State v. Schaengold*, 13 L.R. 130 (1915); *State v. Lubell*, 28 N.P. (n.s.) 155 (1930).

E. Trademark Counterfeiting

1. Specific Statutes

Trademark counterfeiting is covered by Ohio Revised Code §1329.65, Unauthorized Uses or Reproductions Subject to Civil Actions. This section is included within the trademark registration statute. Criminal counterfeiting is also covered by ORC §2913.32. *See L*, below.

2. Definition

The statute does not define counterfeiting.

a. Registration Requirement

The mark must be registered under ORC §§1329.54 through 1329.67. ORC §1329.65(A).

b. Identity of Types of Goods

The goods must be reproductions, counterfeits, copies, or colorable imitations of the registered mark. *See* ORC §1329.65(A).

3. Who Can Sue

The owner of the trademark or service mark may bring a civil suit. ORC §1329.66.

4. Remedies

Any or all of the remedies listed in ORC 1329.66 are available.

a. Civil

Injunctive relief; profits and damages; destruction of any counterfeits or imitations.

b. Criminal

The Ohio Revised Code, §1329.66, states that in addition to the remedies listed, a registrant has the right to prosecute under any appropriate penal law of this state. Making or altering any object so that it appears to have a source or authorship which it does not possess is criminal simulation and a felony of the fourth degree. ORC §2913.32.

5. Protective Provisions for defendants

Under the Ohio Revised Code, §1329.65(B), a registrant shall not be

entitled to recover profits or damages unless the acts have been committed with knowledge that the trademark or service mark is intended to cause confusion or mistake or to deceive.

F. False Advertising

1. Statute

There is no separate statute specifically addressed to false advertising or false representations to the public in the sale of goods. False advertising and false representations are addressed in ORC §4165.02, which is part of the Uniform Deceptive Trade Practices Act outlined under D, above.

2. Prohibited Practices

(1) Advertising goods or services with intent not to sell them as advertised; (2) making false statements of fact concerning the reasons for, existence of, or amounts of price reductions; (3) advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity. *See* ORC §4165.02.

In addition, particular industries and professions have regulations on false advertising: optometrists, §4725.11; veterinarians, §4741.21; auctioneers, §4707.15; cosmetologists, §4713.17(E); barbers, §4709.16; accountants, §4701.12; attorneys, DR 2-101; banks, §§1129.06, 1109.41, 1129.99; bond investment companies, §§3949.17; 3949.19; chiropractors, §4734.10; food, drugs, cosmetics §§3715.52, 3715.68; dentists, §4715.30; counterfeit drugs, §§2925.37(F), 2925.37(K); electrologists, §4713.171; embalmers and funeral directors, §4717.08, 4717.11; emergency medical service agencies, §§3303.22, 3303.99; employment agencies, §4143.12; fire insurance companies, §3929.29; foreign insurance companies, §§3901.24, 3901.25; fraternal benefit societies, §3921.38; health and hospitalization insurers, §§3923.16, 3923.99; health maintenance organizations, §1742.16; hearing aid dealers, §4747.12; life insurance companies, §§3911.23, 3911.24; medical devices and equipment, §§3715.52, 3715.64; prepaid dental plans, §§1736.15, 1736.18; private investigators, §4749.13; real estate brokers, §4735.18; security guards, §4749.13; small loan companies, §1321.11; soil additives, §905.11; using the words "Engineer" and "Surveyors" if not actually in that capacity, §4733.02; speech pathologist or audiologist, §4753.02; savings and loan associations, §1155.21; insurance solicitors, §3905.02; insurance companies generally, §3999.10; agricultural or vegetable seed, §907.08(B); and paints, and oils §3741.07.

3. Limitations

Section 4165.04 ORC states that the deceptive trade practices statute as enacted in Ohio 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 September 24, 1969. Subdivisions (B) and (C) of §4165.02 ORC do not apply to the use of a service mark, trademark, certification mark, collective mark, trade name, or other trade identification that was used and not abandoned before September 25, 1969 if the use was in good faith and is otherwise lawful except for ch. 4165 ORC.

4. Who Can Sue

Any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, or unincorporated association injured or likely to be damaged by a deceptive trade practice may bring suit. *See* ORC §4165.03.

5. Remedies

Injunction; attorney's fees; damages (monetary relief); any other remedy otherwise available against the same conduct under the common law or other section of the Ohio Revised Code. *See* ORC §4165.03.

6. Leading Cases

George P. Ballas Buick-GMC, Inc. v. Taylor Buick, Inc., 5 Ohio App. 3d 71, 449 N.E.2d 503 (Lucas Ct. 1982); *Lozier v. Kline*, 40 Ohio App. 2d 277, 319 N.E.2d 204, 184 USPQ 369, (Wayne Ct. 1973); *Mr. Gasket Co. v. Travis*, 35 Ohio App. 2d 65, 299 N.E.2d 906, 179 USPQ 811, (Cuyahoga Ct. 1973); *Straum v. State*, 15 Ohio App. 32 (Cuyahoga Ct. 1921); *Brostus v. State*, 7 Abs. 253, 29 L.R. 174 (App. Cuyahoga 1929); *State v. Schaengold*, 13 L.R. 130 (1915); *State v. Lubell*, 28 N.P. (n.s.) 155 (1930).

G. Corporate Name Reservation Prior to Incorporation

1. Statute

The basic corporate name reservation and registration provisions are Ohio Revised Code §1701.05 and §1702.05. Related provisions include

ORC §§1701.75, 1701.78, 1701.82, 1702.41, and 1702.45, which relate to the reorganization, merger, and consolidation of corporations, etc.

2. Reservation

A corporate name may be reserved by any person who wishes to reserve a name for a proposed new corporation or for any corporation intending to change its name. ORC §§1701.05(C) and 1702.05(C).

a. Time Period

A name may be reserved for sixty days from the date of endorsement by the Secretary of State that the specified name is available for such a use. ORC §§1701.05(C) and 1702.05(C).

b. Renewal

Reservation is renewable.

c. Fee

Fee for registration is \$5. ORC §§1701.05(D) and 1702.05(D).

d. Prerequisite to Incorporation

ORC §§1701.05(c) and 1702.05(c) gives the option to reserve a name, but it does not make this mandatory.

3. Conflicting Names

A foreign corporation may register its name with the Secretary of State as long as it is readily distinguishable from all other corporations doing business in the state, ORC §§1703.04(D), 1703.06, 1703.31.

4. Restrictions on Use of "Corp." and Similar Terms

There is no statute prohibiting the use of "Corporation," "Inc.," etc., if not incorporated.

5. Required or Authorized Use of "Corp." or Similar Term

The name of the corporation shall end with or include "Company," "Co.," "Corp.," "Corporation," "Incorporated," or "Inc." ORC §1701.04(A)(1).

6. Search Provision

When searching a proposed name for a corporation, the section of the statute considers the following points: (1) A proposed name which sounds exactly like or substantially similar to one already on file will not be accepted for filing. (2) The presence or absence of definite or indefinite articles, prepositions, periods, ampersands, commas, and other minor variations do not distinguish names sufficiently one from another. (3) The corporate endings "Corporation," "Corp.," "Incorporated," "Inc.," "Company," and/or "Co." will not distinguish one

name from another. (4) A geographical term is not sufficient to distinguish one name from another.

7. Policy Regarding Identical Words

The Secretary of State shall not accept for filing any name that is not distinguishable from another corporation.

8. Substantive Rights

Reservation under a corporate name gives the exclusive right to use the specified name as the name of a corporation. ORC §1701.05(C). In addition, the Secretary of State will not issue a trade name (§1329.02) or a trademark or service mark (§1329.55) if the name is not distinguishable and is likely to cause confusion with any corporate name already in existence.

A corporation cannot sell its corporate name, but it can sell its trade name or business name. *Cincinnati Realty Co. v. St. Nicholas Plaza, Inc.*, 28 N.P. (n.s.) 354 (1931).

9. Prohibited Terms

"Architect," "Landscape Architect," "Engineer," "Surveyor," and derivatives thereof, may only be used in corporate names by professional associations, nonprofit membership associations, or by general corporations which have complied with all requirements of the State Board of Registration for that profession as well as all applicable statutory provisions (§§4703.331, 4733.16). "Bank," "Banking," or "Trust" cannot be part of the corporate name unless the corporation is to be a bank. For example, names like "Sand Bank Company," "Food Bank Company," etc., cannot be used. ORC §1101.02, O. Const. Art. XIII, §3.

If incorporating an insurance agency to be licensed by the Department of Insurance, the Director of Insurance requires that the name contain words such as "Agency" or "Insurance Agency." If there is a desire that the word "Agency" be deleted from the corporate name, written waiver must be obtained from the Department of Insurance. This waiver must be filed at the same time the name without the word "Agency" is filed.

No place except a pharmacy shall display a sign or advertise using the word "pharmacy," "drugstore" and the like. ORC §4729.36. See ORC §1151.07 regarding word restrictions for savings and loan associations.

10. Administrative Agency

Office of the Secretary of State
Att.: Bob Taft

Corporate Division
30 E. Broad Street, 14th Floor
Columbus, OH 43266-0418
(614) 466-3910

11. Forms

Although the Secretary of State will provide forms for registration, the use of a state-provided form is not compulsory.

12. Fees

Fee for registration is \$5.

H. Trade Name Registration (Fictitious Name Statutes)

1. Purpose

The purpose of the statute is to identify anyone in business or trade using a trade or fictitious name. Ohio Revised Code §§1329.01-1329.10, Registered Trade Name.

A fictitious name is a name used in business or trade that is fictitious and that the user has not registered or is not entitled to register as a trade name. The fictitious name report does not give protection against the acceptance by the Secretary of State's Office of a conflicting name. The fictitious name filing was created to require public disclosure of all business names in use that do not identify the user, ORC §1329.01(A)(2).

2. Entities Required to File

Individuals, general partnerships, limited partnerships, corporations, associations, societies, foundations, federations, organizations, or foreign corporations licensed to exercise their corporate powers in this state may register with the Secretary of State. ORC §1329.01(B). If any of the foregoing decide not to file or cannot file a fictitious name as a trade name, they shall report the use of the fictitious name to the Secretary of State. ORC §1329.01(C).

3. Limited Partnerships

Limited partnership which have filed under the Ohio Limited Partnership Act are required to register fictitious names, ORC §1329.01(C).

4. Where to File

Trade names are registered with the Secretary of State, Corporate Division. Fictitious names not registered but in use must be reported to the Secretary of State on a form prescribed by the Secretary of State. ORC §1329.01(C).

5. Fees

A \$20 filing fee payable to the Secretary of State shall accompany the trade name registration, ORC §1329.01(B)(4). The filing fee for a fictitious name report is \$10.

6. Publication

There are no publication requirements.

7. Foreign Corporations

The statute applies to foreign corporations licensed to exercise corporate powers in this state. ORC §1329.01(A)(3).

8. Civil Penalties

The Attorney General upon request of the Secretary of State shall seek an injunction against any company failing to comply with ORC §1329.01 or §1329.07. No person doing business under a trade name or fictitious name shall commence or maintain an action in the trade name or fictitious name in any court in this state or on account of any contracts made or transactions had in the trade name or fictitious name until it has first complied with ORC §1329.01 and, if the person is a partnership, it has complied with ORC §1777.02, but upon compliance, such an action may be commenced or maintained on any contracts and transactions entered into prior to compliance. ORC §1329.10(B).

9. Criminal Penalties

No criminal penalties are provided.

10. Certificate

Upon applicant's compliance with the requirements of registration, a certificate of registration is issued. ORC §1329.03.

11. Renewal or Deletion

Registration of a trade name or report of a fictitious name is effective for five years and is renewable for five-year periods. Renewals must be made using an application supplied by the Secretary of State. *See* ORC §1329.04. Upon a written request the Secretary of State shall cancel a registration. ORC §1329.08(A).

12. Substantive Rights

Registration gives protection against subsequent acceptance by the Secretary of State of any name which conflicts with the trade name without written consent from the holders of the trade name. *See* ORC §1329.02.

13. Search

The Secretary of State shall keep all registered trade names and reported fictitious names open for public examination. ORC §1329.09. A preliminary search report can be obtained by a telephone call to the Secretary's Office, (614) 466-0590. However, no guarantees are made to the accuracy of the preliminary search.

14. Agent

A corporation is required to appoint a statutory agent. See ORC §1701.07.

15. Mail Registration

Registration may be accomplished by mail.

**I. State Statutory and/or Common Law Unfair Competition
or Passing Off Provisions**

Ohio does not have a general state statute prohibiting unfair competition, imitation of (unregistered) names and marks, or passing off apart from the Ohio trademark, deceptive trade practices and unfair business practice statutes (*see* D and C, above, respectively).

1.-5. Not applicable.

6. Common Law Action for Unfair Competition

Ohio state courts recognize a state common law action for unfair competition.

7. Elements of a Common Law Cause of Action

While claims may be made by a plaintiff under the Ohio common law and the state deceptive practices statutes, the analyses to be applied by the courts in regard to these bases of relief are essentially the same as those applied in assessing unfair competition under the federal statutes. *Jewel Companies, Inc. v. Westhall Co.*, 413 F. Supp. 994, 198 USPQ 432 (1976).

Proof of intent to deceive is required in unfair competition cases. The intent in certain circumstances may be presumed. This presumption is rebuttable. *Ductile Iron Soc'y v. Gray Iron Founders' Soc'y*, 30 Ohio Op. 2d 87, 95 Ohio L. Abs. 115, 201 N.E.2d 309 (1964 C.P.).

8. Remedies

See I.7, above.

9. Leading Cases

Adams Baking Co. v. Interstate Bakeries Corp., 37 Ohio Misc. 79, 66 Ohio

Op. 2d 175, 307 N.E.2d 273 (1972 C.P.); *Reader v. Brodt*, 4 Ohio N.P. 265, 6 Ohio D.N.P. 65, 299 Misc. 2d 906 (1973); *Yunker v. Nationwide Mut. Ins. Co.*, 175 Ohio St. 1, 191 N.E.2d. 145 (1963).

J. Statutes of Special Application and Personal Name Statutes

1. Special Statutory Sections

Some of the following sections of the Ohio Revised Code do not have specific penalties if not followed, but if not followed, corporations/organizations will not be able to file articles of incorporation.

(a) ORC §4717.11. A funeral home must operate under the name of the holder of a funeral director licensed in Ohio. Sanctions for violations.

(b) ORC §1726.02(A). A development corporation shall include the words "Ohio Development Corporation" in its name. Sanctions for violations.

(c) ORC §1728.02(A)(1). A community urban redevelopment corporation shall include the words "Community Urban Redevelopment" in its name. Sanctions for violations.

(d) ORC §1729.04. No person, firm, corporation, or association organized or applying to do business in this state, on or after July 17, 1923, as a farmers' marketing association for the sale of farm products shall use the word "Co-operative" as a part of its corporate or other business name or title unless it has complied with ORC §§1729.01 through 1729.27. Sanctions for violations.

(e) ORC §1733.07(A)(1)(2). A credit union shall include the words "Credit Union" in its name. Sanctions for violations.

(f) ORC §1737.05. A medical care corporation holding a certificate of authority or license from the Superintendent of Insurance shall not use in its name, contracts, or literature the words "Insurance," "Casualty," "Surety," "Health and Accident," "Mutual," or other words descriptive of the insurance or surety business. A violation of ORC §1737.05 could lead to a fine of between \$25 to \$500 or imprisonment for between thirty days to one year, or both, for each subsequent offense. ORC §1737.99.

(g) ORC §1738.18. A health care corporation shall not use the words "Insurance," "Casualty," "Surety," "Mutual," "Health Maintenance Organization," "Health Maintenance Corporation," "Total Health Care Corporation," "HMO," or any other words deceptively similar to health maintenance, insurance, or surety business organizations defined in ORC ch. 1742. Violation of O.R.C. §1738.18 could lead to a fine of \$50 to \$1,000 for a first offense and a fine of \$100 to \$1,000, or

imprisonment for thirty days to three years, or both, for each subsequent offense, ORC §1738.99.

(h) ORC §1740.05. A dental care corporation shall not include in its name the words "Insurance," "Casualty," "Surety," "Health and Accident," "Mutual," or any other words that would cause confusion with any insurance or surety company doing business in this state. Violation of this section could lead to a fine of \$25 to \$500 for a first offense and a fine of \$50 to \$500 or imprisonment for thirty days to one year, or both, for each subsequent offense. ORC §1740.99.

(i) Regarding banks, *see* G.9, above.

(j) Regarding architects, *see* G.9, above.

(k) Regarding insurance agents, *see* G.9, above.

(l) ORC §1783.02. *Limited Partnership*: "Limited" shall be the last word of the name of every limited partnership association formed under ORC §§1783.01 through 1783.12. The omission of "Limited" in the use of the name of the association shall render every person participating in such omission, or knowingly acquiescing therein, liable for any indebtedness or liabilities arising therefrom.

(m) ORC §3921.04(A)(1). A fraternal benefit society shall not use a corporate name which so closely resembles the name of any society or insurance company as to be misleading or confusing. Sanctions for violations.

2. Use of Personal Name

The Ohio trademark registration statute prohibits registration of a person's name in certain situations. *See* A, above (the Ohio statute follows the Model Act on what is prohibited from registration).

K. Right to Publicity

1. Recognition

In *Zacchini v. Scripps-Howard Broadcasting*, 54 Ohio St. 2d 286, 376 N.E.2d 582 (1978); *Zacchini v. Scripps Howard Broadcasting Co.*, 47 Ohio St. 2d 224, 351, the Ohio Supreme Court recognized the right of a person to control publicity concerning oneself. *Note*: The U.S. Supreme Court reversed *Zacchini* on other grounds. 97 S. Ct. 2849, 433 U.S. 562 (1977). An actionable invasion of the right to privacy is the unwarranted publicizing of one's private affairs with which the public has no legitimate concern. *Housh v. Peth*, 165 Ohio St. 35 (1956). The false light theory of invasion of privacy has been accepted in at least two unreported decisions. *Clark v. Plain Dealer Publishing Co.*, No. 44544 (Ohio Ct. App. 8th Nov. 4, 1982); *Filotei v. Booth Broadcasting Co.*, No. 43454 (Cuyahoga Cty. Ct. App., Dec. 10, 1981).

2. Applicable Statute

Right of publicity is part of Ohio's law of invasion of privacy, *Reeves v. United Artists Corp.*, 765 F.2d 79 (1985). Ohio's right of publicity is a common law right; there are no statutory provisions.

3. Elements of Cause of Action

When a person has a right to the publicity value of his actions and someone appropriates that right over his objections without license or privilege, such an act is an invasion of his privacy.

4. Survivability

The right of publicity does not survive the death of the holder of that right. *Reeves, supra* K.2.

5. Term of Survival

Not applicable.

6. Secondary Meaning Requirement

The cases do not discuss a secondary meaning.

7. Remedies

Injunction and damages are available remedies.

8. Limitations

No other limitations exist.

L. Criminal Statutes

1. Statutory Provision

State criminal prohibitions against unauthorized use of trade names or trademarks are as follows.

(a) ORC §1333.52 creates criminal penalties for record piracy.

(b) The ORC section dealing with fraud, §2913.32, though not specifically using the word trademark or trade name, could be interpreted to cover trademark/trade name counterfeiting. ORC §2913.32 provides:

(A) No person with purpose to defraud, or knowing that he is facilitating a fraud, shall do any of the following:

1. make or alter any object so that it appears to have value because of antiquity, rarity, curiosity, source, or authorship, which it does not in fact possess;

2. practice deception in making, retouching, editing, or reproducing any

photograph, movie film, video tape, phonograph record, or recording tape;

3. utter, or possess with purpose to utter, any object which he knows to have been simulated as provided in division (A)(1) or (2) of this section.

(B) Whoever violates this section is guilty of criminal simulation, a felony of the fourth degree.

(c) ORC §1329.26, Manufacture or Sale of Goods Marked "Sterling" or "Sterling Silver":

No person shall make, sell, or offer to sell or dispose of, or have in his possession with intent to sell or dispose of, an article of merchandise marked, stamped, or branded "sterling" or "sterling silver," or encased or enclosed in a box, package, cover, wrapper, or other thing having thereon an engraving or printed label, stamp, imprint, mark, or trademark, indicating or denoting that such article is silver, sterling silver, or solid silver, unless nine hundred and twenty-five one-thousandths parts of the metal of which such article is manufactured is pure silver.

Violation of this section of the ORC could result in a \$100 fine.

(d) ORC §1329.27, Manufacture or Sale of Goods Improperly Marked "Coin" or "Coin Silver":

No person shall make, sell, or offer to sell or dispose of, or have in his possession with intent to sell or dispose of, an article of merchandise marked, stamped or branded "coin" or "coin silver" or encased or enclosed in a box, package, cover, or wrapper or other thing having thereon an engraving or printed label, stamp, imprint, mark, or trademark, indicating or denoting that such article is coin or coin silver, unless nine hundred one-thousandths parts of the metal of which such article is manufactured is pure silver.

Violation of this section could result in a \$100 fine.

(e) ORC §1329.29, Labeling of "Kosher" Foods: This section of the ORC has been revised to create criminal penalties for selling or labeling food as "Kosher" which has not been prepared under orthodox Hebrew religious requirements. Violation of this section could result in a fine of \$25 to \$500.

(f) ORC §1329.30, Labeling of Binding Twine:

No dealer, manufacturing corporation, company, or agent, shall sell or offer for sale a ball or parcel of binding twine, commonly employed in binding grain, unless there is attached thereto a tab or label describing the kind of material of which such twine is composed and the weight of such ball or parcel.

Violation of this section could result in a fine of \$1 to \$25.

(g) ORC §1329.31, Brand to Be Placed Upon Convict Goods:

Goods, wares, and merchandise made by convict labor in a penitentiary, prison, reformatory, or other establishment in this or any other state in which convict labor is employed, and imported, brought, or introduced into this state, shall be branded, labeled, or marked as provided in §1329.32 of the Ohio Revised Code before being exposed for sale.

For a first offense of this section, a fine of \$25 to \$50 is imposed. For subsequent offenses a fine of \$50 to \$200 may be imposed.

(h) **ORC §1329.32, Contents, Style and Use of Brands:**

The brand, label, or mark required by §1329.31 of the Revised Code shall contain at the head or top thereof "convict made" followed by the year and name of the penitentiary, prison, reformatory, or other establishment in which it was made. When such branding or marking is impossible a label shall be used.

Penalties are the same as in ORC §1329.31 (paragraph (g), above).

(i) **ORC §1329.33, Selling "Convict Made" Goods Without Label:**

No person, dealing in goods, wares, and merchandise made by convict labor shall knowingly have them in possession for the purpose of sale or offer them for sale, without the brand, label, or mark of "convict made" as required by §1329.31 of the O.R.C., or remove, conceal, or deface such brand, mark, or label.

Penalties are the same as in O.R.C. 1329.31 (paragraph (g), above).

(j) **ORC §1329.501, Laundering Articles Labeled With Name or Mark of Owner:**

No person, other than the owner, shall launder, wash, clean, or renovate any supplies used for the purpose of cleanliness and sanitation, upon which a name, mark, or device is produced except with written consent of the owner. Any person who finds or receives such property in the ordinary course of business under circumstances which gives him knowledge and means of inquiring as to the true owner, must make reasonable efforts to find the owner and restore the property to him, otherwise he is presumed guilty of traffic in the same, contrary to such sections.

For a first offense or violation of this section a person may be fined \$10 to \$50 or imprisoned ten days to one month or both; for subsequent offenses or violations, a person may be fined \$20 to \$100 or imprisoned thirty days to three months or both.

(k) **ORC §1329.49, Re-use of Marked Goods Without Consent of Owner:**

No person shall use, give, buy, take, destroy, sell or otherwise dispose of, or traffic in, articles or supplies, fill or re-fill any vessel, receptacle or utensil upon which a name or mark, is produced, or refuse to return such articles or supplies on demand of the owner, or to deface, erase,

obliterate, cover up or otherwise remove or conceal any such name, mark or device, unless consent of the owner is obtained or unless the articles or supplies shall have been purchased from the said owner.

Same penalties as found in O.R.C. §1329.501 (paragraph (j), above).

Note that ORC §1329.66, which deals with the rights and remedies of trademark owners, provides that any right given in the statute does not affect a registrant's right to prosecute under any appropriate penal law of Ohio.

M. Trade Disparagement or Trade Libel

1. Statute or Common Law Doctrine

The Ohio Revised Code states that a person engages in deceptive trade practice when, under §4165.02(H), he disparages the goods, services, or business of another by false representation of fact. The last section of 4165.03 would seem to indicate that the common law and Ohio Revised Code §4165 were meant to coexist: "[T]he relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other sections of the Revised Code."

2. Elements of Cause of Action

There seems to be some conflict on this issue. ORC §4165.03 states that proof of monetary damage or loss of profits is not required. But there are some Ohio cases, *Cleveland Leader Printing Co. v. Nethersole*, 84 Ohio St. 118, 95 N.E. 735 (1911), and *International Visible Systems Corp. v. Remington-Rand Inc.*, 65 F.2d 540 (6th Cir. 1933), which state that there are three elements necessary to find trade disparagement: The words must be (1) false, (2) maliciously published, and (2) result in some special pecuniary loss.

3. Presumptions

No presumptions are recognized.

4. Remedies

According to Ohio Revised Code §4165.03, anyone who may be damaged by a deceptive trade practice as defined in §4165.02 (which includes disparaging the goods, services, or business of another by false representation of a fact) may be granted an injunction and reasonable attorney's fees. A person injured by a deceptive trade practice of another may recover actual damages and attorney's fees.

5. Punitive Damages

Under Ohio's Deceptive Trade Practices Statute, the court may award

reasonable attorneys' fees to the prevailing party. This relief is in addition to remedies otherwise available. ORC §4165.03. A plaintiff may recover punitive damages under Ohio's Tort Action Statutes if the defendant has demonstrated malice or egregious fraud and if the plaintiff has proven actual damages. ORC §2315.21.

6. Single Publication

In Ohio if someone repeats a libelous statement, he is liable for its republication, *Fowler v. Chichester*, 26 Ohio St. 9 (1874); *Haines v. Welling*, 7 Ohio 250 (1835).

7. Defenses

(1) Conduct in compliance with the orders or rules of 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 September 25, 1969 (subdivisions (B) and (C) of §4165.02 of the ORC do not apply to the use of a service mark, trademark, certification mark, collective mark, trade name, or other trade identification that was used and not abandoned before September 25, 1969, if the use was in good faith and is otherwise lawful except for ch. 4165 ORC.). See ORC §4165.04.

N. Franchising or Business Opportunity Statutes

1. Statute

The Ohio Revised Code §§1334.01 through 1334.99 ("Business Opportunity Plans") governs the sale of business opportunities within the State of Ohio.

2. Registration

There are no requirements for filing or registration with an Ohio agency or governmental official. A seller or broker need only provide a written disclosure statement to a prospective purchaser. See ORC §1334.02 for a description of the disclosure statement.

3. Forms

There are no prescribed forms.

4. Fees

No fee is required.

5. Approval Procedure

No examination or approval procedure is conducted.

6. Bond

"[A] seller shall establish the bond on trust account in an amount of not less than \$50,000 at the commencement of business for the first six months." See ORC §1334.04(c).

7. Waiting Period

There is no review.

8. Penalties

See ORC §§1334.08 and 1334.09.

9. Required Disclosures

ORC §1334.02(B) requires that a seller or broker must provide to the prospective purchaser a written statement disclosing: (1) the name, address, and principal place of business of the seller; (2) the name under which the seller is doing or intends to do business; (3) the trademark, trade name, service mark, or other commercial symbol under which the prospective purchaser will be operating; (4) financial information on payments to be made by the purchaser and conditions of refund thereof; (5) nature of the business opportunity plan offered by the seller and financing arrangement offered by the seller; (6) nature and terms of any buy-back or security arrangement if the seller represents such; (7) length of time seller has offered the business opportunity plan; (8) number of business opportunity plans sold or leased by the seller, involving the same goods offered to buyer, which were still operating in this or another state at the end of the previous year; (9) limits, if any, on the goods or services the purchaser may offer for sale or distribution; (10) conditions under which a purchaser may transfer the business opportunity plan; termination provisions; (11) if a bond is required, it must identify the trustee.

Also required is a listing of: (1) the name and address of each person with whom the purchaser is required or advised to do business; (2) information regarding whether or not seller or any person listed under (1) has been involved in a civil or criminal action in the last seven years, involving fraud, embezzlement, fraudulent conversion, misappropriation of property, violation of a franchise law or law prohibiting unfair or deceptive practices; is subject to injunctive or restraining order dealing with the sale or lease of a business opportunity plan; has, in the last seven years, been involved in bankruptcy proceedings; (3) the name and address of each business opportunity plan, sold or leased by the seller, located in Ohio.

There must be attached to the disclosure statement: (1) a copy of the seller's financial statement, no more than twelve months old; (2) an unexecuted copy of the entire agreement selling or leasing the business opportunity plan.

10. Standing to Sue

Both purchasers of business opportunities and the Attorney General may sue under the Act. *See* ORC §§1334.08 and 1334.09.

11. Remedies

Civil and criminal remedies are available including:

(1) Action by the Attorney General to obtain a declaratory judgment, temporary restraining order, preliminary injunction, permanent or class action injunction to restrain the act or practice. The court may assess expenses of a referee or receiver. Additional penalties of up to \$5,000 for each violation and not to exceed \$100,000 in the aggregate may be brought. *See* ORC §1334.08.

(2) Action by the purchaser to rescind the transaction and recover three times the amount of actual damages or \$10,000, whichever is greater, or damages or other relief appropriate in a class action. The court may award a reasonable attorney's fee if action was groundless or in bad faith. First violations are first degree misdemeanors, but repeat offenses are considered fourth degree felonies (*see* ORC §1334.99). Additional remedies are available for the same conduct as may be violated pursuant to ORC §§1334.01 through 1334.15 under local, state, or federal law. *See* ORC §1334.15.

12. Contract Requirements

Provisions governing contracts include damages and rescission. *See* ORC §1334.09. Every agreement selling or leasing a business opportunity shall be in writing and include: the terms and conditions of payment; a full description of the acts or service the seller will undertake to perform for the purchaser; the seller's principal business address and the name and address of its agent in Ohio authorized to receive service of process; the business of the seller, whether corporate, partnership, or otherwise; the delivery date of the goods the seller is to deliver to the purchaser and the location of any buy-back or security arrangement; and notice of the purchaser's right to cancel the agreement any time prior to the fifth business day after the signing of the agreement. *See* ORC §1334.06.

13. Exceptions

(1) Employer/employee relationships; (2) cooperative associations; (3) transfer of a registered security; (4) publishers, broadcasters, and

printers in certain situations; (5) sale of a business which for at least the six previous months has been in a specific location, been open to the general public, and has all equipment and supplies at specific locations; (6) a person selling goods on premises occupied by a retailer who granted such an activity; (7) if the seller meets certain financial standards. *See* ORC §1334.12.

14. Registered Marks Exception

Sections 1334.01 through 1334.15, ORC, do not apply to:

ORC §1334.12 (C) An agreement for the use of a trademark, service mark, trade name, seal, advertising, or other commercial symbol designating a person who offers a bona fide service for the evaluation, testing, or certification of goods, commodities, or services;

ORC §1334.12 (D) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising, or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising, or other commercial symbol;

ORC §1334.12 (H) A license granted by a general merchandise retailer that allows the licensee to sell goods or services to the general public under the retailer's trademark, trade name, or service mark, advertising, or other commercial symbol if the general merchandise retailer has been doing business in this state continuously for five years prior to this state continuously for five years prior to the granting of the license and the general merchandise retailer also sells the same goods or services directly to the general public.

15. Federal Registration

Federal registration is not required for statutory exemption.

16. Use of UFOC

Any transaction in which the purchaser receives a document that fully complies with the requirements of the Uniform Franchise Offering Circular is permitted except under division (H) of §1334.03 and §1334.04, ORC. *See* ORC §1334.13. *See also* N.14, above.

17. Other Forms

Any transaction in which the purchaser receives a document that fully complies with the "Guidelines for preparation of the Uniform Franchise Offering Circular and related documents," and any transaction that fully complies with the trade regulation rule of the Federal Trade Commission, "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures," are permitted, except under division (H) of §1334.03 and §1334.04, ORC. *See* ORC §1334.13.

18. Amendment

There is no procedure for amending filings to reflect material changes in the information contained in the offering statement.

19. Other Franchise Regulations

Advertising is not directly regulated, but a seller may not make any false or misleading statements, make any representations inconsistent with the disclosure statement, or use the term "secured investment" or other similar terminology which may be misleading, ORC §1334.03 (B), (C) and (G).

Cancellation proceedings are set forth in ORC §1334.06.

Renewals or extensions of an existing business opportunity plan are exempt from Ohio Revised Code §§1334.01 through 1334.15, provided the original agreement was for at least one year, ORC §1334.12(N).

There are not any waiting periods other than allowing the purchaser five business days to cancel the transaction, ORC §1334.06(B).

20. Liability of Franchisor for Torts of Franchisee

Ohio courts apparently have not addressed this issue.