

Trademark Laws: Wisconsin

by [Brian G. Gilpin](#) and [Jennifer L. Gregor, Godfrey & Kahn](#), with Practical Law Intellectual Property & Technology

Law stated as of 04 Feb 2025 • United States, Wisconsin

A Q&A guide to Wisconsin 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](#)

[State Statutory and Common Law Trademark Infringement Causes of Action](#)

[State Anti-Dilution Law](#)

[Anti-Counterfeiting Statute](#)

[State Unfair Competition and Deceptive Trade Practices Law](#)

[Other Significant State Statutory and Common Law Trademark-Related Claims](#)

[State Criminal Trademark Laws](#)

[Pending Legislation](#)

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.

Wisconsin's trademark registration statute is codified in Chapter 132 of the Wisconsin Statutes ([Wis. Stat. §§ 132.001 to 132.25](#)).

State Agency

The [Wisconsin Department of Financial Institutions](#) (DFI) administers trademark registrations.

Key Substantive Registration Requirements

Types of Marks Covered

The Wisconsin registration statute provides for the registration of:

- [Trademarks.](#)
- [Service marks.](#)
- [Trade names.](#)

Under Wisconsin law, a trademark or service mark is adopted or used by any person to designate, make known, or distinguish any goods or service as having been made, prepared, or provided by that person, and that person registers the mark under [Wis. Stat. § 132.01](#). A trademark or service mark may be:

- A label.
- A trade name.
- A term.
- A design.
- A pattern.
- A model.
- A device.
- A shopmark.
- A drawing.

- A specification.
- A designation.
- A form of advertisement.

(Wis. Stat. § 132.001(2).)

Certain items receive special statutory protection and may be registered, including:

- Container marks (Wis. Stat. § 132.04).
- Beverage names, brands, and trademarks (Wis. Stat. § 132.11).
- Lodge, association, and organization names and insignia (Wis. Stat. § 132.16).

Use Requirements and Intent-to-Use Applications

The Wisconsin Statutes reference [intent-to-use applications](#) (Wis. Stat. § 132.01(1)). However, the DFI requires that the date of first use be set out in an application to register a mark, and the date cannot be more than 30 days in the future (see [DFI: Trademark File Online](#)). In practice, the DFI has granted registrations for applications listing a shortly upcoming date of first use.

Statutory Bars to Registration

The DFI may not register any mark that:

- Is a beverage name or brand already registered under [Wis. Stat. § 132.11](#) (Wis. Stat. § 132.01(4)).
- Consists of or comprises a replica or a simulation of the flag, coat of arms, or insignia of:
 - the US;
 - any state or municipality; or
 - any foreign nation.

(Wis. Stat. § 132.01(5).)

For a discussion of the Lanham Act statutory bars to registration, including provisions the US Supreme Court recently struck down as unconstitutional, see [Practice Note, Acquiring Trademark Rights and Registrations: Immoral, Scandalous, and Other Restricted Matter](#).

Other Key Substantive Registration Requirements

An applicant seeking to register a Wisconsin state trademark must:

- Sign the application under penalty of perjury.
- Pay the requisite filing fee.
- Electronically apply with the DFI using its form.

The application form includes:

- The applicant's full legal name.
- If the applicant is a business, the type of business and the place of organization. Foreign corporations must be qualified to do business in Wisconsin before the DFI grants a registration.
- The Nice classification number for the goods and services used in connection with the mark.
- A physical address and mailing address.
- A description of the mark to be registered, including an image file for a logo.
- The date of first use (see [Use Requirements and Intent-to-Use Applications](#)).

(Wis. Stat. § 132.01(1) to (3).)

Key Benefits of State Registration

Procedural

Registration of a mark is [prima facie](#) evidence of:

- The adoption of the mark.
- The facts prerequisite to the registration.

(Wis. Stat. § 132.031.)

Substantive

Registration of a mark provides the registrant with the remedies of:

- [Injunctive](#) relief.
- Destruction of materials bearing infringing marks.
- Actual damages or an amount up to three times the defendant's profits from the infringement.
- If the defendant acted willfully, the greater of:
 - actual damages; or
 - an amount three times the defendant's profits from the infringement.
- Recovery of costs of investigating and prosecuting the suit, including reasonable investigators' and attorneys' fees.

(Wis. Stat. § 132.033(2).)

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

Registration Term

A Wisconsin trademark registration has a term of ten years from the registration or renewal date if it was filed or renewed on or after May 1, 1990 (Wis. Stat. § 132.01(6)(b)).

Renewal Requirements

A registrant may renew a Wisconsin trademark registration for successive ten-year periods within six months before the expiration by:

- Applying for renewal, including the same details as in the original application (see [Question 1](#)).
- Paying a renewal fee.

(Wis. Stat. § 132.01(3), (6); Wisconsin Department of Financial Institutions: [Trademark General Information](#).)

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

A registrant may assign a Wisconsin state trademark registration by:

- Filing an assignment form with the [Wisconsin Department of Financial Institutions](#) (DFI).
- Paying a filing fee (currently \$15).

([Wis. Stat. § 132.01\(9\)](#).) The assignment form must be notarized ([DFI: Trademark FAQs](#)).

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.

The Wisconsin Statutes provide a cause of action for infringement of a state-registered trademark.

Elements of the Cause of Action

The owner of a Wisconsin trademark registration may sue to enjoin the manufacture, use, display, or sale of any counterfeit mark identical to or substantially identical to the registered mark ([Wis. Stat. § 132.033\(1\)](#)).

A counterfeit mark is defined as a fake mark that is both:

- Identical to or substantially identical to a genuine mark.

- Used or intended to be used on or in connection with goods or services for which the genuine mark is registered and used.

(Wis. Stat. § 132.001(1).)

The elements of a cause of action for Wisconsin statutory trademark infringement are that:

- The defendant used either:
 - an identical mark; or
 - a substantially identical mark.
- The use caused a likelihood of confusion.

(*Madison Reprographics, Inc. v. Cook's Reprographics, Inc.*, 552 N.W.2d 440, 444-45 (Wis. Ct. App. 1996); *Mil-Mar Shoe Co. v. Shonac Corp.*, 906 F. Supp. 476, 479, 481-82 (E.D. Wis. 1995), rev'd on other grounds, 75 F.3d 1153 (7th Cir. 1996) (applying Wisconsin law).)

Wisconsin courts consider the following factors when determining a likelihood of confusion, whether based on a Wisconsin trademark registration or common law rights:

- The strength of the mark.
- Similarity of the defendant's designation to the plaintiff's mark.
- Similarity and proximity of the goods or services.
- Overlap of marketing channels.
- The consumer's likely degree of care when selecting the product or service.
- Evidence of actual confusion.
- Defendant's intent when choosing a designation.

(*Madison Reprographics, Inc.*, 552 N.W.2d at 446.)

Remedies

Remedies for infringement of a mark registered under the Wisconsin Statutes include:

- Injunctive relief.
- Destruction of infringing articles.
- Actual damages or an amount up to three times the defendant's profits from the infringement.
- If the defendant acted willfully, the greater of:
 - actual damages; or
 - an amount three times the defendant's profits from the infringement.
- Recovery of costs of investigating and prosecuting the suit, including reasonable investigators' and attorneys' fees.

(Wis. Stat. § 132.033(2).)

Statutory Defenses or Exemptions

Defenses to an infringement claim include:

- The registrant fraudulently obtained the registration.
- The registrant abandoned the mark.
- The mark is used by the registrant, or with permission of the registrant or a person in privity with the registrant, to misrepresent the source of the goods or services with which the mark is used.
- The allegedly infringing use is a use of any of the following and not as a trademark or service mark:
 - the party's name in the party's business;
 - the name of any person in privity with the party; or
 - a descriptive use that fairly and in good faith describes the party's goods and services or their geographic origin.
- The mark violates or has violated:
 - the [Sherman Act](#);
 - the [Clayton Act](#); or

- chapter 133 of the Wisconsin Statutes.
- The defendant has prior common law or federal law rights in a mark identical to the plaintiff's mark.

(Wis. Stat. § 132.033(5).)

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.

Wisconsin recognizes a claim for common law trademark infringement (*Ritter v. Farrow*, 955 N.W.2d 122, 128 (Wis. 2021); *First Wis. Nat'l Bank of Milwaukee v. Wichman*, 270 N.W.2d 168, 172-73 (Wis. 1978)).

Elements of a Cause of Action

To prevail on a common law trademark infringement claim, a plaintiff must show that:

- Its designation is legally protectable as a trademark or trade name.
- The defendant's use of a similar designation is likely to confuse.

(*Madison Reprographics, Inc.*, 552 N.W.2d at 444-45.)

Key Lanham Act Distinctions

There are no key distinctions between Wisconsin common law and the Lanham Act.

The same legal standards apply to all types of federal and state law unfair competition claims (*G. Heileman Brewing Co. v. Anheuser-Busch Inc.*, 676 F. Supp. 1436, 1465 (E.D. Wis. 1987) (applying Wisconsin law)).

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

Wisconsin does not recognize a statutory cause of action for trademark dilution.

Common Law

Wisconsin law is silent regarding a common law cause of action for 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 the following:

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

Statute

Wisconsin does not recognize a statutory cause of action for trademark dilution.

Common Law

Wisconsin law is silent regarding a common law cause of action for 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

Wisconsin does not recognize a statutory cause of action for trademark dilution.

Common Law

Wisconsin law is silent regarding a common law cause of action for trademark dilution.

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

Statute

Wisconsin does not recognize a statutory cause of action for trademark dilution.

Common Law

Wisconsin law is silent regarding a common law cause of action for 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

Wisconsin does not recognize a statutory cause of action for trademark dilution.

Common Law

Wisconsin law is silent regarding a common law cause of action for 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

Wisconsin does not recognize a statutory cause of action for trademark dilution.

Common Law

Wisconsin law is silent regarding a common law cause of action for 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.

Wisconsin does not have a specific civil anti-counterfeiting statute. However, state law provides a statutory cause of action for trademark counterfeiting under the Wisconsin registration statute ([Wis. Stat. § 132.033](#)).

Standing Requirements

Only the owner of a mark registered under the Wisconsin registration statute has [standing](#) to sue ([Wis. Stat. § 132.033\(1\)](#)).

Remedies

Remedies for counterfeiting of a mark registered under the Wisconsin Statutes include:

- Injunctive relief.
- Destruction of infringing articles.
- Actual damages or an amount up to three times the defendant's profits from the infringement.
- If the defendant acted willfully, the greater of:
 - actual damages; or
 - an amount three times the defendant's profits from the infringement.
- Recovery of costs of investigating and prosecuting the suit, including reasonable investigators' and attorneys' fees.

([Wis. Stat. § 132.033\(2\)](#).)

Statutory Exemptions or Defenses

Defenses to a counterfeiting claim include:

- The registrant fraudulently obtained the registration.
- The registrant abandoned the mark.
- The mark is used by the registrant, or with permission of the registrant or a person in privity with the registrant, to misrepresent the source of the goods or services with which the mark is used.

- The allegedly infringing use is a use of any of the following (and not as a trademark or service mark):
 - the party's name in the party's business;
 - the name of any person in privity with the party; or
 - a descriptive use that fairly and in good faith describes the party's goods and services or their geographic origin.
- The mark violates or has violated:
 - the Sherman Act;
 - the Clayton Act; or
 - chapter 133 of the Wisconsin Statutes.
- The defendant has prior common law or federal law rights in a mark identical to the plaintiff's mark.

(Wis. Stat. § 132.033(5).)

State Unfair Competition and Deceptive Trade Practices Law

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.

Wisconsin's fraudulent representation statute is codified at [Wis. Stat. § 100.18](#).

Fraudulent Representation: Wis. Stat. § 100.18

Prohibited Conduct

It is unlawful to make or cause to be made any advertisement or other statement to the public containing any untrue, deceptive, or misleading assertion, representation, or statement of fact with the intent to either:

- Sell or distribute any real estate, merchandise, securities, employment, service, or anything else offered.
- Induce the public to enter into a contract or obligation to procure any real estate, merchandise, securities, employment, service, or anything else offered.

(Wis. Stat. § 100.18.)

There are also certain context-specific prohibitions relating to:

- Deceptive pricing (Wis. Stat. § 100.18(2)).
- Close-out sale ads (Wis. Stat. § 100.18(3m)).
- Bait-and-switch advertising (Wis. Stat. § 100.18(9)).
- Motor fuel price disclosure (Wis. Stat. § 100.18(6), (8)).
- Motor vehicle advertising (Wis. Stat. § 100.18(10m)).

Standing Requirements for a Private Action

Any person who suffers a pecuniary loss from a fraudulent representation can bring a claim under the statute (Wis. Stat. § 100.18(11)(b)). The law does not create a private cause of action between competitors based on alleged misrepresentations made to the public (*Grice Eng'g, Inc. v. JG Innovations, Inc.*, 691 F. Supp. 2d 915, 923 (W.D. Wis. 2010) (applying Wisconsin law)).

To prevail on a claim for fraudulent representation, the plaintiff must show that:

- The false or deceiving representation materially induced the decision to act.
- The action would not have occurred absent the representation.

(See *Grice Eng'g, Inc.*, 691 F. Supp. 2d at 923.)

Remedies

Remedies for violations of Wisconsin's fraudulent representation statute include:

- Actual damages.
- Injunctive relief.
- Court costs.
- Reasonable attorneys' fees.

(Wis. Stat. § 100.18(11)(b), (d).)

Remedies for violation of an injunction include:

- Double damages.
- Court costs.
- Reasonable attorneys' fees.

(Wis. Stat. § 100.18(11)(b).)

Statutory Exemptions or Defenses to Private Claims

Wisconsin's fraudulent representation statute does not apply to:

- The sale of food (*Gallego v. Wal-Mart Stores, Inc.*, 707 N.W.2d 539, 544 (Wis. Ct. App. 2005)).
- Real estate brokers, except for knowing violations (Wis. Stat. § 100.18(12)(b)).

14. For each statute listed in [Question 13](#), please describe the elements of a cause of action.

Fraudulent Representation: Wis. Stat. § 100.18

To prove fraudulent representation in Wisconsin, a plaintiff must show the following elements:

- The defendant made a representation to the public with the intent to induce an obligation.
- The representation was untrue, deceptive, or misleading.
- The representation materially caused a pecuniary loss to the plaintiff.

(*Novell v. Migliaccio*, 749 N.W.2d 544, 552 (Wis. 2008).)

Reliance is an aspect of the third element, but reasonable reliance is not an element of the claim (*Novell*, 749 N.W.2d at 553-54).

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

Fraudulent Representation: Wis. Stat. § 100.18

A cause of action under the Wisconsin fraudulent representation statute is distinct from a trademark infringement claim. The statute has been cited in connection with various conduct and activities, including deceptive advertising involving trademarks.

Wisconsin does not recognize a statutory or common law dilution cause of action.

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.

Wisconsin recognizes a common law tort of unfair competition (*Vill. Food & Liquor Mart v. H & S Petroleum, Inc.*, 647 N.W.2d 177, 185 (Wis. 2002)).

Elements of a Common Law Unfair Competition Cause of Action

Following the Restatement (Second) of Torts, Wisconsin courts have held that it is unfair competition for a party to use on or in connection with goods or services a designation that so resembles a mark or trade name previously used by another that the use is likely to cause either:

- Confusion, mistake, or deception.
- Prospective purchasers to believe that:
 - the actor's goods or services are those of the other party;
 - the goods or services of both the actor and the other party have the same source;
 - the actor's goods or services are approved or sponsored by the other party; or
 - the actor's business is the business of or is associated or connected with the other party, even though the actor does not use the designation to deceive.

(See *First Wis. Nat'l Bank of Milwaukee*, 270 N.W.2d at 172; *G. Heileman Brewing Co.*, 676 F. Supp. at 1471.)

Key Lanham Act Distinctions

There are no key distinctions between unfair competition claims under Wisconsin common law and the 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).

Wisconsin law does not provide any other significant statutory or common law trademark causes of action.

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

In Wisconsin, the statute of limitations for intentional tort claims is three years ([Wis. Stat. § 893.57](#)). Wisconsin generally follows the discovery rule for tort claims, under which a cause of action does not accrue until either the plaintiff:

- Knows the tortfeasor's identity.
- Reasonably should have discovered the tortfeasor's identity.

(*Spitler v. Dean*, 436 N.W.2d 308, 309 (Wis. 1989).)

Dilution

Wisconsin does not recognize a statutory or common law dilution cause of action.

Counterfeiting

See [Statutory and Common Law Trademark Infringement](#).

Fraudulent Representation

The statute of limitations under Wisconsin's fraudulent representation statute is three years from the occurrence of the unlawful act or practice, not three years from discovery ([Wis. Stat. § 100.18\(11\)\(b\)\(3\)](#); *Skrupky v. Elbert*, 526 N.W.2d 264, 273-74 (Wis. Ct. App. 1994)).

Federal courts interpreting Wisconsin law have applied the continuing tort theory to Wisconsin's fraudulent representation statute, holding that each new publication of the allegedly fraudulent representation restarts a new statute of limitations as to that publication (see *Thermal Design, Inc. v. Am. Soc'y of Heating, Refrigerating, and Air-Conditioning Eng'rs, Inc.*, 2008 WL 1902010, at *4 (E.D. Wis. Apr. 25, 2008); *Werner v. Pittway Corp.*, 90 F. Supp. 2d 1018, 1033 (W.D. Wis. 2000)).

State Criminal Trademark Laws

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

In Wisconsin, it is unlawful to, without the consent of a mark's owner:

- Remove any mark attached to merchandise or products to use the merchandise or products to make duplications or reproductions in the identical form of the originals or sufficiently similar to be calculated to deceive.
- Commercially use with intent to deceive, orally utter, or display in any printed or written form a Wisconsin-registered mark or an identical or substantially identical counterfeit mark. This does not apply to good faith:
 - purchases of merchandise from a distributor; or
 - retail sales of that merchandise.

(Wis. Stat. § 132.02.)

Criminal penalties for knowing and willful violations are either or both of the following:

- Imprisonment for up to six months.
- A fine of up to \$10,000.

(Wis. Stat. § 132.03.)

Criminal penalties for trafficking in goods or services bearing counterfeit marks are either or both of the following:

- Imprisonment up to six years.
- Fines up to:
 - \$250,000 for individuals; or
 - \$1 million for entities.

(Wis. Stat. §§ 132.20(2) and 939.50(3)(h).)

Pending Legislation

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

There is no pending legislation in Wisconsin at this time that would materially impact civil trademark enforcement and protection.