

§482-8.5 Administrative order of abatement against a registered or authorized entity.

(a) Any person claiming to be the owner of a trade name or mark who believes that the name of any entity registered or authorized to transact business under the laws of this State is confusingly similar to its trade name or mark may file a petition with the director for an administrative order of abatement to address the infringement of its trade name or mark. The petition shall set forth the facts and authority supporting the claim that the petitioner has common law rights of ownership of the trade name or mark, that these rights are being infringed upon by a registered or authorized entity whose name is confusingly similar to the petitioner's trade name or mark, and that further use of the entity name should be abated.

(b) Any person with a registered trade name in this State claiming that another subsequently registered name of any entity registered or authorized to transact business under the laws of this State is substantially identical to its registered trade name may file a petition with the director for an administrative order of abatement against the use of the subsequently registered entity name. The petition shall set forth the facts and authority supporting the claim that the petitioner's registered trade name is substantially identical to the subsequently registered entity name, the petitioner's trade name was registered before the subsequently registered entity name, and further use of the subsequently registered entity name should be abated.

(c) The petitioner, at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by chapter 91 and the registrant shall be given an opportunity to respond to the petition at the hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(d) In addition to any other remedy or sanction allowed by law, the order of abatement may:

(1) Allow the entity to retain its registered name, but require the entity to:

- (A) Register a new trade name with the director; and
 - (B) Transact business in this State under the new trade name;
- or

(2) Require the entity to change its registered name, and to:

- (A) File a name change with the director; and
- (B) Transact business in this State under the new name.

If the entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapter 414, 414D, 415A, 425, 425E, or 428, as applicable.

(e) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. Review of any final decision of the

circuit court shall be governed by chapter 602. [L 2002, c 130, §7; am L 2003, c 124, §90 and c 210, §13; am L 2008, c 108, §11]

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