

Chapter 648

Assumed Business Names

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CASE CITATIONS: *Keller v. Lonsdale*, (1959) 216 Or 339, 339 P2d 112.

ATTY. GEN. OPINIONS: "Persons" using assumed business name, 1962-64, p 319; notice to nonresidents of changes in filing requirements, 1962-64, p 381; corporations using assumed business names, 1964-66, p 55; registering corporate name omitting the "inc." as an assumed business name, 1964-66, p 87; requirement of corporate designation in assumed business name, 1964-66, p 217.

LAW REVIEW CITATIONS: 2 WLJ 438.

648.010

NOTES OF DECISIONS

1. In general

The certificate must be signed and acknowledged by all the persons interested in the business. *Balfour, Guthrie & Co. v. Knight*, (1917) 86 Or 165, 167 P 484.

The statute permits but one name for a single business. *Starr v. Hotelling*, (1942) 168 Or 207, 122 P2d 432.

This section does not apply to single, isolated transactions, but to continuing commercial activity. *Keller v. Lonsdale*, (1959) 216 Or 339, 339 P2d 112.

The names "Moler Barber College" and "Mohler Barber School" were practically synonymous, as regards right to injunction for unfair competition. *Danton v. Mohler Barber School*, (1918) 88 Or 164, 170 P 288.

The statute does not render void agreements entered into by offending partnership, especially where the partnership gave and did not obtain credit. *Uhlmann v. Kin Daw*, (1920) 97 Or 681, 193 P 435.

Appending the address, "City Garage, Dallas, Oregon," to a party's signature to a contract, did not constitute the use of a fictitious or assumed name, not registered as required by statute, so as to prevent a recovery on the contract. *Sayles v. Daniels Sales Agency*, (1921) 100 Or 37, 38, 196 P 465.

A cleaning business under an assumed name "Portland Heights Cleaners" could not adopt a second assumed name "Portland Cleaners" to be used simultaneously with the former. *Starr v. Hotelling*, (1942) 168 Or 207, 122 P2d 432.

2. Application to interstate commerce

The requirements of this section do not apply to interstate commerce. *Loveland v. Warner*, (1902) 103 Or 638, 639, 204 P 622, 206 P 298.

Where goods to be used as premiums were sold and shipped from another state, and notes were executed in payment of the premiums, and seller agreed to send organizer to assist buyer within the state, and to pay certain amounts in cash if business of buyer was not increased, and buyer did not permit the organizer sent into the state to do anything in relation to the business, the seller cannot be held to have carried on, transacted, or engaged in business in the state, within the meaning of the above section

and the seller could recover the purchase price of the premiums in the state courts without filing such certificate, though it might in the future possibly do something within the ban of the statute. *Id.*

FURTHER CITATIONS: *Hunter v. Cunning*, (1944) 176 Or 250, 154 P2d 562, 157 P2d 510; *Lift Truck Parts & Service, Inc. v. Bourne*, (1963) 235 Or 446, 385 P2d 735; *Buften v. Hoseley*, (1963) 236 Or 12, 386 P2d 471; *Carter v. Clear Fir Sales Co.*, (1967) 284 F Supp 386.

ATTY. GEN. OPINIONS: Use by firm of architects of name of deceased partner, 1930-32, p 424; procedure in case of the death of one member of a firm of architects, 1932-34, p 287; right of corporation organized under laws of state to conduct a motor transportation business under an assumed name, 1932-34, p 615; authority to require change of name of laundry before filing, 1938-40, p 739; requirement that partnership operating a collection agency under two different assumed names at two separate locations must obtain licenses under both assumed names and file a bond for each place of business, 1944-46, p 491; fees for registration, cancellation and reregistration of assumed business names, 1948-50, p 240; revocation of license on the ground of an assumed name similar to another firm, 1950-52, p 109; legality of distributing a collection system form book, 1950-52, p 301; state license as not issuing to a married woman in any other surname than that of her husband, 1950-52, p 375; notice required by 1963 statute to persons previously holding certificates, 1962-64, p 319; use of "& Co." in business name of individual accountant, 1962-64, p 371; notice to nonresidents of changes in filing requirements, 1962-64, p 381; names using "corp." or "inc." that are not corporate names, 1964-66, p 55; necessity for assumed business name of corporation to contain a corporate designation, 1964-66, p 217.

648.015

NOTES OF DECISIONS

An arrangement of purely generic or descriptive words can acquire a secondary meaning and thereby create a protectible interest in a trade name. *Lift Truck Parts & Service, Inc. v. Bourne*, (1963) 235 Or 446, 385 P2d 735.

Defendant's business name was found so similar to plaintiff's as to cause confusion. *Id.*

FURTHER CITATIONS: *The 88¢ Stores v. Martinez*, (1961) 227 Or 147, 361 P2d 809.

ATTY. GEN. OPINIONS: Avoiding duplication or similarity, 1962-64, p 319; names using "corp." or "inc." that are not corporate names, 1964-66, p 55.

648.050

ATTY. GEN. OPINIONS: Fees for registration, cancellation and reregistration of assumed business names, 1948-50, p

240; notice required by 1963 statute to persons previously holding certificates, 1962-64, p 319.

648.061

NOTES OF DECISIONS

This section does not require a foreign corporation to surrender its right of removal to the federal courts by filing and operating under an assumed trade name. *Carter v. Clear Fir Sales Co.*, (1967) 284 F Supp 386.

ATTY. GEN. OPINIONS: Requirement that nonresident real estate broker wishing to do business under assumed name must file consent to substituted service with Secretary of State and Real Estate Commissioner, 1940-42, p 175; change of filing office for consent to service, 1962-64, p 382.

648.070

CASE CITATIONS: *Carter v. Clear Fir Sales Co.*, (1967) 284 F Supp 386.

ATTY. GEN. OPINIONS: Change of filing office for consent to service, 1962-64, p 382.

648.090

NOTES OF DECISIONS

1. Necessity of pleading

A justice court is not deprived of jurisdiction of a suit by a person doing business under an assumed name because the certificate required by this section is not filed with the county clerk, unless the defect is raised by a special demurrer in the nature of a plea in abatement, since the Act affects the qualification of the party to sue and not the statement of the cause of action. *Beamish v. Noon*, (1915)

76 Or 415, 419, 149 P 522; *Schucking & Co. v. Young*, (1915) 78 Or 483, 494, 153 P 803.

The defense that plaintiff had failed to comply with the statutory requirements of this chapter is waived, if not set up either by answer or demurrer. *Benson v. Johnson*, (1917) 85 Or 677, 680, 165 P 1001, 167 P 1014.

When the complaint contains an allegation that plaintiff's assignor was doing business under an assumed name, the defense that he had not complied with the statute is waived if not pleaded. *Columbia River Door Co. v. Todd*, (1918) 90 Or 147, 175 P 443, 860.

Where the complaint does not in any way disclose a failure on the part of the plaintiff to comply with the statute, the issue can be raised only by a plea in abatement. *Sayles v. Daniels Sales Agency*, (1921) 100 Or 37, 38, 196 P 465.

The defense that plaintiff has been doing business under an assumed name without filing the certificate required by law, must be grounded on a sufficient pleading. *Loveland v. Warner*, (1922) 103 Or 638, 639, 204 P 622, 206 P 298.

When the defendant fails to plead the defense that plaintiff had failed to comply with the statute, he thereby waives the defense. *Rowland v. Nat. Reserve Ins. Co.*, (1926) 118 Or 139, 246 P 210.

2. Proof

Where the complaint alleges full compliance with laws relating to firm names, and defendant's answer admits such allegations to be true, such admission relieves plaintiff from proving the allegation admitted, the same being considered conclusive evidence of such facts. *Beamish v. Noon*, (1915) 76 Or 415, 149 P 522; *Schucking & Co. v. Young*, (1915) 78 Or 483, 494, 153 P 803.

FURTHER CITATIONS: *Keller v. Lonsdale*, (1959) 216 Or 339, 339 P2d 112; *Peer v. Claremont*, (1960) 188 F Supp 641.