

RCW 19.77.160 Injunctive relief for owners of famous marks. (1)

The owner of a mark that is famous in this state shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in this state of a mark, commencing after the mark becomes famous, which causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous and has distinctive quality, a court shall consider all relevant factors, including, but not limited to the following:

- (a) The degree or inherent or acquired distinctiveness of the mark in this state;
- (b) The duration and extent of use of the mark in connection with the goods or services with which the mark is used;
- (c) The duration and extent of advertising and publicity of the mark in this state;
- (d) The geographical extent of the trading area in which the mark is used;
- (e) The channels of trade for the goods or services with which the mark is used;
- (f) The degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought;
- (g) The nature and extent of use of the same or similar marks by third parties; and
- (h) Whether the mark is the subject of state registration in this state or United States registration.

(2) The owner shall be entitled only to injunctive relief in an action brought under this section, unless the subsequent user willfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

(3) The following are not actionable under this section:

- (a) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify competing goods or services of the owner of the famous mark;
- (b) Noncommercial use of a famous mark; and
- (c) All forms of reporting and news commentary. [2003 c 34 § 7; 1989 c 72 § 10.]