California

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A. State Trademark Registration Statute

1. Code Section

The California statute has been replaced in its entirety by the Model State Trademark Law, as it existed in 2007.

3. Administrator
Location and address for air courier filing: Secretary of State
Trademark Unit
1500 11th Street, 2nd Floor
Sacramento, CA 95814

Mailing: Secretary of State
Trademark Unit
P.O. Box 942870
Sacramento, CA 94277-2870

Telephone: (916) 653-3984
Website: www.sos.ca.gov/business-programs/ts/

4. Procedure for Applying for Registration
   a. Forms
On January 16, 2018 the Secretary of State introduced an online system

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*Lewis Roca Rothgerber Christie LLP is one of the largest law firms in the Western United States with more than 300 attorneys and patent agents in ten offices including three in California: Irvine, Los Angeles (Glendale) and Silicon Valley (Menlo Park). The firm has a major intellectual property practice. Its trademark practice includes an active litigation practice in addition to domestic and foreign prosecution. The firm also maintains a prominent practice in patent litigation and prosecution, and Internet/domain name disputes. This entry was prepared by Michael J. MacDermott and Jeffrey C. Tom.
for new trademark and service mark applications. https://tmbizfile.sos.ca.gov/Registration/. The online system allows for signature by an authorized representative but does not provide for entry of a mailing address for the representative. Paper filing is still available. A state-provided form (Form TM 100) is required for paper filings and may be found at http://bpd.cdn.sos.ca.gov/ts/forms/tm-100.pdf. Cal. Bus. & Prof. Code §14207(a). Two pages of instructions accompany the form and there is now a coversheet for mailing. A list of frequently asked questions may be found on the website at http://www.sos.ca.gov/businessprograms/ts/faqs/

b. Number of Copies
For paper filings the original application must be filed. No copies are required.

c. Fee
A registration fee (currently $70 per classification), payable to the Secretary of State, is required. Id. Cal. Gov. Code §12193.

d. Specimens
For online filings, only one specimen is required. For paper filings, three identical, original specimens per classification are required, showing the mark as actually used in connection with the goods/services listed in the application. Cal. Bus & Prof. Code §14207(e). The specimens should be no larger than 8.5″ × 11″, and should lay flat. Color photographs of goods and color printouts of webpages for services are permitted, but photocopies and computer generated prototypes are not.

e. Drawing
For paper filings, a “drawing” of the mark in handwritten, hand-drawn, or computer-generated form on an 8.5″ × 11″ sheet of paper is required. For “word” or “standard character” marks, only the characters of the mark should be listed on the sheet. For such marks it is advisable to include in Section 5 the standard character statement of the United States Patent and Trademark Office (“USPTO”). If the mark contains a design, it should be described. The instructions also asks for the U.S. Trademark Office appropriate design code(s) but the Secretary of State will assign if not recited. http://tess2.uspto.gov/tmdb/dscm/index.htm. Color marks are permitted and the color feature should be discussed in Section 5. For online filings, an image or drawing must be attached in jpeg or pdf format.

5. Intent to Use Provision
None.

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6. Classification
The Model Trademark Law follows the classification of goods and services adopted by the USPTO under the Nice Agreement, known as the International Classification of Goods and Services for the Purpose of the Registration of Marks (Eleventh Edition version 2019 NCL 11-2019), at https://www.uspto.gov/trademark/trademark-updates-and-announcements/nice-agreement-current-edition-version-general-remarks. The Trademark Unit has become stricter in its requirements for the identification or description of goods and services. It is best to use identifications approved by the USPTO. See the USPTO Trademark Manual at https://idm-tmng.uspto.gov/id-master-list-public.html. A mark may be registered for multiple classes in a single registration. See Cal. Bus. & Prof. Code §14235. However, the Trademark Unit currently does not accept both goods and services in the same application. They must be filed separately. There is pending legislation, AB-64, which would, inter alia, create two new classes, 500 and 501, for registration of cannabis goods and services, respectively. The legislation is currently in committee. The Secretary of State website states that as of January 1, 2018, cannabis-related marks may be registered. http://www.sos.ca.gov/businessprograms/ts/faqs/#question13. However, at this time, the classification and goods and services identifications must still comply with those of the United States Patent and Trademark Office. Thus, for example, the wording cannabis or marijuana may not be used.

7. Search Prior to Application
The Trademark Unit will conduct a pre-application search of an alphabetical listing of all registered marks and advise as to availability. It is not required. Search results are available by telephone or by letter; there is no charge for an informal telephone response, but there is a $10 fee for a written response. There is no online database of registered marks maintained by the Secretary of State. Commercial databases are available.

8. Search Prior to Registration
The Trademark Unit will cause the application for registration to be examined for conformity with the Model State Trademark Law Cal. Bus. §Prof. Code §14209. This examination will include the determination of whether the applied-for mark so resembles a mark registered in California, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake, or to deceive. Id. at §14205(f). A famous mark, even when not registered in California, may also be a basis for refusal. The Trademark Unit has
refused registration based upon confusingly similarity to marks registered with the U.S. Patent and Trademark Office. Its practice in that regard does not appear to be consistent.

9. Doing Business Requirement
There is no doing business requirement, but the mark must be used by the applicant in California on goods or services rendered in the state. *Id.* at §§14202(h), 14207.

10. Types of Marks Registrable
Trademarks and service marks are registrable; no specific provision is made for registration of collective and certification marks. For registration of cannabis related marks, see Section 6. Moreover, the Trademark Unit is also responsible for registration of container brands (Cal. Bus. & Prof. Code §14425), laundry marks (Cal. Bus. & Prof. Code §14480), and names of farms, ranches, estates, or villas (Cal. Bus. & Prof. Code §14460); *see infra* J.1.(a)-(d).

11. Restrictions
The statute precludes registration of the following: immoral, deceptive, or scandalous matter; matter that may disparage or falsely suggest a connection with persons living or dead, institutions, beliefs, or national symbols, or that may bring them into contempt or disrepute; marks consisting of the flag or coat of arms or other insignia of the United States of America, of any state or municipality, or of any foreign nation, or any simulation thereof; marks consisting or comprising the name, signature, or a portrait identifying a particular living individual, except by the individual’s written consent; and marks likely to be confused with a mark registered or a mark or trade name used in California by another and not abandoned. Cal. Bus. & Prof. Code §14205.

The statute further precludes, under certain conditions, registration of marks consisting of: merely descriptive or deceptively misdescriptive terms; primarily geographically descriptive or deceptively misdescriptive terms; or merely a surname unless the applicant can prove the mark has become distinctive. *Id.*

Nothing within the statute shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time within common law. *Id.* at §14259.

A registration may be cancelled by the Secretary of State upon receipt of a voluntary request from the owner of the mark (i.e., the registrant or assignee), if it is not renewed upon the expiration of the current effective term, if a check or other remittance for a filing fee is
not paid upon presentation and if payment made by cashier’s check is
not made within thirty days thereafter, or, within six months of
registration, if a ministerial error has been made in determining
likelihood of confusion with a previously registered mark. Cal. Bus. &
Prof. Code §14230(a), (b), (e), (f). Cancellation may be ordered by a
court of competent jurisdiction on virtually any grounds. Id. at
§14230(d). Specifically, a court of competent jurisdiction may order
cancellation where the mark has been abandoned, or where the
registration was improper or fraudulent. Id. at §14230(c)(1)-(4).
Cancellation may also be ordered if the mark has become generic. Id.
at §14230(c)(5). Finally, cancellation may be ordered if there is a
likelihood of confusion between the mark and another mark regis-
tered in the United States Patent and Trademark Office prior to the
date the California registrant filed its application. Id. at §14230(c)(6).
However, if the California registrant can prove that it is the owner of a
concurrent registration in the United States Patent and Trademark
Office covering an area including the State of California, the California
registration shall not be cancelled for that area of the State of
California. Id.

12. Use in State
The bona fide “use” of the mark on goods sold or transported in
commerce in California and/or on services rendered in California is
required. Id. at §§14202(h), 14207.

13. Term of Registration
Five years from the date of registration. Id. at §14217(a).

14. Renewal
An application for renewal (Form TM 109, available at http://bpd.
cdn.sos.ca.gov/ts/forms/tm-109.pdf) must be filed with the Secretary
of State within (but not before) six months prior to the expiration of
the registration. Id. The renewal fee is $30. Cal. Gov. Code §12193(c).
Renewal applications require a verified statement that the mark has
been and is still, in use in the State of California. Though the form
makes no reference to it, the renewal requires one original specimen
showing the mark as currently used in connection with the
§14217(d). The specimen should be no larger than 8.5” × 11”, and
should lay flat. Photographs are permitted, but computer generated
prototypes are not. The renewal term is five years, and a registration
may be successively renewed for five-year periods. Id.
15. Renewal Forms
A separate state-provided form is required. (Form TM 109 available at http://bpd.cdn.sos.ca.gov/ts/forms/tm-109.pdf) Id. Online renewals are not available. The form does not mention a specimen of use but a specimen is required. See the instructions.

16. Other Forms
An assignment form (Form TM 108, available at http://bpd.cdn.sos.ca.gov/ts/forms/tm-108.pdf) which is used for recordation of assignments, mergers, and other changes in ownership, must be filed with the Trademark Unit within three (3) months after the date of an assignment, or prior to the subsequent purchase. Cal. Bus. & Prof. Code §14220(a). The fee is $30. Cal. Gov. Code §12193(b). A name-change form (Form TM 110, available at http://bpd.cdn.sos.ca.gov/ts/forms/tm-110.pdf) to record a change of name of the mark’s owner as opposed to for an ownership change. The latter requires the assignment form. Id at §14220(b). The name-change form must be accompanied by a true and correct copy of the original California document showing the name-change, or a copy of the original document filed in another jurisdiction and certified by their filing office. Id. No fee is required. Neither form is available for online filing.

17. Post-Registration Forms
There are no forms other than the renewal, name change, and assignment forms described above. Only the initial registration application form may now be filed online. All other filings must be submitted on paper by mail.

18. Fees After Registration

19. Use Requirement for Renewal
A verified statement of current and continued use of the mark in California, including a specimen showing the mark in such use is required. Cal. Bus. & Prof. Code §14217(d); Form TM 109 (available at http://bpd.cdn.sos.ca.gov/ts/forms/tm-109.pdf).

20. Presumptions
   a. In Favor of Registrant
The certificate shall be admissible in evidence as competent and

b. Presumption of Doing Business
See supra 20.a., regarding a verified statement of use. A registration is active for five years, but renewal requires further evidence or verification of continuous use.

21. Remedies for Infringement
Injunctions are available to owners of famous marks and of registered marks. Cal. Bus. & Prof. Code §§14247, 14250.

Damages or lost profits may be recoverable for registered marks, as well as treble damages. Id.

See Section F for discussion of remedies for counterfeiting.

22. Persons Entitled to Sue
Only the owner (i.e., registrant) of a famous mark or a registered mark may sue for infringement. Cal. Bus. & Prof. Code §§14247, 14250. The term “registrant” includes legal representatives, successors, or assigns of the owner or original registrant. Id. at §14202(g).

B. Dilution

1. Code Section

2. Judicially Created Dilution Doctrine
Not applicable, although valid common law marks and trade names may be “diluted.”

3. Tarnishment
For tarnishment, the statute requires that “association arising from the similarity between a mark or a trade name and a famous mark that harms the reputation of the famous mark” be shown. Cal. Bus. & Prof. Code §14202(m). “Dilution by blurring” can also occur where there is an “association arising from the similarity between a mark or a trade name and a famous mark that impairs the distinctiveness of the famous mark.” Id. at §14202(l).

4. Likelihood of Confusion
Actual or likely confusion, mistake, or deception is not required for a finding of dilution. Id. at §14202(k)(2).
5. Competition Between the Parties
Dilution can occur regardless of whether there is competition between the owner of the famous mark and the other parties. *Id.* at §14202(k)(1).

6. Fame or Distinctiveness
The statute requires that the mark be famous and distinctive, either inherently or through acquired distinctiveness. *Id.* at §14247(a). "[A] mark is famous if it is widely recognized by the general consuming public of this state, or by a geographic area of this state, as a designation of source of the goods or services of the mark's owner." *Id.* at §14247(a). In determining whether a mark is famous, a court may consider factors including, but not limited to, all of the following: (1) the duration, extent, and geographic reach of advertising and publicity of the mark in California, whether advertised or publicized by the owner or third parties; (2) the amount, volume, and geographic extent of sales in California of goods or services offered under the mark; (3) the extent of actual recognition of the mark in California; (4) whether the mark is the subject of a state registration in California, or a federal registration under the Act of March 3, 1881, or under the Act of February 20, 1905, or on the Principal Register under the Trademark Act of 1946 (15 U.S.C. §1051 et seq.), as amended. *Id.*

7. Remedies
Injunctive relief is available. *Id.* at §14247(b). If the dilution was willful, then all the remedies for infringement are available. *Id.;* (see supra A.21).

8. Leading Cases

The authors know of no California state court cases which have thoroughly analyzed the dilution statute under the Model Trademark Act.
Act. In *Tu Thien The, Inc. v. Tu Thien Telecom, Inc.*, 2014 U.S. Dist. LEXIS 111200 at *6 (C.D. Cal. Aug. 11, 2014), the court noted that “[t]he analysis of dilution claims under federal and California law is the same,” but that “[t]he primary difference between the two claims is the level of fame that must be established” because “[u]nder California law, ‘a mark is famous if it is widely recognized by the general consuming public of this state, or by a geographic area of this state, as a designation of source of the goods or services of the mark’s owner.’” *Id.* (citing *Jada Toys, Inc. v. Mattel, Inc.*, 518 F.3d 628, 634 (9th Cir. 2008) and Cal. Bus. & Prof. Code §14247(a).

9. Extraterritorial Effect

The injunction does not extend beyond the borders of California.

10. Preemption Cases

The authors know of no specific preemption cases discussing the Model State Trademark Act. However, in *Airwair Int’l Ltd. v. Vans, Inc.*, 2013 U.S. Dist. LEXIS 100120 (N.D. Cal. July 17, 2013), the district court confirmed that “the analysis for California dilution claims is the same as the analysis under the federal Trademark Dilution Revision Act” and, therefore, the Lanham Act did not preempt the state claims, maintain the cause of action for trademark dilution under Cal. Bus. & Prof. Code §§14202 and 14247. In *Golden Door, Inc. v. Odisho*, 437 F. Supp. 956 (N.D. Cal. 1977), the district court granted injunctive relief under the old dilution act (Cal. Bus. & Prof. Code §14330) without discussing the issue of federal preemption. On appeal, the Ninth Circuit held the Lanham Act did not preempt plaintiff’s rights under California law. *Golden Door, Inc. v. Odisho*, 646 F.2d 347, 351 (9th Cir. 1980).

C. Unfair Business Practices Acts (Little FTC Acts)

1. Code Section


2. Scope

The express purpose of the California Unfair Practices Act is to “safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented.” Cal. Bus. & Prof. Code §17001.
The statute is designed to cover a great variety of transactions other than conventional sale of real or personal property. *Los Angeles Check Sellers Ass’n v. United States Nat’l Bank*, 275 Cal. App. 2d 570, 80 Cal. Rptr. 321 (1969); Cal. Bus. Prof. Code §17024.

Generally, the statute is designed to prevent a manufacturer from obtaining an unfair advantage over a competing manufacturer of the same product. *Plotkin v. Tanner’s Vacuums*, 53 Cal. App. 3d 454, 458, 125 Cal. Rptr. 697 (1975).

3. Prohibited Activities

Section 17040 prohibits locality discrimination with intent to destroy or prevent competition in the distribution and sale of any “article or product” of general use or consumption. Cal. Bus. & Prof. Code §17040.

Section 17043 prohibits loss selling, or selling any article or product at less than cost for the purpose of injuring or destroying competitors, and Sections 17044 and 17030 prohibit the use of loss leading products, meaning any article or product sold at less than cost. Section 17045 prohibits the secret payment of rebates, refunds, commissions, or unearned discounts to the injury or destruction of competition, and Section 17046 makes unlawful the use of threats, intimidation, or boycotts to effectuate any of the prohibited activities.

4. Remedies

a. State Administrative Enforcement

Although not expressly included within the list of proper plaintiffs under Cal. Bus. & Prof. Code §17070, California courts have held that actions under the Act may be maintained by the state through the Attorney General. *People v. Part*, 102 Cal. App. 2d 653, 228 P.2d 68 (1951); *People v. Centr-O-Mart*, 34 Cal. 2d 702, 214 P.2d 378 (1950).

b. Criminal Enforcement

Cal. Bus. & Prof. Code §17100 provides misdemeanor penalties for each single violation of the Act. The punishment consists of a fine of not less than $100 nor more than $1,000, or imprisonment not exceeding six months, or both, in the court’s discretion.

c. Civil Penalties

The California Act does not specifically provide for an administrative action to redress violations. The Attorney General may bring an action on behalf of aggrieved persons; the remedies provided are the same as those provided to private litigants. In contrast, under Cal. Bus. & Prof. Code §§17206, 17536, which are part of the California Unfair Competition Law (Cal. Bus. & Prof. Code §17200 et seq.), civil...
penalties of up to $2,500 per violation are permitted, and actions by the Attorney General, District Attorney, county counsel, city attorneys, or private persons are currently authorized. Cal. Bus. & Prof. Code §17206.

d. Private Actions and Remedies

In addition to injunctive relief, a plaintiff may recover actual and treble damages. Cal. Bus. & Prof. Code §§17070, 17082. An award of treble damages is mandatory under §17082 if a violation of the Act is established. Id. §17082; G.H.I.I. v. MTS, Inc., 147 Cal. App. 3d 256, 277, 195 Cal. Rptr. 211, 224 (1983).

The successful plaintiff may also recover reasonable attorney fees and costs. Cal. Bus. & Prof. Code §17082.

e. Class Actions
There is no express provision in the Act for suits brought as class actions. However, the California Consumers Legal Remedies Act, Cal. Civ. Code §1750 et seq., expressly provides for the bringing of class action suits by consumers against any person using unfair business practices in connection with the sale or lease of goods or services. Section 1770 sets forth the proscribed practices under that Act, which comport generally with the proscribed practices under the Unfair Business Practices Act.

Class actions are also expressly authorized under Cal. Code Civ. Pro. §382; a class action suit based on alleged violations of the Unfair Business Practices Act could therefore be brought pursuant to that section.

f. Notice
Notice is not a prerequisite to filing suit under the Act. Cal. Bus. & Prof. Code §17070.

g. Standing

h. Consumer Products
Cal. Bus. & Prof. Code §17024 defines “article or product” to include
any article, product, commodity, thing of value, service or output of a service trade, except (1) motion pictures licensed for exhibition to movie theaters, and (2) articles, services, and products for which rates are established under the jurisdiction of the Public Utilities Commission.

i. Jurisdiction of Courts
There is no provision in the Act requiring that suit be brought before a specific or special tribunal.

j. Rules
There are no administrative rules or regulations under the Act.

k. Administrative Investigative Authority
Cal. Bus. & Prof. Code §§17083-17084 provide for the issuance of subpoenas and orders to permit inspection and copying of documents and records. As the Act has no separate provisions for actions brought by the Attorney General, or specific state agencies, the remainder of this subcategory is inapplicable.

In contrast, under the California Unfair Competition Law, Cal. Bus. & Prof. Code §17200 et seq., the State Department of Consumer Affairs and local consumer affairs agencies have authority to request that the Attorney General bring an action for violations of that statute (see also C.4. c, supra).

5. Administrator
The Act does not provide for administrative action under any department, but for legal action in state courts.

6. Leading Cases

D. Uniform Deceptive Trade Practices Act
California has not adopted the UDTPA nor a variation thereof. California’s Unfair Competition Law, Cal. Bus. & Prof. Code §17200 et seq., prohibits unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising. See infra I.1–9.

1.–5. Not applicable.
E. Trademark Counterfeiting

1. Specific Statutes

2. Definition
A “counterfeit” mark is defined as “a spurious trademark, service mark, collective mark, or certification mark that is identical to, or substantially indistinguishable from, a registered mark that is used on or in connection with goods or services or any labels or packaging or components. Cal. Bus. & Prof. Code §14202(n).

   a. Registration Requirement
To be entitled to the remedies of the statute a party must own a trademark or service mark registered in California. Cal. Bus. & Prof. Code §14245.

   b. Identity of Types of Goods
See E.2, supra.

3. Who Can Sue
The statute provides for suit only by the owner (or registrant) of the registered mark.

4. Remedies
   a. Civil
In addition to the usual remedies discussed in Section A.21, owners of registered marks may seek an order for seizure of goods, labels, packaging, and other components bearing counterfeit marks and all instrumentalities used in the production of counterfeit goods. Id. at §14250. Attorney fees are available along with punitive damages to a defendant who was subject to an improper seizure order that was sought in bad faith. Id. at §14250.

   b. Criminal
See discussion of criminal counterfeiting statute, California Penal Code §350 in L, infra.

5. Protective Provisions for Defendants
If it is determined that the seized goods are not counterfeit, any person having a financial interest in the goods may have recovery, against any person causing seizure of the non-counterfeit goods for any damages proximately caused thereby, of the costs required to defend against the seizure, attorney fees if the seizure action was

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F. False Advertising

1. Statute
California’s False Advertising Statute is part of California’s general Unfair Competition Law, Cal. Bus. & Prof. Code §17200 et seq., discussed at I.1-.9, infra. Section 17500 et seq. specifically addresses false advertising.

2. Prohibited Practices
Section 17500 prohibits the dissemination, in any advertising media, of any “statement” concerning real or personal property or services offered for sale which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

3. Limitations
The statute is not limited to consumer goods, but applies to false or misleading statements concerning real or personal property or the performance of services. Cal. Bus. & Prof. Code §17500.

4. Who Can Sue
Suit may be brought by the Attorney General, any district attorney, county counsel, city attorney, or city prosecutor in California, and by any person who has suffered injury in fact and has lost money or property as a result of a violation. Cal. Bus. & Prof. Code §17535; see Californians for Disability Rights v. Mervyn’s, LLC, 39 Cal. 4th 223, fn. 2, 138 P.3d 207, fn. 2 (2006).

5. Remedies

6. Leading Cases
G. Corporate Name Reservation Prior to Incorporation

1. Statute
   Statutes relating to registration are Cal. Corp. Code §§2101, 2106 (foreign corporations), and 13409 (professional corporations).

2. Reservation
   a. Time Period
      A proposed corporate name may be reserved for sixty days. Cal. Corp. Code §201(d).
   b. Renewal
      Consecutive reservations are not permitted, but subsequent reservations are permitted following at least one day after a prior reservation expires.
   c. Fee
   d. Prerequisite to Incorporation
      Advance reservation is not required.

3. Conflicting Names
   Where a new corporation’s name is similar to an existing corporation’s name or the name of a foreign corporation authorized to transact business in California, the name will not be approved without proof of consent by the domestic or authorized foreign corporation and the Secretary of State’s finding that the public will not be misled. Cal. Corp. Code §§201(b), 2106(b). A foreign corporation must also agree to transact business in California under an assumed name, where the foreign corporation has a name which would not be available to a new corporation under §201(b). Id. at §2106(b). Alternatively, the foreign corporation may obtain and file an order from a court of competent jurisdiction permanently enjoining the other corporation from doing business under the conflicting name. Id.
4. Restrictions on Use of “Corp.” and Similar Terms
There is no apparent restriction on use of the term “Corporation” or other similar terms by an unincorporated entity.

5. Required or Authorized Use of “Corp.” or Similar Term
The name of a close corporation must contain the word “Corporation,” “Incorporated,” “Limited,” or an abbreviation of one of those words, and the articles must state “This corporation is a close corporation.” Cal. Corp. Code §§202(a), 158.

6. Search Provision
A person may request a search for availability of a name from the California Secretary of State, Corporate Division by mailing a completed Name Availability Inquiry Letter (available at https://bpd.cdn.sos.ca.gov/corp/pdf/naainquiryform.pdf) to the California Secretary of State’s office in Sacramento. No fee is required.

7. Policy Regarding Identical Words
The Secretary of State has discretion in determining that a corporate name is too similar to an existing registered name. See, e.g., Cranford v. Jordan, 7 Cal. 2d 465, 61 P.2d 45 (1936) (no abuse of discretion in finding “Transamerica Corporation” not available for use because of confusing similarity to “Transamerica Service Corporation”).

8. Substantive Rights
No trademark rights arise from incorporation under the name; trademark and service mark rights arise from use. The filing of Articles of Incorporation does not itself authorize the use of a corporate name in violation of the rights of another under the Lanham Act or California statutes. Cal. Bus. & Prof. Code §14417.

The filing of Articles of Incorporation does create a rebuttable presumption of the exclusive right to use the corporate name if the corporation is (1) the first to file, and (2) actually using the name in trade or business. This presumption affects only the burden of producing evidence. Id. at §14415.

9. Prohibited Terms
The words “Bank,” “Trust,” “Trustee,” or related words cannot be used without a certificate of approval from the California Commissioner of Business Oversight. Cal. Corp. Code §201(a).

10. Administrative Agency
Secretary of State, Business Programs Division
1500 11th Street

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H. Trade Name Registration (Fictitious Name Statutes)

1. Purpose

2. Entities Required to File
Any individual, partnership or other association (including joint ventures, limited liability companies, and business trusts) or corporation regularly transacting business in California for profit under a “fictitious business name” must file a fictitious business name statement. Cal. Bus. & Prof. Code §17910.

With respect to individuals, “fictitious business name” means a name that does not include the surname of the individual or a name that suggests the existence of additional owners. Id. at §17900(b)(1).

With respect to partnerships and other associations other than limited partnerships and foreign limited partnerships, “fictitious business name” means a name that does not include the surname of each general partner or a name that suggests the existence of additional owners. Id. at §17900(b)(2).

With respect to corporations, “fictitious business name” means any
name other than the corporate name stated in the filed articles of incorporation. *Id.* at §17900(b)(3).

With respect to limited partnerships and foreign limited partnerships, "fictitious business name" means any name other than the name of the limited partnership on file with the Secretary of State. *Id.* at §17900(b)(4).

3. **Limited Partnerships**

   Limited partnerships are required to register if they are regularly transacting business in California for profit under any name other than the name on file with the Secretary of State. Cal. Bus. & Prof. Code §§17900(b)(4), 17910.

4. **Where to File**

   The fictitious business name statement must be filed with the clerk of the county in which the entity has its principal place of business in California. If the business has no principal place of business in California, then the statement must be filed with the Clerk of Sacramento County. Cal. Bus. & Prof. Code §17915.

5. **Fees**

   The cost of filing a fictitious business statement is $10 for the first fictitious business name and owner, and $2 for each additional fictitious business name or owner filed on the same statement and doing business at the same location. Cal. Bus. & Prof. Code §17929.

6. **Publication**

   The fictitious business name statement must be published (within thirty days after filing) in a newspaper of general circulation in the county where the principal place of business is located once a week for four successive weeks. An affidavit of publication must be filed with the county clerk when publication has been accomplished. Cal. Bus. & Prof. Code §17917; Cal. Gov. Code §6064.

7. **Foreign Corporations**

   All corporations regularly transacting business for profit in California are included. Cal. Bus. & Prof. Code §17910.

8. **Civil Penalties**

   Prohibition against maintaining a court action on any account, contract, or transaction made in the fictitious business name until the statement has been executed, filed and published. Cal. Bus. & Prof. Code §17918.

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9. Criminal Penalties
Execution, filing, or publication of a statement knowing that it is false in whole or in part is a misdemeanor and punishable by a fine not to exceed $1000. Cal. Bus. & Prof. Code §17930.

10. Certificate
One certified copy of the statement is furnished to the registrant or business filing the statement. Cal. Bus. & Prof. Code §17929.

11. Renewal or Deletion
A fictitious business name statement must be renewed at the end of five years from the date on which it was filed, or within forty days after any change in the facts set forth in the statement, except a change in the residence address of an individual, general partner, or trustee. Cal. Bus. & Prof. Code §17920. Upon ceasing to transact business in California under the fictitious business name, a statement of abandonment of use of fictitious business name shall be filed. Id. at §17922. Filing a statement of abandonment results in the expiration of the Fictitious Business Name Statement under this statute. Id. at §§17920, 17922.

12. Substantive Rights
Filing of the fictitious business name statement gives rise to a rebuttable presumption that the registrant has the exclusive right to use the name as a trade name in the county in which the statement is filed if the registrant (1) is the first to file, and (2) is actually using the name in connection with a trade or business in that county. Cal. Bus. & Prof. Code §14411. This presumption affects only the burden of producing evidence. Id. at §17926(d). No substantive trade name rights are created by filing. See also, id. at §17926(c), (d). The filing of the statement does not, of itself, authorize the use of the business name in violation of the rights of another. Id. at §14418.

13. Search
The county clerk is required to maintain an index of fictitious business name statements filed, thus, searching is possible. Cal. Bus. & Prof. Code §17925. Compilations of filings are also available. Id at §17928. Some counties provide search information online, for example, Los Angeles County’s fictitious business name search is available at http://rrcc.lacounty.gov/Clerk/FBN_Search.cfm. San Francisco County can be accessed via www.criis.com.
14. Agent
The statute does not explicitly require designation of a registered agent for service of process.

15. Mail Registration
Registration by mail is permitted. Cal. Bus. & Prof. Code at §17916, see id. at § 17913(f).

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

1. Statutory Section
Cal. Bus. & Prof. Code §17200 et seq. constitutes the statutory Unfair Competition Law in California. It includes, but is not limited to, false advertising. See supra F.1.-6. Unfair competition is broadly defined as any "unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Historically, California’s Unfair Competition Law has received negative publicity for its susceptibility to abuse by private attorneys. Accordingly, attorneys are cautioned to consider the applicability of the Unfair Competition Law before pursuing particular claims that may fall within the broad purview of the statute. For a detailed discussion, see, e.g., Jacquetta Lannan, Comment, Saving 17200: An Analysis of Proposition 64, 46 Santa Clara L. Rev., 451 (2006), available at http://digitalcommons.law.scu.edu/lawreview/vol46/iss2/6/.

2. Derivation
The statute was originally Cal. Civ. Code §3369, which codified the common law action for unfair competition in California. That common law action was limited to suits between business competitors. See Meta-Film Associates, Inc. v. MCA, Inc., 586 F. Supp. 1346, 1361-62 (C.D. Cal. 1984); Barquis v. Merchants Collection Ass’n, 7 Cal. 3d 94, 109-12, 101 Cal. Rptr. 745, 496 P.2d 817 (1972). In Barquis, the California Supreme Court expanded the cause of action to include suits brought by consumers. The Attorney General may also bring suit for civil penalties and injunctive relief.

3. Intent
Unlawful intent is not an element of a cause of action. Any business practice that is likely to deceive the public falls within the scope of the statute. People v. Toomey, 157 Cal. App. 3d 1, 203 Cal. Rptr. 642 (1984). Section 17200 also prohibits any business practice that is unlawful, unfair, or fraudulent. Committee on Children’s Television v. General
I.8.


4. Defenses
Cal. Bus. & Prof. Code §17208 provides, “Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued.” Accrual is postponed until the plaintiff “discovers or has reason to discover the cause of action.” Glue-Fold, Inc. v. Slutterback Corp., 82 Cal. App. 4th 1018, 1029 (Cal. 2000).

5. Remedies
In suits brought by or on behalf of consumers, the remedy under California’s statutory unfair competition law is limited to injunctive relief, and to restitution, where the court determines that restitution is necessary, to deter future violation or to foreclose retention of any ill-gotten gains. See Cal. Bus. & Prof. Code §17203; See also Meta-Film Associates, Inc. v. MCA, Inc., 586 F. Supp. 1346, 1361-62 (C.D. Cal. 1984); Fletcher v. Security Pacific Nat’l Bank, 23 Cal. 3d, 442, 153 Cal. Rptr. 28, 591 P.2d 51 (1979). Plaintiffs may not recover damages or attorney fees. See Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co., 20 Cal. 4th 163, 179 (Cal. 1999). Cal. Bus. & Prof. Code §17205 provides that “Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties under all other laws of this state.” Additionally, Cal. Bus. & Prof. Code §17206 provides for civil penalties of up to $2,500 for each violation of the unfair competition law.

6. Common Law Action for Unfair Competition
California’s common law action for unfair competition is now codified in Cal. Bus. & Prof. Code §17200 et seq.

7. Elements of a Common Law Cause of Action
See I.1, 2 and 3, supra.

8. Remedies
See 1.5, supra.
9. Leading Cases

J. Statutes of Special Application and Personal Name Statutes

1. Special Statutory Sections
   (a) Container Brands. Cal. Bus. & Prof. Code §§14425-14438, provides that persons engaged in the manufacturing, packing, canning, bottling, or selling of any substance in containers with a name or other mark or device thereon, or whose equipment or supplies, owned by and used that persons business, bears a name or other mark or device thereon, may file with the Secretary of State a description of the name, mark, or device as a brand. Cal. Bus. & Prof. Code §14427. The filing fee is $30. Cal. Gov. Code §12193(d).

   (b) Farm Names. Cal. Bus. & Prof. Code §§14460-14465 provides that farm owners or lessees in California may register the name of the farm with the Secretary of State and use the name as a trademark on the products grown on the farm. Cal. Bus. & Prof. Code §§14461, 14462. As used in Cal. Bus. & Prof. Code §§14460-14465, “farm” includes ranches, estates, and villas. Registration has the same effect as registration of a trademark. Id. at §14463. The registration fee is $10. Cal. Gov. Code §12193(g).

   (c) Laundry Supply Designations. Cal. Bus. & Prof. Code §§14480-14491 provides that any person engaged in the business of supplying clean laundered garments, towels, table linen or other articles may register the name, mark, or device woven, impressed, or applied to the garments, towels, table linen, or other articles. Cal. Bus. & Prof. Code §14481. Registration requires filing a description of the name, mark, or device with the Secretary of State and publishing, in a newspaper published in the county in which the principal place of business of the supplier is located, the description of the name, mark, or device once a week for three successive weeks. Cal. Bus. & Prof. Code §§14482-14483. The filing fee is $10 for filing with the Secretary of State. Cal. Gov. Code §12193(e). The statute makes it a misdemeanor to traffic in or to conceal or remove any registered name, mark, or device from laundry supplies or a felony where the value of supplies exceeds $950. Cal. Bus. & Prof. Code §§14484, 14491.

   (d) Names Other Than Trademarks. Cal. Bus. & Prof. Code §§14492-
14495 provide for the registration of the name of any lodge, order, beneficial association, fraternal or beneficial society or association, historical, military, or veterans organization, or labor union. Cal. Bus. & Prof. Code §14492. The registration fee is $10. Cal. Gov. Code §12193(f). Use of the registered name without consent can be enjoined; actual damages can be recovered. Cal. Bus. & Prof. Code §14494.

2. Use of Personal Name
Not applicable. See K, infra.

K. Right of Publicity

1. Recognition
Both a common law and a statutory right of publicity are recognized in California. Leading cases discussing the common law right include the following: Comedy III Prods., Inc. v. Gary Saderup, Inc., 25 Cal. 4th 387, 106 Cal. Rptr. 2d 126 (2001); Eastwood v. Superior Court, 149 Cal. App. 3d 409, 198 Cal. Rptr. 342 (1983); Lugosi v. Universal Pictures, 25 Cal. 3d 813, 160 Cal. Rptr. 323, 603 P.2d 425 (1979); White v. Samsung Electronics America, Inc., 971 F.2d 1395, 1397 (9th Cir. 1992); Waits v. Frito-Lay, Inc., 978 F.2d 1093 (9th Cir. 1992); Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988).

2. Applicable Statute
California Civil Code (hereinafter Cal. Civ. Code) §3344 prohibits the knowing use of a person’s name, voice, signature, photograph, or likeness on or in products, merchandise, or goods or for advertising, selling or soliciting purchases of products, merchandise, goods or services without consent. Leading cases discussing the statutory right include the following: David v. Electronic Arts Inc., 775 F.3d 1172 (9th Cir. 2015); Crosby v. HLC Properties, Ltd., 2014 Cal. App. LEXIS 94, 2014 WL 318205 (Cal. App. 2d Dist. Jan. 29, 2014); Milton H. Green Archives, Inc. v. CMG Worldwide, Inc., 568 F. Supp. 2d 1152 (C.D. Cal 2008), aff’d 692 F.3d 983, 2012 WL 3743100 (9th Cir. 2012); Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC, 692 F.3d 983 (9th Cir. 2012); Maxwell v. Dolezal, 231 Cal. App. 4th 93, 97 (Cal. App. 2d Dist. 2014). The pre-1984 version of Cal. Civ. Code §3344 applied only to an unauthorized use “for purposes of advertising products, merchandise, goods or services, or for purposes of solicitation of purchases of products” and therefore cases decided under the pre-1984 version of Cal. Civ. Code §3344, such as Eastwood v. Superior Court, 149 Cal. App. 3d 409 (1983),
supra, must be read with this change in mind. See KNB Enterprises v. Matthews, 78 Cal. App. 4th 362, fn. 5, 92 Cal. Rptr. 2d 713, fn. 5 (2000).

3. Elements of Cause of Action
The elements of a cause of action for violation of a right of publicity are (1) the defendant’s use of the personality’s identity; (2) the appropriation of the plaintiff’s name or likeness to defendant’s advantage, commercial or otherwise; (3) lack of consent; and (4) resulting injury. White v. Samsung Elecs. Am., Inc., 971 F.2d 1395, 1397 (9th Cir. 1992); Eastwood v. Superior Court, 149 Cal. App. 3d 409, 198 Cal. Rptr. 342 (1983); Downing v. Abercrombie & Fitch, 265 F.3d 994, 1001 (9th Cir. 2001).

4. Survivability
Cal. Civ. Code §3344.1 provides for descendability of the right of publicity and for registration with the Secretary of State by a person who claims ownership of a right of publicity. It provides that registration is a prerequisite to a damage action but also states that the remedies provided by the section are cumulative of other remedies. It is questionable whether injunctive relief would be available without registration. The Secretary of State provides a searchable database of personality names, which can be accessed at https://specialfilings.sos.ca.gov/sii.

There is a procedure for applying for registration.
   a. Forms
   b. Fee
A registration fee of $10 is required by Cal. Gov. Code §12195(d).
   c. Requirements
The form must be verified and include the name and date of death of deceased personality, name and address of claimant, basis of the claim and the rights claimed.

5. Term of Survival

6. Secondary Meaning Requirement
There is no statutory requirement for secondary meaning.

7. Remedies
Injunctive relief as well as actual and punitive damages, including lost
profits, are recoverable. The statute sets a minimum damages limit at $750. Attorney fees and costs may also be awarded. Cal. Civ. Code Sections 3344 and 3344.1 complement California’s common law right of publicity and its remedies are cumulative.

8. Limitations
If the unauthorized publication of the plaintiff’s name or likeness is in connection with a fictionalized report, plaintiff must allege and prove scienter, i.e., that the article was published with knowledge or in reckless disregard of its falsity. Stewart v. Rolling Stone LLC, 181 Cal. App. 4th 664, 105 Cal. Rptr. 3d 98 (2010), as modified on denial of reh’g (2010); Eastwood v. Superior Court, supra K.3, 149 Cal. App. 3d at 425-26, 198 Cal. Rptr. 342 (1983).

Re: Cal. Civ. Code §3344, see exceptions noted in sub-sections (b)-(g); and Cal. Civ. Code §3344.1 (g)-(n).

L. Criminal Statutes

1. Statutory Provision

   Prohibited Practices. Cal. Penal Code §350 prohibits the willful manufacture, intentional sale or the knowing possession for sale of any counterfeit mark registered with the Secretary of State or on the Principal Register of the United States Patent and Trademark Office.

   Cal. Penal Code §351(a) makes it a misdemeanor for any person to sell, attempt to sell, offer for sale, or assist in the sale of goods which he willfully and falsely represents to be the goods of anyone other than the true dealer, manufacturer, or producer. An exception is provided for persons who sell or offer for sale under his own name or brand the product of another manufacturer or producer with that manufacturer or producer’s written consent.

   Penalties. A violation of Cal. Penal Code §350 may result in a $10,000 fine or imprisonment for up to one year or both in the case of an individual, and a fine of up to $200,000 in the case of a corporation if the offense involves less than 1000 articles. If the offense involves more than 1000 articles, it may result in a $500,000 fine or imprisonment for up to three years or both in the case of an individual and a fine of up to $1,000,000 in the case of a corporation. A subsequent violation by an individual may result in a $50,000 fine and up to a three year term in prison. A subsequent violation by a corporation may result in a $400,000 fine.
M. Trade Disparagement or Trade Libel

1. Statute or Common Law Doctrine
California recognizes a common law cause of action for trade libel. In California, a disparaging statement about a competitor’s product that causes the competitor to suffer pecuniary damages is actionable as trade libel.

2. Elements of Cause of Action
The elements of a cause of action for trade libel are (1) a publication concerning the quality of plaintiff’s property (2) which induces others not to deal with him, and (3) special damages. Nichols v. Great American Ins. Companies, 169 Cal. App. 3d 766, 215 Cal. Rptr. 416 (1985); Hartford Casualty Ins. Co. v. Swift Dist., Inc., 59 Cal. 4th 277, 172 Cal. Rptr. 3d 653 (2014). It is not necessary that the disparaging publication be intentionally designed to injure, but special damages must be shown. Nichols; see also Erlich v. Etner, 224 Cal. App. 2d 69, 36 Cal. Rptr. 256 (1964). Further, the statement must be made with actual malice, that is, with knowledge it was false or with reckless disregard for whether it was true or false. JM Mfg. Co., Inc. v. Phillips & Cohen LLP, 247 Cal. App. 4th 87, 201 Cal. Rptr. 3d 782 (2016). A trade libel claim must identify the author or speaker, recipient, time, and location of each allegedly libelous statement. Code Rebel, LLC v. Aqua Connect, Inc., 2013 U.S. Dist. LEXIS 137937 (C.D. Cal. Sept. 24, 2013).

3. Presumptions
General damages are not presumed; special damages are required,
and only the loss of specific sales are recoverable. *Erlick v. Etner*, *supra* M.2.

4. Remedies
The cases have not discussed the question whether injunctive relief is available. However, under the doctrine of prior restraint, an injunction probably will not issue to prevent libel. An injunction may be available if the libel were found to constitute false advertising.

5. Punitive Damages
Punitive damages are recoverable upon proof of actual damages. *Erlich v. Etner*, *supra* M.2.

6. Single Publication

7. Defenses
The defenses typically applicable in defamation actions (truth, consent, absolute privilege, and qualified privilege) apply to trade libel as well.

N. Franchising or Business Opportunity Statutes

1. Statute
Cal. Corp. Code §§31000 *et seq.* (the Franchise Investment Law or “FIL”) governs the sale of franchises in California. Franchises are also governed by Bus. & Prof. Code §20000 *et seq.* (the California Franchise Relations Act or “FRA”). Under the FIL and the FRA, a franchise is a contract or agreement by which (1) a franchisee is granted the right to engage in a marketing system substantially prescribed by the franchisor; (2) the business is substantially associated with the franchisor’s trademark or other commercial symbol; and (3) the franchisee is required to pay a franchise fee. *Thueson v. U-Haul Internat., Inc.*, 144 Cal. App. 4th 664, 670 (Cal. 2006).

For cases discussing California’s Franchise Investment Law generally, see: *E.S. Bills v. Tzucanow*, 38 Cal. 3d 824, 215 Cal. Rptr. 278 (1985); *People v. Kline*, 110 Cal. App. 3d 587, 168 Cal. Rptr. 185 (1980); *Spahn v. Guild Industries Corp.*, 94 Cal. App. 3d 143, 156 Cal. Rptr. 375 (1979);
2. Registration
Cal. Corp. Code §31110 requires that a franchise proposed to be offered or sold in California must first be registered with the Commissioner of Corporations. A critical issue is the determination of whether a “franchise” (as opposed to another type of license or arrangement) is being offered. Cal. Corp. Code §31005. Sometimes a close question is presented regarding whether a trademark license constitutes a franchise under the statute. To clarify when a franchise exists, in 1974, the Commissioner of Corporations issued “Guidelines for determining whether an agreement constitutes a franchise,” issued by the Commissioner of Corporations. (Release 3-F, revised, June 22, 1994), available at: http://www.dbo.ca.gov/Commissioner/Releases/3-F.asp.

3. Forms
Cal. Corp. Code §31111 of the FIL and §310.111 of Title 10 of the California Code of Regulations (“California Franchise Regulations”) (and accompanying Guidelines for Franchise Regulations issued by the Department of Business Oversight, Revised February 2019, available at: http://www.dbo.ca.gov/forms/doc/DBO-310.111.pdf) set forth in detail the information about the franchise registration application and related forms. State forms are required and these are available from the Department of Business Oversight. For forms, call 1-866-275-2677 or visit the Department of Business Oversight’s website at www.dbo.ca.gov.

4. Fees

5. Approval Procedure
The Commissioner does not actually “approve” a franchise registration. Instead the Commissioner grants franchise registration if the submitted materials are in compliance with the FIL and the California Franchise Regulations. The Commissioner may issue a stop order denying or revoking effectiveness of a franchise registration if (1) the applicant has failed to comply with the provisions of the FIL; (2) the offer or sale of the franchise would constitute fraud on the purchasers; (3) the applicant has failed to comply with any order of the
Commissioner issued pursuant to §31113 with respect to the provision of adequate financial arrangements; or (4) any person identified in the application to register has been convicted of a felony or held liable for fraud, embezzlement, fraudulent conversion, or misappropriation of property, or is subject to any currently effective order of the SEC, the FTC, or injunctive or restrictive orders relating to business activity and the involvement of such person in the sale or arrangement of the franchise creates an unreasonable risk to prospective franchisees.

6. Bond
The Commissioner may require the escrow or impoundment of franchise fees and the like if he finds that inadequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the offering. Alternatively, the franchisor may furnish an adequate surety bond or defer any payments from the franchisee until all of the franchisor’s initial obligations to the franchisee have been satisfied. Cal. Corp. Code §31113.

7. Waiting Period
If no stop order is in effect, registration of the offer automatically becomes effective at 12 p.m., California time, of the 30th business day after the filing of a complete application for registration or the last preeffective amendment thereto, or at an earlier time that the commissioner determines. Cal. Corp. Code §31116(a).

8. Penalties
The Commissioner has broad powers to investigate possible violations of the FIL and to issue desist and refrain orders stopping the offer and sale of unregistered franchises until registration has been effected (Cal. Corp. Code §31402) or franchises whose applications or disclosure documents contain misrepresentations until the misrepresentations have been corrected (Cal. Corp. Code §31403). The Commissioner may impose civil penalties, including fines of up to $10,000 for each violation as well as other sanctions (Cal. Corp. Code §31405) and may seek criminal penalties, including fines of up to $100,000 and imprisonment up to one year, (Cal. Corp. Code §§31410, 31411).

9. Required Disclosures
The application must include a franchise disclosure document (“FDD”) in an acceptable form (pursuant to §310.114.1 of the California Franchise Regulations), a copy of the franchise agreement, and the franchisor’s audited financial statement. The FDD addresses 23 separate items of disclosure, including terms of the proposed
franchise relationship, the work history of the franchisor’s principals, the costs and fees to be paid to the franchisor, details of the initial training program, a table of contents of the operations manual, the terms regarding renewal or termination, territorial protections granted to the franchisee, a list of names and contact information of existing franchised outlets and franchisees that have left the system within the past year, and a statement of the number of franchises presently operating and proposed to be sold. Also if the franchisor wants to include financial performance representations about its outlets, it may do so provided there is a reasonable basis for it to make the representations and the disclosure complies with the regulations regarding financial performance representations set forth in §310.114.1(c)(6) of the California Franchise Regulations. Finally, an authorization permitting the Commissioner to examine the registrant’s financial records regarding the sale of the franchise must be submitted. Cal. Corp. Code §31111.

10. Standing to Sue
The FIL provides for suit by franchisees or subfranchisees for damages, and, if the violation is willful, for rescission of the franchise agreement. Additionally, the FIL provides that the Commissioner may bring an action for injunctive relief, and the district attorney may institute criminal proceedings. Cal. Corp. Code §§31300, 31400, and 31410, respectively.

11. Remedies
See N. 10, supra.

12. Contract Requirements
There are no provisions governing contracts, but there is a required additional disclosure to be added to the FDD if the franchise agreement (i) provides for termination upon bankruptcy, (ii) contains a post termination non-competition covenant, (iii) contains a liquidated damages clause, (iv) requires binding arbitration of disputes or (v) is governed by a law other than California law.

13. Exceptions
The offer and sale of the franchise is exempted from registration if:

(1) the franchisor has a net worth on a consolidated basis of not less than $5,000,000, or the franchisor has a net worth of not less than $1,000,000 and is at least 80 percent owned by a corporation which has a net worth on a consolidated basis of not less than $5,000,000; and

(2) has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer.
or sale; or has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; or if any corporation which owns at least 80 percent of the franchisor has had at least twenty-five franchises conducting business at all times during the five-year period; and

(3) general information is disclosed about the sale, and a notice of exemption is filed with the Commissioner and a fee is paid. Cal. Corp. Code §31101.

The offer or sale of a franchise by a franchisee for his own account is also exempted from the registration requirement. Cal. Corp. Code §31102.

Finally, transactions relating to bank credit card plans and petroleum corporations or distributors are exempted from the disclosure and registration requirements. Cal. Corp. Code §§31103-31104.

14. Registered Marks Exception
There are no statutory exceptions for franchises involving the license of registered trademarks or service marks.

15. Federal Registration
There is no federal registration of a franchise. However, each FDD must comply with the format specified under the Federal Trade Commission (“FTC”) Franchise Rule (16 C.F.R. Part 436).

16. Use of UFOC
The form of uniform franchise offering circular (UFOC), now known as the franchise disclosure document (FDD), is prescribed by the Corporations Commissioner based on the FTC authorized form of FDD with some variations. It should be used.

17. Other Forms
The use of forms other than those designated or authorized under the FIL or by the Commissioner is not permitted.

18. Amendment
Cal. Corp. Code §31123 requires the franchisor to submit an application to amend the registration to include any material changes in the information contained in the prior application, FDD and other filed documents.

19. Other Franchise Regulations
Advertising is regulated under §§31156-31157, and renewals of registrations are regulated under Cal. Corp. Code §§31121-31122.
20. Liability of Franchisor for Torts of Franchisee
A franchisor may be liable for actions of the franchisee’s employees only if it has retained or assumed a general right of control over factors such as hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of the franchisee’s employees. *Patterson v. Domino’s Pizza, LLC*, 60 Cal. 4th 474, 497-498 (Cal. 2014).