



# Trade Marks Act 1994

## 1994 CHAPTER 26

### PART I

#### REGISTERED TRADE MARKS

##### *Priority*

#### **35 Claim to priority of Convention application**

- (1) A person who has duly filed an application for protection of a trade mark in a Convention country (a “Convention application”), or his successor in title, has a right to priority, for the purposes of registering the same trade mark under this Act for some or all of the same goods or services, for a period of six months from the date of filing of the first such application.
- (2) If the application for registration under this Act is made within that six-month period—
  - (a) the relevant date for the purposes of establishing which rights take precedence shall be the date of filing of the first Convention application, and
  - (b) the registrability of the trade mark shall not be affected by any use of the mark in the United Kingdom in the period between that date and the date of the application under this Act.
- (3) Any filing which in a Convention country is equivalent to a regular national filing, under its domestic legislation or an international agreement, shall be treated as giving rise to the right of priority.

A “regular national filing” means a filing which is adequate to establish the date on which the application was filed in that country, whatever may be the subsequent fate of the application.

- (4) A subsequent application concerning the same subject as the first Convention application, filed in the same Convention country, shall be considered the first Convention application (of which the filing date is the starting date of the period of priority), if at the time of the subsequent application—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the previous application has been withdrawn, abandoned or refused, without having been laid open to public inspection and without leaving any rights outstanding, and
- (b) it has not yet served as a basis for claiming a right of priority.

The previous application may not thereafter serve as a basis for claiming a right of priority.

- (5) Provision may be made by rules as to the manner of claiming a right to priority on the basis of a Convention application.
- (6) A right to priority arising as a result of a Convention application may be assigned or otherwise transmitted, either with the application or independently.

The reference in subsection (1) to the applicant's "successor in title" shall be construed accordingly.

### **36 Claim to priority from other relevant overseas application**

- (1) Her Majesty may by Order in Council make provision for conferring on a person who has duly filed an application for protection of a trade mark in—
  - (a) any of the Channel Islands or a colony, or
  - (b) a country or territory in relation to which Her Majesty's Government in the United Kingdom have entered into a treaty, convention, arrangement or engagement for the reciprocal protection of trade marks,a right to priority, for the purpose of registering the same trade mark under this Act for some or all of the same goods or services, for a specified period from the date of filing of that application.
- (2) An Order in Council under this section may make provision corresponding to that made by section 35 in relation to Convention countries or such other provision as appears to Her Majesty to be appropriate.
- (3) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.