



Trade Marks Act 1994

1994 CHAPTER 26

PART I

REGISTERED TRADE MARKS

Grounds for refusal of registration

[^{F1}6A Raising of relative grounds in opposition proceedings in case of non-use

- (1) This section applies where—
- an application for registration of a trade mark has been published,
 - there is an earlier trade mark [^{F2}of a kind falling within section 6(1)(a), (b) or (ba)] in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
 - the registration procedure for the earlier trade mark was completed before the start of the [^{F3}relevant period].

[In this section “the relevant period” means the period of 5 years ending with the date ^{F4}(1A) of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.]

- (2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

- (3) The use conditions are met if—
- within the [^{F5}relevant period] the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
 - the earlier trade mark has not been so used, but there are proper reasons for non-use.

- (4) For these purposes—
- use of a trade mark includes use in a form [^{F6}(the “variant form”)] differing in elements which do not alter the distinctive character of the mark in the form

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- in which it was registered [^{F7}(regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor)], and
- (b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.
- (5) In relation to a [^{F8}European Union] trade mark [^{F9}or international trade mark (EC)], any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to [^{F10}the European Union].
- ^{F11}(5A) [In relation to an international trade mark (EC) the reference in subsection (1)(c) to the completion of the registration procedure is to be construed as a reference to the publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation.]
- (6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.
- (7) Nothing in this section affects—
- (a) the refusal of registration on the grounds mentioned in section 3 (absolute grounds for refusal) or section 5(4)(relative grounds of refusal on the basis of an earlier right), or
- (b) the making of an application for a declaration of invalidity under section 47(2) (application on relative grounds where no consent to registration).]

Textual Amendments

- F1** S. 6A inserted (5.5.2004) by Trade Marks (Proof of Use, etc.) Regulations 2004 (S.I. 2004/946), regs. 1, 4 (with reg. 8)
- F2** Words in s. 6A(1)(b) inserted (10.5.2008) by Trade Marks (Earlier Trade Marks) Regulations 2008 (S.I. 2008/1067), regs. 1, **art. 4(2)** (with reg. 6)
- F3** Words in s. 6A(1)(c) substituted (14.1.2019) by The Trade Marks Regulations 2018 (S.I. 2018/825), regs. 1(1), **8(2)** (with Pt. 5)
- F4** S. 6A(1A) inserted (14.1.2019) by The Trade Marks Regulations 2018 (S.I. 2018/825), regs. 1(1), **8(3)** (with Pt. 5)
- F5** Words in s. 6A(3)(a) substituted (14.1.2019) by The Trade Marks Regulations 2018 (S.I. 2018/825), regs. 1(1), **8(4)** (with Pt. 5)
- F6** Words in s. 6A(4)(a) inserted (14.1.2019) by The Trade Marks Regulations 2018 (S.I. 2018/825), regs. 1(1), **8(5)(a)** (with Pt. 5)
- F7** Words in s. 6A(4)(a) inserted (14.1.2019) by The Trade Marks Regulations 2018 (S.I. 2018/825), regs. 1(1), **8(5)(b)** (with Pt. 5)
- F8** Words in s. 6A(5) substituted (6.4.2016) by The European Union Trade Mark Regulations 2016 (S.I. 2016/299), reg. 1(1), **Sch. para. 1** (with reg. 13)
- F9** Words in s. 6A(5) inserted (10.5.2008) by Trade Marks (Earlier Trade Marks) Regulations 2008 (S.I. 2008/1067), regs. 1, **4(3)**
- F10** Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 4 (with arts. 3(2)(3), 4(2), 6(4)(5))
- F11** S. 6A(5A) inserted (14.1.2019) by The Trade Marks Regulations 2018 (S.I. 2018/825), regs. 1(1), **8(6)** (with Pt. 5)

Modifications etc. (not altering text)

- C1** S. 6A applied (with modifications) by SI 1996/714, art. 10C(2) (as substituted (5.5.2004) by Trade Marks (International Registration) (Amendment) Order 2004 (S.I. 2004/948), arts. 1(2), **5** (with art. 8))

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*Changes to legislation: There are currently no known outstanding effects
for the Trade Marks Act 1994, Section 6A. (See end of Document for details)*

C2 S. 6A(3) modified (20.5.2016) by [The Standardised Packaging of Tobacco Products Regulations 2015](#) (S.I. 2015/829), regs. 1(2), **13(5)(a)(6)** (with regs. 13(9), 14(5), 20)

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Changes to legislation:

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