



Trade Marks Act 1938 F¹ (repealed 31.10.1994)

CHAPTER 22

TRADE MARKS ACT 1938 (REPEALED 31.10.1994)

REGISTRATION, INFRINGEMENT AND OTHER SUBSTANTIVE PROVISIONS

The register

- 1 Register of trade marks etc.

Effect of registration and the action for infringement

- 2 No action for infringement of unregistered trade mark.
- 3 Registration to be in respect of particular goods.
- 4 Right given by registration in Part A, and infringement thereof.
- 5 Right given by registration in Part B, and infringement thereof.
- 6 Infringement by breach of certain restrictions.
- 7 Saving for vested rights.
- 8 Saving for use of name, address, or description of goods.

Registrability and validity of registration

- 9 Distinctiveness requisite for registration in Part A.
- 10 Capability of distinguishing requisite for registration in Part B.
- 11 Prohibition of registration of deceptive, &c., matter.
- 12 Prohibition of registration of identical and resembling trade marks.
- 13 Registration in Part A to be conclusive as to validity after seven years.
- 14 Registration subject to disclaimer.
- 15 Words used as name or description of an article or substance.
- 16 Effect of limitation as to colour, and of absence thereof.

Changes to legislation: There are currently no known outstanding effects for the Trade Marks Act 1938 (repealed 31.10.1994). (See end of Document for details)

Procedure for, and duration of, registration

- 17 Application for registration.
- 18 Opposition to registration.
- 19 Registration.
- 20 Duration and renewal of registration.
- 21 Registration of parts of trade marks and of trade marks as a series.

Assignment and transmission

- 22 Powers of, and restrictions on, assignment and transmission.
- 23 Certain trade marks to be associated so as to be assignable and transmissible as a whole only.
- 24 Power of registered proprietor to assign and give receipts.
- 25 Registration of assignments and transmissions.

Use and non-use

- 26 Removal from register and imposition of limitations on ground of non-use.
- 27 Defensive registration of well known trade marks.
- 28 Registered users.
- 29 Proposed use of trade mark by corporation to be constituted, &c.
- 30 Use of one of associated or substantially identical trade marks equivalent to use of another.
- 31 Use of trade mark for export trade.

Rectification and correction of the register

- 32 General power to rectify entries in register.
- 33 Power to expunge or vary registration for breach of condition.
- 34 Correction of register.
- 35 Alteration of registered trade mark.
- 36 Adaptation of entries in register to amended or substituted classification of goods.

Certification trade marks

- 37 Certification trade marks.

Sheffield marks

- 38 Sheffield marks.

Manchester Branch

- 39 Trade marks for textile goods.
- 39A Registration of trade mark following overseas application.

GENERAL AND MISCELLANEOUS

Rules and fees

- 40 Power of Board of Trade to make rules.
- 40A Hours of business and excluded days.
- 41 Fees.

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Trade Marks Act 1938 (repealed 31.10.1994). (See end of Document for details)

Powers and duties of Registrar

- 42 Preliminary advice by Registrar as to distinctiveness.
- 43 Hearing before exercise of Registrar's discretion.
- 44 Power of Registrar to award costs.
- 45 Annual reports of Registrar.

Legal proceedings and appeals

- 46 Registration to be prima facie evidence of validity.
- 47 Certificate of validity.
- 48 Costs of Registrar in proceedings before Court, and payment of costs by Registrar.
- 49 Trade usage, &c. to be considered.
- 50 Registrar's appearance in proceedings involving rectification.
- 51 Court's power to review Registrar's decision.
- 52 Discretion of Court in appeals.
- 53 Procedure on appeal to Board of Trade.
- 54 Procedure in cases of option to apply to Court or Registrar.

Evidence

- 55 Mode of giving evidence.
- 56 Evidence of orders, &c. of Board of Trade.
- 57, 58

Offences and restraint of use of Royal Arms

- 58A Fraudulent application or use of trade mark an offence.
- 58B Delivery up of offending goods and material.
- 58C Order as to disposal of offending goods or material.
- 58D Enforcement of section 58A.
- 59 Falsification of entries in register a misdemeanour.
- 60 Fine for falsely representing a trade mark as registered.
- 61 Restraint of use of Royal Arms, &c.

Miscellaneous

- 62 Change of form of trade connection not to be deemed to cause deception.
- 63 Jointly owned trade marks.
- 64 Trusts and equities.
- 64A Recognition of agents.
- 65 Saving for jurisdiction of courts in Scotland, Northern Ireland and Isle of Man.
- 66 Interpretation.
- 67

Supplemental

- 68 Transitional provisions.
- 69 Repeal and savings.
- 70
- 71 Short title and extent.

SCHEDULES

FIRST SCHEDULE — Certification Trade Marks

- 1 (1) An application for the registration of a mark under...
- 2 (1) When an application has been accepted, the Registrar shall,...
- 3 (1) The regulations deposited in respect of a certification trade...
- 4 (1) The Board of Trade may, on the application in...
- 5 Notwithstanding anything in section forty-four of this Act, the Registrar...
- 6 The following provisions of this Act shall not have effect...

SECOND — Sheffield Marks

SCHEDULE

- 1 The Cutlers' Company shall continue to keep at Sheffield the...
- 2 An application by a person carrying on business in Hallamshire,...
- 3 An application for the registration of a trade mark made...
- 4 The Registrar shall consider an application notified to him as...
- 5 Within the prescribed time after receipt of a notice of...
- 6 The Registrar shall consider any arguments, proposals or observations notified...
- 7 Where the Registrar refuses authorisation to proceed with an application,...
- 8 Upon the registration of a trade mark in the Sheffield...
- 9 The provisions of this Act and of the rules with...
- 10 When the Registrar receives an application for the registration of...
- 11 Any person aggrieved by a decision of the Cutlers' Company...
- 12 (1) For the purposes of this Schedule the expression "metal..."
- 13 A certificate purporting to be under the hand of the...

THIRD SCHEDULE — Transitional Provisions

Validity of registrations under previous Acts

- 1 (1) Subject to the provisions of this paragraph and of...

Assignments and transmissions (before appointed day) giving exclusive rights in different places in the United Kingdom

- 2 (1) The validity of an assignment or transmission of a...

Saving as to retrospective provisions relating to assignments and transmissions

- 3 The retrospective provisions contained in section twenty-two of this Act,...

Association of trade marks assignable or transmissible as a whole only under the Trade Marks Act, 1919

- 4 Where immediately before the appointed day a trade mark was...

Previous use of a trade mark by person becoming registered user on application made within one year of appointed day

- 5 Where a person is registered as a registered user of...

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Use of trade mark for export trade before appointed day

6 Section thirty-one of this Act shall be deemed to have...

Trade marks registered under section sixty-two of the Trade Marks Act 1905,

to be deemed to have been registered under section thirty-seven...

7 Section thirty-seven of this Act shall have effect, in relation...

Cotton marks registered before appointed day

8 No registration as of a date before the appointed day...

FOURTH SCHEDULE —

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