



Trade Marks Act 1938

CHAPTER 22

TRADE MARKS ACT 1938

REGISTRATION, INFRINGEMENT AND OTHER SUBSTANTIVE PROVISIONS.

The register

- 1 The register of trade marks

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, and 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

Status: This is the original version (as it was originally enacted).

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-uses

- 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, and 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

GENERAL AND MISCELLANEOUS.

Rules and fees

- 40 Power of Board of Trade to make rules
- 41 Fees

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, and 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, and c. of Board of Trade
- 57 Evidence of entries in register
- 58 Evidence of things done by Registrar

Offences and restraint of use of Royal Arms

- 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, and 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
- 65 Recognition of agents
- 66 Saving for jurisdiction of courts in Scotland, Northern Ireland and Isle of Man
- 67 Exercise of powers of Board of Trade

Supplemental

- 68 Interpretation
- 69 Transitional provisions
- 70 Repeal and savings
- 71 Short title, commencement 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,...

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- 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 "...
- 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...

Use of trade mark for export trade before appointed day

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

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*Trade marks registered under section sixty-two of the Trade Marks Act, 1905,
to be deemed to have been registered under section thirty-seven of this Act*

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...