



Trade Marks Act 1938

1938 CHAPTER 22

GENERAL AND MISCELLANEOUS.

Supplemental

68 Interpretation

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

" the appointed day " has the meaning assigned to it by section seventy-one of this Act;

" assignment " means assignment by act of the parties concerned;

" the Court " means (subject to provisions relating to Scotland, Northern Ireland or the Isle of Man) His Majesty's High Court of Justice in England;

" limitations " means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold, or otherwise traded in, in any place within the "United Kingdom, or as to use in relation to goods to be exported to any market outside the United Kingdom;

" mark " includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof;

" permitted use " has the meaning assigned to it by subsection (1) of section twenty-eight of this Act;

" prescribed " means, in relation to proceedings before the Court, prescribed by rules of court, and, in other cases, prescribed by this Act or the rules;

" the register " means the register of trade marks kept under this Act;

" registered trade mark " means a trade mark that is actually on the register;

" registered user " means a person who is for the time being registered as such under section twenty-eight of this Act;

" the Registrar " means the Comptroller-General of Patents, Designs and Trade Marks;

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" the rules " means rules made by the Board of Trade under section thirty-six or section forty of this Act;

" trade mark " means, except in relation to a certification trade mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under section thirty-seven of this Act;

" transmission " means transmission by operation of law, devolution on the personal representative of a deceased person, and any other mode" of transfer not being assignment;

" United Kingdom " includes the Isle of Man.

- (2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references therein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in physical or other relation to, goods.
- (3) In the application of this Act to Scotland, the expressions "injunction," " plaintiff " and " defendant " mean respectively " interdict," " pursuer" and " defender."

69 Transitional provisions

The transitional provisions set out in the Third Schedule to this Act shall have effect with respect to the matters therein mentioned respectively.

70 Repeal and savings

- (1) The enactments set out in the Fourth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) Nothing in this Act shall affect any order, rule, regulation or requirement made, table of fees or certificate issued, notice, decision, determination, direction or approval given, application made, or thing done, under any enactment repealed by this Act; and every such order, rule, regulation, requirement, table of fees, certificate, notice, decision, determination, direction, approval, application or thing shall, if in force at the commencement of this Act, continue in force and shall, so far as it could have been made, issued, given or done under this Act, have effect as if made, issued, given or done under the corresponding enactment of this Act.
- (3) Any document referring to any enactment repealed by this Act shall be construed as referring to the corresponding enactment of this Act.
- (4) Nothing in this section shall be taken to prejudice the provisions of section thirty-eight of the Interpretation Act, 1889.

71 Short title, commencement and extent

- (1) This Act may be cited as the Trade Marks Act, 1938.
- (2) This Act shall come into operation on the date fixed by order made under subsection (5) of section thirty-three of the Trade Marks (Amendment) Act, 1937, for

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the coming into operation of that Act (in this Act referred to as " the appointed day "), immediately after the coming into operation of that Act.

- (3) It is hereby declared that this Act extends to Northern Ireland.
- (4) This Act shall extend to the Isle of Man.