

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Trade Marks Act 1938 (repealed 31.10.1994), THIRD SCHEDULE.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

SCHEDULES

THIRD SCHEDULE

TRANSITIONAL PROVISIONS

Validity of registrations under previous Acts

- 1 (1) Subject to the provisions of this paragraph and of section thirteen of this Act, the validity of the original entry of a trade mark on the register of trade marks existing at the commencement of the ^{M1}Trade Marks Act 1905, or on any of the registers of trade marks kept under previous Acts that were deemed part of the same record as the last-mentioned register, shall be determined in accordance with the Acts in force at the date of such entry, and any such trade mark shall retain its original date, but for all other purposes it shall be deemed to have been registered under the Trade Marks Act 1905.
- (2) No trade mark which was on the register at the commencement of the Trade Marks Act 1905, and which under that Act was then a registrable trade mark, shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration.
- (3) No trade mark which was on the register at the commencement of the ^{M2}Trade Marks (Amendment) Act 1937, and which, having regard to any amendment by that Act of the Trade Marks Act 1905, or of the ^{M3}Trade Marks Act 1919, whether as respect limitations that might be imposed on registration or as respects any other matter, was then a registrable trade mark under the Trade Marks Act 1905 to 1937, shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration.
- (4) Nothing in the ^{M4}Trade Marks (Amendment) Act 1937, shall be taken to have invalidated the original registration of a trade mark that immediately before the commencement of that Act was validly on the register.
- (5) Nothing in section thirty-six of the ^{M5}Trade Marks Act 1905, or in the Trade Marks (Amendment) Act 1937, shall be construed as having subjected any person to any liability in respect of any act or thing done before the commencement of those Acts respectively to which he would not have been subject under the Acts then in force.

Marginal Citations

- M1** 1905 c. 15.
M2 1937 c. 49.
M3 1919 c. 79.
M4 1937 c. 49.
M5 1905 c. 15.

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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 trade mark effected or claimed to have been effected before the appointed day, in any such case as is mentioned in subsection (6) or section twenty-two of this Act, shall be determined as if the provisions contained in subsections (1) to (5) of that section had not been enacted: Provided that, on application made in the prescribed manner within two years from the commencement of this Act, by a person who claims that an assignment or transmission of a registered trade mark to him or to a predecessor in title of his has been so effected, the Registrar shall have the like jurisdiction as under the proviso to subsection (6) of section twenty-two of this Act, and an assignment or transmission approved by him shall not be deemed to have been invalid on the ground of the subsistence of such rights as are mentioned in the said subsection (6) or on the ground that the assignment or transmission was effected otherwise than in connection with the goodwill of a business or was effected in respect of some (but not all) of the goods in respect of which the trade mark was registered, if application for the registration under section twenty-five of this Act of the title of the person becoming entitled is made within six months from the date on which the approval is given, or was made before that date.
- (2) Any decision of the Registrar under this paragraph shall be subject to appeal to the Court.

Saving as to retrospective provisions relating to assignments and transmissions

- 3 The retrospective provisions contained in section twenty-two of this Act, and in the last foregoing paragraph, shall have effect without prejudice to any determination of a competent tribunal that was made before the appointed day, or to the determination of any appeal from a determination so made, or to any title acquired for valuable consideration before the appointed day.

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 registered in Part B of the register subject to a condition rendering it assignable or transmissible only as a whole with another trade mark registered in the name of the same proprietor or with two or more other trade marks so registered, and not separately, the trade marks shall be deemed to be associated trade marks, and the entries in the register relating thereto may be amended accordingly.

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 a trade mark on an application made within one year from the commencement of this Act, subsection (2) of section twenty-eight of this Act shall have effect in relation to any previous use (whether

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before or after the commencement of this Act) of the trade mark by that person, being use in relation to the goods in respect of which he is registered and, where he is registered subject to conditions or restrictions, being use such as to comply substantially therewith, as if such previous use had been permitted use.

Use of trade mark for export trade before appointed day

- 6 Section thirty-one of this Act shall be deemed to have had effect in relation to an act done before the appointed day as it has effect in relation to an act done after the commencement of this Act, without prejudice, however, to any determination of a competent tribunal which was made before the appointed day, or to the determination of any appeal from a determination so made.

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 to a trade mark that immediately before the appointed day was on the register by virtue of section sixty-two of the ^{M6}Trade Marks Act 1905, as if the said section thirty-seven had been in force at the date of the registration of the trade mark and it had been registered under that section, subject however to the following modifications, that is to say:—
- (a) the proviso to subsection (1) of the said section thirty-seven shall not apply;
 - (b) in a case in which regulations for governing the use of the trade mark are deposited at the Patent Office at the commencement of this Act, those regulations shall be deemed to have been deposited under the said section thirty-seven;
 - (c) in a case in which no such regulations are deposited at the commencement of this Act, the proprietor shall be at liberty, or may be required by the Board of Trade as a condition of the continuance of the registration, to deposit at any time thereafter such regulations as the Board may permit or require; and
 - (d) in a case in which no such regulations are for the time being deposited, the said section thirty-seven shall have effect as if references therein, and in the First Schedule to this Act, to the regulations had been omitted.

Marginal Citations

M6 1905 c. 15.

Cotton marks registered before appointed day

- 8 No registration as of a date before the appointed day of a cotton mark as defined in section sixty-four of the ^{M7}Trade Marks Act 1905, in respect of cotton piece goods or cotton yarn shall give any exclusive right to the use of any letter, numeral, line heading, or any combination thereof.

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M7 [1905 c. 15.](#)

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