

1987 No. 1521

TRADE MARKS

The Counterfeit Goods (Consequential Provisions)
Regulations 1987

Made - - - - - 26th August 1987

Laid before Parliament 11th September 1987

Coming into force 1st January 1988

The Secretary of State, being designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the prohibition of the release for free circulation of goods bearing a trade mark without authorisation, in exercise of the powers conferred on him by the said section 2(2) hereby makes the following Regulations:

1.—(1) These Regulations may be cited as the Counterfeit Goods (Consequential Provisions) Regulations 1987 and shall come into force on 1st January 1988.

(2) In these Regulations, “the Council Regulation” means Council Regulation (EEC) No. 3842/86 laying down measures to prohibit the release for free circulation of counterfeit goods(c), and expressions used in that Regulation shall bear the same meaning in these Regulations.

2. Section 64A of the Trade Marks Act 1938(d) (restrictions on importation of goods bearing infringing trade marks) shall not apply in respect of goods entered, or expected to be entered, for free circulation to the extent that the proprietor or registered user of the trade mark in question is entitled to lodge an application in respect of the goods under Article 3(1) of the Council Regulation.

3.—(1) Counterfeit goods which correspond to the description of goods contained in a decision under Article 3(3) of the Council Regulation granting an application lodged under Article 3(1) thereof shall be liable to forfeiture if an entry thereof for free circulation is delivered during the period specified in the decision as that during which the Commissioners of Customs and Excise may take action.

(2) Section 139 of and Schedule 3 to the Customs and Excise Management Act 1979(e) (detention, seizure and condemnation of goods) shall apply in respect of any goods liable to forfeiture under paragraph (1) above as they apply in respect of goods liable to forfeiture under the customs and excise Acts; and, accordingly—

- (a) section 144 of the said Act (protection of officers, etc, in relation to seizure and detention of goods) shall apply in respect of seizure or detention effected by virtue of this paragraph; and
- (b) sections 145, 146 and 152 to 155 of the said Act (general provisions as to condemnation proceedings) shall apply in respect of condemnation proceedings brought by virtue of this paragraph.

(a) S.I. 1987/926.

(b) 1972 c.68.

(c) O.J. No. L357, 18.12.86, p.1.

(d) 1938 c.22; section 64A was inserted by the Trade Descriptions Act 1968 (c.29), section 17.

(e) 1979 c.2.

(3) Where in any condemnation proceedings brought by virtue of paragraph (2) above any question arises as to whether or not any goods are or were liable to forfeiture under paragraph (1) above, the burden of proof shall lie upon the party alleging that they are not or were not so liable.

26th August 1987

Francis Maude
Parliamentary Under Secretary of State,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision consequential upon Council Regulation (EEC) No. 3842/86 laying down measures to prohibit the release for free circulation of counterfeit goods. Section 64A of the Trade Marks Act 1938 (which makes equivalent but inconsistent provision) is disapplied to the extent that the Council Regulation applies. Counterfeit goods entered for free circulation are rendered liable to forfeiture, sections 139, 144-146 and 152-155 of and Schedule 3 to the Customs and Excise Management Act 1979 (detention, seizure and condemnation of goods) are applied, and additional provision about burden of proof is made similar to that in section 154(2)(f) of that Act.

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