



# Trade Marks Act 1938

## 1938 CHAPTER 22

### REGISTRATION, INFRINGEMENT AND OTHER SUBSTANTIVE PROVISIONS.

#### *Registrability and validity of registration*

#### **9 Distinctiveness requisite for registration in Part A**

- (1) In order for a trade mark (other than a certification trade mark) to be registrable in Part A of the register, it must contain or consist of at least one of the following essential particulars :—
  - (a) the name of a company, individual, or firm, represented in a special or particular manner;
  - (b) the signature of the applicant for registration or some predecessor in his business;
  - (c) an invented word or invented words;
  - (d) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;
  - (e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the foregoing paragraphs (a), (b), (c) and (d), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness.
- (2) For the purposes of this section " distinctive " means adapted, in relation to the goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.
- (3) In determining whether a trade mark is adapted to distinguish as aforesaid the tribunal may have regard to the extent to which—
  - (a) the trade mark is inherently adapted to distinguish as aforesaid; and

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish as aforesaid.