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STATUTORY INSTRUMENTS

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**2018 No. 825**

**The Trade Marks Regulations 2018**

**PART 2**

Amendments to the 1994 Act

**Right to prevent goods entering the UK without being released for free circulation and prohibition on the use of a trade mark registered in the name of an agent or representative**

11. After section 10, insert—

**“10A Right to prevent goods entering the UK without being released for free circulation**

(1) The proprietor of a registered trade mark is entitled to prevent third parties from bringing goods into the United Kingdom in the course of trade without being released for free circulation if they are goods for which the trade mark is registered which—

- (a) come from outside the customs territory of the EU; and
- (b) bear without authorisation a sign which is identical with the trade mark or cannot be distinguished in its essential aspects from the trade mark.

(2) In subsection (1) the reference to goods for which the trade mark is registered includes a reference to the packaging of goods for which the trade mark is registered.

(3) Subsection (1) is without prejudice to the rights of proprietors acquired before the date of application for registration of the trade mark, or (where applicable) the date of the priority claimed in respect of that application.

(4) The entitlement of the proprietor under subsection (1) is to lapse if—

- (a) proceedings are initiated in accordance with the European Customs Enforcement Regulation to determine whether the trade mark has been infringed; and
- (b) during those proceedings evidence is provided by the declarant or the holder of the goods that the proprietor of the trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

(5) References in this Act to the “European Customs Enforcement Regulation” are references to Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights<sup>(1)</sup>.

**10B Prohibition on the use of a trade mark registered in the name of an agent or representative**

(1) Subsection (2) applies where a trade mark is registered in the name of an agent or representative of a person (“P”) who is the proprietor of the trade mark, without P’s consent.

- (2) Unless the agent or representative justifies the action mentioned in subsection (1), P may do either or both of the following—
- (a) prevent the use of the trade mark by the agent or representative (notwithstanding the rights conferred by this Act in relation to a registered trade mark);
  - (b) apply for the rectification of the register so as to substitute P's name as the proprietor of the registered trade mark.”.