



BELIZE

**TRADE MARKS ACT
CHAPTER 257**

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CHAPTER 257**TRADE MARKS**

17 of 2000.

*[22nd June, 2000]***PART I***Preliminary*

1. This Act may be cited as the Trade Marks Act.

Short title.

2.—(1) In this Act, unless the context otherwise requires,

Interpretation.

“business” includes a trade or profession;

“certification mark” is a mark indicating that the goods or services in connection with which it is used are certified by the proprietor of the mark in respect of origin, materials, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, and the provisions of this Act apply to certification marks subject to the provisions of the Second Schedule;

“collective mark” means a mark distinguishing the goods or services of members of the association which is the proprietor from those of other undertakings, and the provisions of this Act apply to collective marks subject to the provisions of the First Schedule;

“Court” means the Supreme Court;

“Director”, in relation to a body corporate whose affairs are managed by its members, means any member of the body;

“infringement proceedings”, in relation to a registered trade mark, include proceedings for an order for delivering up of infringing goods;

“Journal” means the Journal of Intellectual Property referred to in section 11 of this Act;

“Minister” means the Minister for the time being to whom the subject of intellectual property is assigned by the Governor-General pursuant to section 41 of the Belize Constitution , Cap. 4;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised;

“priority date” means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

“publish” means make available to the public and references to publication,

- (a) in relation to an application for registration are to publication under section 16 (1) of this Act; and
- (b) in relation to registration, are to publication under section 18 of this Act;

“Register” means the Register of Trade Marks referred to in this Act;

“Registrar” means the Registrar of Intellectual Property appointed under section 4 of the Patents Act, Cap. 253;

“trade” includes any business or profession;

“trade mark” means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings and it may, in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging.

(2) References in this Act to a trade mark include, unless the context otherwise requires, references to a collective mark or a certification mark.

PART II

Appointment, Powers and Duties of Registrar etc.

3.–(1) The Registrar of Intellectual Property appointed by the Minister pursuant to section 4 (1) of the Patents Act, Cap. 253 shall maintain a Register of Trade Marks, Certification Marks and Collective Marks in accordance with this Act.

The Registrar.

(2) The provisions of section 4 (2) to (5) of the Patents Act, Cap. 253 shall apply to this Act.

(3) References in this Act to “the Register” are to the register; and references to registration (in particular, in the expression “registered trade mark”) are, unless the context otherwise requires, to registration in the register.

(4) The Registrar shall enter in the register in accordance with this Act,

- (a) registered trademarks, certification marks and collective marks;
- (b) such particulars as may be prescribed of registrable transactions affecting a registered trade mark; and
- (c) such other matters relating to registered trademarks as may be prescribed.

(5) The register shall be kept in such a manner as may be prescribed, and provision shall in particular be made for,

- (a) public inspection of the register upon payment of the prescribed fee;
- (b) the supply of certified or uncertified copies, or extracts, of entries in the register.

Powers and duties of the Registrar.

4.–(1) The Registrar may require the use of such forms as he may direct for any purpose relating to the registration of a trade mark or any proceedings before him under this Act.

(2) The forms, and any direction of the Registrar with respect to their use, shall be published by the Registrar as Regulations in the *Gazette*.

Information about applications and registered trade-marks.

5.–(1) After publication of an application for registration of a trade mark, the Registrar shall on request, and upon payment of the prescribed fee, provide any person with such information and permit such person to inspect such documents relating to the application, or to any registered trade mark resulting from it, as may be specified in the request, subject, however, to any prescribed restrictions.

(2) Any request referred to in subsection (1) of this section, shall be made in the prescribed manner and shall be accompanied by the appropriate prescribed fee, if any.

(3) Before publication of an application for registration of a trade mark, documents or information constituting or relating to the application shall not be published by the Registrar or communicated by him to any person except,

- (a) in such cases and to such extent as may be prescribed; or
- (b) with the consent of the applicant,

but subject to the provisions of subsection (4) of this section.

(4) Where a person has been notified that an application for registration of a trade mark has been made, and that the applicant will, if the application is granted bring proceedings against him in respect of acts done after publication of the application, such person may make a request under subsection (1) of this section, notwithstanding that the application has not been published, and that subsection shall apply accordingly.

Rectification or correction of the register.

6.–(1) Any person having a sufficient interest may apply for the rectification or correction of an error or omission in the register,

Provided that an application shall not be made under this section in respect of a matter affecting the validity of the registration of a trade mark.

(2) An application for rectification or correction of the register shall be made to the Registrar.

(3) The effect of a rectification or correction made under this section is that the error or omission shall be deemed never to have been made.

(4) The Registrar may, on request made in the prescribed manner by the proprietor of a registered trade mark, or a licensee, enter any change in his name or address as recorded in the register.

(5) The Registrar may, subject to the provisions of this Act, remove from the register any matter which appears to him to have ceased to have effect.

7.-(1) The Minister may make Regulations empowering the Registrar to do such things as the Registrar considers necessary to implement any amended or substituted classification of goods or services for purposes of the registration of trade marks.

Adaptation of entries to new classification.

(2) Regulations made pursuant to this section may in particular provide for the amendment of existing entries on the register so as to accord with the new classification.

(3) Any such power of amendment as is referred to in this section shall not be exercised so as to extend the rights conferred by registration except where it appears to the Registrar that full compliance with this requirement would involve undue complexity and that any extension would not adversely affect the rights of any person.

(4) The Regulations may empower the Registrar,

- (a) to require the proprietor of a registered trade mark, within such time as may be prescribed, to file a proposal for amendment of the register; and

- (b) to cancel or refuse to renew the registration of the trade mark in the event of the proprietor failing to do so.

(5) Any such proposal shall be advertised in at least two newspapers having general circulation in Belize and in one issue of the *Gazette*, and may be opposed, in such manner as may be prescribed.

8.—(1) The Minister may make Rules empowering the Registrar, in any proceedings before him under this Act,

- (a) to award any party such costs as he may consider reasonable; and
- (b) to direct how and by what parties they are to be paid.

(2) An order of the Registrar made pursuant to subsection (1) of this section, may be enforced in the same way as an order of the Court.

(3) Provision may be made by the Rules empowering the Registrar, in appropriate cases, to require a party to proceedings before him to give security for costs, in relation to those proceedings on appeal, and as to the consequences if such security is not given.

(4) Rules may make provisions as to the giving of evidence before the Registrar by affidavit or statutory declaration.

9.—(1) The Registrar shall not be taken to warrant the validity of the registration of a trade mark under this Act or under any treaty, convention, arrangement or engagement to which Belize is a party.

(2) The Registrar is not subject to any liability by reason of, or in connection with, any examination required or authorised under this Act, or any such treaty, convention, arrangement or engagement, or any report or other proceedings consequent on such examination.

(3) No proceedings lie against any member of staff of the Office of Intellectual Property in respect of any matter for which, by virtue of this section, the Registrar is not liable.

Power of Registrar to award costs and require security.

Exclusion of liability in respect of official acts.

10.—(1) The Registrar shall in the month of December in each year, make a report to the Minister about the operations of the Office of Intellectual Property in respect of this Act, and shall include in such report the discharge of his functions under the Paris Convention and any other international arrangement concerning trademarks to which Belize is party.

Registrar's annual report.

(2) The report referred to under subsection (1) of this section shall include an account of all monies received and paid by the Office of Intellectual Property pursuant to this Act.

11.—(1) The Registrar shall publish in the Journal of Intellectual Property a notice of the registration of any trade mark.

The Journal.

(2) The Journal shall contain all such particulars of any application for the registration of a trade mark as may be prescribed (including a representation of the mark) and such other information relating to the trade mark as the Registrar thinks fit.

PART III

Registration of Trade Marks, etc.

12.—(1) An application for the registration of a trade mark shall be made to the Registrar.

Application for registration.

(2) The application shall contain,

- (a) a request for registration of a trade mark;
- (b) the name and address of the applicant;
- (c) a statement of the goods or services in relation to which it is sought to register the trade mark; and
- (d) a representation of the trade mark.

(3) The application shall state that the trade mark is being used, by the applicant or with his consent, in relation to those goods or services, or that he has a *bona fide* intention that it should be so used.

(4) The application shall be subject to payment of the application fee and such class fees as may be appropriate.

Date of filing.

13.—(1) The date of filing of an application for registration of a trade mark is the date on which documents containing everything required by section 12 (2) of this Act, are furnished to the Registrar by the applicant.

(2) If the documents are furnished on different days, the date of filing is the last of those days.

Classification of trade marks.

14.—(1) Goods and services shall be classified for the purposes of the registration of trademarks according to a prescribed system of classification.

(2) Any question arising as to the class within which any goods or services fall shall be determined by the Registrar, whose decision shall be final.

Examination of application.

15.—(1) The Registrar shall examine whether an application for registration of a trade mark satisfies the requirements of this Act (including any requirements imposed by Rules).

(2) For that purpose he shall carry out a search, to such extent as he considers necessary, of earlier trademarks.

(3) If it appears to the Registrar that the requirements for registration are not met, he shall inform the applicant and give him an opportunity, within such period as the Registrar may specify, to make representations or to amend the application.

(4) If the applicant fails to satisfy the Registrar that those requirements are met, or to amend the application so as to meet them, or fails to respond before the end of the specified period, the Registrar shall refuse to accept the application.

(5) If it appears to the Registrar that the requirements for registration are met, he shall accept the application.

16.-(1) When an application for registration has been accepted, the Registrar shall cause the application to be published in the register and the Journal, and in any other prescribed manner.

Publication, opposition proceedings and observations.

(2) Any person may, within the prescribed time from the date of the publication of the application, give notice to the Registrar of opposition to the registration.

(3) The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(4) Where an application has been published, any person may, at any time before the registration of the trade mark, make observations in writing to the Registrar as to whether the trade mark should be registered, and the Registrar shall inform the applicant of any such observations .

(5) A person who makes observations does not thereby become a party to the proceedings on the application.

17.-(1) The applicant may at any time withdraw his application or restrict the goods or services covered by the application.

Withdrawal, restriction or amendment of application.

(2) If the application has been published, the withdrawal or restriction shall also be published.

(3) In other respects, an application may be amended, at the request of the applicant, only by correcting,

- (a) the name or address of the applicant;
- (b) errors of wording or of copying; or
- (c) obvious mistakes,

and then only where the correction does not substantially affect the identity of the trade mark or extend the goods or services covered by the application.

(4) Provision shall be made by Rules for the publication of any amendment which affects the representation of the trade mark, or the goods or services covered by the application, and for the making of objections by any person claiming to be affected by it.

Registration.

18.—(1) Where an application has been accepted and,

- (a) no notice of opposition is given within the period referred to in section 16 (2) of this Act; or
- (b) all opposition proceedings are withdrawn or decided in favour of the applicant,

the Registrar shall register the trade mark, unless it appears to him having regard to matters coming to his notice since he accepted the application that it was accepted in error.

(2) A trade mark shall not be registered unless any fee prescribed for the registration is paid within the prescribed period and if the fee is not paid within that period, the application shall be deemed to be withdrawn.

(3) A trade mark when registered shall be registered as of the date of filing of the application for registration, and that date shall be deemed for the purposes of this Act to be the date of registration.

Registration; supplementary provisions.

19.—(1) Provision may be made by Rules as to,

- (a) the division of an application for the registration of a trade mark into several applications;
- (b) the merging of separate applications or registrations; or
- (c) the registration of a series of trade marks.

Duration of registration.

20.—(1) A trade mark shall be registered for a period of ten years from the date of registration.

(2) Registration may be renewed in accordance with section 21 of this Act for further periods of ten years.

21.-(1) The registration of a trade mark may be renewed at the request of the proprietor, subject to payment of a renewal fee.

Renewal of registration.

(2) Provision shall be made by Rules for the Registrar to inform the proprietor of a registered trade mark before the expiry of the registration, of the date of expiry and the manner in which the registration may be renewed.

(3) A request for renewal shall be made, and the renewal fee paid, before the expiry of the registration and failing this, the request may be made and the fee paid within such further period (of not less than six months) as may be prescribed, in which case an additional renewal fee shall also be paid within that period.

(4) Renewal shall take effect from the expiry of the previous registration.

(5) If the registration is not renewed in accordance with the above provisions, the Registrar shall remove the trade mark from the register,

Provided that provisions may be made by the Rules for the restoration of the registration of a trade mark which has been removed from the register, subject to such conditions (if any) as may be prescribed.

(6) The renewal or restoration of the registration of a trade mark shall be published in the register and the Journal and in any other prescribed manner.

22.-(1) A registered trade mark shall not be altered in the register, during the period of registration or on renewal.

Alteration of registered trade mark.

(2) Nevertheless, the Registrar may, at the request of the proprietor, allow the alteration of a registered trade mark where the mark includes the proprietor's name or address and the alteration is limited to alteration of that name or address and does not substantially affect the identity of the mark.

(3) Provision shall be made by Rules for the publication of any such alteration and the making of objections by any person claiming to be affected by it.

Registered trade mark.

23.—(1) A registered trade mark is a property right obtained by the registration of the trade mark under this Act and the proprietor of a registered trade mark has the rights and remedies provided by this Act.

(2) No proceedings lie to prevent or recover damages for the infringement of an unregistered trade mark as such, but nothing in this Act affects the law relating to passing off.

PART IV

Refusal of Registration, Effects, Rights, Infringements, etc., of Registered Trade Marks.

Rights conferred by registered trade mark.

24.—(1) Subject to the provisions of this Act, the proprietor of a registered trade mark has exclusive rights in the trade mark which are infringed by use of the trade mark in Belize without his consent.

(2) The acts amounting to infringement, if done without the consent of the proprietor, are specified in section 25 of this Act, and references in this Act to the infringement of a registered trade mark are to any such infringement of the rights of the proprietor.

(3) The rights of the proprietor have effect from the date of registration which, in accordance with section 18 (3) of this Act, is the date of filing of the application for registration,

Provided that,

- (a) no infringement proceedings may be begun before the date on which the trade mark is in fact registered; and
- (b) no offence under section 75 of this Act (unauthorised use of trade mark, etc. in relation to goods) is

committed by anything done before the date of publication of the registration.

25.-(1) A person infringes a registered trade mark if he uses in the course of trade a sign or mark which is identical with the trade mark in relation to goods or services which are identical with those for which it is registered.

Infringement of registered trade.

(2) A person infringes a registered trade mark if he uses in the course of a trade a sign where because,

- (a) the sign is identical with the trade mark and is used in relation to goods or services similar to those for which the trade mark is registered; or
- (b) the sign is similar to the trade mark and is used in relation to goods or services identical with or similar to those for which the trade mark is registered,

there exists a likelihood of confusion on the part of the public which includes the likelihood of association with the trade mark.

(3) A person infringes a registered trade mark if he uses in the course of a trade a sign which,

- (a) is identical with or similar to the trade mark; and
- (b) is used in relation to goods and services which are similar for those which the trade mark is registered,

where the trade mark has a reputation in Belize and the use of the sign, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

(4) For the purpose of this section, a person uses a sign if, in particular he,

- (a) affixes it to goods or the packaging thereof;

- (b) offers or exposes goods for sale, put them on the market or stock them for those purposes under the sign, or offers or supplies services under the sign;
- (c) imports or exports goods under the sign; or
- (d) uses the sign on business papers or in advertising.

(5) A person who applies a registered trade mark to material intended to be used for labelling or packing goods, as a business paper, or for advertising goods or services, shall be treated as a party to any use of the material which infringes the registered trade mark if when he applies the mark he knew or had reason to believe that the application of the trade mark was not duly authorised by the proprietor or a licensee.

(6) Nothing in the preceding provisions of this section shall be construed as preventing the use of a registered trade mark by any person for the purpose of identifying goods or services as those of the proprietor or a licensee, but any such use otherwise than in accordance with honest practices in industrial or commercial matters shall be treated as infringing the registered trade mark if the use without due cause takes unfair advantage of, or is detrimental to, the distinctive character or repute of the trade mark.

26.—(1) A registered trade mark is not infringed by the use of another registered trade mark in relation to goods or services for which the latter is registered but subject to section 47 (6) of this Act (effect of declaration of invalidity of registration).

(2) A registered trade mark is not infringed by,

- (a) the use by a person of his own name or address;
- (b) the use of indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services;
or

Limits on effect of registered trade mark.

- (c) the use of the trade mark where it is necessary to indicate the intended purpose of a product or service (in particular, as accessories or spare parts), provided the use is in accordance with honest practices in industrial or commercial matters.

(3) A registered trade mark is not infringed by the use in the course of trade in a particular locality of an earlier right which applies only in that locality, and for this purpose an “earlier right” means an unregistered trade mark or other sign continuously used in relation to goods or services by a person or a predecessor in title of his from a date prior to whichever is the earlier of,

- (a) the use of the first-mentioned trade mark in relation to those goods or services by the proprietor or a predecessor in title of his; or
- (b) the registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor or a predecessor in title of his,

and an earlier right shall be regarded as applying in a locality if, or to the extent that, its use in that locality is protected by virtue of any rule of law (in particular, the law of passing off).

27.—(1) A registered trade mark is not infringed by the use of the trade mark in relation to goods which have been put on the market in the Caricom Single Market and Economy under that trade mark by the proprietor or with his consent.

Exhaustion of rights conferred by registered trade mark.

(2) Subsection (1) of this section, does not apply where there exist legitimate reasons for the proprietor to oppose further dealings in the goods (in particular, where the condition of the goods has been changed or impaired after they have been put on the market).

28.—(1) An applicant for registration of a trade mark, or the proprietor of a registered trade mark, may,

Registration subject to disclaimer.

- (a) disclaim any right to the exclusive use of any specified element of the trade mark; or

- (b) agree that the rights conferred by the registration shall be subject to a specified territorial or other limitation;

and where the registration of a trade mark is subject to a disclaimer or limitation, the rights conferred by section 24 of this Act (rights conferred by registered trade mark) are restricted accordingly.

(2) Provision shall be made by Rules as to the publication and entry in the register of a disclaimer or limitation.

29. A registered trade mark is personal property.

30.—(1) Where a registered trade mark is granted to two or more persons jointly, each of them is entitled, subject to any agreement to the contrary, to an equal undivided share in the registered trade mark.

(2) The following provisions apply where two or more persons are co-proprietors of a registered trade mark, by virtue of subsection (1) of this Act or otherwise.

(3) Subject to any agreement to the contrary, each co-proprietor is entitled, by himself or his agents, to do for his own benefit and without the consent of or the need to account to the other or others, any act which would otherwise amount to an infringement of the registered trade mark.

(4) One co-proprietor may not without the consent of the other or others,

- (a) grant a licence to use the registered trade mark; or
- (b) assign or change his/her share in the registered trade mark.

(5) Infringement proceedings may be brought by any proprietor, but he may not, without the leave of the Court, proceed with the action unless the other, or each of the others, is either joined as a plaintiff or added as a defendant, but a co-proprietor who is thus added as a defendant shall not be made liable for any costs in the action unless he takes part in the proceedings and nothing in this subsection affects the granting of interlocutory relief on the application of a single co-proprietor.

Nature of registered trade mark.

Co-ownership of registered trade mark.

(6) Nothing in this section affects the mutual rights and obligations of trustees or personal representatives, or their rights and obligations as such.

31.-(1) A registered trade mark is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or moveable property and it is so transmissible either in connection with the goodwill of a business or independently.

Assignment, etc., of registered trade mark.

(2) An assignment or other transmission of a registered trade mark may be partial, that is, limited so as to apply,

- (a) in relation to some but not all of the goods or services for which the trade mark is registered; or
- (b) in relation to use of the trade mark in a particular locality.

(3) An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, a personal representative, and this requirement may be satisfied in a case where the assignor or personal representative is a body corporate by the affixing of its seal.

(4) The above provisions apply to assignment by way of security as in relation to any assignment.

(5) A registered trade mark may be the subject of a charge in the same way as other personal or moveable property.

(6) Nothing in this Act shall be construed as affecting the assignment or other transmission of an unregistered trade mark as part of the goodwill of a business.

32.-(1) On application being made to the Registrar by,

- (a) a person claiming to be entitled to an interest in or under a registered trade mark by virtue of a registrable transaction; or

Registration of transactions affecting registered trade mark.

- (b) any other person claiming to be affected by such a transaction,

the prescribed particulars of the transaction shall be entered in the Register.

(2) The following are registrable transactions,

- (a) an assignment of a registered trade mark or any right in it;
- (b) the grant of a licence under a registered trade mark;
- (c) the granting of any security interest (whether fixed or floating) over a registered trade mark or any right in or under it;
- (d) the making by personal representatives of an assent in relation to a registered trade mark or any right in or under it;
- (e) an order of a court or other competent authority transferring a registered trade mark or any right in or under it.

(3) Until an application has been made for registration of the prescribed particulars of a registrable transaction,

- (a) the transaction is ineffective as against a person acquiring a conflicting interest in or under the registered trade mark in ignorance of it; and
- (b) a person claiming to be a licensee by virtue of the transaction does not have the protection of section 43 or 44 of this Act (rights and remedies of licensee in relation to infringement).

(4) Where a person becomes the proprietor or a licensee of a registered trade mark by virtue of a registrable transaction unless,

- (a) an application for registration of the prescribed particulars of the transaction is made before the end of the period of six months beginning with its date; or
- (b) the Court is satisfied that it was not practicable for such an application to be made before the end of that period and that an application was made as soon as practicable thereafter,

he is not entitled to damages or an account of profits in respect of any infringement of the registered trade mark occurring after the date of the transaction and before the prescribed particulars of the transaction are registered.

(5) Provision may be made by Rules as to,

- (a) the amendment of registered particulars relating to a licence so as to reflect any alteration of the terms of the licence; and
- (b) the removal of such particulars from the register,
 - (i) where it appears from the registered particulars that the licence was granted for a fixed period and that period has expired; or
 - (ii) where no such period is indicated and, after such period as may be prescribed, the Registrar has notified the parties of his intention to remove the particulars from the register.

(6) Provision may also be made by Rules as to the amendment or removal from the register of particulars relating to a security interest on the application of, or with the consent of, the person entitled to the benefit of that interest.

33.-(1) No notice of any trust (express, implied or constructive) shall be entered in the register, and the Registrar shall not be affected by any such notice.

Trusts and equities.

(2) Subject to the provisions of this Act, equities in respect of a registered trade mark may be enforced in like manner as in respect of other personal or moveable property.

Application for registration of trade mark as an object of property.

34.—(1) The provisions of sections 29 to 33 of this Act (which relate to a registered trade mark as an object of property) apply, with the necessary modifications, in relation to an application for the registration of a trade mark as in relation to a registered trade mark.

(2) In section 30 of this Act (co-ownership of registered trade mark) as it applies in relation to an application for registration, the reference in subsection (1) of this section to the granting of the registration shall be construed as a reference to the making of the application.

(3) In section 32 of this Act (registration of transactions affecting registered trademarks) as it applies in relation to a transaction affecting an application for the registration of a trade mark, the references to the entry of particulars in the register, and to the making of an application to register particulars, shall be construed as references to the giving of notice to the Registrar of those particulars.

Absolute grounds for refusal of registration.

35.—(1) The following shall not be registered,

- (a) signs which do not satisfy the requirements of the definition of a trade mark;
- (b) trade marks which are devoid of any distinctive character;
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or rendering of services, or other characteristics of goods or services;
- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade,

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c), or (d) of this subsection if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.

(2) A sign shall not be registered as a trade mark if it consists exclusively of,

- (a) the shape which results from the nature of the goods themselves;
- (b) the shape of goods which is necessary to obtain a technical result; or
- (c) the shape which gives substantial value to the goods.

(3) A trade mark shall not be registered if it is,

- (a) contrary to public policy or to accepted principles of morality; or
- (b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service).

(4) A trade mark shall not be registered if or to the extent that its use is prohibited in Belize by any enactment or rule of law.

(5) A trade mark shall not be registered in the cases specified, or referred to, in section 36 (specially protected emblems).

(6) A trade mark shall not be registered if or to the extent that the application for registration is made in bad faith.

36.-(1) A trade mark which consists of or contains,

- (a) the Belize flag, or any of the principal armorial bearings of the Belize flag, or any insignia or device so nearly resembling the Belize flag or any such armorial bearings as to be likely to be mistaken for them or it;

Specially protected emblems.

- (b) any insignia used by the Belize Police Department, Belize Defence Force, Prison Department, Fire Department or any other Government Department, or any device so nearly resembling such insignia as to be likely to be mistaken for it;
- (c) words, letters or devices likely to lead persons to think that the applicant either has or recently has had Government patronage or authorization,

shall not be registered unless it appears to the Registrar that consent has been given by or on behalf of the Government.

(2) A trade mark shall not be registered if it falls in one of the categories referred to in section 62 of this Act (national emblems, etc., of Convention countries) or section 63 of this Act (emblems, etc., of certain international organisations).

37.—(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

(2) A trade mark shall not be registered if because,

- (a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected; or
- (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

(3) A trade mark which,

- (a) is identical with or similar to an earlier trade mark; and

Relative grounds
for refusal of reg-
istration.

- (b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected,

shall not be registered if, or to the extent that, the earlier trade mark has a reputation in Belize and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

(4) A trade mark shall not be registered if, or to the extent that, its use in Belize is liable to be prevented,

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade; or
- (b) by virtue of an earlier right other than those referred to in subsections (1) to (4)(a) of this section, in particular by virtue of the law of copyright, design right or registered designs.

(5) A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.

(6) Nothing in this section prevents the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration.

38.—(1) In this Act, an “earlier trade mark” means,

Meaning of “earlier trade mark”.

- (a) a registered trade mark or an international trade mark (Belize) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade mark; or
- (b) a trade mark which, at the date of application for registration of the trade mark in question or (where

appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention as a well-known trade mark.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which if registered, would be an earlier trade mark by virtue of subsection (1) (a) or (b) of this section, subject to its being so registered.

(3) A trade mark within subsection (1) (a) or (b) of this section, whose registration expires shall continue to be taken into account in determining the registrability of a later mark for a period of one year after the expiry unless the Registrar is satisfied that there was no *bona fide* use of the mark during the two years immediately preceding the expiry.

39.—(1) This section applies where on an application for the registration of a trade mark it appears to the Registrar,

- (a) that there is an earlier trade mark in relation to which the conditions set out in section 37 (1), (2), or (3) of this Act obtain; or
- (b) that there is an earlier right in relation to which the condition set out in section 37 (4) of this Act is satisfied,

but the applicant shows to the satisfaction of the Registrar that there has been honest concurrent use of the trade mark for which registration is sought.

(2) In that case the Registrar shall not refuse the application by reason of the earlier trade mark or other earlier right unless objection on that ground is raised in opposition proceedings by the proprietor of that earlier trade mark or other earlier right.

(3) For the purpose of this section “honest concurrent use” means such use in Belize, by the applicant or with his consent, at the same time the use is made by the proprietor of the earlier trade mark or with his consent under any earlier law to this Act relating to trade marks in Belize.

Raising of relative grounds in case of honest concurrent use.

- (4) Nothing in this section affects,
- (a) the refusal of registration on the grounds mentioned in section 35 of this Act (absolute grounds for refusal), or
 - (b) the making of an application for a declaration on invalidity under section 47 (2) of this Act (application on relative grounds where no consent to registration).

(5) This section does not apply when there is an order in force under section 40 of this Act.

40.—(1) The Minister may by Order provide that in any case a trade mark shall not be refused registration on a ground mentioned in section 37 of this Act (relative grounds for refusal) unless objection on that ground is raised in opposition proceedings by the proprietor of the earlier trade mark or other earlier right.

Power to require that relative grounds be raised in opposition proceedings.

(2) The Order may make such consequential provisions as appears to the Minister appropriate,

- (a) with respect to the carrying out by the Registrar of searches of earlier trademarks; and
- (b) as to the persons by whom an application for a declaration of invalidity may be made on the grounds specified in section 37 (2) of this Act (relative grounds).

(3) An Order making such provision as is mentioned in subsection (2) (a) may direct that so much of section 16 of this Act (examination of application) as requires a search to be carried out shall cease to have effect.

(4) An Order making such provisions as are mentioned in sub-section (2) (b) may provide that so much of section 47 (3) of this Act as provides that any person may make an application for a declaration of invalidity shall have effect subject to the provisions of the Order.

(5) An Order under this section may contain such transitional provisions as appear to the Minister to be appropriate.

PART V

Surrender, Revocation and invalidity, etc., of Trade Marks Licences.

41.—(1) A licence to use a registered trade mark may be general or limited but a limited licence may, in particular, apply,

Licensing of registered trade mark.

- (a) in relation to some but not all of the goods or services for which the trade mark is registered; or
- (b) in relation to use of the trade mark in a particular manner or a particular locality.

(2) A licence is not effective unless it is in writing signed by or on behalf of the grantor.

(3) Unless the licence provides otherwise, it is binding on a successor in title to the grantor's interest.

(4) References in this Act to doing anything with, or without, the consent of the proprietor of a registered trade mark shall be construed as including, in appropriate cases, references requiring the consent of the licensee, as the case may be.

(5) Where the licence so provides, a sub-licence may be granted by the licensee, and references in this Act to a licence or licensee include a sub-licence or sub-licensee.

Exclusive licence.

42.—(1) In this Act, an “exclusive licence” means a licence (whether general or limited) authorizing the licensee to the exclusion of all other persons including the person granting the licence, to use a registered trade mark in the manner authorized by the licence, and the expression “exclusive licensee” shall be construed accordingly.

(2) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he/she has against the person granting the licence.

43.—(1) This section has effect with respect to the rights of a licensee in relation to infringement of a registered trade mark but the provisions of this section do not apply where or to the extent that, by virtue of section 44 (1) of this Act (exclusive licensee having rights and remedies of assignee), the licensee has a right to bring proceedings in his own name.

General provisions as to rights of licensees in case of infringement.

(2) A licensee is entitled, unless his licence through which his interest is derived provides otherwise, to call on the proprietor of the registered trade mark to take infringement proceedings in respect of any matter which affects his interests.

(3) If the proprietor,

(a) refuses to do so; or

(b) fails to do so within two months after being called upon,

the licensee may bring the proceedings in his own name as if he were the proprietor.

(4) Where infringement proceedings are brought by a licensee by virtue of this section, the licensee may not, without the leave of the Court, proceed with the action unless the proprietor is either joined as a plaintiff or added as a defendant but this does not affect the granting of interlocutory relief on an application by a licensee alone.

(5) A proprietor who is added as a defendant as mentioned in subsection (4) of this section shall not be made liable for any costs in the action unless he takes part in the proceedings.

(6) In infringement proceedings brought by the proprietor of a registered trade mark, any loss suffered or likely to be suffered by licensees shall be taken into account, and the Court may give such directions as it

thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of licensees.

(7) The provisions of this section apply in relation to an exclusive licensee if or to the extent that he has, by virtue of section 44 (1) of this Act, the rights and remedies of an assignee as if he were the proprietor of the registered trade mark.

Exclusive licensee having rights and remedies of assignee.

44.—(1) An exclusive licence may provide that the licensee shall have, to such extent as may be provided by the licence, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment and, where or to the extent that such provision is made, the licensee is entitled, subject to the provisions of the licence and to the following provisions of this section, to bring infringement proceedings against any person other than the proprietor, in his own name.

(2) Any such rights and remedies of an exclusive licensee are concurrent with those of the proprietor of the registered trade mark, and references to the proprietor of a registered trade mark in the provisions of this Act relating to infringement shall be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section, a defendant may avail himself of any defence which would have been available to him if the action had been brought by the proprietor of the registered trade mark.

(4) Where proceedings for infringement of a registered trade mark brought by the proprietor or an exclusive licensee relate wholly or partly to an infringement in respect of which they have concurrent rights of action, the proprietor or, as the case may be, the exclusive licensee may not, without the leave of the Court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant but this does not affect the granting of interlocutory relief on an application by a proprietor or an exclusive licensee alone.

(5) A person who is added as a defendant as mentioned in subsection (4) of this section, shall not be made liable for any costs in the action unless he takes part in the proceedings.

(6) Where an action for infringement of a registered trade mark is brought which relates wholly or partly to an infringement in respect of which the proprietor and an exclusive licensee have or had concurrent rights of action,

- (a) the Court shall in assessing damages take into account,
 - (i) the terms of the licence; and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
- (c) the Court shall if an account of profits is directed, apportion the profits between them as the Court considers just, subject to any agreement between them,

Provided that the provisions of this subsection apply whether or not the proprietor and the exclusive licensee are both parties to the action, and if they are not both parties the Court may give such directions as it thinks fit as to the extent to which the party to the proceedings is to hold the proceeds of any pecuniary remedy on behalf of the other.

(7) The proprietor of a registered trade mark shall notify any exclusive licensee who has a concurrent right of action before applying for an order under section 51 of this Act (order for delivery up), and the Court may on the application of the licensee make such order under that section as it thinks fit having regard to the terms of the licence.

(8) The provisions of subsections (4) to (7) of this section have effect subject to any agreement to the contrary between the exclusive licensee and the proprietor.

Surrender of registered trade mark.

45.—(1) A registered trade mark may be surrendered by the proprietor in respect of some or all of the goods or services for which it is registered.

(2) Provision may be made by rules,

- (a) as to the manner and effect of a surrender; and
- (b) for protecting the interests of other persons having a right in the registered trade mark.

Revocation of registration.

46.—(1) The registration of a trade mark may be revoked on any of the following ground,

- (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in Belize by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
- (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;
- (c) that, in consequence of the acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered;
- (d) that in consequence of the use made of it by the proprietor or with his consent in relation to the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

(2) For the purposes of subsection (1) of this section, “use of a trade mark” includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in Belize includes affixing the trade mark to goods or to the packaging of goods in Belize solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1) (a) or (b) of this section, if such use as is referred to in those paragraphs is commenced or resumed after the expiry of the five year period and before the application for revocation is made,

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) An application for revocation may be made by any person, and may be made either to the Registrar or to the Court, except that,

- (a) if proceedings concerning the trade mark in question are pending in the Court, the application must be made to the Court; and
- (b) if in any other case the application is made to the Registrar, he may at any stage of the proceedings refer the application to the Court.

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from,

- (a) the date of the application for revocation; or
- (b) if the Registrar or Court is satisfied that the grounds for revocation existed at an earlier date, that date.

47.—(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 35 or any of the provisions referred to in that section (absolute grounds for

Grounds for invalidity of registration.

refusal of registration) but where the trade mark was registered in breach of subsection (1) (b), (c), or (d) of this section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

(2) The registration of a trade mark may be declared invalid on the ground,

- (a) that there is an earlier trade mark in relation to which the conditions set out in section 37 (1), (2) or (3) obtain of this Act; or
- (b) that there is an earlier right in relation to which the condition set out in section 37 (4) of this Act, is satisfied, unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(3) An application for a declaration of invalidity may be made by any person, and may be made either to the Registrar or to the Court, except that,

- (a) if proceedings concerning the trade mark in question are pending in the Court, the application shall be made to the Court; and
- (b) if in any other case the application is made to the Registrar, he may at any stage of the proceedings refer the application to the Court.

(4) In the case of bad faith in the registration of a trade mark, the Registrar himself may apply to the Court for a declaration of the invalidity of the registration.

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made,

Provided that this shall not affect transactions past and closed.

48.—(1) Where the proprietor of an earlier trade mark or other earlier right has acquiesced for a continuous period of five years in the use of a registered trade mark in Belize, being aware of that use, there shall cease to be any entitlement on the basis of that earlier trade mark or other right,

Effect of acquiescence of earlier trade mark.

- (a) to apply for a declaration that the registration of the later trade mark is invalid; or
- (b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used,

unless the registration of the later trade mark was applied for in bad faith.

(2) Where subsection (1) of this section applies, the proprietor of the later trade mark is not entitled to oppose the use of the earlier trade mark, or as the case may be, the exploitation of the earlier right, notwithstanding that the earlier trade mark or right may no longer be invoked against his later trade mark.

49.—(1) An infringement of a registered trade mark is actionable by the proprietor of the trade mark.

Action for infringement.

(2) In an action for infringement, all such relief by way of damages, injunctions, accounts or otherwise is available to him as is available in respect of the infringement of any other property right.

50.—(1) Where a person is found to have infringed a registered trade mark, the Court may make an order requiring him,

Order of erasure, etc., of offending sign.

- (a) to cause the offending sign to be erased, removed or obliterated from any infringing goods, material or articles in his possession, custody or control; or

(b) if it is not reasonably practicable for the offending sign to be erased, removed or obliterated, to secure the destruction of the infringing goods, material or articles in question.

(2) If an order under subsection (1) of this section is not complied with, or it appears to the Court likely that such an order would not be complied with, the Court may order that the infringing goods, material or articles be delivered to such person as the Court may direct for erasure, removal or obliteration of the sign, or for destruction, as the case may be.

Order for delivery up of infringing goods, material or articles.

51.-(1) The proprietor of a registered trade mark may apply to the Court for an order for the delivery up to him, or such other person as the Court may direct, of any material or infringing goods, articles which a person has in his possession, custody or control in the course of a business.

(2) An application shall not be made after the end of the period specified in section 53 of this Act (period after which remedy for delivery up not available), and no order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under section 54 of the Act (order as to disposal of infringing goods, etc.).

(3) A person to whom any infringing goods, material or articles are delivered up in pursuance of an order under this section shall, if an order under section 54 of this Act is not made, retain them pending the making of such order, or the decision not to make an order under that section.

(4) Nothing in this section affects any other power of the Court.

Meaning of “infringing goods, material or articles”.

52.-(1) In this Act, the expression “infringing goods”, “infringing material” and “infringing articles” shall be construed as provided in the next following subsections.

(2) Goods are “infringing goods” in relation to a trade mark, if they or their packaging bear a sign identical or similar to that mark and,

- (a) the application of the sign to the goods or their packaging was an infringement of the registered trade mark;
- (b) the goods are proposed to be imported into Belize and the application of the sign in Belize to them or their packaging would be an infringement of the registered trade mark; or
- (c) the sign has otherwise been used in relation to the goods in such a way as to infringe the registered trade mark.

(3) Nothing in subsection (2) of this section, shall be construed as affecting the importation of goods which may lawfully be imported into Belize by virtue of any law.

(4) Material is “infringing material”, in relation to a registered trade mark if it bears a sign identical or similar to that mark and either,

- (a) it is used for labelling or packaging goods, as a business paper, or for advertising goods or services, in such a way as to infringe the registered trade mark; or
- (b) it is intended to be so used and such use would infringe the registered trade mark.

(5) “Infringing articles”, in relation to a registered trade mark, means articles,

- (a) which are specifically designed or adapted for making copies of a sign identical or similar to that mark; and
- (b) which a person has in his possession, custody or control, knowing or having reason to believe that they have been or are to be used to produce infringing goods or material.

Period after which remedy for delivery up not available.

53.—(1) An application for an order under section 51 of this Act (order for delivery up of infringing goods, material or articles) may not be made after the end of the period of six years from,

- (a) in the case of infringing goods, the date on which the trade mark was applied to the goods or their packaging;
- (b) in the case of infringing material, the date on which the trade mark was applied to the material; or
- (c) in the case of infringing articles, the date on which they were made,

except as mentioned in the next following provisions.

(2) If during the whole or part of that period the proprietor of the registered trade mark,

- (a) is under a disability; or
- (b) is prevented by fraud or concealment from discovering the facts entitling him to apply for an order,

an application may be made at any time before the end of the period of six years from the date on which he ceased to be under such disability or, as the case may be, could with reasonable diligence have discovered those facts.

(3) In subsection (2) of this section, “disability” has the same meaning as in section 28 of the Limitation Act, Cap. 170.

54.—(1) Where infringing goods, material or articles have been delivered up in pursuance of an order under section 51 of this Act, an application may be made to the Court,

- (a) for an order that they be destroyed or forfeited to such person as the Court may think fit; or

Order as to disposal of infringing goods, material or articles.

(b) for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the Court shall consider whether other remedies available in an action for infringement of the registered trade mark would be adequate to compensate the proprietor and any licensee and protect their interests.

(3) Provision shall be made by Rules of Court as to the service of notice on persons having an interest in the goods, material or articles, and any such person is entitled,

(a) to appear in proceedings for an order under this section, whether or not he was served with notice; and

(b) to appeal against any order made, whether or not he appeared,

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in the goods, material or articles, the Court shall make such order as it thinks just.

(5) If the Court decides that no order should be made under this section, the person in whose possession, custody or control the goods, material or articles were before being delivered up is entitled to their return.

(6) References in this section to a person having an interest in goods, material or articles include any person in whose favour an order would or may be made under this section.

55.—(1) Where a person threatens another with proceedings for infringement of a registered trade mark other than,

Remedy for
groundless threats
of infringement
proceedings.

(a) the application of the mark to goods or their packaging;

- (b) the importation of goods to which, or to the packaging of which, the mark has been applied; or
- (c) the supply of services under the mark,

any person aggrieved may bring proceedings for relief under this section.

(2) The relief which may be applied for is any of the following,

- (a) a declaration that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats;
- (c) damages in respect of any loss he has sustained by the threats,

and the plaintiff is entitled to such relief unless the defendant shows that the acts in respect of which proceedings were threatened constitute (or if done would constitute) an infringement of the registered trade mark concerned.

(3) If that is shown by the defendant, the plaintiff is nevertheless entitled to relief if he shows that the registration of the trade mark is invalid or liable to be revoked in a relevant respect.

(4) The mere notification that a trade mark is registered, or that an application for registration has been made, does not constitute a threat of proceedings for the purposes of this section.

56.—(1) A person who has duly filed an application for protection of a trade mark in a Convention country (a “Convention application”), or his successor in title, has a right to priority, for the purposes of registering the same trade mark under this Act for some or all of the same goods or services, for a period of six months from the date of filing of the first such application.

(2) If the application for registration under this Act is made within that six-month period,

Claim to priority of Convention application.

- (a) the relevant date for the purposes of establishing which rights take precedence shall be the date of filing of the first Convention application; and
- (b) the registrability of the trade mark shall not be affected by any use of the mark in Belize in the period between that date and the date of the application under this Act.

(3) Any filing which in a Convention country is equivalent to a regular national filing, under its domestic legislation or an international agreement, shall be treated as giving rise to the right of priority.

(4) A “regular national filing” means a filing which is adequate to establish the date on which the application was filed in that country, whatever may be the subsequent fate of the application.

(5) A subsequent application concerning the same subject as the first Convention application, filed in the same Convention country, shall be considered the first Convention application (of which the filing date is the starting date of the period of priority), if at the time of the subsequent application,

- (a) the previous application has been withdrawn, abandoned or refused, without having been laid open, to public inspection and without leaving any rights outstanding; and
- (b) it has not yet served as a basis for claiming a right of priority.

The previous application may not thereafter serve as a basis for claiming a right of priority.

(5) Provision may be made by Rules as to the manner of claiming a right to priority on the basis of a Convention application.

(6) A right to priority arising as a result of a Convention application may be assigned or otherwise transmitted, either with the application or

independently and the reference in subsection (1) of this section to the applicant's successor in title shall be construed accordingly.

Collective marks. **57.** The provisions of this Act apply to collective marks subject to the provisions of the First Schedule.

Certification marks. **58.** The provisions of this Act apply to certification marks subject to the provisions of the Second Schedule.

PART VI

International Conventions , Treaties and Legal Proceedings etc.

Application of treaties. **59.** The provisions of any international treaty in respect of trademarks, collective marks and certification marks to which Belize is party shall apply to matters dealt with by this Act and, in case of conflict with the provisions of this Act, shall prevail over the latter.

The Paris Convention. **60.**—(1) The Paris Convention for the Protection of Industrial Property of March 20th 1883, as revised or amended from time to time, the Regulations made thereunder, and the Administrative Instructions made under those Regulations shall be given full effect.

(2) Where reference is made in this Act to the Paris Convention, such reference shall include the Regulations and Administrative Instructions referred to subsection (1) of this section.

(3) Where the provisions of this Act and the Regulations made thereunder conflict with those of the Paris Convention, the provisions of the Paris Convention shall prevail.

Protection of well-known trade mark: Article 6bis of Paris Convention. **61.**—(1) References in this Act to a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark are to a mark which is well-known in Belize as being the mark of a person who,

- (a) is a national of a Convention country; or
- (b) is domiciled in, or has a real and effective industrial or commercial establishment in, a Convention country,

whether or not that person carries on business, or has any goodwill, in Belize, and references to the proprietor of such a mark shall be construed accordingly.

(2) The proprietor of a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark is entitled to restrain by injunction the use in Belize of a trade mark which, or the essential part of which, is identical or similar to his mark, in relation to identical or similar goods or services, where the use is likely to cause confusion, but this right is subject to section 48 of this Act (effect of acquiescence by proprietor of earlier trade mark).

(3) Nothing in subsection (2) of this section affects the continuation of any *bona fide* use of a trade mark begun before the commencement of this section.

62.—(1) A trade mark which consists of or contains the flag of a Convention country shall not be registered without the authorisation of the competent authorities of that country, unless it appears to the Registrar that use of the flag in the manner proposed is permitted without such authorisation.

National emblems, etc., of Convention countries: Article 6ter of Paris Convention.

(2) A trade mark which consists of or contains the armorial bearings or any other state emblem of a Convention country which is protected under the Paris Convention shall not be registered without the authorisation of the competent authorities of that country.

(3) A trade mark which consists of or contains an official sign or hallmark adopted by a Convention country and indicating control and warranty shall not, where the sign or hallmark is protected under the Paris Convention, be registered in relation to goods or services of the same, or a similar kind, as those in relation to which it indicates control and warranty, without the authorisation of the competent authorities of the country concerned.

(4) The provisions of this section as to national flags and other state emblems, and official signs or hallmarks, apply equally to anything which from a heraldic point of view imitates any such flag or other emblem, or sign or hallmark.

(5) Nothing in this section prevents the registration of a trade mark on the application of a national of a country who is authorised to make use of a state emblem, or official sign or hallmark, of that country, notwithstanding that it is similar to that of another country.

(6) Where by virtue of this section the authorisation of the competent authorities of a Convention country is or would be required for the registration of a trade mark, those authorities are entitled to restrain by injunction any use of the mark in Belize without their authorisation.

63.—(1) This section applies to,

- (a) the armorial bearings, flags or other emblems; and
- (b) the abbreviations and names,

of international intergovernmental organisations of which one or more Convention countries are members.

(2) A trade mark which consists of or contains any such emblem, abbreviation or name which is protected under the Paris Convention shall not be registered without the authorisation of the international organisation concerned, unless it appears to the Registrar that the use of the emblem, abbreviation or name in the manner proposed,

- (a) is not such as to suggest to the public that a connection exists between the organisation and the trade mark; or
- (b) is not likely to mislead the public as to the existence of a connection between the use and the organisation.

(3) The provisions of this section as to emblems of an international organisation apply equally to anything which from a heraldic point of view imitates any such emblem.

Emblems, etc., of certain international organisations: Article 6ter of Paris Convention.

(4) Where by virtue of this section the authorisation of an international organisation is or would be required for the registration of a trade mark, that organisation is entitled to restrain by injunction any use of the mark in Belize without its authorisation.

(5) Nothing in this section affects the rights of a person whose *bona fide* use of the trade mark in question began before the day when the relevant provisions of the Paris Convention entered into force in relation to Belize.

64.—(1) For the purposes of section 62, of this Act state emblems of a Convention country (other than the national flag), and official signs or hallmarks, shall be regarded as protected under the Paris Convention only if, or to the extent that,

Notification under Article 6ter of the Paris Convention.

- (a) the country in question has notified Belize in accordance with Article 6ter (3) of the Convention that it desires to protect that emblem, sign or hallmark;
- (b) the notification remains in force; and
- (c) Belize has not objected to it in accordance with Article 6ter (4) or any such objection has been withdrawn.

(2) For the purposes of section 62 of this Act, the emblems, abbreviations and names of an international organisations shall be regarded as protected under the Paris Convention only if, or to the extent that,

- (a) the organisation in question has notified Belize in accordance with Article 6ter (3) of the Convention that it desires to protect that emblem, abbreviation or name;
- (b) the notification remains in force; and
- (c) Belize has not objected to it in accordance with Article 6ter (4) or any such objection has been withdrawn.

(3) Notification under Article 6ter (3) of the Paris Convention shall have effect only in relation to applications for registration made more than two months after the receipt of the notification.

(4) The Registrar shall keep and make available for public inspection by any person, at all reasonable hours and free of charge, a list of,

- (a) the state emblems and official signs or hallmarks; and
- (b) the emblems, abbreviations and names of international organisations,

which are for the time being protected under the Paris Convention by virtue of notification under Article 6ter (3).

65.—(1) The following provisions apply where an application for registration of a trade mark is made by a person who is an agent or representative of a person who is the proprietor of the mark in a Convention country.

(2) If the proprietor opposes the application, registration shall be refused.

(3) If the application (not being so opposed) is granted, the proprietor may,

- (a) apply for a declaration of the invalidity of the registration; or
- (b) apply for the rectification of the register so as to substitute his name as the proprietor of the registered trade mark.

(4) The proprietor may (notwithstanding the rights conferred by this Act in relation to a registered trade mark) by injunction restrain any use of the trade mark in Belize which is not authorised by him.

(5) Subsections (2), (3) and (4) of this section, do not apply if, or to the extent that, the agent or representative justifies his action.

Acts of agent or representative: Article 6septies of the Paris Convention.

(6) An application under subsection (3) (a) or (b) of this section, shall be made within three years of the proprietor becoming aware of the registration, and no injunction shall be granted under subsection (4) of the section in respect of a use in which the proprietor has acquiesced for a continuous period of three years or more.

66.—(1) Judicial notice shall be taken of the Paris Convention or any other Treaty relating to trade marks, collective marks and certification marks to which Belize may become a party, and of any bulletin, journal or *Gazette* published under such Convention or Treaty.

Judicial notice of certain treaties.

(2) Any document referred to in any such bulletin, journal or *Gazette* shall be admissible as evidence of any instrument or other act thereby communicated, or of any institution established by or having functions under any Convention or Treaty referred to in subsection (1) of this section.

67. In all legal proceedings relating to a registered trade mark (including proceedings for rectification of the register) the registration of a person as proprietor of a trade mark shall be *prima facie* evidence of the validity of the original registration and of any subsequent assignment or other transmission of it.

Registration to be *prima facie* evidence of validity.

68.—(1) If in the proceedings before the Court the validity of the registration of a trade mark is contested and it is found by the Court that the trade mark is validly registered, the Court may give a certificate to that effect.

Certificate of validity of contested registration.

(2) If the Court gives such a certificate and in subsequent proceedings,

- (a) the validity of the registration is again questioned; and
- (b) the proprietor obtains a final order or judgment in his favour,

he is entitled to his costs as between attorney and client unless the Court directs otherwise but this subsection does not extend to the costs of an appeal in any such proceedings.

Registrar's appearance in proceedings involving the register.

69.—(1) In proceedings before the Court involving an application for,

- (a) the revocation of the registration of a trade mark;
- (b) a declaration of the invalidity of the registration of a trade mark; or
- (c) the rectification of the register,

the Registrar is entitled to appear and be heard if so directed by the Court.

(2) Unless otherwise directed by the Court, the Registrar may instead of appearing submit to the Court a statement in writing signed by him giving particulars of,

- (a) any proceedings before him in relation to the matter in issue;
- (b) the grounds of any decision given by him affecting it;
- (c) the practice of the Intellectual Property Office in like cases; or
- (d) such matters relevant to the issues and within his knowledge as Registrar as he thinks fit,

and the statement shall be deemed to form part of the evidence in the proceedings.

(3) Anything which the Registrar is or may be authorised or required to do under this section may be done on his behalf by a duly authorised officer of the staff of the Intellectual Property Office.

Appeals from decisions of the Registrar.

70.—(1) An appeal lies to the Court from any decision of the Registrar under this Act.

(2) For the purposes of this section, “decision of the Registrar” includes any act of the Registrar in exercise of a discretion vested in him by or under this Act.

71.--(1) The Minister may make Rules,

Power of Minister
to make Rules.

- (a) for the purpose of any provision of this Act authorising the making of Rules with respect to any matter; and
- (b) for prescribing anything authorised or required by any provision of this Act to be prescribed,

and generally for regulating practice and procedure under this Act.

(2) Provision may, in particular, be made,

- (a) as to the manner of filing of applications and other documents;
- (b) requiring and regulating the translation of documents and the filing and authentication of any translation;
- (c) as to the service of documents;
- (d) authorising the rectification of irregularities of procedure;
- (e) prescribing time limits for anything required to be done in connection with any proceeding under this Act;
- (f) providing for the extension of any time limit so prescribed, or specified by the Registrar, whether or not it has already expired.

(3) Provision may be made by Rules as to,

- (a) the payment of a single fee in respect of two or more matters; and
- (b) the circumstances (if any) in which a fee may be repaid or remitted.

Hours of business of Intellectual Property Office.

72.—(1) The Registrar may give directions specifying the hours of business of the Intellectual Property Office for the purpose of the transaction by the public of business under this Act, and the days which are business days for that purpose.

(2) Business done on any day after the specified hours of business, or on a day which is not a business day, shall be deemed to have been done on the next business day, and where the time for doing anything under this Act expires on a day which is not business day, that time shall be extended to the next business day.

(3) Directions under this section may make different provision for different classes of business and shall be published in the prescribed manner.

Agents.

73.—(1) Every applicant for the registration of a trade mark, certification mark or collective mark in the register whose ordinary residence or principal place of business is outside Belize shall be represented by an attorney-at-law who is resident in Belize and practicing in Belize in accordance with the relevant law.

(2) The Minister may make Rules requiring the keeping of a register of persons who act as agents for other persons for the purpose of applying for or obtaining the registration of trademarks, and references in this Act to “trade mark agent” or “agent” shall be construed, unless the context otherwise requires, to be references to persons whose names are entered in the register pursuant to this subsection.

(3) The Rules may require the payment of fees by persons requiring to be registered as agents.

(4) No person who is not an agent shall carry on business under any name, description or style which contains the words “registered trade mark agent” or hold himself out or otherwise describe himself as such an agent.

(5) A person who contravenes subsection (4) of this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding three years, or to both such fine and period of imprisonment.

74.-(1) The proprietor of a registered trade mark, or a licensee, may give notice in writing to the Comptroller of Customs ,

Provision restricting importation of infringing goods.

- (a) that he is the proprietor or, as the case may be, a licensee, of the registered trade mark;
- (b) that, at a time and place specified in the notice, goods which are, in relation to that registered trade mark, infringing goods, material or articles are expected to arrive in Belize; and
- (c) that he requests the Comptroller of Customs to treat them as prohibited goods.

(2) When a notice is in force under this section the importation of the goods to which the notice relates, otherwise than by a person for his private and domestic use, is prohibited, but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

(3) The proprietor of a registered trade mark, or a licensee who gives notice to the Comptroller of Customs pursuant to subsection (1) of this section, shall comply with such conditions with respect to,

- (a) the form of the notice;
- (b) the furnishing of evidence;
- (c) the payment of fees in respect of the notice;
- (d) the giving of security in respect of any liability or expense which the Comptroller may incur in consequence of the notice by reason of the detention of any article or anything done to a detained article;
- (e) the indemnification of the Comptroller against any liability or expenses, whether security has been given or not; and

- (f) any other incidental or supplementary matters, as may be prescribed, and different provisions may be prescribed for different classes or cases.

(4) Notwithstanding anything in the Customs Regulation Act, Cap. 49, a person shall not be liable to any penalty under that Act (other than the forfeiture of the goods) by reason only that any goods are treated as prohibited goods by virtue of this section.

PART VII

Miscellaneous

75.—(1) A person commits an offence who with a view to gain for himself or another, or with intent to cause a loss to another, and without the consent of the proprietor,

- (a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trade mark;
- (b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign; or
- (c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b) of this subsection.

(2) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor,

- (a) applies a sign identical to, or likely to be mistaken for, a registered trade mark to material intended to be used,

Unauthorized use of trade mark, etc., in relation to goods.

- (i) for labelling or packaging goods;
 - (ii) as a business paper in relation to goods; or
 - (iii) for advertising goods; or
- (b) uses in the course of a business material bearing such a sign for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods; or
- (c) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything by himself or another, which would be an offence under paragraph (b) of this subsection.

(3) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor,

- (a) makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trade mark; or
- (b) has such an article in his possession, custody or control in the course of a business,

knowing or having reason to believe that it has been, or is to be, used to produce goods, material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods.

- (4) A person does not commit an offence under this section unless,
- (a) the goods are goods in respect of which the trade mark is registered; or
 - (b) the trade mark has a reputation in Belize and the use of the sign takes or would take unfair advantage of, or

is or would be detrimental to, the distinctive character or the repute of the trade mark.

(5) It is a defence for a person charged with an offence under this section to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trade mark.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a period not exceeding ten years and where the offence continues after the first conviction, to a further fine of one hundred dollars for every day such offence continues, or in default of payment of the fine to imprisonment for a period of ten days for every day such offence continues.

Falsification of register, etc.

76.—(1) It is an offence for a person to make, or cause to be made, a false entry in the register of trademarks, knowing or having reason to believe that it is false.

(2) It is an offence for a person,

- (a) to make or cause to be made anything falsely purporting to be a copy or an extract of an entry in the register; or
- (b) to produce or tender or cause to be produced or tendered in evidence any such thing,

knowing or having reason to believe that it is false.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding five years, or to both such fine and period of imprisonment.

Falsely representing trade mark as registered.

77.—(1) It is an offence for a person,

- (a) falsely to represent that a mark is a registered trade mark ;or

- (b) to make a false representation as to the goods or services for which a trade mark is registered.

(2) For the purposes of this section, the use in Belize in relation to a trade mark,

- (a) of the word “registered”; or
- (b) of any other word or symbol importing a reference (express or implied) to registration,

shall be deemed to be a representation as to registration under this Act unless it is shown that the reference is to registration elsewhere than in Belize and that the trade mark is in fact so registered for the goods or services in question.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding eight thousand dollars or to imprisonment for a period not exceeding four years, or to both such fine and period of imprisonment.

78.—(1) Where an offence is committed under this Act by a body corporate, every person who at the material time was a Director, Manager, Secretary or other similar officer of the body corporate, or any person purporting to act in such capacity shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or connivance, or that he tried to prevent the commission of the offence.

Offences by body corporate or partnership.

(2) Subsection (1) of this section shall, *mutatis mutandis*, apply in respect of partners in a partnership for offences committed by a partnership under this Act.

(3) A fine imposed on a partnership on its conviction under this Act shall be paid out of the partnership assets.

79.—(1) Any police officer may,

Powers of police officers.

- (a) subject to the provisions of this Act, enter and search any premises or place, for goods which, or the

packaging of which, bears a sign identical to or likely to be mistaken for a registered trade mark, or for material bearing such a sign and intended to be used for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or for articles specifically designed or adapted for making copies of such sign;

- (b) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft) for goods referred to in paragraph (a) of this subsection;
- (c) stop and search any vehicle, in which he reasonably suspects that there are the goods referred to in paragraph (a) of this subsection;
- (d) seize, remove or detain any goods referred to in paragraph (a) found by him pursuant to this subsection.

(2) Any police officer may,

- (a) break open any outer or inner door of any place which he is empowered or authorised by this Act to enter and search ;
- (b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Act to stop, board and search;
- (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
- (d) detain any person found in any place which he is empowered or authorised by this Act to search until such place has been searched;
- (e) detain any vessel or aircraft which he is empowered by this Act to stop, board and search, and prevent any

person from approaching or boarding such vessel or aircraft until it has been searched;

- (f) detain any vehicle which he is empowered by this Act to stop and search until it has been searched.

80.—(1) No domestic premises shall be entered and searched by a police officer unless a magistrate has issued a warrant under subsection (2) of this section.

Restrictions on the entry and search of domestic premises.

(2) A magistrate may, if he is satisfied by information on oath that there are reasonable grounds for suspecting that there is in any domestic premises any article which may be seized, removed or detained under any provision of this Act, issue a warrant authorising a police officer to enter and search the premises.

(3) A police officer authorised under subsection (2) of this section to enter and search any premises may call upon any police officer to assist him in entering and searching the premises.

(4) In this section, “domestic premises” means any premises or any part thereof, used exclusively or mainly as a dwelling house.

81.—(1) Without prejudice to any other written law, any person who,

Obstruction of police officers.

- (a) wilfully obstructs a police officer in the exercise of his powers or the performance of his duties under this Act;
- (b) wilfully fails to comply with any requirements properly made to him by any such police officer; or
- (c) without reasonable excuse, fails to give such police officer any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months.

(2) A person who, when required to give information to a police officer in the exercise of his powers or the performance of his duties under this Act, knowingly gives false or misleading information to any such police officer, commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a period not exceeding two years.

(3) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.

82.—(1) The United Kingdom Trade Marks Act, Cap. 213, R. E 1980-1990, and the Merchandise Marks Act, Cap. 209, R. E. 1980-1990, are hereby repealed.

(2) Notwithstanding the repeal of the above Acts, all Orders, Rules, Regulations or any other subsidiary legislation made under the repealed Acts shall continue in force in so far as they have effect as part of the law of Belize until revoked by subsidiary legislation made under this Act.

83.—(1) Notwithstanding the repeal of the Acts referred to in section 82 (1) of this Act, all trademarks registered in Belize pursuant to the United Kingdom Trade Marks Act, Cap. 213 R. E. 1980-1990 and any Rules made thereunder, in Subsidiary Legislation 1991 Edition, Volume V, Cap. 213 at page 2 shall, subject to subsections (2) and (3) of this section, be deemed to have been registered under this Act.

(2) Trademarks registered pursuant to subsection (1) of this section, shall remain in force for the unexpired portion of the period of protection provided under this Act subject to the payment of the prescribed fees or renewal fees provided in this Act.

(3) A person who on the date of the entry into force of this Act has filed an application in the United Kingdom for the registration of a trade mark may, within 12 months of the entry into force of this Act, file an

Repeals.

Transitional.

application for the registration of the same trade mark under this Act, and such application shall be accorded the filing date or priority date accorded to the application by the United Kingdom Patents Office.

(4) Where, upon the entry into force of this Act, an application made under the United Kingdom Trade Marks Act , Cap. 213, R. E. 1980-1990 and Rules made thereunder in Subsidiary Legislation 1991 Edition, Volume V, Cap. 213 at page 2, is pending in Belize, such application shall, notwithstanding the provisions of subsection (1) of this section, be dealt with under the said United Kingdom Trade Marks Act and Rules made thereunder, but the grant of registration shall be subject to this Act.

(5) Notwithstanding subsection (1) of this section, the United Kingdom Trade Marks Act , Cap. 213 R. E. 1980-1990, shall continue to apply in so far as it is necessary to enable any person applying for the registration of a United Kingdom registered trade mark in Belize before this Act comes into force to do so, but any trade mark thus registered shall be deemed to have been registered under this Act.

(6) On the commencement of this Act, all notices of the ownership by any person of a trade mark which were previously made under the Merchandise Marks Act , Cap. 209 R. E. 1980-1990, shall cease to have effect in Belize, and such trademarks shall be registered in accordance with this Act.

(7) The Minister may by Order published in the *Gazette* make any further transitional or saving provisions which appear to him to be necessary or desirable.

FIRST SCHEDULE

TRADE MARKS ACT

Collective Marks

*[Sections 2 (1) and 57]**General*

1. The provisions of this Act apply to collective marks subject to the following provisions.

Signs of which a collective mark may consist

2. In relation to a collective mark, the reference in section 2 (1) of this section (signs of which a trade mark may consist) to distinguishing goods or services of one undertaking from those of other undertakings shall be construed as reference to distinguishing goods or services of members of the association which is the proprietor of the mark from those of other undertakings.

Indication of geographical origin

3.–(1) Notwithstanding section 35(1)(c) of this Act, a collective mark may be registered which consists of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services.

(2) However, the proprietor of such a mark is not entitled to prohibit the use of the signs or indications in accordance with honest practices in industrial or commercial matters (in particular, by a person who is entitled to use a geographical name).

Mark not to be misleading as to character or significance

4.-(1) A collective mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular, if it is likely to be taken to be something other than a collective mark.

(2) The Registrar may accordingly require that a mark in respect of which application is made for registration include some indication that it is a collective mark, and notwithstanding section 17 (3) of this Act, an application may be amended so as to comply with any such requirement.

Regulations governing use of collective mark

5.-(1) An applicant for registration of a collective mark shall file with the Registrar regulations governing the use of the mark.

(2) The regulations shall specify the persons authorised to use the mark, the conditions of membership of the association and, where they exist, the conditions of use of the mark, including any sanctions against misuse.

(3) Further requirements with which the regulations have to comply may be imposed by Rules.

Approval of regulations by Registrar

6.-(1) A collective mark shall not be registered unless the regulations governing the use of the mark,

- (a) comply with paragraph 5 (2) of these rules and any further requirements imposed by the rules; and
- (b) are not contrary to public policy or to accepted principles of morality.

(2) Before the end of the prescribed period after the date of the application for registration of a collective mark, the applicant shall file the regulations with the Registrar and pay the prescribed fee and if he does not do so, the application shall be deemed to be withdrawn.

(3) The Registrar shall consider whether the requirements mentioned in subparagraph (1) of these rules are met.

(4) If it appears to the Registrar that those requirements are not met, he shall inform the applicant and give him an opportunity, within such period as the Registrar may specify, to make representations or to file amended regulations.

(5) If the applicant fails to satisfy the Registrar that those requirements are met, or to file regulations amended so as to meet them, or fails to respond before the end of the specified period, the Registrar shall refuse the application.

(6) If it appears to the Registrar that those requirements, and other requirements for registration, are met, he shall accept the application and shall proceed in accordance with section 16 (publication, opposition proceedings and observations).

(7) The regulations shall be published and notice of opposition may be given, and observations may be made, relating to the matters mentioned in this paragraph.

Regulations to be open to inspection

7. The regulations governing the use of a registered collective mark shall be open to public inspection in the same way as the register.

Amendment of regulations

8.—(1) An amendment of the regulations governing the use of a registered collective mark is not effective unless and until the amended regulations are filed with the Registrar and accepted by him.

(2) Before accepting any amendment regulations the Registrar may in any case where it appears to him expedient to do so cause them to be published.

(3) If he does so, notice of opposition may be given, and observations may be made, relating to the matters mentioned in paragraph 6(1) of these rules.

Infringement: rights of authorised users

9. The following provisions apply in relation to an authorised user of a registered collective mark as in relation to a licence of a trade mark,

- (a) section 25 (5) of this Act (definition of infringement: unauthorised application of mark to certain material);
- (b) section 54 (2) of this Act (order as to disposal of infringing goods, material or articles: adequacy of other remedies);
- (c) section 74 of this Act (prohibition of importation of infringing goods, material or articles: request to the Comptroller of Customs).

10.—(1) The following provisions (which correspond to the provisions of section 43 of this Act (general provisions as to the rights of licensees in cases of infringement)) have effect as regards the right of an authorised user in relation to infringement of a registered collective mark.

(2) An authorised user is entitled, subject to any agreement to the contrary between him and the proprietor, to call on the proprietor to take infringement proceedings in respect of any matter which affects his interests.

(3) If the proprietor,

(a) refuses to do so; or

(b) fails to do so within two months after being called upon,

the authorised user may bring the proceedings in his own name as if he were the proprietor.

(4) Where the infringement proceedings are brought by virtue of this paragraph, the authorised user may not, without the leave of the Court, proceed with the action unless the proprietor is either joined as a plaintiff or added as a defendant but this does not affect the granting of interlocutory relief on an application by an authorised user alone.

(5) A proprietor who is added as a defendant as mentioned in subparagraph (4) shall not be made liable for any costs in the action unless he takes part in the proceedings.

(6) In infringement proceedings brought by the proprietor of a registered collective mark, any loss suffered or likely to be suffered by authorised users shall be taken into account and the Court may give such directions as it thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of such users.

Grounds for revocation of registration

11. Apart from the grounds of revocation provided for in section 46 of this Act, the registration of a collective mark may be revoked on the ground,

- (a) that the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in paragraph 4 (1) of these regulations;
- (b) that the proprietor has failed to observe, or to secure the observance of, the regulations governing the use of the mark; or
- (c) that an amendment of the regulations has been made so that the regulations,
 - (i) no longer comply with paragraph 5 (2) of these regulations and any further conditions imposed by Rules; or
 - (ii) are contrary to public policy or to accepted principles of morality.

Grounds for invalidity of registration

12. Apart from the grounds of invalidity provided for in section 47 of this Act, the registration of a collective mark may be declared invalid on the ground that the mark was registered in breach of the provisions of paragraph 4 (1) or 6 (1) of these regulations.

SECOND SCHEDULE

TRADE MARKS ACT

Certification Marks

*[Sections 2 (1) and 58]**General*

1. The provisions of this Act apply to certification marks subject to the following provisions.

Signs of which a certification mark may consist

2. In relation to a certification mark, the reference in section 2 (1) of this Act (signs of which a trade mark may consist) to distinguishing goods or services of one undertaking from those of other undertakings shall be construed as a reference to distinguishing goods or services which are certified from those which are not.

Indication of geographical origin

3.–(1) Notwithstanding section 35(1)(c) of this Act, a certification mark may be registered which consists of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services.

(2) However, the proprietor of such a mark is not entitled to prohibit the use of the signs or indications in accordance with honest practices in industrial or commercial matters (in particular, by a person who is entitled to use a geographical name).

Nature of proprietor's business

4. A certification mark shall not be registered if the proprietor carries on a business involving the supply of goods or services of the kind certified.

Mark not to be misleading as to character or significance

5.-(1) A certification mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular if it is likely to be taken to be something other than a certification mark.

(2) The Registrar may accordingly require that a mark in respect of which application is made for registration include some indication that it is a certification mark and notwithstanding section 17(3) of this Act an application may be amended so as to comply with any such requirement.

Regulations governing use of certification mark

6.-(1) An applicant for registration of a certification mark shall file with the Registrar regulations governing the use of the mark.

(2) The regulations shall indicate who is authorised to use the mark, the characteristics to be certified by the mark, how the certifying body is to test those characteristics and to supervise the use of the mark, the fees (if any) to be paid in connection with the operation of the mark and the procedures for resolving disputes.

(3) Further requirements with which the regulations have to comply may be imposed by Rules.

Approval of regulations by Registrar

7.-(1) A certification mark shall not be registered unless,

- (a) the regulations governing the use of the mark,
 - (i) comply with paragraph 6 (2) of these rules and any further requirements imposed by rules; and
 - (ii) are not contrary to public policy or to accepted principles of morality; and

(b) the applicant is competent to certify the goods or services for which the mark is to be registered.

(2) Before the end of the prescribed period after the date of the application for registration of a certification mark, the applicant must file the regulations with the Registrar and pay the prescribed fee, and if he does not do so, the application shall be deemed to be withdrawn.

(3) The Registrar shall consider whether the requirements mentioned in subparagraph (1) of this rule are met.

(4) If it appears to the Registrar that those requirements are not met, he shall inform the applicant and give him an opportunity, within such period as the Registrar may specify, to make representations or to file amended regulations.

(5) If the applicant fails to satisfy the Registrar that those requirements are met, or to file regulations amended so as to meet them, or fails to respond before the end of the specified period, the Registrar shall refuse the application.

(6) If it appears to the Registrar that those requirements, and other requirements for registration, are met, he shall accept the application and shall proceed in accordance with section 16 of this Act (publication, opposition proceedings and observations).

(7) The regulations shall be published and notice of opposition may be given, and observations may be made, relating to the matters mentioned in this paragraph, in addition to any other grounds on which the application may be opposed or observations made.

Regulations to be open to inspection

8. The regulations governing the use of a registered certification mark shall be open to public inspection in the same way as the register.

Amendment of regulations

9.—(1) An amendment of the regulations governing the use of a registered certification mark is not effective unless and until the amended regulations are filed with the Registrar and accepted by him.

(2) Before accepting any amendment regulations the Registrar may in any case where it appears to him expedient to do so cause them to be published.

(3) If he does so, notice of opposition may be given, and observations may be made, relating to the matters mentioned in paragraph 7 (1) of these rules.

Consent to assignment of registered certification mark

10. The assignment or other transmission of a registered certification mark is not effective without the consent of the Registrar.

Infringement: rights of authorised users

11. The following provisions apply in relation to an authorised user of a registered certification mark as in relation to a licence of a trade mark,

- (a) section 25 (5) of this Act (definition of infringement: unauthorized application of mark to certain material);
- (b) section 54 (2) of this Act (order as to disposal of infringing goods, material or articles: adequacy of other remedies);
- (c) section 74 of this Act (prohibition of importation of infringing goods, material or articles: request to the Comptroller of Customs).

12. In infringement proceedings brought by the proprietor of a registered certification mark any loss suffered or likely to be suffered by authorized users shall be taken into account, and the Court may give such directions as it thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of such users.

Grounds for revocation of registration

13. Apart from the grounds of revocation provided for in section 46 of this Act, the registration of a certification mark may be revoked on the ground,

- (a) that the proprietor has begun to carry on such a business as is mentioned in paragraph 4 of these rules;
- (b) that the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in paragraph 5 (1) of these rules;
- (c) that the proprietor failed to observe, or to secure the observance of, the regulations governing the use of the mark;
- (d) that an amendment of the regulations has been made so that the regulations,
 - (i) no longer comply with paragraph 6 (2) of these rules and any further conditions imposed by rules; or
 - (ii) are contrary to public policy or to accepted principles of morality; or
- (e) that the proprietor is no longer competent to certify the goods or services for which the mark is registered.

Grounds for invalidity of registration

14. Apart from the grounds of invalidity provided for in section 47 of this Act, the registration of a certification mark may be declared invalid on the ground that the mark was registered in breach of the provisions of paragraph 4, 5 (1) or 6 (3) of these rules.