

(COTTON MARKS.) TRADE MARKS ACT, 1905.

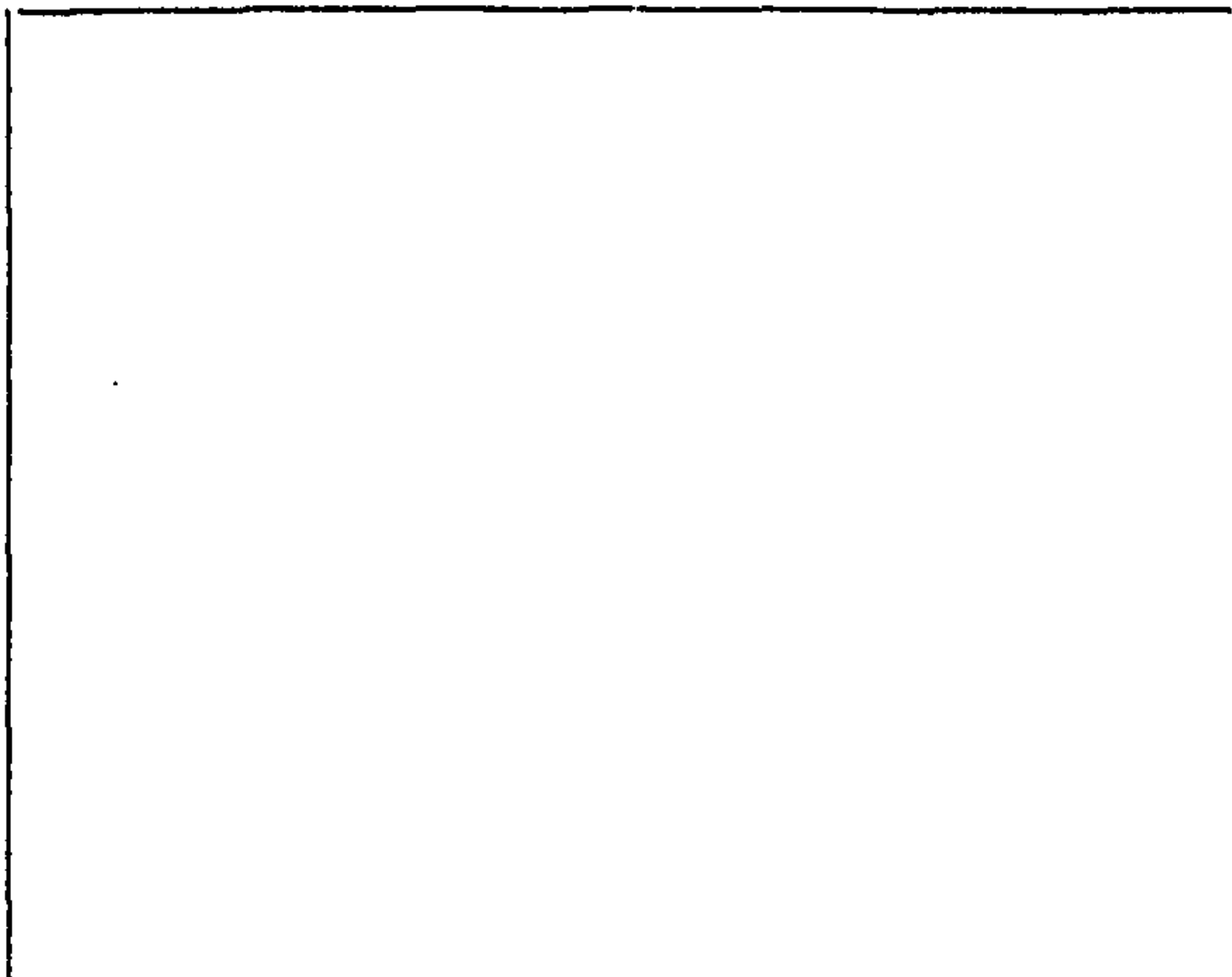
MB No. 2.

General Certificate.

Manchester Branch of the Trade Marks Registry,
48, Royal Exchange, Manchester.

It is hereby certified by the Keeper of Cotton Marks, that

REPRESENTATION OF TRADE MARK.



WITNESS my hand this day of '19 .

(Seal of Patent Office.)

Keeper of Cotton Marks.

(TRADE MARKS. TRADE MARKS ACT, 1905.
£1.)

Form TM No. 29.

Form of Appeal from the Registrar to the Board of Trade.

I, (a) of (a) hereby give notice of my intention to appeal to the
Board of Trade from (b) of the Registrar of the day of 19
whereby he (c)

Accompanying this notice is a statement of my case for the decision of the Board of Trade.

(Signed) ———.

Dated this day of 19 .

To the Registrar, Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.,
and to
[Name of Opponent, if any].

- (a) Here insert full name and address of appellant.
- (b) Here insert "the decision" or "that part of the decision" as the case may be.
- (c) Here insert the decision complained of.

APPENDIX VII.

(TRADE MARKS. TRADE MARKS ACT, 1905.
10s.)

Form TM No. 30.

Notice of Order of Court for Alteration or Rectification of Register of Trade Marks.

In the matter of the Trade Mark No. , registered in Class in the name of

SIR,
NOTICE is hereby given that by an Order of the Court made on the day of 19 , it was directed that
An Office Copy of the Order of the Court is enclosed herewith.

Dated this day of 19 .

(a) ———

*To the Registrar, Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

(a) To be signed by the person interested or his agent.

(TRADE MARKS. TRADE MARKS ACT, 1905.
£1.)

Form TM No. 31.

Request for General Certificate of Registrar (other than Certificate for use in Legal Proceedings or for use in obtaining Registration Abroad).

In the matter of the Trade Mark No. in Class .
SIR,
I, of hereby request you to furnish me with your Certificate that (a)

(b) ———.

Dated this day of 19 .

*To the Registrar, Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

(a) Here set out the particulars which the Registrar is requested to certify.
(b) Signature.

(TRADE MARKS. TRADE MARKS ACT, 1905.
£1.)

Form TM No. 32.

Request for Certificate of Refusal to Register a Trade Mark.

In the matter of an Application for registration of a Trade Mark, No. in Class .

SIR,
I, of , the Applicant in the above matter, hereby request you to furnish me with your Certificate of Refusal to register the said Trade Mark.

(a) ———

Dated this day of 19 .

*To the Registrar, Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.*

(a) Signature of applicant.

(TRADE MARKS.
Fee 18 or 18a.)

TRADE MARKS ACT, 1905.

Form TM No. 33.

*Request for Certificate of Registration of Trade Mark for use in
obtaining Registration Abroad.*

In the matter of the Trade Mark, No. _____, registered in Class _____ in the
name of _____.

SIR,
I, _____ of _____, the registered proprietor of the above Trade Mark hereby
request you to furnish me with your Certificate of Registration for use in obtaining
registration of the same in (a) _____.

(b) _____.

Dated this _____ day of _____ 19 _____.

To the Registrar, Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

(a) Here state name of country in which registration is to be sought.

(b) Signature.

(TRADE MARKS.
£1.)

TRADE MARKS ACT, 1905.

Form TM No. 34.

*Request for Certificate of Registration of Trade Mark to be used in
Legal Proceedings.*

In the matter of the Trade Mark, No. _____, registered in Class _____ in the
name of _____.

SIR,
I, _____ of _____, the registered proprietor of the above Trade Mark, hereby
request you to furnish me with your Certificate of Registration to be used in legal
proceedings.

(a) _____

Dated this _____ day of _____ 19 _____.

To the Registrar, Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

(a) Signature.

Dated this 24th day of March, 1906.

(Sd.) D. LLOYD-GEORGE,
President of the Board of Trade.

THIRD SCHEDULE.

CLASSIFICATION OF GOODS.

Illustrations.

Note.—Goods within the brackets are mentioned by way of illustration, and not
as an exhaustive list of the contents of a class.

CLASS 1.

Chemical substances used in manufactures, photography, or philosophical research
and anti-corrosives. (Such as acids, including vegetable acids; alkalies; artists'
colours; pigments; mineral dyes.)

APPENDIX VII.

CLASSIFICATION OF GOODS—*continued.*

CLASS 2.

Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes. (Such as artificial manure; cattle medicines; deodorisers; vermin destroyers.)

CLASS 3.

Chemical substances prepared for use in medicine and pharmacy. (Such as cod liver oil; medicated articles; patent medicines; plasters; rhubarb.)

CLASS 4.

Raw or partly prepared vegetable, animal, and mineral substances used in manufactures, not included in other classes. (Such as resins; oils used in manufactures and not included in other classes; dyes, other than mineral; tanning substances; fibrous substances (*e.g.*, cotton, hemp, flax, jute); wool; silk; bristles; hair; feathers; cork; seeds; coal; coke; bone; sponge.)

CLASS 5.

Unwrought and partly wrought metals used in manufacture. (Such as iron and steel, pig or cast; iron, rough; iron, bar and rail, including rails for railways; iron, bolt and rod; iron, sheet, and boiler and armour plates; iron, hoop; lead, pig; lead, rolled; lead, sheet; wire; copper; zinc; gold, in ingots.)

CLASS 6.

Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines included in Class 7. (Such as steam engines; boilers; pneumatic machines; hydraulic machines; locomotives; sewing machines; weighing machines; machine tools; mining machinery; fire engines.)

CLASS 7.

Agricultural and horticultural machinery, and parts of such machinery. (Such as ploughs; drilling machines; reaping machines; threshing machines; churns; cyder presses; chaff cutters.)

CLASS 8.

Philosophical instruments, scientific instruments, and apparatus for useful purposes. Instruments and apparatus for teaching. (Such as mathematical instruments; gauges; logs; spectacles; educational appliances.)

CLASS 9.

Musical instruments.

CLASS 10.

Horological instruments.

CLASS 11.

Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals. (Such as bandages; friction gloves; lancets; fleams; enemas.)

CLASS 12.

Cutlery and edge tools. (Such as knives; forks; scissors; shears; files; saws.)

CLASSIFICATION OF GOODS—continued.**CLASS 13.**

Metal goods not included in other classes. (Such as anvils; keys; basins (metal); needles; hoes; shovels; corkscrews.)

CLASS 14.

Goods of precious metals (including aluminium, nickel, Britannia metal, &c.) and jewellery, and imitations of such goods and jewellery. (Such as plate; clock cases and pencil cases of such metals; Sheffield and other plated goods; gilt and ormolu work.)

CLASS 15.

Glass. (Such as window and plate glass; painted glass; glass mosaic; glass beads.)

CLASS 16.

Porcelain and earthenware. (Such as china; stoneware; terra cotta; statuary porcelain; tiles; bricks.)

CLASS 17.

Manufactures from mineral and other substances for building or decoration. (Such as cement; plaster; imitation marble; asphalt.)

CLASS 18.

Engineering, architectural, and building contrivances. (Such as diving apparatus; warming apparatus; ventilating apparatus; filtering apparatus; lighting contrivances; drainage contrivances; electric and pneumatic bells.)

CLASS 19.

Arms, ammunition, and stores not included in Class 20. (Such as cannon; small-arms; fowling pieces; swords; shot and other projectiles; camp equipage; equipments.)

CLASS 20.

Explosive substances. (Such as gunpowder; gun-cotton; dynamite; fog-signals; percussion caps; fireworks; cartridges.)

CLASS 21.

Naval architectural contrivances and naval equipments not included in Classes 19 and 20. (Such as boats; anchors; chain cables; rigging.)

CLASS 22.

Carriages. (Such as railway carriages; waggons; railway trucks; bicycles; bath chairs.)

CLASS 23.

- (a) Cotton yarn.
- (b) Sewing cotton.

CLASS 24.

Cotton piece goods of all kinds. (Such as cotton shirtings; long cloth.)

CLASS 25.

Cotton goods not included in Classes 23, 24, or 25. (Such as cotton lace; cotton braids; cotton tapes.)

APPENDIX VII.

CLASSIFICATION OF GOODS—*continued.*

CLASS 26.

Linen and hemp yarn and thread.

CLASS 27.

Linen and hemp piece goods.

CLASS 28.

Linen and hemp goods not included in Classes 26, 27, and 50.

CLASS 29.

Jute yarns and tissues, and other articles made of jute not included in Class 50.

CLASS 30.

Silk, spun, thrown, or sewing.

CLASS 31.

Silk piece goods.

CLASS 32.

Other silk goods not included in Classes 30 and 31.

CLASS 33.

Yarns of wool, worsted, or hair.

CLASS 34.

Cloths and stuffs of wool, worsted or hair.

CLASS 35.

Woolen and worsted and hair goods not included in Classes 33 and 34.

CLASS 36.

Carpets, floor-cloth, and oil-cloth. (Such as drugget ; mats and matting ; rugs.)

CLASS 37.

Leather, skins unwrought and wrought, and articles made of leather not included in other classes. (Such as saddlery ; harness ; whips ; portmanteaus ; furs.)

CLASS 38.

Articles of clothing. (Such as hats of all kinds ; caps and bonnets ; hosiery ; gloves ; boots and shoes ; other ready-made clothing.)

CLASS 39.

Paper (except paperhangings), stationery, and bookbinding. (Such as envelopes ; sealing wax ; pens (except gold pens) ; ink ; playing cards ; blotting cases ; copying presses.)

CLASS 40.

Goods manufactured from india-rubber and gutta-percha not included in other classes.

CLASSIFICATION OF GOODS—*continued.*

CLASS 41.

Furniture and upholstery. (Such as paperhangings; papier mâché; mirrors; mattresses.)

CLASS 42.

Substances used as food, or as ingredients in food. (Such as cereals; pulses; olive oil; hops; malt; dried fruits; tea; sago; salt; sugar; preserved meats; confectionery; oil cakes; pickles; vinegar; beer clarifiers.)

CLASS 43.

Fermented liquors and spirits. (Such as beer; cyder; wine; whisky; liqueurs.)

CLASS 44.

Mineral and aerated waters, natural and artificial, including ginger-beer.

CLASS 45.

Tobacco, whether manufactured or unmanufactured.

CLASS 46.

Seeds for agricultural and horticultural purposes.

CLASS 47.

Candles, common soap, detergents; illuminating, heating, or lubricating oils; matches, and starch, blue, and other preparations for laundry purposes. (Such as washing powders; benzine collas.)

CLASS 48.

Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).

CLASS 49.

Games of all kinds and sporting articles not included in other classes. (Such as billiard tables; roller skates; fishing nets and lines; toys.)

CLASS 50.

Miscellaneous—(1.) Goods manufactured from ivory, bone or wood, not included in other classes. (2.) Goods manufactured from straw or grass, not included in other classes. (3.) Goods manufactured from animal and vegetable substances, not included in other classes. (4.) Tobacco pipes. (5.) Umbrellas, walking-sticks, brushes, and combs. (6.) Furniture cream, plate powder. (7.) Tarpaulins, tent, rick-cloths, rope, twine. (8.) Buttons of all kinds other than of precious metal or imitations thereof. (9.) Packing and hose of all kinds. (10.) Goods not included in the foregoing classes. (Such as coopers' wares.)

Dated this 24th day of March, 1906.

D. LLOYD-GEORGE,
President of the Board of Trade.

APPENDIX VIII.

INSTRUCTIONS TO PERSONS WHO WISH TO REGISTER TRADE MARKS.

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1.—GENERAL.

It is advisable in the first instance for a person who desires to register a Trade Mark to buy a copy of the Trade Marks Rules, 1906, and of the Trade Marks Act of 1905 now governing the registration of Trade Marks. For information as to obtaining copies of the Rules and Act, see paragraph 26.

¹ The pages here inserted are those of this book, and not those actually inserted in the Instructions as issued from the Patent Office.

2.—WHO MAY APPLY FOR REGISTRATION OF A TRADE MARK.

Any person claiming to be the proprietor of a Trade Mark, whether a British subject or not, may make an application for the Registration of a Trade Mark in the United Kingdom.

The term "person" includes firm, partnership, and body corporate.

Any person who has made a previous application for Registration of a Trade Mark, which is registrable under the Trade Marks Act, 1905, either in any of the Foreign States or in any of the British Possessions (*see* paragraph 24) with which certain arrangements for mutual protection of Trade Marks have been made, may obtain priority of date in the United Kingdom, provided that the application is made within four months from the date of the application in such Foreign State or British Possession.

3.—WHAT MAY BE REGISTERED AS A TRADE MARK.

Section 9 of the Trade Marks Act, 1905, provides as follows:—

9. A registrable trade mark must contain or consist of at least one of the following essential particulars:—

- (1) The name of a company, individual, or firm represented in a special or particular manner;
- (2) The signature of the applicant for registration or some predecessor in his business;
- (3) An invented word or invented words;
- (4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;
- (5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Board of Trade or the Court, be deemed a distinctive mark:

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the thirteenth day of August one thousand eight hundred and seventy-five, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Act.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

4.—MANNER OF APPLYING FOR REGISTRATION OF A TRADE MARK.

All applications and communications must be made in the English language.

Applications relating to marks not being cotton marks or Sheffield marks must be left at the Patent Office by hand or sent by post addressed to the Registrar, The Patent Office, Trade Marks Branch, 25, Southampton Buildings, London, W.C.

In the case of cotton marks, applications should be addressed to the Keeper of Cotton Marks, Manchester Branch of the Trade Marks Registry, 48, Royal Exchange, Manchester (*see* paragraph 19).

In the case of Sheffield marks, applications should be addressed to the Law Clerk to the Cutlers' Company, The Cutlers' Hall, Sheffield (*see* paragraph 18).

Applicants must use the appropriate Stamped Forms (*see* paragraph 5), as fees cannot be received by cheque or money order or in cash at the Patent Office.

5.—TRADE MARK FORMS AND FEES.

The following is a List of the Forms¹ under the Trade Marks Act, 1905, and of the principal fees:—

Number of Form.	Title of Form.	Fee.
		£ s. d.
TM No. 1	Form of authorisation of Agent	—
TM No. 2	Application for registration of Trade Mark	0 10 0
TM No. 3	Additional Representation of Trade Mark	No stamp.
TM No. 4	Request for statement of grounds of decision under section 12 (3)	0 10 0
TM No. 5	Application for registration of Special Trade Mark under section 9 (5)	0 10 0
TM No. 6	Application for registration of Special Trade Mark under section 62	0 10 0
TM No. 7	Notice of Opposition to application for registration	1 0 0
TM No. 8	Counter-statement to opposition to application for registration	0 10 0
TM No. 9	Application for hearing in cases of opposition	1 0 0
TM No. 10	Application to the Board of Trade for hearing under Rule 38	1 0 0
TM No. 11	Fee for Registration of a Trade Mark	1 0 0
TM No. 12	Renewal of Registration before notice has been given by Registrar	1 0 0
TM No. 13	Renewal of Registration after notice has been given by Registrar	1 0 0
TM No. 14	Additional fee to accompany renewal fee within one month after advertisement of non-payment of renewal fee	0 10 0
TM No. 15	Restoration of Trade Mark where removed for non-payment of fee	1 0 0
TM No. 16	Joint request by registered proprietor and assignee to register assignee as subsequent proprietor	1 0 0
TM No. 17	Form of Declaration (only to be furnished when requested by Registrar) by assignee in support of Form TM No. 16	—
TM No. 18	Request to enter name of subsequent proprietor upon register	1 0 0
TM No. 19	Form of Declaration (only to be furnished when requested by Registrar) in support of Statement of Case accompanying Form TM No. 18	—
TM No. 20	Application for alteration of address on Register	0 5 0

¹ For the Forms, see above, pp. 677 *et seq.*; for Table of Fees, p. 673.

Number of Form.	Title of Form.	Fee.
		£ s. d.
TM No. 21	Application to permit an apportionment of Trade Marks	5 0 0
TM No. 22	Request for correction of clerical error or amendment of application... ..	0 5 0
TM No. 23	Request to enter change of name of registered proprietor	0 5 0
TM No. 24	Application to cancel entry on register	0 5 0
TM No. 25	Request to strike out goods from those for which a mark is registered	0 5 0
TM No. 26	Request to enter disclaimer or memorandum	0 5 0
TM No. 27	Application to add to or alter a Trade Mark	1 0 0
TM No. 28	Request for search under Rule 95	0 10 0
TM No. 29	Appeal from Registrar to Board of Trade... ..	1 0 0
TM No. 30	Notice of Order of Court for alteration of Register	0 10 0
TM No. 31	Request for general certificate	1 0 0
TM No. 32	Request for certificate of refusal to register	1 0 0
TM No. 33	Request for certificate of registration for use in obtaining registration abroad	0 5 0
TM No. 34	Request for certificate of registration for use in legal proceedings	1 0 0
	For office copies every 100 words, but never less than one shilling	0 0 4
	For certifying office copies MS. or printed matter	0 10 0
	An additional stamp duty of one shilling is also charged under the Stamp Act upon certified copies of certain documents.	

Stamped Forms are supplied on personal application at the Inland Revenue Office, in the Patent Office, Room 32, or, at a few days' notice and upon pre-payment of the value of the stamp, at any Money Order Office in the United Kingdom.

If it should not be convenient to apply in either of the ways above specified, the Stamped Forms can be ordered by post from the Controller of Stamps (Room No. 5), Inland Revenue Office, Somerset House, London, W.C. In this case a bankers' draft or a Money or Postal Order payable to the Commissioners of Inland Revenue and crossed Bank of England, to cover the value of the stamp and the cost of transmitting the form in a registered envelope by post, must be forwarded to Somerset House with the application for the form. Cheques will not be accepted.

Forms bearing the numbers TM No. 2, TM No. 3, and TM No. 11 are kept in stock at the following Post Offices in London :—

The General Post Office, E.C.

District Post Office, Lombard Street, E.C.

„ 195, Whitechapel Road, E.

„ 239, Borough High Street, S.E.

„ Charing Cross, W.C.

„ 28, Eversholt Street, Camden Town, N.W.

Post Office, 44, Parliament Street, S.W., and

The Chief Post Office of the undermentioned cities and towns :—

IN ENGLAND AND WALES.

Accrington.
Altrincham.

Ashton-under-Lyne. Barnsley.
Bacup. Bath.

Bedford.
Birkenhead.

IN ENGLAND AND WALES—*continued.*

Birmingham.	Driffield.	Manchester.	Sheffield.
Blackburn.	Droitwich.	Middlesbrough.	Southampton.
Bolton.	Dudley.	Newcastle.	Stafford.
Bournemouth.	Durham.	Newport (Mon.).	Stalybridge.
Bradford.	Exeter.	Northallerton.	Stockport.
Brighton.	Gloucester.	Northampton.	Stockton-on-Tees.
Bristol.	Goole.	Norwich.	Stoke-on-Trent.
Burnley.	Greenwich.	Nottingham.	Stourbridge.
Burslem.	Halifax.	Nuneaton.	Stroud.
Bury.	Hanley.	Oldbury.	Sunderland.
Cambridge.	Hartlepool.	Oldham.	Swansen.
Cardiff.	Huddersfield.	Plymouth.	Tamworth.
Carlisle.	Hull.	Pontypriid.	Truro.
Chatham.	Ipswich.	Portsmouth.	Tunstall.
Cheltenham.	Keighley.	Preston.	Wakefield.
Chester.	Kidderminster.	Reading.	Walsall.
Coventry.	Leamington.	Redditch.	Warrington.
Croydon.	Leeds.	Rochdale.	West Bromwich.
Darwen.	Leicester.	Rotherham.	Widnes.
Derby.	Lichfield.	Rugby.	Wigan.
Devizes.	Lincoln.	Salford.	Wolverhampton.
Dewsbury.	Liverpool.	St. Helen's.	Woolwich.
Doncaster.	Macclesfield.	Scarborough.	York.
Dorchester.			

IN SCOTLAND.

Aberdeen.	Greenock.
Dundee.	Inverness.
Edinburgh.	Leith.
Glasgow.	Perth.

IN IRELAND.

Belfast.	Limerick.
Dublin.	Waterford.
Galway.	Wexford.

6.—DOCUMENTS, &c., REQUIRED ON APPLICATION FOR REGISTRATION OF A TRADE MARK.

An application for the registration of a Trade Mark, under Section 9 (*see* paragraph 3), must be made on an application form (Form TM No. 2) bearing an impressed stamp of 10s. (*see* paragraph 5), but in the case of an application under the special provisions of Section 9 (5) in regard to names, signatures or words, Form TM No. 5 must be used.

(The applicant should, before filling up the form, carefully read the marginal notes.)

Four additional representations of the Trade Mark, each mounted on Form TM No. 3, should accompany every application on TM No. 2 or TM No. 5 (*see* paragraph 5).

A *separate* application form is required for *each* class in cases where the same trade mark is claimed in more than one class of goods.

If the mark be the property of a firm or partnership, the Form TM No. 2 should be signed by some one or more members of such firm or partnership, who should add, after his or their signature, "a member of the firm" or "members of the firm" (as the case may be); if of a body corporate, by a director or by the secretary or other principal officer, who should add, after his signature and designation, "for the company."

Applications may be made by agents in the names of and on behalf of the owners of trade marks. The agent must be duly authorised in writing, in the Form TM No. 1, by the owner or owners; the authority

to an agent should be signed by the owner or owners; in the case of a firm, partnership, or body corporate, the authority should be signed in the same manner as indicated in the paragraph next above.

Each application made by an agent should have, after the signature of the agent, the description "Agent."

When an applicant, or his authorised agent, for the registration of a trade mark, otherwise than under an International Convention, resides out of the United Kingdom at the time of making the application, an address for service in the United Kingdom must be given in the application.

When the mark consists of or includes words printed in other than Roman characters, there should be given upon the forms a translation and a transliteration of such words, signed by the applicant or his agent.

In the case of marks claimed in the Cotton Classes and Class 34, the applicant should state by what name the particular mark claimed would be referred to in the invoices of his house.

The representations of the mark on the Form TM No. 3 must agree *in every respect* with each other, and with that on the Form TM No. 2.

Representations of a mark of a large size may be folded. In that case they must, however, be backed with linen, tracing cloth, or other suitable material and firmly affixed to the forms. Representations must in no case be executed *in pencil*. They should be not only of a durable nature, but of such a kind as will admit of their being preserved and bound together in volumes as records of the property of the owners. Photographs are not, as a rule, therefore, acceptable.

7.—WORD MARKS.

In most of the Classes, except the Cotton Classes, word marks are very popular. Speaking broadly, the Act debars from registration three kinds of words: (1) Geographical names; (2) surnames; (3) descriptive words; and it is frequently difficult to decide whether any given word falls under any of these heads. Cases often happen in which a person thinks he has invented a word, and yet on investigation it is found that such a word already exists, and falls under one of the heads above mentioned.

Again, though a given word may, after argument, be decided not to fall under one of the forbidden heads, yet the matter is so much on the border-line that much discussion can be raised before a final decision is reached.

It is very greatly to the advantage of a person adopting a new word mark—it being immaterial to him what word he adopts—to choose a word open to little or no discussion, and which clearly falls within paragraphs 3 or 4 of the ninth section of the Act. The Registrar will give what assistance he can on this subject, and it is suggested that an applicant desirous of adopting a new word mark should, before doing so, submit by letter a word, such as he thinks will suit his purpose, for the Registrar's consideration. The Registrar will of course only express an opinion as to how far a word submitted is within the section, and will make no search for the purpose of ascertaining whether any other person has a similar registered mark, unless a search fee is paid.

8.—SEARCH.

A person wishing to adopt a trade mark may make application to the Registrar in writing upon a Form TM No. 28, to cause a search to be made to ascertain whether any marks are on record at the date of such search which may resemble the proposed mark, and the applicant will be informed of the result of such search. The request on Form TM No. 28 should be accompanied by two representations of the proposed mark, each mounted on a half-sheet of foolscap.

A person may, however, search amongst the classified representations of trade marks at the Trade Marks Branch of the Patent Office, if he so desire. The index includes a general collection of marks, a divisional index of devices, and an alphabetically arranged index of words appearing as parts of trade marks or alone. It must not be assumed, however, that all words contained in this index are protected by registration.

The fee payable by a person making a search is 1s. for every quarter of an hour.

Complete searches amongst classified collections of marks in the *Cotton Classes* (Classes 23, 24 and 25) can only be made at the Manchester Branch Office, 48, Royal Exchange, Manchester. See paragraph 19.

9.—SERIES OF TRADE MARKS.

By section 26 of the Act, when a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

- (a) statements of the goods for which they are respectively used or proposed to be used ; or
- (b) statements of number, price, quality, or names of places ; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark ; or
- (d) colour ;

seeks to register such trade marks, they may be registered as a series in one registration.

When an application is made for a series, a representation of each of the marks of the series must be affixed to Form TM No. 2, and also to each of the Forms TM No. 3.

10.—OLD MARKS.

In order that an application for an "Old Mark" may be treated as such, there must have been continuous user since before the date mentioned in paragraph 3, in the United Kingdom and in connection with the goods stated in the application. An applicant for such a mark should state how, *i.e.*, whether as a label, by branding or embossing or in any other manner, the mark has been so used. The Registrar may require a declaration verifying the statements made in such an application.

11.—PROCEDURE ON RECEIPT OF APPLICATION.

As soon as may be following the receipt of an application and after due consideration and search, the Registrar will communicate the result to the applicant in writing.

12.—NON-COMPLETION OF REGISTRATION OF A TRADE MARK.

When Registration is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the application may, after notice duly given, be treated as abandoned, unless it be completed within the time specified in such notice.

13.—DURATION OF REGISTRATION AND PAYMENT OF RENEWAL FEES.

Registration of a trade mark is for a period of 14 years from the date of the original application, but may be renewed from time to time on payment of the prescribed fee.

Each renewal is for 14 years.

The fee for renewal should be paid in due time by lodging the proper form as directed by the rules.

If the renewal fee is not paid in due time, extra cost is incurred, and, possibly, the registration may entirely lapse.

14.—CLASSIFICATION OF GOODS.

A guide to the classification of goods under the Trade Marks Rules can be obtained on application at the Patent Office, Trade Marks Branch, and should be asked for if the applicant feels any difficulty in determining to which of the classes set out in the Third Schedule to the rules the goods for which he uses his mark belong.

15.—ADVERTISEMENT IN THE TRADE MARKS JOURNAL.

A trade mark cannot in any case be entered upon the Register until after the expiration of one month from the date of its advertisement in the Journal.

A wood-block or electrotype must be furnished for each mark (even though the mark consists only of a word or words) in each Class claimed, except in the case of the Cotton Classes, for which no blocks are required.

No block or electrotype should be forwarded until a formal demand for it is sent by the Registrar.

In the case of a "series" of trade marks differing only in respect of the particulars mentioned in sec. 26 of the Act, a wood-block or electrotype must, if the Registrar so require, be furnished for each mark in the series.

The wood-blocks or electrotypes furnished must correspond *exactly* with the representations, must afford *perfectly distinct* impressions of the marks, and must be upon a scale sufficiently large to reproduce the marks faithfully. Worn or mutilated blocks or electrotypes cannot be

accepted. It is found in practice that zincotypes or process blocks do not, as a rule, yield impressions distinct enough for the purposes of this Journal, and a great number of such blocks have to be returned as unsuitable. It is generally found that the most suitable blocks are wood-blocks or electrotypes.

In the case of word marks the words on the block should be in plain block type.

The largest space available for the insertion of any single block or electrotype is five and a half inches broad by seven and a half inches deep.

When a block or electrotype *exceeds two inches in breadth or depth, or in breadth and depth*, a charge for additional space is made, at the rate of two shillings for every inch or part of an inch over two inches in breadth, and for every inch or part of an inch over two inches in depth.

The official number given by the Registrar to a mark should *not* be cut on the face of the block or electrotype, but should be *marked upon the side* in such a manner as to secure identification.

All blocks or electrotypes should be sent to the Patent Office, Trade Marks Branch, together with the paper marked "Form R. Adv. 3," and with the representation of the mark sent for the guidance of the applicant in preparing the block or electrotype.

After the advertisement of a trade mark the block or electrotype supplied for such advertisement cannot in any case be returned to applicants, even for temporary use.

16.—RESTRICTIONS ON REGISTRATION.

Ornamental or coloured groundwork, such as tartans or checks, cannot be claimed as part of a mark unless such groundwork be included within the mark by some border or lines.

Applications may be refused in cases where the following appear upon the representations of trade marks forming part of an application:—

- (a.) The words "Patent," "Patented," "By Royal Letters Patent," "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is Forgery," or words to like effect.
- (b.) Representations of Their Majesties or of any member of the Royal Family.

The following also may not appear on trade marks, the registration of which is applied for, unless the marks have been used since before 13th August, 1875:—

- (a.) The Royal Arms or Royal crests, or arms or crests so nearly resembling them as to lead to mistake.
- (b.) British Royal crowns.
- (c.) British National flags.
- (d.) The word "Royal" or any other words, letters or devices calculated to lead persons to think that the applicant has Royal patronage or authorisation.

In cases where the following appear on a mark, the Registrar may call for such justification as he may deem necessary for their use:—

Representation of the arms of a foreign State or place.

In cases where the following appear on a mark, the Registrar may

require to be furnished with consents from such officials, persons, or their legal representatives as he may consider necessary:—

- (a.) Representations of the arms or emblems of any city, borough, town, place, society, body corporate, or institution.
- (b.) Names or representations of living persons or persons recently dead.

Where there appears on the face of a trade mark the name or a description of the goods to which the mark is applied, the Registrar may refuse to register such mark in respect of any goods other than the goods so named or described. Where the name or description of any goods appears on a trade mark, which name or description in use varies, the applicant should state in his application that the name or description varies.

17.—OPPOSITIONS.

Notice of opposition to the registration of a trade mark (*see* Rules, Form TM No. 7) must be filed within one month from the date of advertisement of the mark in the Journal, accompanied by an unstamped duplicate.

The applicant's counter-statement, Form TM No. 8, accompanied by an unstamped duplicate, must be filed within one month from the date of receipt by him of the duplicate notice of opposition.

The opponent's evidence, in support of the opposition, must be filed within one month from the date of receipt by him of the duplicate counter-statement, and copy of such evidence must be forthwith sent to the applicant.

The applicant's evidence must be filed within one month from the receipt of the copies of the opponent's evidence, and a copy of such evidence must be forthwith sent to the opponent.

The opponent's evidence in reply must be filed within fourteen days from the receipt of the copies of the applicant's evidence, and a copy of such evidence must be forthwith sent to the applicant.

On the completion of the evidence, a hearing is appointed by the Registrar. Each party attending the hearing must lodge the hearing fee form (Form TM No. 9, with £1 stamp).

18.—CUTLERS' COMPANY.

By sec. 63 of the Act, application for the registration of trade marks used on metal goods shall, if made by a person carrying on business in Hallamshire or within six miles thereof, be made to the Cutlers' Company of Sheffield. *See* Rules 107 to 112.

Applications made to the Cutlers' Company in pursuance of sec. 63 of the Act should be made on Form TM No. 2, the address in the left-hand corner to be "To the Cutlers' Company, Sheffield," instead of "To the Registrar," and should be left at, or sent by post to, the Cutlers' Hall, Sheffield.

Each application should be accompanied by an unstamped copy on an Application Form TM No. 2. *See* Rule 107.

Requests to enter old corporate marks on the Sheffield register, under sec. 63 (2) should be made on Form Sheffield No. 1.

Applications sent by post should be addressed—

The Law Clerk to the Cutlers' Company,
The Cutlers' Hall,
Sheffield.

19.—MANCHESTER BRANCH.

By sec. 64 of the Act, application for the registration of cotton marks should be made to the Manchester branch on Form Cotton No. 1. It should be accompanied by an unstamped duplicate of the Form, and also by four additional representations on Form Cotton No. 2.

These forms can be obtained at the chief post office, Manchester, and on personal application at the Inland Revenue Office, in the Patent Office, Room 32.

Applications sent by post should be addressed :—

The Keeper of Cotton Marks,
Manchester Branch of the Trade Marks Registry,
48, Royal Exchange, Manchester.

Searches can be made at the Manchester Branch on payment of 1s. for each quarter of an hour for marks in the cotton classes.

20.—CERTIFICATES.

The Registrar's certificate in relation to a trade mark is of four kinds, viz. :—

- (i.) Of registration for use in legal proceedings.
- (ii.) Of registration for use in obtaining registration abroad.
- (iii.) Of any application made and of proceedings thereon.
- (iv.) Of refusal to register a mark in use since before 13th August, 1875, and not registrable.

A person desirous of obtaining any of the above certificates should forward Form TM No. 34, Form TM No. 33, Form TM No. 31, or Form TM No. 32 (*see* paragraph 5), as the case may be, to the Registrar, giving the Registrar's official number of the mark and the class, and stating whether the certificate is required for use in legal proceedings, or for use in applying for the registration of the mark abroad, or for what other purpose.

In every case where a certificate is required in respect of a cotton mark, or in respect of any trade mark of which the representations or specimens forming part of the application for registration are *coloured*, or in respect of an application made, or in respect of an application refused, two unmounted copies of the mark should be supplied, agreeing *in every respect* with the representations forming part of the application for registration. Special attention should be paid to this requirement, as otherwise considerable delay may be caused before the certificate can be issued.

21.—INSPECTION OF REGISTER AND COPIES OF ENTRIES.

The fee payable by a person inspecting the register in connection with any particular trade mark is 1s. for every quarter of an hour.

Copies of any entry in the register can be supplied at the rate of 4d. for every hundred words, with a minimum charge of 1s.

22.—REGISTRATION OF SUBSEQUENT PROPRIETORS OF REGISTERED TRADE MARKS.

The request to be made by a subsequent proprietor on application for the registration in his name of a registered trade mark must be made

on Form TM No. 16 or Form TM No. 18 (*see* paragraph 5), as the case may be. In the case of a firm or partnership the declaration may be made by one member of the firm or partnership. In the case of a body corporate the declaration should be made by a director or by the secretary or a principal officer of such body corporate.

If the Registrar considers it necessary he may require a declaration on Form TM No. 17 or Form TM No. 19 to be furnished in support of the request.

Where a person becomes entitled to the goodwill of a business, he should forthwith ascertain what registered marks have been in use in that business, and at the earliest possible moment get those marks transferred into his name on the register. The mere possession of the certificates of registration is quite insufficient.

23.—MISCELLANEOUS MATTERS RELATING TO TRADE MARKS AND THE PATENT OFFICE.

(a.) *Advice on Trade Mark Matters, &c.*—The Patent Office does not undertake to give legal advice or opinions on questions of infringement or on any subject connected with trade mark law, which, like other laws, is left to the interpretation of professional men.

(b.) The Registrar cannot recommend any particular agent for employment by applicants. A list of registered patent agents who, as a rule, also transact trade mark business, may be obtained from Messrs. Eyre & Spottiswoode, East Harding Street, Fleet Street, London, E.C., and 32, Abingdon Street, Westminster, London, S.W., or through any bookseller. Price (including postage) 1s. 1d.

(c.) *Application for Reduction of Fees.*—It is not within the power of the Registrar to comply with any request for the reduction or remission of any of the fees required by the trade mark law.

(d.) *Use of the word "Registered."*—Any person who represents that a trade mark is registered which is not so is liable for every offence on summary conviction to a fine not exceeding five pounds.

A person is deemed, for the purposes of the Trade Marks Act, 1905, to represent that a trade mark is registered if he uses in connection with the trade mark the word "Registered" or any words expressing or implying that registration has been obtained for the trade mark (*see* sec. 67 of the Trade Marks Act, 1905).

(e.) *Patent Medicines.*—Communications with respect to the preparation and supply of medicine stamps appropriated to a particular medicine, or as to the liability to stamp duty of so-called "Patent Medicines," should be addressed to the Secretary (Stamps and Taxes), Inland Revenue, Somerset House, London, W.C.

(f.) *Mere Trading Names.*—Mere trading names or names given to business premises cannot be registered at the Patent Office.

24.—INTERNATIONAL AND COLONIAL ARRANGEMENTS.

An International Convention for the protection of industrial property exists between the following States¹ :—

Belgium.
Brazil.
Cuba.

¹ There have been some recent additions and variations. See the List on p. 741.

Denmark with the Farøe Islands.
 France with Algeria and colonies.
 Germany.
 Great Britain with New Zealand and Queensland.
 Italy.
 Japan.
 Mexico.
 Netherlands with the Dutch East Indies, Surinam, and Curaçoa.
 Norway.
 Portugal with the Azores and Madeira.
 Santo Domingo.
 Servia.
 Spain.
 Sweden.
 Switzerland.
 Tunis.
 United States of America.

Copies of the text of the Convention and of the additional Act modifying the Convention,¹ may be purchased for 2*d.* and 1*d.*, respectively, from Messrs. Eyre & Spottiswoode, East Harding Street, Fleet Street, London, E.C., and 32, Abingdon Street, Westminster, London, S.W., or through any bookseller.

Under this Convention, an applicant for a trade mark in any one of the contracting States may obtain priority of date in any of the other States.

Similar arrangements, for the mutual protection of trade marks, have been made between Great Britain on the one side, and each of the following States and Colonies on the other:—

Ecuador.
 Greece.
 Honduras.
 Paraguay.
 Roumania.
 Tasmania.
 Uruguay.
 Western Australia.

The above list may of course be varied from time to time.²

25.—APPLICATIONS FOR THE REGISTRATION OF TRADE MARKS IN THE BRITISH COLONIES AND FOREIGN STATES.

Applications for the registration of trade marks in the Colonies and foreign States must be made to the Government of the Colony or foreign State in which protection is desired. A collection of colonial and foreign trade mark laws and rules may be seen in the free library of the Patent Office.

26.—SALE OF OFFICIAL PUBLICATIONS.

Copies of the Act and of the rules can be purchased at the sale branch of the Patent Office. The price of the Act and rules together is 8*d.*, postage 2½*d.*; of the Act alone, 3*d.*, postage 1*d.*; and, of the rules

¹ See below, p. 743.

² See the List on p. 741.

alone, 5*d.*, postage, 1½*d.* Sums exceeding 5*d.* should be remitted by postal order or post office order.

Copies of the *Trade Marks Journal* may also be obtained from the sale branch of the Patent Office.

The price of the *Trade Marks Journal* is :—

Nos. 1 to 509 (Years 1876 to 1887)	... ..	1 <i>s.</i> per number
Nos. 510 to 561 (Year 1888)	... ..	1 <i>s.</i> 6 <i>d.</i> „
No. 562 and following Nos. from 1 January 1889...		6 <i>d.</i> „

27.—PATENT OFFICE LIBRARY.

The free public library of the Patent Office, 25, Southampton Buildings, Chancery Lane, London, W.C., is open daily, from 10 a.m. to 10 p.m., except on Sundays, Christmas Day, Good Friday, and Bank Holidays. On the day observed as His Majesty's birthday, Christmas Eve, Easter Eve, and Whitsun Eve, the library is closed at 4 p.m.

C. N. DALTON,

Registrar.

April, 1906.

APPENDIX IX.

PRECEDENTS OF FORMS UPON AN APPLICATION TO REGISTER A TRADE MARK AND ON APPEAL.¹

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1. APPLICATION FOR REGISTRATION.

(Form TM No. 2, above, p. 678.²)

2. APPEAL FROM THE REGISTRAR TO THE BOARD OF TRADE.³

(Form No. 29, above, p. 695.)

3. ORDER OF BOARD OF TRADE ALLOWING APPEAL.

In the matter of the Trade Marks Act, 1905, and in the matter of an application No. by for the registration of a Trade Mark in Class for .
 The Board of Trade having heard the above-named Applicant upon Appeal from the refusal of the Registrar of Trade Marks to register the above-mentioned Trade Mark, No. in Class do hereby allow⁴ the said Appeal and Order that the Registrar of Trade Marks do proceed with the registration of the said Trade Mark.

Dated this day of , 190 .

(Signed) _____,

An Assistant Secretary to the Board of Trade.

¹ See Chap. IV., p. 65.

² This is the ordinary form. The form for a special application under paragraph (5) of sec. 9 is TM No. 5, above, p. 680; under sec. 62 is TM No. 6, above, p. 681; for a cotton mark, Cotton No. 1, above, p. 692; to enter an old corporate mark on the Sheffield Register is Sheffield

No. 1, above, p. 691.

³ The right of appeal is to the Court or to the Board of Trade, sec. 12 (3).

⁴ If the appeal is dismissed the form of order is "do hereby dismiss the appeal, and order that registration of the trade mark in question be not permitted."

3A. REFERENCE BY BOARD OF TRADE TO COURT.

Trade Marks Act, 1905.

In the matter of an application No. _____ of _____ for the registration of a Trade Mark under sec. 12 of the above-mentioned Act, and in the matter of a decision of the Registrar, dated the _____ day of _____, 190____, and in the matter of an Appeal, dated the _____ day of _____, 190____, to the Board of Trade from the above decision.

Reference of Appeal to the Court.

Whereas an appeal has been made to the Board of Trade against the decision above referred to, and whereas the Board of Trade think fit to refer the said appeal to the Court, now therefore the Board of Trade by virtue of the provisions of sec. 59 of the above-mentioned Act of 1905 do hereby refer such appeal to the Court accordingly.

Dated this _____ day of _____, 190____. (Signed) _____,
Secretary to the Board of Trade.

Directions on Reference of the above Appeal to the Court.

For the purpose of the above reference, the Board of Trade, pursuant to Rule 125 of the Trade Marks Rules, 1906, hereby direct that the Appellants make application by motion to the Chancery Division of the High Court of Justice to hear and determine the said Appeal, and that notice of such application be served upon the Registrar of Trade Marks, and upon _____ and that upon the hearing and determination of the said Appeal the Appellants and the Registrar and _____ be respectively at liberty to adduce such evidence by affidavit, examination, or cross-examination of witnesses and otherwise as the Court may see fit to direct or permit.

Dated this _____ day of _____, 190____. (Signed) _____,
Secretary to the Board of Trade.

3B. ORDER OF BOARD OF TRADE ON A SPECIAL APPLICATION UNDER SEC. 9 (5).

In the matter of the Trade Marks Act, 1905, and in the matter of an application No. _____ by _____ of _____ for the registration of a Trade Mark consisting of the word _____ in Class _____ for _____ under sub-sec. 5 of sec. 9 of the above-mentioned Act.

The Board of Trade having considered the above-named application, the case stating at length the grounds upon which the applicants rely and the Statutory Declarations of _____ and having heard the applicants by their _____ and the Registrar do by this Order determine¹ that the Registrar of Trade Marks do proceed with the registration of the said Trade Mark.

Dated this _____ day of _____, 190____. (Signed) _____,
Assistant Secretary to the Board of Trade.

3C. ORDER OF BOARD OF TRADE ON A SPECIAL APPLICATION REQUIRING APPLICANT TO APPLY TO THE COURT.

[Title.]

Whereas the above-named applicants in pursuance of the provisions of sub-sec. 5 of sec. 9 of the Trade Marks Act, 1905, and Rule 35 of the Trade Marks Rules, 1906, have applied for the registration of the words _____ in Class _____ in respect of _____ and have, in accordance with Rule 38 of the said Rules, sent to the Registrar in

¹ Or "that the application in question be proceeded with."

writing a case in duplicate stating at length the grounds upon which they rely in support of their application and that they desire to be heard by the Board of Trade.

And whereas by Rule 39 of the said Rules it is provided that the Board may require the applicant to apply to the Court and limit a time for that purpose.

Now therefore the Board of Trade by virtue of the power hereinbefore recited do hereby require the above-named applicants to apply by motion to the Chancery Division of the High Court of Justice within two months from this date to hear and determine the said application and that notice of proceedings be served upon the Registrar of Trade Marks pursuant to Rule 129 of the said Rules.

Dated this day of 190 .

(Signed) _____

Secretary to the Board of Trade.

4. NOTICE OF OPPOSITION.

(Form TM No. 7, above, p. 681.)

(*Grounds of opposition.*)

1. We are the registered proprietors of a trade mark in Class , for [*describing the goods*] registered on the of 18 , and numbered 1,234, and advertised in the *Trade Marks Journal*, No. , and we use, and since the of , 18 , we have extensively used, the said mark as a trade mark in our business as [*describing the business*].

2. We also use, and since the of , 18 , we have extensively used, a mark consisting of [*describing it*] for [*describing the goods*] as a trade mark, and also in our advertisements and price lists, in our said business.

3. The mark which the applicants by their application above referred to are seeking to register so nearly resembles our said registered trade mark, numbered , and also our said trade mark in paragraph 2 hereof referred to, as to be calculated to deceive.

(For other grounds of opposition, see pp. 70, 91 ; Chap. VIII., p. 127, "What marks may be registered as trade marks" ; Chap. X., p. 221, "Restrictions on registration.")¹

5. COUNTER-STATEMENT.

(In answer to the Notice of Opposition, No. 4.)

(Form TM No. 8, above, p. 682.)

We, , the applicants for the above trade mark, hereby give notice that the following are the grounds upon which we rely as supporting our application :—

1. We [*the applicants*] deny that the mark which is the subject of our application so nearly resembles either of the marks referred to in the notice of opposition herein as to be calculated to deceive.

2. [*Describing the principal differences between the applicants' mark, and the opponent's registered mark No. 1,234.*]

3. [*Describing the principal differences between the applicants' mark, and the mark referred to in paragraph 2 of the notice of opposition.*]

4. The last-mentioned mark is not a trade mark, and the opponents have not used the same as a trade mark. If our said mark bears any undue resemblance to the said mark of the opponents (which we deny), the opponents will not in any way, nor will any right of which they are possessed, or to which they are entitled, be prejudiced by the registration of our said mark.

5. Our said mark has been used by us as a trade mark in connection with the goods to which our application relates since the of , 18 , before the opponents had commenced to use either of their said marks, and if it bears any

¹ See also *Kutnow's Tm.*, 10 R. P. C. 403.

undue resemblance to the last-mentioned marks or either of them (which we deny), the said marks, or whichever of them our said mark so resembles, have, or has been, used as a trade mark, if at all, and the opponents' alleged trade mark, numbered 1,234, has been registered, in derogation of our rights, and our application to register ought not to be prejudiced by reason of such user or registration.

We admit the following allegations in the notice of opposition [*set out facts admitted, if any*].

6. EVIDENCE IN SUPPORT OF THE APPLICATION OR OPPOSITION.²

The formal parts of the declarations are as follows:—

[*Heading as in the Counter-statement, p. 718.*]

We do solemnly and sincerely declare as follows: [*setting out the evidence of the declarants*].

And we make this declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1835.

Declared at _____ in the City of London, this _____ of _____ 18____, before me,

(Signed) _____,

A commissioner for oaths.

7. APPLICATION FOR HEARING BY THE REGISTRAR.

(Form TM No. 9, above, p. 682.)

8. FORM OF APPEAL FROM THE REGISTRAR TO THE BOARD OF TRADE.³

(Form TM No. 29, above, p. 695.)

9. STATEMENT OF CASE.⁴

[*Heading as in the Counter-statement, p. 718.*]

1. The appellants, _____, are manufacturers and vendors of indiarubber hose covered with steel wire, which is wound helically round it by a process protected by certain patents. The opponents, _____, are vendors of indiarubber hose covered with steel wire, wound round it by a process which is different from that employed by the appellants.

2. On or about the _____ of _____, 18____, the appellants published a circular containing (*inter alia*) a representation of the device which they now seek to register as a trade mark. The said circular and representation were registered at Stationers' Hall on the _____ of _____, 18____, in the names of the appellants, and the copyright in the same is now and always has been vested in the appellants.

¹ Rule 53, p. 662.

² This is given by statutory declaration. Rules 53 to 58, p. 662. As to the Registrar's power to dispense with evidence, see Rule 97, p. 668.

³ The right of appeal is to the Court or, with the consent of the parties to the Board of Trade, an appeal to the Court is by notice of motion, Rule 121; Form 9, below, p. 721, should be adapted. A copy of the decision of the Registrar

must accompany the notice of appeal to the Board of Trade, and if the appeal is by the applicant, also a copy of the form of application and six representations of the mark opposed, Rule 123, p. 671.

⁴ Rule 123, p. 671. This is substantially the case made use of in *The Sphincter Co.'s Tm.*, 10 R. P. C. 84. The Forms which follow assume the Registrar's decision to have been against the applicant.

3. The said device consists of [*describing it*]. The said device was drawn on the instructions of the appellants, and was entirely novel in design, and it is a distinctive device. The appellants have extensively published and circulated the said circular and the said representation and device amongst persons concerned in the india-rubber and hose trade, and amongst their customers and others from the said of , to the present time.

4. By their application, numbered , the appellants sought to register the said device as a trade mark in Class 50, for use in connection with the hose manufactured or sold by them. The said application was opposed on the grounds following: that the opponents are the proprietors of a trade mark in Class 50, for hose, registered on the of , 18 , under No. ; and that they had (as they alleged) used for a considerable time past a device consisting of [*describing it*] as an advertisement and description of their hose in price lists, circulars, &c. ; and that the mark for which the appellants are applying for registration (as was alleged) so nearly resembled their said registered trade mark and advertisement as to be calculated to deceive.

5. The trade mark of the opponents consists of [*describing it*]. It is totally different in design and appearance from the said device of the appellants, and the said device bears no resemblance whatever to it.

6. It is untrue that the opponents have ever used any device similar to or resembling the said device of the appellants, or such as could be mistaken for or confounded with the said device referred to in the appellants' application, or such that the registration of the latter as a trade mark would be calculated to deceive.

7. The opponents exhibited to their declaration in opposition certain copies of price lists and advertisements, and among them a price list marked , containing a figure numbered No. 1. The said price list and figure were first issued and published on the of , 18 , as an advertisement, that is to say, years after the appellants had commenced to issue and publish their said device. The said figure No. 1 consists of [*describing it*]. The said figure is quite different in design and appearance from the said device of the appellants, and the said device bears no resemblance whatever to it.

8. The application was heard before the learned Registrar, and on the of , he gave his decision, and refused to allow the said device of the appellants to be registered.

9. The appellants crave leave to refer, for the purposes of their appeal, to all the evidence used at the hearing of their said application and of the opposition,¹ and also to the written decision of the learned Registrar.²

The appellants submit that, under the circumstances hereinbefore stated, the decision of the learned Registrar should be reversed, and the appellants' device No. above mentioned should be admitted to registration, on the following grounds :—

Grounds of
appeal.

- (1.) Because the said device is a distinctive device which the appellants are entitled to use and register as a trade mark under the above-mentioned Acts.
- (2.) Because the learned Registrar was wrong in holding that it has been the custom in the hose trade to advertise pictures of hoses resembling the said device, whereas no such custom was established by the evidence, and such custom, if established, would not be a good ground of objection to the registration of the said device.
- (3.) Because the learned Registrar was wrong in holding that the said device resembles the said trade mark of the opponents numbered No. , whereas the said device does not resemble the said trade mark at all, or (alternatively) not so nearly as to be calculated to deceive.
- (4.) Because the learned Registrar was wrong in holding that the said device resembles the said figure No. 1, and such resemblance, if it existed, would not be a good ground of objection to the registration of the said device.

(Signed) ———.

¹ See sec. 14 (7) and Rule 125, p. 672.

² See note (3) above, p. 719.

10. FORM OF REFERENCE OF THE APPEAL TO THE COURT BY THE BOARD OF TRADE.

Trade Marks Act, 1905.

In the matter of an application No. of for the Registration of a Trade Mark and in the matter of an opposition thereto, No. of and in the matter of a decision of the Registrar dated the day of 190 , and in the matter of an appeal dated the day of 190 , to the Board of Trade from the above decision.

Reference of Appeal to the Court.

Whereas it appears fit to the Board of Trade to refer the above-mentioned Appeal to the Court. Now therefore the Board of Trade by virtue of the provisions of sec. 59 of the above-mentioned Act do hereby refer such appeal to the Court accordingly.

Dated this day of , 190 .

(Signed) ———,
Secretary to the Board of Trade.

Directions on Reference of the above Appeal to the Court.

For the purpose of the above reference the Board of Trade, pursuant to Rule 125 of the Trade Marks Rules, 1906, hereby direct that the appellant make application by motion to the Chancery Division of the High Court of Justice to hear and determine the said Appeal, and that notice of such application be served upon the Registrar of Trade Marks and upon [*the opponent*¹], and that the said in default of being served within from the date hereof with notice of any such application as aforesaid by the appellant be at liberty to apply to the Chancery Division of the High Court of Justice as may be advised. And that upon the hearing of any such application as aforesaid, the appellant, the said and the Registrar be respectively at liberty to adduce such evidence by affidavit, examination or cross-examination of witnesses and otherwise as the Court may see fit to direct or permit in addition to the Statutory Declarations used at the hearing before the Registrar, which for this purpose are, if necessary, to be verified by affidavit.¹

Dated this day of , 190 .

(Signed) ———,
Secretary to the Board of Trade.

11. NOTICE OF MOTION FOR THE DETERMINATION OF THE APPEAL.

19 , No. .

In the High Court of Justice,
Chancery Division,
Mr. Justice

[*Heading as in the Counter-statement above, p. 718.*]

TAKE NOTICE that the Court will be moved before the Honourable Mr. Justice at 10.30 in the forenoon on the of , 19 , or so soon thereafter as counsel can be heard, by counsel, on behalf of the above-mentioned applicants , that the appeal of the applicants from the decision of the Registrar of Trade Marks

¹ But see sec. 49, above, p. 616. A modification of this part of the directions is under consideration.

upon their above mentioned application (which has been referred by the Board of Trade to the Court) may be heard and determined: And for an order directing the Registrar of Trade Marks to proceed with the registration of the trade mark referred to in the said application.

Dated this of , 19 .

(Signed) ———,

Solicitors for the above-named

To the Registrar of Trade Marks,
and

To [*the opponents*].

APPENDIX X.

NOTICE OF MOTION TO RECTIFY THE REGISTER.

19 , No. .

In the High Court of Justice,
Chancery Division,
Mr. Justice .

In the matter of a trade mark numbered ,
And in the matter of the Trade Marks Act, 1905.

TAKE NOTICE that this Court will be moved before the Honourable Mr. Justice , on the of 19 , at 10.30 in the forenoon, or so soon thereafter as counsel can be heard, by counsel on behalf of (*the applicant*) of (*address*), for an order that the Register of Trade Marks kept under the above-mentioned Act may be rectified (*as follows*) :—

- (1.) By the removal of the mark therein registered for class , and numbered .
- (2.) By limiting the registration of the mark therein registered (&c.) for use in connection with part of the goods comprised in the said class only, namely,
- (3.) By expunging from the said Register part of the said mark No. , namely,
- (4.) By adding to the entry therein of the said mark No. , a disclaimer of any right on the part of the registered proprietor of the said mark to the exclusive use of part of the said mark, that is to say the words,¹

Or that such other order for the rectification of the said Register may be made as to the Court shall seem fit.

(Signed) _____.

To (*the registered proprietor*),
and
To the Registrar of Trade Marks.

¹ For other forms of rectification see above, p. 294. For forms of orders, see Seton, 6th ed., vol. 3, p. 2402.

APPENDIX XI.

PRECEDENTS OF PLEADINGS IN ACTIONS FOR INFRINGEMENT AND PASSING-OFF.¹

1. INDORSEMENT OF WRIT.

The plaintiff's claim is for—

(1.) An injunction to restrain the defendant, his servants, and agents, from infringing the plaintiff's registered trade mark, No. 1234, and from passing off goods not of the plaintiff's manufacture as or for the goods of the plaintiff.²

(2.) An account or damages.

(3.) Delivery up of the marked goods.

2. STATEMENT OF CLAIM.

1. The plaintiff and defendant are both manufacturers of hoes, shovels, and other hardware goods, carrying on business in Birmingham and also in London.

The plaintiff's
registered
trade mark.

2. The plaintiff is the proprietor of a trade mark consisting of the device of a circle and a triangle with a dagger placed between them, and the word "dagger" printed beneath the said device. The said trade mark was registered, as an old mark, in the Register of trade marks, under No. 1234, by the plaintiff, as the proprietor thereof, on the 1st of January, 1890, in Class 13 for hoes and shovels.

Use of the
trade mark.

3. The plaintiff, and his predecessors in the business carried on by the plaintiff as aforesaid, have extensively used the said trade mark and also the said word "dagger" as a trade mark upon hoes and shovels manufactured and sold by them since the year 1850, and the plaintiff continues to extensively use the said trade mark and word in his said business.

Plaintiff's
goods known
as "dagger"
hoes.

4. By reason of the user alleged in the last paragraph, the plaintiff's hoes and shovels marked with the said trade mark and word have become known to purchasers or intending purchasers as "dagger" hoes and shovels; and "dagger" hoes and "dagger" shovels in the hardware trade mean respectively the hoes and shovels made and sold by the plaintiff.

Get-up of the
plaintiff's
goods.

5. The plaintiff is accustomed to paste upon the hoes and shovels manufactured and sold by him a number of small triangular labels arranged in the form of a circle and coloured alternately red and green, and hoes and shovels sold in the market and bearing triangular labels so arranged and coloured are known to purchasers or intending purchasers as, and are bought by them as and for, the goods of the plaintiff.

The infringing
mark.

6. The plaintiff has recently discovered, as the fact is, that the defendant is selling hoes and shovels not of the plaintiff's manufacture, bearing a mark consisting of the device of an oval and a square with a dagger placed between them, and having pasted upon them a number of small square labels arranged and coloured similarly to the labels used by the plaintiff, and referred to in paragraph 5 hereof.

Imitation of
the get-up.

¹ For the Forms given in the Appendix to the Rules of the Supreme Court, see p. 470. The first set of pleadings here given relate to an action for the infringement of a registered trade mark, and also for passing off goods by the use of a trade name and imitation of get-up. The

paragraphs referring to each of the combined causes of action are readily distinguishable. The second set relate to an action for the infringement of an unregistered trade mark.

² See a fuller form, p. 725, and other precedents, pp. 730 *et seq.*

7. The plaintiff has also recently discovered, as the fact is, that the defendant has advertised and has invoiced and sold hoes and shovels, not of the plaintiff's manufacture, as "dagger" hoes and shovels.

8. The use of the said device in paragraph 6 mentioned, and also of the word "dagger" as in paragraph 7 mentioned, is an infringement of the plaintiff's said trade mark No. 1234.

9. The employment of the said square labels by the defendant is an unlawful imitation of the get-up of the plaintiff's goods referred to in paragraph 5 hereof.

10. By reason of the unlawful acts aforesaid the defendant has sold and passed off, and has caused to be sold and passed off, large quantities of goods not of the plaintiff's manufacture as and for the plaintiff's goods, and has thereby gained large profits.

The plaintiff claims—

- (1.) An injunction to restrain the defendant, his servants and agents, from infringing the plaintiff's said trade mark, No. 1234, and from passing off goods not of the plaintiff's manufacture as or for the goods of the plaintiff. And in particular to restrain him and them from selling, offering for sale, or disposing of any hoes or shovels, not of the plaintiff's manufacture, bearing the device of a circle and a square with a dagger between them, or any other device colourably resembling the plaintiff's said trade mark, or under the name "dagger" hoes or shovels, or having fixed upon them square labels arranged in a circle, or any other labels in imitation of the get-up of the plaintiff's goods, in paragraph 5 hereof mentioned.¹
- (2.) An account of the profits made by the plaintiff in selling or disposing of any hoes or shovels not of the plaintiff's manufacture, sold under the device in paragraph 6 hereof mentioned, or as "dagger" hoes or shovels, or bearing square labels arranged and coloured as in paragraph 8 hereof mentioned.
- (3.) Delivery up to the plaintiff by the defendant upon oath of all hoes and shovels not of the plaintiff's manufacture, in the defendant's possession or under his control, marked with the device, or bearing the said labels, and of all price lists, copies of invoices, and other documents, and of all advertisement-blocks in the defendant's possession or under his control, bearing the word "dagger," for erasure or cancellation of the devices, labels, and words, or for destruction.
- (4.) Costs.

Use of "dagger" by the defendant.

Infringement of the registered trade mark.

Imitation of get-up.

Passing-off goods : profits.

3. DEFENCE.

(In answer to the above Statement of Claim No. 2.)

1. The defendant admits that the plaintiff is registered as the proprietor of the alleged trade mark, No. 1234 in class 13, but he denies that the said mark is a trade mark, and that the plaintiff is properly registered as the proprietor of the same. The said mark was not used by the plaintiff or by his predecessors in business as a trade mark before the 13th of August, 1875.

2. The defendant denies that the said mark and that the word "dagger" is, or at any material time has been, used as a trade mark for hoes or shovels, and that the plaintiff's hoes or shovels are known as "dagger" hoes or shovels, and that "dagger" hoes or shovels mean, or are understood to mean, hoes or shovels made or sold by the plaintiff, and that hoes and shovels sold in the market and bearing labels arranged and coloured as stated in paragraph 5 of the statement of claim are known to purchasers or intending purchasers as, or are bought as or for, the goods of the plaintiff.

3. The devices of a circle or an oval and a triangle, and the word "dagger," and the device of a dagger, are, and each of them is, common to the trade in hoes and shovels. The word "dagger" and the device of a dagger are commonly employed in the hardware trade to indicate a particular pattern of hoe or shovel, namely, a hoe or shovel having an unusually narrow blade.

4. The business of the defendant as a manufacturer of hoes and shovels has been established since the year 1860, and the said business is much larger than that of the plaintiff. The defendant and his predecessors in the said business have for many years, and since the year 1870 at least (as the plaintiff has since the year last

Traverses of the allegations in the statement of claim.

Devices and word common to the trade.

Get-up used for a long time by the defendant.

¹ See other forms of injunction, post, p. 730.

mentioned been well aware), used upon the hoes and shovels manufactured and sold by them a number of small square labels coloured red and green, and arranged in the form of a circle.

Acquiescence and waiver.

5. If the use by the defendant of the said square labels as aforesaid was at any time an infringement of any right of the plaintiff (which the defendant denies), the plaintiff has acquiesced in the same, and has long since forfeited any claim to interfere with such use.

Get-up of defendant's goods is not deceptive.

6. The said square labels arranged and coloured as aforesaid are not an imitation of the plaintiff's triangular labels, but are, and are well known to dealers in and purchasers of hoes and shovels to be, distinct from the same, and to indicate the goods of the defendant.

Denial of infringement.

7. The defendant denies that he has infringed the plaintiff's alleged trade mark, or imitated the get-up of the plaintiff's goods. He admits that he has sold hoes and shovels, as he lawfully might, bearing some of the common marks aforesaid, namely, the devices of an oval, a square, and a dagger. Save as herein expressly admitted, he denies each of the allegations in paragraphs 6, 7, 8 and 9 of the statement of claim.

Denial of passing-off and of profits.

8. The defendant denies that he has sold or passed off, or caused to be sold or passed off, any goods not of the plaintiff's manufacture as or for the plaintiff's goods, and that (if he has done so, which he denies) he has made any profits thereby.

4. STATEMENT OF CLAIM.¹

• ("Common Law Trade Mark.")

Plaintiffs' goods known as "camel hair," etc.

1. The plaintiffs have for many years been manufacturers of belting for driving machinery, and have extensively advertised, and sold the belting made by them under the styles of "Camel," "Camel Brand," and "Camel Hair." In consequence thereof, belting called "Camel," "Camel Brand," or "Camel Hair," has become to be known in all parts of the world where belting is used as belting of the plaintiffs' manufacture, as the defendants well know.

Use of "camel hair," etc., by defendants.

2. The defendants have lately commenced the business of belting manufacturers, and in order to obtain for themselves the reputation acquired by the plaintiffs, and to pass off their belting as that of the plaintiffs, and to deceive purchasers thereof, have adopted the words "Camel," "Camel Brand," and "Camel Hair," so used by the plaintiffs as aforesaid, and have sold belting under the same designation, and have advertised for sale belting manufactured by them as "Camel," "Camel Brand," and "Camel Hair Belting."

Such use calculated to deceive.

3. The use of the words "Camel," "Camel Brand," and "Camel Hair," by the defendants as aforesaid, is calculated to deceive purchasers of belting into the belief that they were buying belting of the plaintiffs' manufacture, and many persons have been so deceived.²

5. DEFENCE.

(In answer to the above-printed Statement of Claim, No. 4.)

Denial of plaintiffs' reputation.

1. The defendants deny that belting called "Camel," "Camel Brand," and "Camel Hair Belting" has become to be known in all parts of the world where belting is used as belting of the plaintiffs' manufacture; and, if it has, they deny that the defendants were aware of the fact.

2. The defendants and their predecessors have long carried on the business of hemp spinning, and some time ago commenced the manufacture of various kinds of belting in connection with and as a branch of their said business.

Manner of user of "camel hair" by defendants.

3. Amongst other materials used by the defendants in the manufacture of belting was yarn made of camels' hair; and the defendants have, as they lawfully may,

¹ *Reddaway & Co. v. Bentham Hemp Spinning Co.*, 9 R. P. C. 503. This and the following pleading are taken from the report, and are probably somewhat abbreviated from the forms actually

used. And see *Reddaway v. Banham*, 13 R. P. C. 218.

² For forms of claim, see pp. 725 and 730 *et seq.*

described and sold the said belting as the "Bentham Solid Woven Camel-Hair Belting." The defendants have applied to the said belting manufactured and sold by them their distinctive trade mark.

4. Save as aforesaid, the defendants deny that they have sold or advertised their belting manufactured by them as "Camel," "Camel Brand," and "Camel Hair."

5. The defendants deny that the use of the words "Camel," "Camel Brand," and "Camel Hair" would be calculated to deceive persons into the belief that they were buying goods of the plaintiffs' manufacture. The plaintiffs have no prescriptive or distinctive right to the use of the said words.

6. The defendants deny that the use of the words "Camel Hair," as used by them, was calculated to deceive purchasers of belting manufactured by the defendants into the belief that they were buying belting of plaintiffs' manufacture. The defendants deny that any persons have been so deceived.

(The defendants also denied that the plaintiffs had been damnified, and alleged that their competition with the plaintiffs was fair trade competition.)

Denial of other use.
Denial of probability of deception.

6. STATEMENT OF CLAIM.¹

Passing-off—Use of Special Scroll Device.

[Paragraph (1) contained allegations as to the business of the plaintiffs, *Weingarten Brothers*, who were a firm of corset manufacturers carrying on business at New York, in the United States of America, and having at first an agent, and later an office in London.]

(2) Among other varieties of corsets manufactured and sold by the plaintiffs are corsets of the pattern or style commonly known and described as "Straight Fronted Corsets." The plaintiffs were some time since desirous of adopting a new name for their "Straight Fronted Corsets," which should distinguish the "Straight Fronted Corsets" of their make from the "Straight Fronted Corsets" made by other firms, and in pursuance of such desire the plaintiffs adopted as a new and distinctive name for such corsets of their manufacture the term "Erect Form Corsets," and in many cases they have printed those words in a particular and distinctive manner so as to constitute a distinctive device. This is shown at the top of page 2 hereof.² The said term "Erect Form Corsets" had never been used in respect of corsets before it was adopted by the plaintiffs as aforesaid, nor has it since been used by any other firm in the United States or the United Kingdom until the defendant began to use the same as hereinafter stated. (3) Prior to the month of February, 1901, some of the plaintiffs' said "Erect Form Corsets" were sold in this country in response to orders, but in that month the plaintiffs began to send over and they have since continued to send over to and sell in the United Kingdom their said "Erect Form Corsets" in large quantities, such corsets being always put up for sale and sold in boxes having printed on the lids thereof the said words "Erect Form Corsets" printed in the said special and distinctive manner adopted by the plaintiffs aforesaid. The plaintiffs further used the words "Erect Form Corsets" as the distinctive name of their corsets aforesaid on their envelopes and other trade documents, and have expended large sums of money in advertising their said corsets under the name aforesaid in the United Kingdom as well as in the United States of America. (4) In consequence of the novelty and distinctiveness of the said name "Erect Form Corsets," assisted by the special type in which the same was frequently printed by the plaintiffs, and also of the merits of the plaintiffs' said corsets themselves, and of the care and skill with which such corsets are manufactured, the said corsets have acquired under the said name a ready and large sale in the United Kingdom, and the said name was and is universally understood as indicating that the corsets in respect of which it is used are corsets manufactured exclusively by the plaintiffs. Persons who wish for corsets of the style and pattern in which the plaintiffs' said corsets are manufactured, but without desiring a particular make, ask for and order them as "Straight Fronted Corsets." Persons who desire a particular make of such corsets ask for and order them by one or another of the special names used by particular manufacturers, and

¹ *Weingarten v. Bayer*, 20 R. P. C. 259, 649; 21 R. P. C. 341. The form of the order made by the House of Lords

will be found below, p. 740.

² See 20 R. P. C. 292.

when the make desired is the plaintiffs' make they ask for and order them by the name "Erect Form Corsets," and this has been so at least in and since the month of February, 1901. (5) In the month of October, 1901, the defendant _____, who carries on business as a corset manufacturer under the name _____, at _____, and who was already manufacturing and selling under other names "Straight Fronted Corsets" similar in pattern and style to the plaintiffs' said "Straight Fronted Corsets," began for the first time to adopt and use in respect of his "Straight Fronted Corsets," instead of any of the names previously used by him, the said name "Erect Form Corsets" used by the plaintiffs as aforesaid, and (as shown at the top of page 3 hereof)¹ to print the same on the boxes in which such corsets were sold and elsewhere in the same special type in which the same is printed by the plaintiffs, and to describe such corsets as "Celebrated," whereas the defendants' said corsets were not celebrated under that name at all, but were in fact entirely unknown in connection with any such name, while, on the other hand, the plaintiffs' said corsets were in fact celebrated under the said name.

The plaintiffs claimed—

(1) An injunction to restrain the defendant _____, his servants and agents, from selling, or offering, or exposing, or advertising for sale, or procuring to be sold, any corsets not of the plaintiffs' manufacture under the name of "Erect Form Corsets" without clearly distinguishing such corsets from the plaintiffs' corsets; (2) and from in any manner reproducing or imitating in connection with or in respect of any such corsets as aforesaid the special form in which the said words "Erect Form" are printed or arranged by the plaintiffs in connection with or in respect of their "Erect Form Corsets" so as to be calculated to deceive; (3) and from in any manner passing off, or enabling or assisting others to pass off, any such corsets as aforesaid as or for the plaintiffs' corsets; (4) an order for delivery up on oath or (at the plaintiffs' option) destruction of all labels, boxes, price lists, advertisements, blocks or dies for producing the same, and other documents, articles and things which are in the possession or power or under the control of defendant, or offend against the foregoing injunction or any of them; (5) damages or an account of profits; (6) costs.

7. DEFENCE.

(In answer to above-printed Statement of Claim, No. 6.)

(1) The defendant denies that the plaintiffs carry on, or have at any material time or times carried on, a business in the manufacture or sale of corsets which is either old-established or extensive in the United Kingdom. He has no knowledge and makes no admissions of or in regard to the business alleged to be carried on by the plaintiffs in the United States of America. (2) He does not admit that the words "Erect Form Corsets," or the alleged particular and distinctive manner of printing the same, had not been used in respect of corsets or by any other firm before the adoption of the same or either of them by the plaintiffs or before the use thereof by the defendant. (3) The said words were not at any material time a new or a distinctive name for corsets, but they were and are descriptive words and common to the trade. (4) The said manner of printing the said words was not at any material time particular or distinctive, or a distinctive device, but was and is common to the trade. (5) The defendant denies each and every allegation in paragraphs 3 or 4 of the statement of claim respectively contained. (6) The plaintiffs did not until shortly before the commencement of this action, or until after the defendant had begun to sell "Erect Form Corsets," use or attempt to use the said words as the trade name of or to distinguish their goods, but if they use the said words at all (which is not admitted) they use the same as descriptive of the pattern or design of the goods only. The goods of the plaintiffs were and are not known or distinguished by the trade or purchasers as "Erect Form Corsets." (7) The plaintiffs have never employed the alleged particular and distinctive manner of printing upon goods themselves. (8) The defendant admits that he has described certain ranges of corsets made and sold by him as "C. B. Erect Form" of corsets and as "Celebrated C. B. Erect Form Corsets." He denies that he has printed "Erect Form Corsets" in the manner shown in the illustration¹ at the top of page 3 of the Statement of

¹ See 20 R. P. C. 293.

Claim without the letters "C. B." in large type before and after the said words or otherwise than as part of the descriptions aforesaid, or one of the same, the said illustration is incorrect and misleading. (9) The defendant does not admit that he first adopted or used the said words or manner of printing in connection with his said corsets in the month of October, 1901, or that the said ranges of corsets are or were the same as those previously called "Straight Fronted Corsets," or by any other name or names. Save as in paragraphs 8 and 9 hereof expressly admitted, he does not admit any of the several allegations contained in paragraph 5 of the Statement of Claim. (10) If it be the fact (which is denied) that the words "Erect Form" or the use of the said manner of printing are or were under any circumstances known to the trade or to purchasers as indicating or describing the goods of the plaintiffs, the defendant has always clearly, sufficiently, and effectively distinguished his goods in connection with which he has used the said words or manner of printing by the employment of his own initials "C. B." (11) The defendant's trade is old-established and very extensive, and his goods are well known and in high repute, and are celebrated all over the United Kingdom and elsewhere. The said goods are marked "C. B." or the "Celebrated C. B.," and all goods bearing the said marks, or either of them, are known and recognised by the trade and purchasers as being of his manufacture. (12) Except that he knew that the plaintiffs were advertising their goods for sale as "W. B. Erect Form Corsets" and "American Erect Form Corsets" before he began to make "Erect Form Corsets," the defendant denies each and every allegation in paragraph 6 or 7 of the Statement of Claim respectively contained. (13) This action is brought by plaintiffs to endeavour to obtain a monopoly of the words "Erect Form" for corsets. The said manner of printing is of no importance to them or to the defendant. No request was made by or on behalf of the plaintiffs to the defendant before action that he should cease to employ it. The defendant has in fact ceased to print the words in question in the said manner, and, except for the purpose of using up his existing stock, he does not intend to resume the use of the said manner of printing.

APPENDIX XII.

FORMS OF ORDERS IN TRADE MARK CASES AND CASES ANALOGOUS THERETO.¹

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1. MORISON v. MOAT,² 20 L. J. Ch. 520 (1851), Turner, V.-C.

Trade Secret.

Injunction
against use

An injunction to restrain the defendant, his agents, servants, and workmen, from selling, or causing or procuring to be sold, under the title or designation of

¹ The forms are, in most instances, taken from the reports cited; in some cases they give only the substance of the orders actually drawn up. For fuller forms and the formal parts of orders, see Seton, 6th ed., Vol. I., p. 623 *et seq.* A large number of orders have been

collected by Mr. Sebastian, and are printed in his book, 3rd ed., p. 510; 4th ed., p. 514.

² The Lords Justices required the plaintiffs to give an undertaking as to damages; 21 L. J. Ch. 248.

"*Morison's Universal Medicine*," any medicine made or manufactured by him, the said defendant, or by or under his order or direction; and also to restrain the defendant, his agents, servants and workmen, from making or compounding any medicines according to the secret in the said bill mentioned, and from in any manner using the secret of compounding the said medicines or any part thereof.

of name of plaintiff's goods; against use of trade secret.

2. *FARINA v. SILVERLOCK*, 24 L. J. Ch. 632 (1855), Wood, V.-C.

Trade Mark.

To restrain the defendant from printing or selling any labels similar to those in use by the plaintiff, or containing copies of his signature, or address, or flourish, seal or stamps, or other marks invented and used by the plaintiff, or marks merely colourably differing therefrom, intended to represent that Eau de Cologne prepared by other parties was Eau de Cologne prepared by the plaintiff.

Injunction against printing or selling labels; or passing-off.

3. *SEIXO v. PROVEZENDE*, L. R. 1 Ch. 194 (1865), Cranworth, L.C.

Trade Mark and Passing-off.

An injunction to restrain the defendants from affixing, or causing to be affixed, to any casks of wine shipped to their orders, the brand or mark of a crown and the word *Seixo*, or any other combination of marks or words so contrived, as by colourable imitation or otherwise, to represent the marks or brands of the plaintiff, and from employing any marks or words which should be so contrived as to represent, or induce the belief, that such wines were Crown *Seixo*, or the produce of the *Quinta do Seixo*, or otherwise using the word *Seixo* without clearly distinguishing¹ the same from the wines produced by the *Quinta do Seixo*.

Injunction against use of trade mark;

or of trade name of the plaintiff's goods.

4. *WOTHERSPOON v. CURRIE*, L. R. 5 H. L. p. 533 (1872).

Trade Name of Goods, Passing-off.

Injunction restraining the respondent, his servants and agents, from using the word "Glenfield" in or upon any labels affixed to packets of starch manufactured by or for him, and from in any other way representing the starch manufactured by or for him to be "Glenfield Starch," and from selling or causing the same to be sold as "Glenfield Starch," and from doing any act or thing to induce the belief that starch manufactured by or for him, the respondent, is "Glenfield Starch" or starch manufactured by the appellants.

Injunction against use of name;

and passing-off.

5. *FORD v. FOSTER*, L. R. 7 Ch. p. 634 (1872), L.JJ.

Trade Mark.

To restrain the defendants from applying the mark or title "*Eureka*" to any shirts manufactured by them, or to any shirts sold by them, unless manufactured by the plaintiffs, and from selling any shirts already marked with the mark and title "*Eureka*," unless such mark or title has been applied with the sanction of the plaintiff; and from issuing any boxes or packages on which the mark or title of "*Eureka*" shall be applied to shirts not of the plaintiff's manufacture; and from affixing or using any label or card or other mark containing the word "*Eureka*" to or upon any shirts not of the plaintiff's manufacture (there was also an order for an account limited to the period since the filing of the bill).

Injunction against use of trade mark.

¹ This is the proper form where the right to use is not absolutely barred. See No. 6, and *Reddaway v. Banham*, [1896] A. C. 109; 13 R. P. C. 218. Cf. No. 21.

6. ORR-EWING & Co. v. JOHNSON & Co., 13 C. D. p. 450 (1880), Fry, J., and C. A.¹*Trade Mark and Trade Name.*

Injunction against use of an infringing mark ;
or any similar mark without distinguishing, &c.

To restrain the defendants, Robert Johnson & Co., their servants, workmen, and agents, from affixing or causing to be affixed to any Turkey red yarn not dyed by the plaintiffs, Archibald Orr-Ewing & Co., the ticket marked B, and from using two elephants on any tickets used on Turkey red yarn, without clearly distinguishing such tickets from the plaintiffs' ticket marked A, and from employing any mark or words which would be calculated to cause any Turkey red yarn not dyed by the plaintiffs to be known in Bombay as "*Bhé Hathi*" yarn, or to¹ (or so as to) represent or induce the belief that any of the said yarn was dyed by the plaintiffs ; with an order for an account of profits and costs.

7. MASSAM v. THORLEY'S CATTLE FOOD COMPANY, 14 C. D. p. 762 (1880), C. A.

Trade Name and Passing-off.

Injunction against passing-off ;

against pretence that defendants' business is the plaintiff's ;

against imitation of marks and get-up.

Circulars and advertisement.

An injunction to restrain the defendant company, their servants, workmen, agents and travellers, and representatives respectively, from selling, exporting, or shipping, or causing, or procuring, or allowing to be sold, shipped, or exported, and from in any manner representing, or causing, or procuring to be represented, any goods manufactured by the defendant company as the manufacture or goods of the late *Joseph Thorley*, or of the plaintiffs, his trustees and successors in business ; and also from in any manner representing, or causing, or procuring to be represented, or doing anything which shall lead to the belief that the defendant company have been or are carrying on the business of the late *Joseph Thorley*, or are the successors in business of the late *Joseph Thorley* ; and also from affixing or permitting, or causing to be affixed to any goods or articles manufactured or bought, or procured, or sold, or shipped, or exported by the defendant company, or otherwise using or employing, or permitting to be used or employed, any labels, wrappers, or marks used by the late *Joseph Thorley* and the plaintiffs, his trustees and successors in business, or so contrived and prepared as to represent or lead to the belief that the goods or articles manufactured, or sold, or shipped, or exported by the defendant company are the goods or manufacture of the late *Joseph Thorley*, or of the plaintiffs ; and also from employing, using, or circulating, or causing to be employed, used, or circulated, any circulars, pamphlets, notices, or advertisements of the late *Joseph Thorley* or of the plaintiffs, or which shall in any manner represent or lead to the belief that the defendant company have been or are carrying on the business of the late *Joseph Thorley*, or that they are his successors in business.

(The Court refused to prohibit the defendants using the name Thorley in a way not calculated to mislead the public.)

8. HENDRIKS v. MONTAGU, 17 C. D. p. 638 (1881), C. A.

Company's Trade Name.

Injunction against registration of company with name like plaintiff's name ;

against advertising company with name like plaintiff's name ;

or carrying on business under such name.

"An injunction to restrain the defendants from applying to the Registrar of Joint Stock Companies in *England* for Registration, under the Companies Acts, of any company to be incorporated under the name of the *Universe Life Assurance Association*, or any other name likely to mislead or deceive the public into the belief that the company, being incorporated as aforesaid, is the same as the *Universal Life Assurance Society*, from issuing or publishing advertisements, circulars, or prospectuses, representing that a company is to be incorporated pursuant to the *Companies Act, 1862*, under the name of the *Universe Life Assurance Association, Limited*, or any other such name as aforesaid ; and from carrying on or commencing any business under the name of the *Universe Life Assurance Association, Limited*, or any such other name as aforesaid.

¹ The words in italics were struck out by the House of Lords. 7 App. Ca. p. 234.

9. READ v. RICHARDSON, 45 L. T. N. S. p. 60 (1881). C. A.

Trade Mark.

The plaintiffs by their counsel undertaking to abide by any order this Court may make as to damages, in case this Court shall hereafter be of opinion that the defendants have sustained any by reason of this order which the plaintiffs ought to pay, this Court doth order that the defendants, E. Richardson & Co., their servants and agents, be restrained from using the figure of a dog's head upon any labels, tickets, or wrappers affixed or applied to bottles of beer or stout sold for exportation, or exported by the defendants to any of the Australian colonies or New Zealand, and from selling for exportation, or exporting, any bottles of beer or stout having affixed or applied thereto any such label, ticket, or wrapper, until judgment in this action, or further order: and it is ordered that the plaintiffs' costs of this motion be their costs in the action.

Undertaking as to damages.

Interim injunction against use of trade marks on goods for exportation. Costs.

10. LEVER v. GOODWIN, 4 R. P. C. p. 503 (1886), Chitty, J., and C. A.¹

Trade Mark and Passing-off.

"This Court doth order that this action, so far as the same claims protection in respect of the trade mark. No. 39,714, stand dismissed out of the said Court. And it is ordered, that the defendants, Goodwin Bros., their agents and servants, be restrained from selling, offering for sale, or disposing of any soap, not being manufactured for or by the plaintiffs, in the wrapper, or of the form of any one of the three exhibits admitted in this action to have been issued by the defendants, and marked J.S.S.1, J.S.S.4, and B.B.1, or in any wrapper or in any form calculated or intended to pass off, or to enable others to pass off, such soap as or for the goods of the plaintiffs. And it is ordered that the following account be taken, that is to say, an account of the profits made by the defendants in selling or disposing of soap, made by or for the defendants, in any wrapper, such as that contained in the exhibits marked J.S.S.1, J.S.S.4, and B.B.1, and in the form of those exhibits. And it is ordered that the defendants, Goodwin Bros., do within fourteen days after the date of the chief clerk's certificate, to be made pursuant to this order, pay to the plaintiffs, Lever & Co., the amount which, upon taking such account, shall be certified to be payable by the defendants to the plaintiffs. And it is ordered that it be referred to the taxing master to tax the costs of the plaintiffs of this action, up to and including the trial, except so far as the same have been incurred by their claim for protection in respect of the trade mark aforesaid. And it is ordered that it be referred to the taxing master to tax the costs of the defendants of the action, so far as the same have been incurred by the plaintiffs setting up the said claim for protection in respect of the said trade mark, and the costs of the plaintiffs, when so taxed, are to be set off against the said costs of the defendants, when taxed, and the taxing master is to certify to whom, after such set-off, the balance is due. And it is ordered that the party from whom such balance shall be certified to be due do pay the amount thereof to the other party. And the question of the costs of this action incurred subsequent to the trial are reserved, and either of the parties are to be at liberty to apply as they may be advised."

Trade mark action dismissed.

Injunction against use of particular wrapper; against passing-off.

Account.

Payment of amount found due.

Costs.

Costs of account reserved.

11. MELACHRINO v. THE MELACHRINO EGYPTIAN CIGARETTE CO., 4 R. P. C. 225 (1887), Chitty, J.

Trade Mark and Trade Name.

An injunction to restrain the defendant *Poulides*, his agents and servants, from carrying on at No. 10, Pall Mall, the business carried on by him there under the name of *The Melachrino Egyptian Cigarette Co.*, or of *Melachrino & Co.*, and to restrain the defendants respectively, and their respective agents and servants, until judgment or

Interim injunction against use of name for a particular business

¹ Compare the form of the order in *Payton v. Snelling, Lampard & Co., Ltd.*, 16 R. P. C. 290. (An appeal by the defendants in that case was allowed, 17

R. P. C. 48, and the plaintiffs' appeal to the House of Lords was dismissed, 17 R. P. C. 628.)

and use of particular labels.

further order, from selling or offering for sale cigarettes not of the plaintiffs' manufacture or merchandise, in boxes or packages having affixed thereto or connected therewith the labels, exhibits A11 and A12, or any other label being a colourable imitation of the plaintiffs' label.

12. *THE APOLLINARIS CO. v. HERRFELDT*, 4 R. P. C. 488 (1887), C. A.

Trade Marks.

Interim injunction against use of infringing word; and sale of marked goods.

That the defendants, Messrs. Herrfeldt and Campbell, their servants, agents, and workmen, be restrained, until judgment in this action or further order, from using the word "*Apollinis*," or any other word only colourably differing from the word "*Apollinaris*," upon any labels or corks used by them in the course of their trade in any mineral water, and also from offering for sale, or selling, or otherwise disposing of any mineral water in bottles bearing the word "*Apollinis*."

13. *JAY v. LADLER*, 6 R. P. C. 138, 140 (1888), Kekewich, J.

Trade Mark and Passing-off.

Injunction against infringement by circulars or advertisements; against the use of a particular device.

To restrain the defendant from infringing the plaintiff's trade mark by issuing, publishing, or circulating, or causing to be issued, published, or circulated, any circular, advertisement, or notice containing or bearing the trade mark in the pleadings mentioned, or any colourable imitation thereof, in connection with sealskin mantles and sealskin coats, or otherwise using the said trade mark in that connection (and also from using the device of a lady and a bear so as to deceive the public).

14. *MONTGOMERY v. THOMPSON*, 41 C. D. 47 (1889), Chitty, J., and C. A.¹

Trade Name, Passing-off.

Interim injunction against the use of the plaintiffs' trade name; and against passing-off.

An injunction restraining the defendant until judgment or further order from carrying on the business of a brewer at *Stone*, under the title of "*Stone Brewery*," or "*Montgomery's Stone Brewery*," or under any other title so as to represent that the defendant's brewery is the brewery of the plaintiffs, and from selling or causing to be sold any ale or beer not of the plaintiffs' manufacture, under the term "*Stone Ale*" or "*Stone Ales*," or in any way so as to induce the belief that such ale or beer is of the plaintiffs' manufacture.

15. *BURLAND'S TRADE MARK*, 42 Ch. D. 274; 6 R. P. C. 482 (1889), Chitty, J.

Order for Disclaimer.

Entry of disclaimer on the Register.

This Court doth order that the Register of Trade Marks be rectified by entering thereon a disclaimer of any right of Frederick Adolphus Burland to the exclusive use of the word "*Washerine*" in the Trade Mark, No. 77,985, and due notice of the said rectification is to be given to the Comptroller of Patents, Designs, and Trade Marks.

16. *WILKINSON v. GRIFFITH BROS. & CO.*, 8 R. P. C. 376 (1891), Romer, J.

Trade Name and Passing-off.

Injunction against the use of a

An injunction restraining the defendants, their agents and servants, from selling, or offering for sale, any French polish not of the plaintiffs' manufacture with the

The injunction was made perpetual, and was upheld by the House of Lords; [1891] A. C. 217.

label complained of upon it, or so labelled or marked as to induce the public to believe that it is of the plaintiffs' manufacture. An inquiry as to the amount of damages suffered by the plaintiffs by the wrongful acts of the defendants. The defendants to pay the costs of the action up to and including the trial. The subsequent costs to be reserved, with liberty to apply. The costs which the defendants are ordered to pay to include the costs of the counterclaim which was not insisted upon.

particular label.
Inquiry as to damages.
Costs.

17. PAINE & Co. v. DANIELLS & SONS' BREWERIES, [1893] 2 Ch. 581, C. A.

Trade Mark and Passing-off.

Restrain the defendants, their servants and agents, from using the label marked "F." in the labels referred to in the plaintiffs' interrogatories, and from otherwise infringing the plaintiffs' registered trade marks aforesaid, and from doing any act calculated to pass off ale or beer made by the defendants as ale or beer made by the plaintiffs.

Injunction against use of trade mark ; and against passing-off.

18. POWELL'S TRADE MARK, [1893] 2 Ch. 388 ; 10 R. P. C. 63, Chitty, J.¹

Trade Mark Expunged.

This Court doth order that the Register of Trade Marks kept under the authority of the above-mentioned Act be rectified by expunging therefrom the above-mentioned trade mark, No. 37,030. And it is ordered that the said William Powell do pay to the said Birmingham Vinegar Brewery Co., Ltd., and to the Comptroller-General of Patents, Designs, and Trade Marks their costs of this application, to be taxed by the taxing master.

Removal of mark from Register.

And it is ordered that an office copy of this order be forthwith left with the Comptroller-General of Patents, Designs, and Trade Marks at the Patent Office.

19. POWELL v. BIRMINGHAM VINEGAR BREWERY COMPANY, LTD., [1894] 3 Ch. 449 ; 11 R. P. C. 563, Stirling, J., and C. A.

Interlocutory Injunction. Trade Name of Goods.

An injunction to restrain the defendants until trial or further order from using the words *Yorkshire Relish* as descriptive of or in connection with any sauce or relish manufactured by them, or sauce or relish not being of the plaintiff's manufacture sold, or offered for sale, by them without clearly distinguishing such sauce or relish from the sauce or relish of the plaintiff.

Interim injunction against use of trade name of plaintiff's goods.

20. POWELL v. BIRMINGHAM VINEGAR BREWERY COMPANY, LTD., [1896] 2 Ch. 54 ; 12 R. P. C. 496, Stirling, J.²

Trade Name of Goods.

This Court doth order that the defendants, The Birmingham Vinegar Brewery Co., Ltd., their servants and agents, be perpetually restrained by injunction from using the words *Yorkshire Relish* as descriptive of or in connection with any sauce or relish manufactured by them, or sauce or relish (not being of the plaintiff's manufacture) sold, or offered for sale, by them without clearly distinguishing such sauce

Injunction against use of trade name of plaintiff's goods.

¹ Affirmed by the Court of Appeal, [1893] 2 Ch. 388 ; 10 R. P. C. 195 ; and by the House of Lords, [1894] A. C. 8 ; 11 R. P. C. 4.

² Affirmed on appeal, [1896] 2 Ch. 54 ; 12 R. P. C. 235, and by the House of Lords, [1897] A. C. 710 ; 14 R. P. C. 720.

Account of profits.

or relish from the sauce or relish of the plaintiff. And it is ordered that the following account be taken at the risk of the plaintiff: an account of all profits made by the defendants by the sale of any sauce or relish (not manufactured by the plaintiff in bottles having labels with the words *Yorkshire Relish* thereon. And it is ordered that in case the defendants shall on or before 12th November, 1895, serve a notice of appeal from this order, the restraint hereby imposed is, so far as regards the label secondly issued by the defendants, to be suspended until after such appeal shall have been heard or otherwise disposed of. (The defendants were ordered to pay the costs of the action.)

21. GREZIER AND DOYLE v. AUTRAN, 13 R. P. C. 13 (1896), Chitty, J.

Trade Name of Goods and Passing-off.

Injunction against use of name on goods not made by plaintiff at particular place.

Exception.

Injunction against selling excepted goods under name without distinguishing; and from referring to recipe.

Similar injunctions and exception as to another name;

and from referring to recipe without a particular statement.

(1) An injunction to restrain the defendant Hippolyte Autran, his servants and agents, until further order from selling, or offering or advertising for sale, within the United Kingdom, under the name of "*Liqueur de Chartreuse*," or "*Chartreuse*," or under any other description of which the name "*Chartreuse*" forms part, any liqueur which has not been, or shall not be, manufactured by the plaintiff, Gabriel Alfred Grezier, or his assignor, Louis Garnier, at the Monastery of La Grande Chartreuse, in France, or elsewhere in the district or region known as La Grande Chartreuse, in France, hereinafter referred to as the "*Monastery Liqueur*," save and except the following liqueur, that is to say, liqueur which has been or shall be manufactured at one distillery or establishment at Voiron, in France, by Henri Meunier, the father, or by Henri Meunier, the son, or by other the persons, if any, for the time being entitled, according to the law of France, as set forth in the judgment of the Civil Court of Grenoble, dated the 2nd of March, 1895, to the benefit of the agreement dated the 9th of July, 1842. (2) An injunction to further restrain the defendant Hippolyte Autran, his servants and agents, until further order from selling, or offering or advertising for sale, within the United Kingdom, the said excepted liqueur under the name of "*Chartreuse*" simply, and from selling, or offering or advertising for sale, within the United Kingdom, under the name of "*Liqueur de Chartreuse*," or any other description of which the name "*Chartreuse*" forms part, the said excepted liqueur, without clearly distinguishing the same from the Monastery liqueur; and further, on any sale, or offer or advertisement for sale, of the said excepted liqueur, from making any mention of or reference to the recipe of Don Niviere, given to Charles Meunier, the grandfather, in 1813, intended or calculated to induce to the belief that the said excepted liqueur has been or is made according to such recipe. (3) An injunction to restrain the defendant Hippolyte Autran, his servants and agents, until further order from selling, or offering or advertising for sale, within the United Kingdom, under the name of "*Elixir Vegetal de la Grande Chartreuse*," or under any other description of which the name "*Chartreuse*" forms part, any liquid for medicinal use which has not been or shall not be manufactured by the plaintiff, Gabriel Alfred Grezier, or his assignor, Louis Garnier, at the Monastery of La Grande Chartreuse, in France, or elsewhere in the district or region known as La Grande Chartreuse, in France, hereinafter referred to as "*Monastery Elixir*," save and except the "*Elixir Vegetal*," which has been or shall be manufactured at one distillery or establishment at Voiron, in France, by Henri Meunier, the father, or by Henri Meunier, the son, or by other persons, if any, for the time being entitled, according to the law of France, as set forth in the said judgment of the Civil Court at Grenoble, dated the 2nd of March, 1895, to the benefit of the said agreement dated the 9th of July, 1842. (4) An injunction to further restrain the defendant Hippolyte Autran, his servants and agents, until further order from selling, or offering or advertising for sale, within the United Kingdom the said excepted elixir under the name of "*Elixir Vegetal de la Grande Chartreuse*," or under any other name of which the name "*Chartreuse*" forms part, first, without clearly distinguishing the same from the Monastery elixir, and secondly, without stating in English whenever mention or reference is made to the said recipe, that part of Article 4 of the said agreement, dated the 9th of July, 1842, in which it is formally declared that the processes of Henri Meunier, the father, as to the manufacture of the said excepted elixir, have no connection with those at the Monastery of La Grande Chartreuse aforesaid. And the parties were to be at liberty to apply to extend or vary the terms of the said injunctions, having regard to the result of any further proceedings in France relating to the said agreement dated the 9th of July, 1842.

22. ROYAL BAKING POWDER COMPANY'S TRADE MARKS, 14 R. P. C. 425 (1897),
Romer, J.¹

Trade Marks Expunged.

This Court doth order that the Register of Trade Marks be rectified by expunging therefrom Trade Marks Nos. 66,683 and 66,684, both in Class No. 42. And it is ordered that notice of this order be given to the Comptroller-General of Patents, Designs, and Trade Marks² by serving a copy of this order upon the said Comptroller, or by leaving the same with a clerk at the office of the said Comptroller, and at the same time producing the duplicate of this order passed and entered.

Order expunging marks.

23. SAXLEHNER v. APOLLINARIS COMPANY, 14 R. P. C. 657 (1897).

Trade Name of Goods.

An injunction to restrain the defendants, their officers, &c., from selling or offering, or exposing or advertising for sale, in the United Kingdom, any Hungarian bitter water, not being "Hunyadi Janos" water derived from the plaintiff's spring near Buda Pesth, in the Kingdom of Hungary, under or with or by means of any name or description of which the name "Hunyadi" forms part, without clearly distinguishing the same from the water derived from the said spring. Delivery up or destruction of all labels and other documents, and also capsules in the possession or power of the defendants, or under their control, which exhibit the name "Hunyadi" in connection with Hungarian bitter water without clearly distinguishing the same from water derived from the said spring. (An account of profits, limited as agreed, was also ordered, and a special order was made as to costs.)

Injunction to restrain use of word without clearly distinguishing.

24. KYNOCH & CO.'S TRADE MARK, 14 R. P. C. 905 (1897), Kekewich, J.

Order to proceed with Registration.

Upon motion this day made unto this Court for the above-named applicants, Messrs. G. Kynoch & Co., Ltd., being an appeal from the Comptroller-General³ to register the word *Kynite* in Class 20 in respect of all goods included in that class, which appeal has been referred to the Court by the Board of Trade, and upon, &c., this Court doth order that the Comptroller-General do proceed with the registration of the said trade mark.

Order to proceed with registration.

25. F. PINET ET CIE. v. MAISON LOUIS PINET, LTD. ; and SAME v. MAISON PINET, LTD., 15 R. P. C. 73 (1898), North, J.

Trade Name.

Upon the two several motions for injunction this day made unto this Court by counsel for the plaintiffs in the respective actions, and upon, &c. ; and the plaintiffs and defendants in both actions by their counsel consenting that the hearing of the said motions should be treated as motions for judgment in the respective actions, and the plaintiffs by their counsel waiving any claim for damages. The Court doth order that the defendant, Frederick William Shepherd, the liquidator thereof, be perpetually restrained from transferring, selling, or dealing with any right to the name *Pinet*, or any title or description including that name in connection with the manufacture or sale of boots or shoes. And it is ordered that the defendants, Maison Louis Pinet, Ltd., Frederick Westwood Potter, William Alfred Phillips, Arthur Joshua Eastmead, and Louis Marius Pinet, and Maison Pinet, Ltd., Frederick William Shepherd, and Walter Kelsey, be perpetually restrained from

Injunction restraining liquidator from selling name.

Injunction restraining other defendants from

¹ See 18 R. P. C. 97.

² Now called the Registrar of Trade Marks. This is to be done by the person

T.M.

in whose favour the order has been made. Rule 129.

³ See note (2).

using name in connection with certain goods or conferring use of it on others ; and from selling goods under certain names.

Injunction restraining carrying on business under name ; or representing that defendant's business is connected with plaintiff's ;

or selling goods under name.

Injunction restraining certain defendants from carrying on certain business under name ; and from selling goods under name ; and another defendant from doing so without distinguishing ; and all defendants from representing connection with plaintiffs or passing off.

using the said name *Pinet*, or any such title or description as aforesaid, in such connection as aforesaid, and from doing any other act or thing conferring, or purporting to confer, either directly or indirectly, upon any other person or persons any right to use the said name or other such title or description as aforesaid, in such connection as aforesaid, and from selling or offering for sale any boots or shoes not of the plaintiff's manufacture under the name of "*Pinet's Special Boots and Shoes*," or "*Pinet's Boots and Shoes*."

26. EASTMAN PHOTOGRAPHIC MATERIALS COMPANY, LTD. v. JOHN GRIFFITHS CYCLE CORPORATION, LTD., and KODAK CYCLE COMPANY, LTD., 15 R. P. C. 112 (1898). Romer, J.

Trade Name and Passing-off.

An injunction restraining the defendant companies, or either of them, from carrying on business under the name "*Kodak Cycle Company, Ltd.*," or under any name comprising the word "*Kodak*" likely to mislead or deceive the public into the belief that the defendant company is the same company as or is connected with either of the plaintiff companies, or that the business of the said companies, or either of them, is the same as, or is in any way connected with, the business of the plaintiffs, The Eastman Photographic Materials Company, Ltd. An injunction restraining the defendant companies, and each of them, from selling, or offering to sell, any of their cycles or goods as "*Kodak*." The defendants to pay the costs, including the costs of the Comptroller.¹

27. VALENTINE MEAT JUICE COMPANY v. VALENTINE EXTRACT COMPANY, LTD., 17 R. P. C. 688 (1900), C. A.

Trade Name and Passing-off.

"This Court doth order that the defendants, the Valentine Extract Company, Ltd., and Herbert Hughes, and each of them, their servants and agents, be perpetually restrained from carrying on business as manufacturers or vendors of any preparation of extract of meat or meat juice under any name or title of which the name '*Valentine*' or '*Valentine's*' forms part, and from selling, or offering, or exposing, or advertising for sale, or procuring to be sold any such preparation as aforesaid not being of the plaintiff's manufacture under any name or description of which the name '*Valentine*,' or '*Valentine's*,' or '*Valline*' forms part. And it is ordered that the defendant, Charles Richard Valentine, his servants and agents, be perpetually restrained from carrying on any such business as aforesaid, under any such name or title as aforesaid, without clearly distinguishing such business from the business of the plaintiffs, and from selling, or offering, or exposing, or advertising for sale, or procuring to be sold, any such preparation as aforesaid, under any such name or description as aforesaid, without clearly distinguishing such preparation from goods of the plaintiffs. And doth order that the defendants, the Valentine Extract Company, Ltd., Charles Richard Valentine, and Herbert Hughes, and each of them, their servants and agents, be perpetually restrained from in any manner representing or acting so as to be calculated to lead to the belief that the defendant, Charles Richard Valentine, is or ever has been interested in or connected with the business of the plaintiffs, and from passing off, or enabling or assisting others to pass off, any such preparation as aforesaid not being of the plaintiff's manufacture, as or for the plaintiff's goods." (The order directed a delivery up of infringing labels and boxes and an inquiry as to profits, and that the costs of the action and the appeal be paid by the defendants.)

28. J. & J. CASH, LTD. v. CASH, 18 R. P. C. 220 ; 19 R. P. C. 186 (1902), C. A.²

Trade Name.

An injunction to restrain the defendant, *Joseph Cash*, from selling any frillings or woven names or initials not manufactured by the plaintiffs as "*Cash's Frillings*"

¹ There was also an order to expunge the first defendant company's mark "*Kodak*."

² The order made by Kekewich, J., restrained the defendant from carrying

Injunction restraining defendant

or "Cash's Woven Names" or "Initials," and from carrying on the business of a manufacturer or seller of frillings or woven names or initials under the name of "Joseph Cash & Co." while not in partnership with any other person, and from carrying on any such business either in the name of "Cash" or under any style in which the name "Cash" appears without taking reasonable precautions to clearly distinguish the business carried on and the frillings and woven names and initials manufactured or sold by the defendant from the business carried on and the frillings and woven names and initials manufactured by the plaintiffs, and from carrying on any such business under any name or in any manner so as to mislead or deceive the public into the belief that the business of the defendant, or the frillings or woven names or initials manufactured or sold by him, are the business of or goods manufactured by the plaintiffs, or that the defendant is carrying on the business formerly carried on at Coventry by Messrs. J. & J. Cash, the vendors to and predecessors in business of the plaintiffs; an injunction to restrain the defendant from making over his business in frillings or woven names or initials to, or acting as managing director of, any limited or other company formed to carry on business in frillings or woven names or initials, and having a name which is calculated or likely to mislead or deceive the public into the belief that the business, frillings, or woven names or initials of such company are the business, frillings, or woven names or initials of the plaintiffs, or that such company is carrying on the business formerly carried on at Coventry by the said Messrs. J. & J. Cash, and from otherwise assisting any such company to so mislead or deceive the public. (An injunction against soliciting was also granted with the costs of the action, and, the defendant alleging that an interlocutory injunction which had been granted was wider than that granted at the trial, he was to be at liberty to apply for an inquiry as to damages sustained by reason of the interim order).¹

from carrying on business in certain goods under his own name; or so as to mislead;

and from transferring his business to company having name calculated to mislead.

29. MARÉCHAL AND RUCHON v. MCCOLGAN, 18 R. P. C. 264 (1901),
Chatterton, V.-C., Ireland.

Trade Mark. Infringement by Stamping.

An injunction to restrain the defendant, his agents, servants, and workmen from stamping or affixing, or procuring or causing to be stamped or affixed on any pipes, pipe cases, cigar or cigarette cases, the mark "J. B. D.," or any other colourable imitation of the plaintiff's trade mark "G. B. D.," and from selling or exposing for sale any pipes, &c., so marked other than those of the plaintiff's manufacture; and that the defendant deliver up to the plaintiffs or their solicitors all pipes in his possession bearing the mark "J. B. D.," together with the instrument, if any, used for stamping the said mark thereon.

Injunction restraining defendant from stamping pipes as "J. B. D.," and from selling pipes so stamped. Delivery up of stamp.

30. LA SOCIÉTÉ ANONYME DES ANCIENS ÉTABLISSEMENTS PANHARD ET LEVASSOR v. PANHARD-LEVASSOR MOTOR CO., LTD., AND OTHERS, 18 R. P. C. 410 (1901), Farwell, J.

Trade Name. Injunction against Signatories of Memorandum of Association.

"This Court doth order and adjudge that the defendants, the Panhard-Levassor Motor Co., Ltd.," and the seven other defendants, naming them, "their servants or agents, be perpetually restrained from using the names of Panhard and Levassor, or either of them, or any title or description including those names, or either of them, or otherwise colourably resembling the name of the plaintiffs, in connection with the manufacture, use, or sale of or other dealing in, motor cars or parts thereof." And it was ordered that the seven defendants (other than the company), naming them, "do not allow the defendant company to remain registered under its present name, or any such title or description as aforesaid."

Injunction restraining defendants from using certain names in connection with motor cars; and restraining certain defendants from allowing defendant company to remain registered under its name.

on business of a manufacturer or seller of frillings or woven names or initials under the name of Joseph Cash & Company, or under the name of "Cash." For these words the Court of Appeal

substituted the words in italics.

¹ There were special reasons for not granting the inquiry at the trial. See the report.

31. DAVENPORT'S TRADE MARK, 21 R. P. C. 728 (1904), Joyce, J.

Alteration of Trade Mark.

Order allowing certain alterations of registered trade mark as shown in an exhibit.

"The applicants by their counsel undertaking to supply the Comptroller-General of Patents, Designs and Trade Marks¹ with a block of the mark as altered,² this Court doth order that the register of trade marks be rectified by altering the registration of the above-mentioned trade mark No. 3,411, in the following respects—that is to say, by adding the word 'Limited' after the name 'J. T. Davenport' where the same first appears on the said trade mark, and by substituting the word 'Manufacturers,' 'Chemists,' and 'Pharmaceuticals' for the words 'Manufacturer,' 'Chemist,' and 'Pharmacist,' respectively, and by substituting the address, 117, Union Street, London, S.E., England, for the address which now appears on the said trade mark, and by inserting the word 'Late' before the words 'Duke of Cambridge' and omitting the word 'Government' therefrom, so that the said trade mark as altered may be as shown by the exhibit marked A3, referred to in the said affidavit of Horace Davenport. And it is ordered, that due notice of this order may be given to the said Comptroller by serving a copy of this order upon the said Comptroller or by leaving the same with a clerk at the office of the said Comptroller, and at the same time producing a duplicate of this order duly passed and entered."³

32. WEINGARTEN v. BAYER & Co., 22 R. P. C. 351 (1905), H. of L.

Injunction against Passing-off by Use of Special Scroll. Profits.

Injunction restraining defendant from selling goods in boxes bearing a certain scroll; and account of profits.

An injunction to restrain the defendants, their servants and agents from selling or offering for sale corsets in boxes bearing the scroll or an imitation of the scroll used by the plaintiffs in connection with their corsets or any corsets designated by show cards or labels bearing such scroll or imitation, or otherwise distinguished by such scroll or imitation. Account ordered of the profits derived by the defendants from the sale of corsets in such boxes or so designated or distinguished.

33. MAJOR BROTHERS v. J. FRANKLIN & SON, 25 R. P. C. 406 (1908), Jelf, J.

Infringement of Trade Mark. Certificate of Validity.

Certificate of validity of trade mark having come into question.

This action having on the 22nd, 23rd, and 24th days of January, 1908, been tried before the Honourable Mr. Justice Jelf without a jury in the county of London, and the said Honourable Mr. Justice Jelf on the 24th day of January, 1908, having ordered that judgment be entered for the plaintiffs for one shilling damages and granted an injunction restraining the defendants, their servants and agents, from infringing the registered trade marks of the plaintiffs No. 258,116 in Class 42, and No. 258,117 in Class 50, consisting of or comprising the letters "M.A.J.O.," with costs on the High Court scale, and having certified that at the trial of this action the validity of the plaintiffs' registered trade mark came into question,⁴

Damages and costs.

It is this day adjudged that the plaintiffs recover from the defendants one shilling damages and costs on the High Court scale to be taxed, and it is further ordered and adjudged that the defendants, their servants and agents, be and are hereby restrained from infringing the registered trade marks of the plaintiffs, No. 258,116 in Class 42, and No. 258,117 in Class 50, consisting of or comprising the letters "M.A.J.O."

Injunction restraining infringement of trade marks.

¹ Now called the Registrar of Trade Marks.

² See now Rule 94, p. 667.

³ See now Rule 129, p. 672.

⁴ *Query*, whether the certificate should

not state that the question of validity was decided in favour of the proprietor of the trade mark, see. 46, above, p. 466.

APPENDIX XIII.

ORDERS IN COUNCIL APPLYING THE PROVISIONS AS TO INTERNATIONAL AND COLONIAL ARRANGEMENTS, FOREIGN STATES AND BRITISH POSSESSIONS.¹

COLONIAL ARRANGEMENTS.

Colony.	Date of Order in Council.	Statutory Rules and Orders.
Ceylon	7 Aug., 1903	1905, p. 268, No. 933.
Commonwealth of Australia	26 March, 1907	1907, p. 773, No. 263.
<i>Queensland</i> ²	17 Sept., 1885	Vol. 5, p. 141.
New Zealand	8 Feb., 1890	1890, p. 887.
<i>Tasmania</i> ²	30 April, 1894	1894, p. 54, No. 123.
Trinidad and Tobago	12 Aug., 1907	1907, p. 777, No. 652.
<i>Western Australia</i> ²	11 May, 1895	1895, p. 587, No. 245.

INTERNATIONAL ARRANGEMENTS.³

Foreign state.	Date of Order in Council	Statutory Rules and Orders.
Belgium	26 June, 1884	Vol. 5, p. 142.
Brazil	26 June, 1884	Vol. 5, p. 142.
Cuba	12 Jan., 1905	1905, p. 270, No. 10.
Denmark (including the Fære Islands)	20 Nov., 1894	1894, p. 56, No. 542.
Dominican Republic	21 Oct., 1890	1890, p. 887.
*Ecuador	16 May, 1893	1893, p. 65.
France (with Algeria and Colonies)	26 June, 1884	Vol. 5, p. 142.
Germany	9 Oct., 1903	1903, p. 1170, No. 867.
*Greece	15 Oct., 1894	1894, p. 57, No. 234.
*Honduras... ..	26 Sept., 1901	1901, p. 320, No. 799.
Italy	26 June, 1884	Vol. 5, p. 142.
Japan	7 Oct., 1899	1899, p. 964, No. 759.
Mexico	28 May, 1889	Vol. 5, p. 146.
Netherlands	26 June, 1884	Vol. 5, p. 142.
Netherlands (East Indian Colonies)	17 Nov., 1888	Vol. 5, p. 145.
Netherlands (Curaçao and Surinam.)	17 May, 1890	1890, p. 886.
Norway	See Sweden.	
*Paraguay	24 Sept., 1886	Vol. 5, p. 144.

¹ Sections 103 and 104 of the Patents, &c., Act, 1883. Now replaced by sec. 91 of the Patents and Designs Act, 1907.

² Consequent on the Order in Council applying the section to the Commonwealth of Australia, the Orders in Council relating to Queensland and Western Australia were revoked on March 26th, 1907, and that relating to Tasmania on

August 12th, 1907.

³ As to Guatemala, Salvador, and Ecuador, see p. 749. Those countries &c., marked * (including Ecuador) are not parties to the International Convention, but similar arrangements exist between them and Great Britain for the mutual protection of trade marks.

INTERNATIONAL ARRANGEMENTS¹—*continued.*

Foreign State.	Date of Order in Council.	Statutory Rules and Orders.
Portugal (with the Azores and Madeira)	26 June, 1884	Vol. 5, p. 142.
*Roumania ¹	5 Aug., 1892	1892, p. 650.
Servia	26 June, 1884	Vol. 5, p. 142.
Spain	26 June, 1884	Vol. 5, p. 142.
Sweden	9 July, 1885	Vol. 5, p. 143.
Switzerland	26 June, 1884	Vol. 5, p. 142.
Tunis	26 June, 1884	Vol. 5, p. 142.
United States	12 July, 1887	Vol. 5, p. 145.
*Uruguay ¹	24 Sept., 1886	Vol. 5, p. 144.

PLACES UNDER BRITISH JURISDICTION.

Penalties on British subjects committing offences against the Patents, &c. Acts, 1883 to 1888.²

Places.	Date of Order in Council.	Statutory Rules and Orders.
Africa— (a) <i>Continent and adjacent Islands</i> (excluding certain of the territories to which the Order noted infra, under (b), and Orders dealing with other parts ³ apply).	15 Oct., 1889, Art. 55 ...	Vol. 3, pp. 259, 273.
(b) <i>East Africa</i>	7 July, 1897, Art. 17 ...	1897, pp. 134, 141, No. 575.
Brunei	22 Nov., 1890, Art. 40 ...	1890, p. 677. ⁴
China and Corea	11 Feb., 1907, Art. 3 ...	1907, p. 185, No. 107.
Egypt	8 Aug., 1899, Art. 57 ...	1899, pp. 643, 662, No. 595. ⁵
Morocco	28 Nov., 1889, Art. 112...	Vol. 3, p. 524, 558.
Ottoman Empire (and see Egypt, supra)	8 Aug., 1899, Art. 57 ...	1899, pp. 643, 662, No. 595.
Persia	13 Dec., 1889, Art. 292	Vol. 3, pp. 698, 766.
Persian Coast and Islands	13 Dec., 1889, Art. 50 ...	Vol. 3, pp. 796, 815.
Siam	4 April, 1906, Art. 59 ...	1906, p. 227, No. 282.
Somaliland... ..	7 Oct., 1899, Art. 12 ...	1899, pp. 705, 711, No. 758.
Turkey. See Ottoman Empire	... ..	... ..
Zanzibar	7 July, 1897, Art. 17 ...	1897, pp. 159, 165, No. 576.

¹ See note (3), previous page.

² Orders in Council issued under 41 & 42 Vict. c. 67, now replaced by 53 & 54 Vict. c. 37.

³ See the Index to the Statutory Rules and Orders in force on December 31st, 1903, and subsequent volumes.

⁴ The Brunei Order, 1901, No. 588, does not appear to affect the above-mentioned Order, so far as relates to

patents, &c.

⁵ This Order (the Ottoman Order in Council, 1899) is (Art. 12) suspended as regards matters within the jurisdiction of the Egyptian Courts established with his Majesty's concurrence, and the limits of the Order as respects Egypt do not extend to any place south of the 22nd parallel of north latitude.

APPENDIX XIV.

THE INTERNATIONAL CONVENTION.¹

INTERNATIONAL CONVENTION BETWEEN THE GOVERNMENTS OF BELGIUM, BRAZIL, SPAIN, FRANCE, GUATEMALA,² ITALY, NETHERLANDS, PORTUGAL, SALVADOR,² SERVIA, AND SWITZERLAND, FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

Signed at Paris, March 20th, 1883.

[Ratifications exchanged at Paris, June 6th, 1884.]

(Translation.)

ART. I. THE Governments of Belgium, Brazil, Spain, France, Guatemala,² Italy, Holland, Portugal, Salvador,² Serbia, and Switzerland constitute themselves into a Union for the Protection of Industrial Property.

ART. II. The subjects or citizens of each of the Contracting States shall, in all the other States of the Union, as regards patents, industrial designs or models, trade marks and trade names, enjoy the advantages that their respective laws now grant, or shall hereafter grant, to their own subjects or citizens.

Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the formalities and conditions imposed on subjects or citizens by the internal legislation of each State.

Similar provisions to those of this Article and of Art. III. were to be found in particular treaties between individual States; but, owing to differences in municipal law, they were insufficient to provide for the protection of trade marks. Thus, in France, Italy, and other countries, no right arises to the applicant for the registration of a trade mark from the mere registration if another has previously held the same mark for goods of the same kind. In Germany, Sweden, Norway, &c., the mark belongs to the first applicant. "It has thus happened that unscrupulous competitors in countries where the latter system exists have hastened to register in their own names the new names registered in its own country by a well-known house, so that they were placed in a position to compete unfairly with the house by means of its own marks, and even to have its goods seized for infringement of trade mark." (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i., 1897, p. 186.) It was impossible to

¹ Further articles were agreed upon at the Conference at Rome in 1886 (see Parliamentary Paper, C.—4837), but were never ratified. The articles printed below, p. 749, were agreed upon at the Conference at Madrid in 1889, and they have been duly ratified by Great Britain, Spain, France, Switzerland, and Tunis. The articles printed below, p. 751, were not ratified by Great Britain. Amendments of the Convention were made by

the Brussels Act of December 14th, 1900. These are italicised or are referred to in the notes. Serbia and the Dominican Republic have not ratified the Brussels Act.

² Salvador withdrew from this Convention by notice dated September 6th, 1886; Guatemala by notice dated November 27th, 1894, taking effect on November 8th, 1895.

compel these countries to alter the basis of their legislation. Hence Art. IV. gave persons interested the necessary time to register their marks in all the States of the Union before another could anticipate them. See note to Art. IV.

ART. III. Subjects or citizens of States not forming part of the Union, who are domiciled, or have *real and effective* industrial or commercial establishments in the territory of any of the States of the Union, shall be assimilated to the subjects or citizens of the Contracting States.

See note to Art. II., supra. The italicised words were added by the Brussels Act.

ART. IV. Any person who has duly applied for a patent, industrial design or model, or trade mark in one of the Contracting States, shall enjoy, as regards registration in the other States, and reserving the rights of third parties, a right of priority during the periods hereinafter stated.

In some foreign countries registration is equivalent to ownership, notwithstanding prior user or prior registration elsewhere. Hence the provision in the Convention as to priority.

Consequently, subsequent registration in any of the other States of the Union before expiry of these periods shall not be invalidated through any acts accomplished in the interval, either, for instance, by another registration, by publication of the invention, or by the working of it [by a third party], by the sale of copies of the design or model, or by use of the trade mark.

The above-mentioned terms of priority shall be [six] months for patents and [three] months for industrial designs and models and trade marks. [A month longer is allowed for countries beyond sea.]

See note to Art. II. The Brussels Act substitutes "twelve" and "four" for "six" and "three," and omits the other bracketed words. Art. IV., as amended, provides a period of four months during which the mark may be registered in all the Contracting States, and the efficacy of the registration cannot be affected by acts which have been accomplished in the interval, and in particular by another registration or the use of the mark.

ART. IVB. Added by the Brussels Act relates only to patents.

ART. V. The introduction by the patentee into the country where the patent has been granted of objects manufactured in any of the States of the Union shall not entail forfeiture.

Nevertheless, the patentee shall remain bound to work his patent in conformity with the laws of the country into which he introduces the patented objects.

Forfeiture for importation is unknown to English law.

Compulsory working was introduced by sec. 27 of the Patents and Designs Act, 1907.

ART. VI. Every trade mark duly registered in the country of origin shall be admitted for registration, and protected in the form originally registered in all the other countries of the Union.

That country shall be deemed the country of origin where the applicant has his chief seat of business.

If this chief seat of business is not situated in one of the countries of the Union, the country to which the applicant belongs shall be deemed the country of origin.

Registration may be refused if the object for which it is solicited is considered contrary to morality or public order.

See also note to Art. 4 of the Final Protocol, post, p. 747.

ART. VII. The nature of the goods on which the trade mark is to be used can, in no case, be an obstacle to the registration of the trade mark.

This provision relates to the case where the mark is intended for goods whose sale in the country is either forbidden or permitted only after official investigation. Medical remedies are here principally contemplated. This article, by permitting the registration of marks for such goods, allows the owner of a mark to take care at any rate that no other can obtain the use of the same mark for other similar goods, which might afterwards be opposed to the original mark, when the goods in question can be introduced into commerce. (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i., 1897, p. 188.)

ART. VIII. A trade name shall be protected in all the countries of the Union, without necessity of registration, whether it form part or not of a trade mark.

In France it had been decided by the Cour de Cassation, in *Beissel's* case (*Annales de la Propriété Industrielle*, 1880, p. 113), that a mark in becoming public property carried with it the trade name which formed part of it. Hence Art. VIII.

ART. IX. All goods illegally bearing a trade mark or trade name may be seized on importation into those States of the Union where this mark or name has a right to legal protection.

The Act of Brussels adds : “ *In those States of which the legislation does not admit of the seizure on importation, this seizure may be replaced by an injunction against importation. The authorities are not obliged to effect a seizure in case of transit.* ”

Arts. IX. and X. are applied in English law by the provisions of the M. M. A. 1887, which go much further than, and therefore satisfy, the provisions of the Convention. This article was a great benefit to the States which made liberal provision in regard to the device of marks. But this benefit gradually diminished owing to the tendency of all the States of the Union to adopt a broader conception of marks.

The seizure shall be effected at the request of either the proper public department or of the interested party, pursuant to the internal legislation of each country.

ART. X. The provisions of the preceding article shall apply to all goods falsely bearing the name of any locality as indication of the place of origin, when such indication is associated with a trade name of a fictitious character or assumed with a fraudulent intention.

Any producer, manufacturer of, or trader in, such goods, established either in the locality falsely designated as the place of origin or in the region in which such locality is situated, shall be deemed an interested party.

See note to Art. IX.

ART. XB. *Persons resorting to the countries referred to in the convention (Arts. II. and III.) shall enjoy in all States of the Union, the protection accorded to natives against dishonest competition.*

ART. XI. The high contracting parties agree to grant in conformity with the legislation of each country temporary protection to patentable

inventions, to industrial designs or models, and trade marks, for articles exhibited at official or officially recognised international exhibitions *held in the territory of one of them.*

This article is carried out as regards patents and designs by secs. 45 and 59 of the Patents and Designs Act, 1907. No analogous provision was required as regards trade marks, as the right to a trade mark in England is acquired not by priority of registration, but by priority of user. A doubt arose under this article whether temporary protection ought to be granted by every State of the Union merely for the exhibitions which take place in its territory, or whether it should be extended to exhibitions in the other Contracting States. The Brussels Conference (*La Propriété Industrielle*, 1898, p. 2) interpreted the article in the latter sense; and see the sections referred to above.

ART. XII. Each of the high contracting parties agrees to establish a special government department for industrial property, and a central office for communication to the public of patents, industrial designs or models, and trade marks.

ART. XIII. An international office shall be organised under the name of "Bureau International de l'Union pour la Protection de la Propriété Industrielle" (International Office of the Union for the Protection of Industrial Property).

This office, the expense of which shall be defrayed by the Governments of all the Contracting States, shall be placed under the high authority of the central administration of the Swiss Confederation, and shall work under its supervision. Its functions shall be determined by agreement between the States of the Union.

ART. XIV. The present Convention shall be submitted to periodical revisions, with a view to introducing improvements calculated to perfect the system of the Union.

To this end conferences shall be successively held in one of the Contracting States by delegates of the said States. The next meeting shall take place in 1885 at Rome.

ART. XV. It is agreed that the high contracting parties respectively reserve to themselves the right to make separately, as between themselves, special arrangements for the protection of industrial property, in so far as such arrangements do not contravene the provisions of the present Convention.

ART. XVI. States which have not taken part in the present Convention shall be permitted to adhere to it at their request.

Such adhesion shall be notified officially through the diplomatic channel to the Government of the Swiss Confederation, and by the latter to all the others. It shall imply complete accession to all the clauses, and admission to all the advantages stipulated by the present Convention *and shall take effect one month after the despatch of the notification made by the Swiss Government to the other States of the Union, unless a later date is indicated by the acceding State.*

ART. XVII. The execution of the reciprocal engagements contained in the present Convention is subordinated, in so far as necessary, to the observance of the formalities and rules established by the constitutional laws of those of the high contracting parties who are bound to procure the application of the same, which they engage to do with as little delay as possible.

ART. XVIII. The present Convention shall come into operation one month after the exchange of ratifications, and shall remain in force for

an unlimited time, till the expiry of one year from the date of its denunciation. This denunciation shall be addressed to the Government commissioned to receive adhesions. It shall only affect the denouncing State, the Convention remaining in operation as regards the other contracting parties.

[Here follow the Signatures.]

Final Protocol.

On proceeding to the signature of the Convention concluded this day between the Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia, and Switzerland, for the protection of industrial property, the undersigned plenipotentiaries have agreed as follows:—

1. The words "industrial property" are to be understood in their broadest sense; they are not to apply simply to industrial products properly so called, but also to agricultural products (wines, corn, fruits, cattle, &c.), and to mineral products employed in commerce (mineral waters, &c.).

2. Under the word "patents" are comprised the various kinds of industrial patents recognised by the legislation of each of the Contracting States, such as importation patents, improvement patents, &c.

3. The last paragraph of Article II. does not affect the legislation of each of the Contracting States as regards the procedure to be followed before the tribunals, and the competence of those tribunals.¹

4. Paragraph 1 of Article VI. is to be understood as meaning that no trade mark shall be excluded from protection in any State of the Union from the fact alone that it does not satisfy, in regard to the signs composing it,² the conditions of the legislation of that State; provided that on this point it comply with the legislation of the country of origin, and that it had been properly registered in said country of origin. With this exception, which relates only to the form of the mark,² and under reserve of the provisions of the other Articles of the Convention, the internal legislation of each State remains in force.

To avoid misconstruction, it is agreed that the use of public armorial bearings and decorations may be considered as being contrary to public order in the sense of the last paragraph of Article VI.³

5. The organisation of the special department for industrial property mentioned in Article XII. shall comprise, so far as possible, the publication in each State of a periodical official paper.

¹ Article 3B relates to compulsory working of patents.

² The expressions "in regard to the signs composing it" and "only to the form of the mark" were, no doubt, used because special attention was directed to name marks, which at that time were not considered as marks in a certain number of States. At present the majority of States do recognise names as marks, but with all kinds of restrictions which tend to destroy the effect of the concession. (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i. (1897), p. 144.)

³ The object of clause 4 has been suggested to be to protect word marks in countries where the local law did not admit them. (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i. (1897), p. 141.) On the other hand, the view has been put forward (*ib.*) that, under the last paragraph of this clause, States may refuse, as "contrary to public order," marks which, whilst apparently mere fancy names, consist of a new name of the product, or words descriptive of it, and those which are more or less likely to lead to mistakes. (*See quere?*)

6. The common expenses of the International Office, instituted by virtue of Article XIII., are in no case to exceed for a single year a total sum representing an average of 2,000fr. for each Contracting State.

To determine the part which each State should contribute to this total of expenses, the Contracting States, and those which may afterwards join the Union, shall be divided into six classes, each contributing in the proportion of a certain number of units, namely:—

1st class	...	...	...	...	...	25 units.
2nd	„	...	...	...	...	20 „
3rd	„	...	...	...	...	15 „
4th	„	...	...	...	...	10 „
5th	„	...	...	...	...	5 „
6th	„	...	...	...	...	3 „

These coefficients will be multiplied by the number of States in each class, and the sum of the result thus obtained will supply the number of units by which the total expense has to be divided. The quotient will give the amount of the unit of expense.

The Contracting States are classed as follows, with regard to the division of expense:—

1st class	...	France, Italy.
2nd	„	Spain.
3rd	„	Belgium, Brazil, Portugal, Switzerland.
4th	„	Holland.
5th	„	Servia.
6th	„	Guatemala, Salvador.

The Swiss Government will superintend the expenses of the International Office, advance the necessary funds, and render an annual account, which will be communicated to all the other Administrations.

The International Office will centralise information of every kind relating to the protection of industrial property, and will bring it together in the form of a general statistical statement, which will be distributed to all the Administrations. It will interest itself in all matters of common utility to the Union, and will edit, with the help of the documents supplied to it by the various Administrations, a periodical paper in the French language dealing with questions regarding the object of the Union.

The numbers of this paper, as well as all the documents published by the International Office, will be circulated among the Administrations of the States of the Union in the proportion of the number of contributing units as mentioned above. Such further copies as may be desired, either by the said Administrations or by societies or private persons, will be paid for separately.

The International Office shall at all times hold itself at the service of members of the Union, in order to supply them with any special information they may need on questions relating to the international system of industrial property.

The Administration of the country in which the next Conference is to be held will make preparation for the transactions of that Conference, with the assistance of the International Office.

The Director of the International Office will be present at the

meetings of the Conferences, and will take part in the discussions but without the privilege of voting.

He will furnish an annual report upon his administration of the office, which shall be communicated to all the members of the Union.

The official language of the International Office will be French.

7. The present final protocol, which shall be ratified together with the Convention concluded this day, shall be considered as forming an integral part of, and shall have the same force, validity, and duration as, the said Convention.

[*Here follow the signatures.*]

*Accessions and Withdrawals.*¹

Cuba acceded September 22, 1904.

Denmark (including the Faroe Islands) acceded October 1, 1894.

Dominican Republic acceded December 8, 1884.

Ecuador acceded December 21, 1883, but withdrew February 27, 1886.¹

Germany acceded May 1, 1903.

Greece, declaration October 15, 1894.

Guatemala withdrew by notice dated November 27, 1894, taking effect November 8, 1895.

Japan acceded by notice dated April 15, 1899, taking effect July 15, 1899.

Salvador, a signatory party, withdrew September 6, 1886.

Sweden acceded June 18, 1885.

United States acceded May 30, 1887.

ARRANGEMENT BETWEEN GREAT BRITAIN, SPAIN, FRANCE, SWITZERLAND,
AND TUNIS, FOR THE PREVENTION OF FALSE INDICATIONS OF ORIGIN
OF GOODS.²

Signed at Madrid, April 14, 1891.

[*Ratifications exchanged at Madrid, June 15, 1892.*]

(Translation.)

THE undersigned Plenipotentiaries of the States hereinafter enumerated,

In view of Article XV. of the International Convention of the 20th March, 1883, for the protection of industrial property,

Have mutually concluded the following arrangement, subject to ratification :—

ART. I. All goods bearing a false indication of origin, in which one of the Contracting States, or a place situated therein, shall be directly or

¹ See the list printed at p. 741, where the list of British Possessions to which the Convention is now applicable will also be found.

² Parliamentary Paper, Treaty Series, No. 13 (1892)

indirectly indicated as being the country or place of origin, shall be seized on importation into any of the said States.

The seizure may also take place either in the State where the false indication of origin has been applied, or in that into which the goods bearing the false indication may have been imported.

If the law of any State does not permit seizure on importation, such seizure shall be replaced by prohibition of importation.

If the law of any State does not permit seizure in the interior, such seizure shall be replaced by the remedies assured in such case to natives by the law of such State.

ART. II. The seizure shall take place at the request either of the proper Government Department, or of an interested party, whether individual or society, in conformity with the domestic law of each State.

The authorities are not bound to effect the seizure of goods in transit.

ART. III. The present stipulations are not intended to prevent the vendor from indicating his name or address upon goods coming from a country other than that where the sale takes place; but in such case the address or the name must be accompanied by a clear indication in legible characters of the country or place of manufacture or production.

ART. IV. The tribunals of each country will decide what appellations, on account of their generic character, do not fall within the provisions of the present arrangement, regional appellations concerning the origin of products of the vine being, however, not comprised in the reserve provided for by the present article.

It has been suggested that, instead of the courts of law being left to deal with the question *pro re natâ*, either the Contracting States or the competent authorities in every country should be required to determine beforehand what local names in their territory are to be considered as generic. (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i. (1897).) There would, however, be great difficulty in carrying out either suggestion. In some cases the law of the country might not permit the Executive to trespass in this way on the domain of the Courts. Names that ought to find a place in the generic lists would be omitted. Who would decide as to translated names and names of countries?—as in the case of “Russia leather,” which in German (*Russisches Leder*) means leather from Russia, while in England and in France (*cuir de Russie*) it means a peculiar kind of leather called in Germany *guchtenleder*. (*Ib.* pp. 179, 180, and n. 120.)

ART. V. States which are parties to the Union for the Protection of Industrial Property, and who have not adhered to the present arrangement, shall be allowed to accede on demand in the manner prescribed by Article XVI. of the Convention of the 20th March, 1883, for the Protection of Industrial Property.

ART. VI. The present arrangement shall be ratified, and the ratifications shall be exchanged at Madrid within six months at the latest.

It shall come into force one month after the exchange of ratifications, and have the same force and duration as the Convention of the 20th March, 1883.

In witness whereof the plenipotentiaries of the States hereinafter enumerated have signed the present arrangement at Madrid, 14th April, 1891.

[Signed on behalf of Brazil, Spain, France and Tunis, Great Britain, Guatemala, Portugal, and Switzerland, but Brazil, Guatemala, and Portugal did not ratify.]

ARRANGEMENT RELATING TO THE INTERNATIONAL REGISTRATION OF TRADE MARKS.¹

ART. I. The subjects or citizens of each of the contracting States may ensure in all the other States the protection of their trade marks accepted for registration in the country of origin by applying for the said marks at the International Office at Berne, through the agency of the administration of the said country of origin.

ART. II. The subjects or citizens of States which have not adhered to the present arrangement who satisfy the conditions of Article III. of the Convention shall be assimilated to the subjects or citizens of the Contracting States.

ART. III. The International Office shall immediately register marks applied for, in accordance with Article I. It shall notify such registration to the contracting States. The marks registered shall be published in a supplement to the journal of the International Office, by means of a drawing or a description in the French language provided by the applicant.

With a view to provide the necessary publicity in the various States for marks so registered, each administration shall receive gratis from the International Office such a number of copies of the said publication as it shall think fit to demand.

ART. IV. From the date of registration so made at the International Office, the protection in each of the contracting States shall be the same as if the mark had been directly registered there.

ART. V. In the countries where their law authorises them to do so, the administrations to which the International Office gives notice of the registration of a mark shall have power to declare that protection cannot be granted to such mark in their territory. They shall exercise such power within a year of the notice prescribed by Article III.

Such a declaration so notified to the International Office shall be transmitted by it without delay to the administration of the country of origin and to the owner of the mark. The person interested shall have the same remedies as if the mark had been directly registered by him in the country where the protection is refused.

ART. VI. The protection resulting from registration at the International Office shall last for twenty years from such registration, but cannot be invoked in favour of a mark which no longer enjoys legal protection in its country of origin.

ART. VII. Registration may always be renewed in accordance with the provisions of Articles I. and III.

Six months before the expiry of the period of protection, the International Office shall give official notice to the administration of the country of origin and to the owner of the mark.

ART. VIII. The administration of the country of origin shall fix at its pleasure, and shall raise for its own profit, a fee which it may demand

¹ This translation is by Mr. J. F. Iselin (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i. (1897), p. 111). The restricted Union includes the following States:—Belgium, Brazil, France, Italy, the Netherlands, Portugal Spain, Switzer-

land, and Tunis. It applies also to the respective colonies of the Contracting States mentioned as forming part of the General Union of 1883. Great Britain did not sign, see above, p. 743.

from the owner of the mark for which international registration is applied for.

To this fee shall be added an international duty of 100 francs, the annual produce of which shall be divided equally amongst the Contracting States, after deducting the costs occasioned by the execution of this arrangement.

ART. IX. The administration of the country of origin shall give notice to the International Office of the annulments, erasures, disclaimers, transfers, and other changes which shall take place in the ownership of the mark.

The International Office shall register these changes, give notice of them to the contracting administrations, and immediately publish them in its journal.

ART. X. The administrations shall regulate by agreement the details relating to the execution of the present agreement.

ART. XI. The States of the Union for the Protection of Industrial Property which have not taken part in the present arrangement shall be permitted to adhere to it upon their demand, and in the form prescribed by Article XVI. of the Convention of the 20th March, 1883, for the Protection of Industrial Property.

As soon as the International Office shall be informed that a State has adhered to the present arrangement, it shall send to the administration of that State, in accordance with Article III., a general notice of the marks which at that time enjoy international protection.

ART. XII. The present arrangement shall be ratified, and the ratifications shall be exchanged at Madrid within six months at the latest. It shall come into force one month after the exchange of ratifications, and shall have the same force and duration as the Convention of the 20th March, 1883.

Final Protocol.

Upon proceeding to the signature of the arrangement relating to the International Registration of Trade Marks, concluded this day, the Plenipotentiaries of the States which have adhered to the said arrangement have agreed as follows:—Doubts having arisen as to the scope of Article V., it is understood that the power of refusal which this Article leaves to the administrations does not affect the provisions of Article VI. of the Convention of the 20th March, 1883, or of paragraph 4 of the accompanying final protocol, these provisions being applicable to marks registered at the International Bureau, as they are, and shall still continue to be applicable to those directly registered in any of the Contracting States. The present protocol shall have the same force and duration as the arrangement to which it relates.

This exchange of ratifications took place on June 15th, 1892.

APPENDIX XV.

TREATY WITH THE UNITED STATES.

The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Government of the United States of America, with a view to the reciprocal protection of the marks of manufacture and trade in the two countries, have agreed as follows:—

The subjects and citizens of each of the contracting parties shall have, in the dominions and possessions of the other, the same rights as belong to native subjects or citizens, or as are now granted or may hereafter be granted to the subjects and citizens of the most favoured nation in everything relating to property in trade marks and trade labels.

It is understood that any person who desires to obtain the aforesaid protection must fulfil the formalities required by the laws of the respective countries.

In witness whereof the undersigned have signed the present declaration, and have affixed thereto the seal of their arms.

Done at London, the 24th day of October, 1877.

DERBY.

EDWARD PIERREPONT.

APPENDIX XVI.

THE UNITED STATES TRADE MARKS ACT, 1905.¹

An Act to authorise the registration of trade marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same (February 20th, 1905).

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:—That the owner of a trade mark used in commerce with foreign nations, or among the several States, or with Indian tribes, provided such owner shall be domiciled within the territory of the United States,² or resides in or is located in any foreign country which, by treaty, convention, or law, affords similar privileges to the citizens of the United States, may obtain registration for such trade mark by complying with the following requirements: First, by filing in the Patent Office an application therefor, in writing, addressed to the Commissioner of Patents, signed by the applicant, specifying his name, domicile, location, and citizenship; the class of merchandise and the particular description of goods comprised in such class to which the trade mark is appropriated;³ a description of the trade mark itself,⁴ and a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the trade mark has been used. With this statement shall be filed a drawing of the trade mark, signed by the applicant, or his attorney, and such number of specimens of the trade mark, as actually used, as may be required by the Commissioner of Patents. Second, by paying into the Treasury of the United States the sum of ten dollars, and otherwise complying with the requirements of this Act and such regulations as may be prescribed by the Commissioner of Patents.

2. That the application prescribed in the foregoing section, in order to create any right whatever in favour of the party filing it, must be accompanied by a written declaration verified by the applicant, or by a member of the firm or an officer of the corporation or association

¹ This Act has been amended by Acts of 1906 and 1907; see below, p. 801.

² The Act of 1906, s. 3, confers the same rights on the owner of a trade mark who shall have a manufacturing establishment within the territory of the United States.

³ The Act of 1906 provides for a classification, and by sec. 2 enacts that "on a single application for registration

of a trade mark the trade mark may be registered at the option of the applicant for any or all goods upon which the mark has actually been used comprised in a single class of merchandise, provided the particular descriptions of goods be stated."

⁴ The Act of 1906, s. 1, adds: "Only when needed to express colors not shown in the drawing."

applying, to the effect that the applicant believes himself or the firm, corporation, or association in whose behalf he makes the application, to be the owner of the trade mark sought to be registered, and that no other person, firm, corporation, or association, to the best of the applicant's knowledge and belief, has the right to such use, either in the identical form or in such near resemblance thereto as might be calculated to deceive; that such trade mark is used in commerce among the several States, or with foreign nations or with Indian tribes, and that the description and drawing presented truly represent the trade mark sought to be registered. If the applicant resides or is located in a foreign country, the statement required shall, in addition to the foregoing, set forth that the trade mark has been registered by the applicant, or that an application for the registration thereof has been filed by him in the foreign country in which he resides or is located, and shall give the date of such registration, or the application therefor, as the case may be, except that in the application in such cases it shall not be necessary to state that the mark has been used in commerce with the United States or among the States thereof. The verification required by this section may be made before any person within the United States authorised by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, charge d'affaires, consul, or commercial agent holding commission under the Government of the United States, or before any notary public, judge or magistrate having an official seal and authorised to administer oaths in the foreign country in which the applicant may be whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States.

3. That every applicant for registration of a trade mark, or for renewal of registration of a trade mark, who is not domiciled within the United States, shall, before the issuance of the certificate of registration, as hereinafter provided for, designate, by a notice in writing, filed in the Patent Office, some person residing within the United States on whom process or notice of proceedings affecting the right of ownership of the trade mark of which such applicant may claim to be the owner, brought under the provisions of this Act or under other laws of the United States, may be served with the same force and effect as if served upon the applicant or registrant in person. For the purpose of this Act it shall be deemed sufficient to serve such notice upon such applicant, registrant, or representative by leaving a copy of such process or notice addressed to him at the last address of which the Commissioner of Patents has been notified.

4. That an application for registration of a trade mark filed in this country by any person who has previously regularly filed in any foreign country which, by treaty, convention, or law, affords similar privileges to citizens of the United States, an application for registration of the same trade mark shall be accorded the same force and effect as would be accorded to the same application if filed in this country on the date on which application for registration of the same trade mark was first filed in such foreign country: Provided, that such application is filed in this country within four months from the date on which the application was first filed in such foreign country: And Provided, That certificate of registration shall not be issued for any mark for registration of which application has been filed by an applicant located in a foreign country

until such mark has been actually registered by the applicant in the country in which he is located.

5. That no mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade mark on account of the nature of such mark unless such mark—

(a) Consists of or comprises immoral or scandalous matter ;

(b) Consists of or comprises the flag or coat-of-arms or other insignia of the United States, or any simulation thereof, or of any State or municipality or of any foreign nation:¹ Provided, That trade marks which are identical with a registered or known trade mark owned and in use by another, and appropriated to merchandise of the same descriptive properties, or which so nearly resemble a registered or known trade mark owned and in use by another, and appropriated to merchandise of the same descriptive properties, as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers, shall not be registered : Provided, That no mark which consists merely in the name of an individual, firm, corporation, or association, not written, printed, impressed, or woven in some particular or distinctive manner or in association with a portrait of the individual, or merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, or merely a geographical name or term, shall be registered under the terms of this Act: Provided further, That no portrait of a living individual may be registered as a trade mark, except by the consent of such individual evidenced by an instrument in writing: And provided further, That nothing herein shall prevent the registration of any mark used by the applicant or his predecessors, or by those from whom title to the mark is derived, in commerce with foreign nations or among the several States, or with Indian tribes, which was in actual and exclusive use as a trade mark of the applicant or his predecessors from whom he derived title for ten years next preceding the passage of this Act.

6. [This section provides for examination of the application and, if the mark is not refused, advertisement in the Official Gazette of the Patent Office, and for notices of opposition, stating the grounds therefor, within thirty days after advertisement, or, if no such notice is given, for issue of a certificate of registration.²]

7. That in all cases where notice of opposition has been filed, the Commissioner of Patents shall notify the applicant thereof and the grounds therefor.

Whenever application is made for the registration of a trade mark which is substantially identical with a trade mark appropriated to goods of the same descriptive properties, for which a certificate of registration has been previously issued to another, or for registration of which another has previously made application, or which so nearly resembles such trade mark, or a known trade mark owned and used by another, as, in the opinion of the Commissioner, to be likely to be mistaken

¹ The Act of 1907 introduces here the words: "Or of any design or picture that has been or may hereafter be adopted by any fraternal society as its emblem."

² Sec. 6 is slightly amended by the Act of 1907, thereby permitting notice of opposition to be given by attorney, subject to verification by the opponent within a reasonable time after filing.

therefor by the public, he may declare that an interference exists as to such trade mark, and in every case of interference or opposition to registration he shall direct the examiner in charge of interferences to determine the question of the right of registration to such trade mark, and of the sufficiency of the objections to registration, in such manner and upon such notice to those interested as the Commissioner may by rules prescribe.

The Commissioner may refuse to register the mark against the registration of which objection is filed, or may refuse to register both of two interfering marks, or may register the mark, as a trade mark, for the person first to adopt and use the mark, if otherwise entitled to register the same unless an appeal is taken, as hereinafter provided for, from his decision, by a party interested in the proceeding, within such time (not less than twenty days) as the Commissioner may prescribe.

8. [This section gives a right of appeal from the examiner in charge of trade marks, or the examiner in charge of interferences, to the Commissioner in person.]

9. [This section gives a further right of appeal to the Court of Appeals of the district of Columbia.]

10. That every registered trade mark, and every mark for the registration of which application has been made, together with the application for registration of the same, shall be assignable in connection with the goodwill of the business in which the mark is used. Such assignment must be by an instrument in writing and duly acknowledged according to the laws of the country or State in which the same is executed; any such assignment shall be void as against any subsequent purchaser for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from the date thereof. The Commissioner shall keep a record of such assignments.

11. [This section provides for the issue of certificates of registration stating the date of application for registration. It also provides for certified copies of the record being evidence.]

12. That a certificate of registration shall remain in force for twenty years, except that in the case of trade marks previously registered in a foreign country such certificates shall cease to be in force on the day on which the trade mark ceases to be protected in such foreign country, and shall in no case remain in force more than twenty years, unless renewed. Certificates of registration may be, from time to time, renewed for like periods on payment of the renewal fees required by this Act, upon request of the registrant, his legal representatives, or transferees of record in the Patent Office, and such request may be made at any time not more than six months prior to the expiration of the period for which the certificates of registration were issued or renewed. Certificates of registration in force at the date at which this Act takes effect shall remain in force for the period for which they were issued, but shall be renewable on the same conditions and for the same period as certificates issued under the provisions of this Act, and when so renewed shall have the same force and effect as certificates issued under this Act.

13. [This section provides for rectification of the Register by the cancellation of a registered trade mark. The trade mark may be

cancelled if the registrant was not entitled to the use of the mark at the date of his application for registration, or on the ground of non-user, or abandonment. An application may be made by any person who shall deem himself injured by the registration.]

14. That the following shall be the rates for trade mark fees :—

On filing each original application for registration of a trade mark, ten dollars; Provided, That an application for registration of a trade mark pending at the date of the passage of this Act, and on which certificate of registration shall not have issued at such date, may, at the option of the applicant, be proceeded with and registered under the provisions of this Act without the payment of further fee.

On filing each application for renewal of the registration of a trade mark, ten dollars.

On filing notice of opposition to the registration of a trade mark, ten dollars.

On an appeal from the examiner in charge of trade marks to the Commissioner of Patents, fifteen dollars.

On an appeal from the decision of the examiner in charge of interferences, awarding ownership of a trade mark or cancelling the registration of a trade mark, to the Commissioner of Patents, fifteen dollars.

For certified and uncertified copies of certificates of registration and other papers, and for recording transfers and other papers, the same fees as required by law for such copies of patents, and for recording assignments and other papers relating to patents.

15. [This section makes certain provision as to patent fees applicable to trade mark fees.]

16. That the registration of a trade mark under the provisions of this Act shall be *prima facie* evidence of ownership. Any person who shall, without the consent of the owner thereof, reproduce, counterfeit, copy, or colourably imitate any such trade mark and affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration, or to labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registration, and shall use, or shall have used, such reproduction, counterfeit, copy, or colourable imitation in commerce among the several States, or with a foreign nation, or with the Indian tribes, shall be liable for an action for damages therefor at the suit of the owner thereof; and whenever in any such action a verdict is rendered for the plaintiff, the Court may enter judgment therein for any sum above the amount found by the verdict as the actual damages according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs.

17. [This section defines the Courts having jurisdiction in matters relating to registered trade marks.]

18. [Writs of certiorari may be granted by the Supreme Court of the United States for review.]

19. [Power to grant injunctions and award profits and damages.]

20. [Power to order delivery up of infringing labels, &c., and to punish for contempt by breach of injunction.]

21. That no action or suit shall be maintained under the provisions of this Act in any case when the trade mark is used in unlawful

business, or upon any article injurious in itself, or which mark has been used with the design of deceiving the public in the purchase of merchandise, or has been abandoned, or upon any certificate of registration fraudulently obtained.

22. [Where there are interfering registrations, any person interested in any of them may sue the interfering registrant in equity; and the Court may adjudge either of the registrations void in whole or in part.]

23. [Saving of remedies of person aggrieved by any wrongful use of any trade mark as if the Act had not been passed.]

24. [This section deals with pending applications.]

25. [A person procuring registration by false or fraudulent declarations or means to be liable in damages to the injured party.]

26. [Power to make rules and regulations.]

27. That no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer or trader, or of any manufacturer or trader located in any foreign country which by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade mark registered in accordance with the provisions of this Act, or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any custom house of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade mark, issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade mark; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

28. That it shall be the duty of the registrant to give notice to the public that a trade mark is registered, either by affixing thereon the words "Registered in U.S. Patent Office," or abbreviated thus, "Reg. U.S. Pat. Off.," or when, from the character or size of the trade mark, or from its manner of attachment to the article to which it is appropriated, this cannot be done, then by affixing a label containing a like notice to the package or receptacle wherein the article or articles are inclosed: and in any suit for infringement by a party failing so to give notice of registration no damages shall be recovered except on proof that the defendant was duly notified of infringement, and continued the same after such notice.

29. That in construing this Act the following rules must be observed,

except where the contrary intent is plainly apparent from the context thereof:—The United States includes and embraces all territory which is under the jurisdiction and control of the United States. The word “States” includes and embraces the district of Columbia, the territories of the United States and such other territory as shall be under the jurisdiction and control of the United States. The terms “person” and “owner,” and any other word or term used to designate the applicant or other entitled to a benefit or privilege, or rendered liable under the provisions of this Act, include a firm, corporation, or association, as well as a natural person. The term “applicant” and “registrant” embrace the successors and assigns of such applicant or registrant. The term “trade mark” includes any mark which is entitled to registration under the terms of this Act and whether registered or not, and a trade mark shall be deemed to be “affixed” to an article when it is placed in any manner in or upon either the article itself or the receptacle or package or upon the envelope or other thing in, by, or with which the goods are packed or inclosed or otherwise prepared for sale or distribution.

30. [Commencement of Act, April 1st, 1905. Repeal of prior Acts inconsistent with this Act except as to certificates of registration issued under Act of March 3rd, 1881, or Act of August 5th, 1882.]

APPENDIX XVII.

THE COMMONWEALTH OF AUSTRALIA.

TRADE MARKS ACT, 1905 (No. 20 of 1905).

An Act Relating to Trade Marks.

[Assented to 21st December, 1905.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—INTRODUCTORY.

1. This Act may be cited as the Trade Marks Act, 1905. Short title.
2. This Act shall commence on a day to be fixed by proclamation not less than four months after the passing of this Act. Commence-
ment.
3. This Act is divided as follows :— Parts.
 - Part I.—Introductory.
 - Part II.—Administration.
 - Division 1.—The Minister, the Registrar, and the Trade Marks Office.
 - Division 2.—The Transfer of the Administration of the State Trade Marks Acts.
 - Part III.—Registrable Trade Marks.
 - Part IV.—Registration of Trade Marks.
 - Division 1.—General.
 - Division 2.—Applications.
 - Division 3.—Opposition.
 - Division 4.—Registration and Effect of Registration.
 - Division 5.—Renewal of Registration.
 - Part V.—Assignment of Trade Marks.
 - Part VI.—The Register of Trade Marks.
 - Part VII.—Workers' Trade Marks.
 - Part VIII.—The Commonwealth Trade Mark.
 - Part IX.—Protection of Trade Marks.
 - Part X.—Miscellaneous.
4. In this Act, except where otherwise clearly intended— Definitions.
 - "The Court" means the High Court or the Supreme Court of the State in which the Trade Marks Office is situate or a Justice thereof.
 - "The Law Officer" means the Attorney-General or Crown Solicitor of the Commonwealth.
 - "Person" includes a body corporate and a firm and any association of persons bodies corporate or firms.

"The Register" means the Register of Trade Marks under this Act.

"Registered Trade Mark" means a trade mark registered under this Act.

"The Registrar" means the Registrar of Trade Marks.

"State Trade Marks Act" means any State Act relating to the Registration of Trade Marks.

"This Act" includes all regulations made thereunder.

Application of common law.

5. Subject to this Act, or any Act of the Parliament, the common law of England relating to trade marks shall, after the commencement of this Act, apply throughout the Commonwealth.

Provided that this section shall not affect any right, privilege, obligation, or liability acquired, accrued, or incurred under the law of any State before the commencement of this Act.

State Trade Marks Acts to cease to apply to trade marks.

6. The State Trade Marks Acts of each State shall, on the commencement of this Act, cease to apply to trade marks further than as follows:—

(a) The State Trade Marks Act under which a trade mark is registered shall continue to apply to that trade mark so long as the registration under that Act remains in force.

(b) Proceedings under a State Trade Marks Act, pending at the commencement of this Act, may be continued and completed under the State Trade Marks Act.

(c) Applications for the registration of trade marks may be received and dealt with under a State Trade Marks Act, if made by virtue of some right acquired, before the commencement of this Act, in pursuance of any International Convention for the protection of industrial property.

Cf. *Patents Act, 1903, s. 6.*

Registration under State Trade Marks Acts to cease after a certain period.

7. (1.) The registration of a trade mark under a State Trade Marks Act shall cease either—

(a) at the expiration of fourteen years from the commencement of this Act, or

(b) at the time when, under the State Trade Marks Act, the trade mark would, if after the commencement of this Act no fee for the continuance of its registration were paid, first become liable to removal from the register,

whichever first happens.

(2.) No fee shall be receivable nor shall any act be done after the commencement of this Act for the continuance of the registration of a trade mark under a State Trade Marks Act.

Trade marks registered under State Act may be registered under this Act.

8. (1.) The registered proprietor of a trade mark properly registered in any State under a State Trade Marks Act may make application for the registration of his trade mark under this Act.

(2.) The application shall, subject to paragraphs (3), (4), and (5) of this section, be dealt with in the same manner as other applications for registration of trade marks.

(3.) The trade mark may be registered even if it does not contain the essential particulars required by this Act, but subject, in that case, to such conditions and limitations as to mode or place or period of user as the Registrar, Law Officer, or Court thinks fit to impose.

Cf. *Patents Act, 1903, s. 7.*

(4.) Where the same trade mark or a nearly identical trade mark is owned or registered by another proprietor in any part of the Commonwealth in respect of the same goods, the trade mark may be registered subject to such conditions and limitations as to mode or place of user or

otherwise as the Registrar, Law Officer, or Court thinks fit to impose to preserve the rights of each proprietor.

(5.) Where the trade mark or a nearly identical trade mark is common to the trade in another State, the registration under this Act shall confer no exclusive rights in that State on the registered proprietor, and that State may be excepted from the registration under this Act.

(6.) The registration of the trade mark under a State Trade Marks Act shall cease upon its registration under this Act.

9. (1.) The unregistered proprietor of a trade mark in use in any State at the commencement of this Act may make application for the registration of his trade mark under this Act.

Unregistered trade marks in use in States.

(2.) The application shall, subject to paragraphs (3), (4), (5), and (6) of this section, be dealt with in the same manner as other applications for registration of trade marks.

(3.) The trade mark may be registered if it could have been lawfully registered under the State Trade Marks Act in force, at the commencement of this Act, in the State in which the trade mark was then used, had an application for its registration been made before the commencement of this Act.

(4.) If the trade mark does not contain the essential particulars required by this Act, it may nevertheless be registered subject to such conditions and limitations as to mode or place, or period of user, as the Registrar, Law Officer, or Court thinks fit to impose.

(5.) Where the same trade mark or a nearly identical trade mark is owned or registered by another proprietor in any part of the Commonwealth in respect of the same goods, the trade mark may be registered subject to such conditions and limitations as to mode or place of user or otherwise as the Registrar, Law Officer, or Court thinks fit to impose to preserve the rights of each proprietor.

(6.) Where the trade mark, or a nearly identical trade mark, was, at the commencement of this Act, common to the trade in another State, the registration under this Act shall confer no exclusive rights in that State on the registered proprietor, and that State may be excepted from the registration under this Act.

PART II.—ADMINISTRATION.

DIVISION 1.—*The Minister, the Registrar, and the Trade Marks Office.*

10. The Minister for Trade and Customs or other the Minister for the time being administering the Department of Trade and Customs shall be charged with the execution of this Act.

Administra-
tion.

11. (1.) There shall be a Registrar of Trade Marks.

Cf. *Patents*

(2.) Until the Governor-General otherwise determines the Commissioner of Patents shall be the Registrar of Trade Marks.

Act, 1903, s. 9.

Registrar.

Ib. s. 10.

(3.) The Governor-General may appoint a Deputy Registrar of Trade Marks who shall, subject to the control of the Registrar of Trade Marks, have all the powers conferred by this Act on the Registrar.

12. For the purposes of this Act an office shall be established which shall be called the Trade Marks Office, and a sub-office shall be established

Trade Marks
Office.

Ib. s. 12.

in every State other than the State in which the Trade Marks Office is established.

Seal of Trade
Marks Office.
Ib. s. 13.

13. There shall be a seal of the Trade Marks Office, and impressions thereof shall be judicially noticed.

DIVISION 2.—*The Transfer of the Administration of the State Trade Marks Acts.*

Transfer of
administra-
tion.

14. On the commencement of this Act, the administration of the State Trade Marks Acts of all the States shall be transferred to the Commonwealth and thereupon—

Effect of
transfer of ad-
ministration.
Ib. ss. 18 and
19.

- (a) the State Trade Marks Acts of each State shall, so far as they have any relation to trade marks, cease to be administered by the State, and shall thereafter be administered by the Commonwealth so far as is necessary for the purpose of completing then pending proceedings and of giving effect to then existing rights, and the Registrar shall collect for each State the fees which become payable thereunder; and
- (b) all powers and functions under any State Trade Marks Act vested in the Governor of a State or in the Governor with the advice of the Executive Council of a State or in any Minister officer or authority of a State shall vest in the Governor-General or in the Governor-General in Council or in the Minister officer or authority exercising similar powers under the Commonwealth as the case requires or as is prescribed; and
- (c) all records registers deeds and documents of the Trade Marks Office of each State vested in or subject to the control of the State shall, by force of this Act, be vested in and made subject to the control of the Commonwealth.

PART III.—REGISTRABLE TRADE MARKS.

Of what trade
marks may
consist.

Cf. 51 & 52
Vict. c. 50,
s. 10.

Essential
particulars.
Cf. *ib.* s. 10
(1).

15. A registrable trade mark shall consist of essential particulars with or without additional matter.

16. The essential particulars of a registrable trade mark shall be one or more of the following particulars:—

- (a) A name or trading style of a person printed, impressed, or woven in some particular and distinctive manner; or
- (b) A written signature or copy of a written signature of the person applying for registration thereof or some predecessor in his business; or
- (c) A distinctive device, mark, brand, heading, label, or ticket; or
- (d) An invented word or invented words; or
- (e) A word or words having no reference to the character or quality of the goods, and not being a geographical name used or likely to be understood in a geographical sense.

Additional
matter.

Cf. *ib.* s. 10
(2).

17. The additional matter which may be added to the essential particulars of a registrable trade mark shall be—

- (a) Any letters, words, or figures; or
- (b) Any combination of letters, words, or figures, or of any of them.

18. Except in the case of a trade mark properly registered in any State under a State Trade Marks Act, a registrable trade mark must not contain—

Use of certain words, &c., forbidden in trade marks.
Cf. T.M. Regulations (Eng.) 29.

- (a) the words "Trade Mark," "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is Forgery" or words to the like effect; or
- (b) a representation of the King, the Queen, or any member of the Royal Family, or of the Royal Crown.

19. A registrable trade mark must not contain—

Use of words, &c., indicating Royal patronage.
Cf. *ib.* 30.

- (a) the word "Royal" or any word, letter, or device, indicating Royal or Government patronage; or
- (b) a representation of the Royal Arms, or of the national flag of the United Kingdom, or of the flag of the Commonwealth, or of the national arms of the United Kingdom, or of the arms or seal of the Commonwealth or any State; or

(c) a representation of any living person without his written consent.

Representation of living person.

20. In determining whether any particular of a trade mark is distinctive, regard may be had, in the case of a trade mark in actual use, to the extent to which user has rendered the trade mark or the particular distinctive for the goods with respect to which the trade mark is sought to be registered.

Mark made distinctive by user.
Cf. 5 Edw. VII. c. 15, s. 9.

21. A trade mark may be limited in whole or in part to a particular colour or colours, and in case of any application for the registration of a trade mark the fact that the trade mark is so limited shall be taken into consideration by any tribunal in determining whether it is distinctive or not. If a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Coloured trade marks.
Cf. 5 Edw. VII. c. 15, s. 10.

22. (1.) Where any Commonwealth or State authority, or any association or person, undertakes the examination of any goods in respect of origin, material, mode or conditions of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by a mark used upon or in connection with such goods, the Minister may, if he judges it to be to the public advantage, permit the authority association or person to register the mark as a trade mark in respect of such goods, whether the authority association or person is or is not a trader, or is or is not possessed of a goodwill in connection with such examination and certifying.

Standardisation &c., trade marks.
Cf. *ib.* s. 62.

(2.) When registered, the trade mark shall be deemed in all respects to be a registered trade mark, and the authority, association, or person to be the registered proprietor thereof, save that the trade mark shall not be transmissible or assignable except with the permission of the Minister.

(3.) This section shall as to conditions of manufacture apply to Commonwealth and State authorities only.

PART IV.—REGISTRATION OF TRADE MARKS.

DIVISION 1.—General.

Trade mark must be for particular goods.
Cf. *ib.* s. 8.

23. A trade mark must be registered in respect of particular goods or classes of goods as prescribed.

Disclaimers.
Cf. *ib.* s. 15.

24. (1.) If a trade mark—

(a) contains parts not separately registered by the proprietor as trade marks, or

(b) contains matter common to the trade or otherwise of a non-distinctive character,

the Registrar or the Law Officer or the Court, in deciding whether the trade mark shall be entered or shall remain upon the Register, may in his or its discretion require, as a condition of its being upon the Register, that the proprietor shall disclaim any right to the exclusive use of any of those parts, or of that matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they think needful for the purpose of defining his rights under the registration.

Provided always that no such disclaimer shall affect any rights of the proprietor of the trade mark except such as depend upon its registration.

What matters
seemed com-
mon to trade.

(2.) The fact that a mark or matter therein is publicly and honestly used by more than three several persons in any one State as a mark on or in connection with similar goods shall be treated as conclusive evidence that it is common to the trade.

Identical
marks.

Cf. 5 Edw.
VII. c. 15,
s. 19.

25. Except by order of the Court, the Registrar shall not register in respect of goods a trade mark identical with one belonging to a different proprietor which is already on the Register in respect of the like goods, or class of goods, or so nearly resembling such a trade mark as to be likely to deceive.

Names, &c., of
living persons.

26. Where the name or a representation of a living person or a person believed by the Registrar to be living appears on a trade mark, the Registrar may require the applicant to furnish him with the consent of that person to the name or representation appearing on the trade mark before he proceeds with the registration of the trade mark.

Registrar may
refer rival
claims to the
Court.

Cf. *ib.* s. 20.

27. Where each of several persons applies to be registered as the proprietor of the same trade mark, or of nearly identical trade marks in respect of the like goods or class of goods, the Registrar may refuse to register the trade mark until the rights of the applicants have been determined, and may himself submit or require the applicants to submit their rights to the Court.

Concurrent
user.

Cf. *ib.* s. 21.

28. In case of honest concurrent user or of special circumstances the Registrar, Law Officer, or the Court may, in his or its discretion, permit the registration of the same trade mark or of nearly identical trade marks for the like goods or class of goods by more than one proprietor, subject to such conditions and limitations as to mode or place of user or otherwise as he or it thinks fit to impose.

Associated
trade marks.

Cf. *ib.* ss. 24,
25.

29. (1.) Where application is made for the registration of a trade mark so nearly resembling a trade mark of the applicant which is already on the Register as to be likely to deceive or cause confusion if used by a person other than the applicant, the Registrar may require as a condition of registration that the trade marks shall be entered on the Register as associated trade marks.

(2.) If the proprietor of a trade mark claims to be entitled to the exclusive use of any part of it separately he may, if the part satisfies all the conditions of a trade mark, register it as a separate trade mark.

(3.) When a part of a registered trade mark is registered separately, it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be entered on the Register as such, and the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of the part separately registered as a trade mark.

(4.) Except for the purpose of assignment or transmission, and subject to the provisions of this Act as to use of associated trade marks, associated trade marks shall be deemed to be registered independently.

30. Where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the Registrar, Law Officer, or the Court, as the case may be, may, if and so far as he or it thinks fit, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the user of the first-mentioned trade mark.

User of associated trade mark.
Cf. *ib.* s. 27.

31. (1.) When a person claiming to be the proprietor of several trade marks, which while resembling each other in the essential particulars thereof yet differ in respect of—

Series of trade marks.
Cf. 5 Edw. VII. c. 15, s. 26.

(a) statements of the goods for which they are respectively used or proposed to be used, or

(b) statements of number, price, quality, or names of places, seeks to register such trade marks, they may be registered as a series in one registration.

(2.) All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

DIVISION 2.—Applications.

32. (1.) Any person, claiming to be the proprietor of a trade mark, may make application to the Registrar for the registration of his trade mark.

Who may apply for registration.

(2.) The application must be made in the form prescribed and must—

Cf. *ib.* s. 62.

(a) specify the goods or class of goods in respect of which the applicant desires the trade mark to be registered;

(b) state what are the essential particulars of his trade mark and disclaim any right to the exclusive use of the matter added to the essential particulars of his trade mark; and

(c) state an address within the Commonwealth as an address for service:

Form of application.

Provided that an applicant need not disclaim his own name or address or the foreign equivalents thereof or that of a predecessor in business.

(3.) Separate applications must be made for the registration of a trade mark in respect of each class of goods in respect of which the applicant desires it to be registered.

33. (1.) Every application must be lodged by being left at or sent by post to the Trade Marks Office or a sub-office.

Lodging of application.

(2.) Such application shall be forthwith referred by the Registrar to an examiner, who shall ascertain and report whether the trade mark is

Cf. *Patents Act*, 1903, ss. 33 & 46.

a registrable trade mark, and whether it is identical with a trade mark already on the Register under this Act or any State Trade Marks Act in respect of the like goods or class of goods, or so nearly resembles the latter trade mark as to be likely to deceive, and whether the trade mark or any matter therein is common to the trade.

(3.) Subject to this Act the Registrar may either accept the application, with or without modifications or conditions, or refuse it.

Appeal.
Cf. 46 & 47
Vict. c. 57,
s. 62 (4).

34. (1.) An appeal shall lie to the Law Officer from any conditional acceptance or any refusal by the Registrar of the application.

(2.) The Law Officer shall hear the applicant and the Registrar, and shall decide whether and subject to what conditions or modifications (if any) the application shall be accepted.

Appeal to
Court.

(3.) An applicant aggrieved by the decision of the Law Officer may in the time and in the manner prescribed appeal to the Court.

(4.) The Court shall hear the applicant and determine whether the application ought to be refused or ought to be accepted with or without any modifications or conditions.

Direct appeal
by consent
from Registrar
to Court.

35. If the applicant so desires, he may appeal direct from the Registrar to the Court without any appeal to the Law Officer.

36. If the application is accepted with or without conditions or modifications it shall forthwith be advertised in the prescribed manner.

Advertise-
ment.

Limit of time
for proceeding
with applica-
tion.

37. If, by reason of default on the part of the applicant, the registration of a trade mark has not been completed within twelve months from the date of the lodging of the application, the Registrar shall give notice of the non-completion to the applicant, and if, at the expiration of fourteen days from that notice or such further time as the Registrar in special cases permits, the registration is not completed, the application shall be deemed to be abandoned.

Ib. s. 63.
51 & 52 Vict.
c. 50, s. 9.

DIVISION 3.—*Opposition.*

Notice of
opposition.

Cf. 46 & 47
Vict. c. 57,
s. 69 (1).

38. Any person may, within three months after the advertisement of the application or such further time not exceeding three months as the Registrar on application made within the first period of three months allows, lodge at the Trade Marks Office a notice of opposition in duplicate to the registration of the trade mark, setting out the grounds on which he relies to support his notice.

Address for
service.

39. Every notice of opposition shall state an address in Australia as an address for service.

Notice to
applicant.

40. The Registrar shall send a duplicate of the notice of opposition to the applicant.

Cf. *ib.* s. 69
(1).

41. (1.) Within three months after the lodging of notice of opposition or such further time not exceeding three months as the Registrar on application made within such first mentioned three months allows, the applicant may lodge at the Trade Marks Office a counter-statement in duplicate, setting out the grounds on which he relies to support his application.

Counter-
statement by
applicant.

Cf. *ib.* s. 69
(2).

(2.) If the applicant fails to so lodge a counter-statement he shall be deemed to have abandoned his application, and in that event he shall not be liable for costs, but if he lodges a counter-statement and thereafter abandons his application he shall, unless the Registrar otherwise orders, pay to the opponent such costs as the Registrar allows.

Failure to
lodge counter-
statement.

- (3.) The Registrar shall send a duplicate of the counter-statement to the opponent. Service of counter-statement.
42. (1.) The Registrar shall fix a day for the hearing of the application, and shall give notice thereof to the applicant and to the opponent. Day of hearing.
- (2.) On the day so fixed, or on any other day to which the hearing is adjourned, the Registrar shall hear the applicant and the opponent, and shall decide whether the application is to be refused or whether it is to be granted either with or without any modifications or conditions. Hearing.
43. (1.) Any party aggrieved by the decision of the Registrar may in the time and in the manner prescribed appeal to the Law Officer. Appeal to Law Officer.
- (2.) The Law Officer shall hear the applicant and the opponent, and may determine whether the application ought to be refused or ought to be granted with or without any modifications or conditions. Cf. 46 & 47 Vict. c. 57, s. 62 (4).
44. (1.) Any party aggrieved by the decision of the Law Officer may in the time and in the manner prescribed appeal to the Court. Appeal to Court.
- (2.) The Court shall hear the applicant and the opponent, and determine whether the application ought to be refused or ought to be granted with or without any modifications or conditions.
45. If either party so desires and gives written notice thereof the appeal shall be taken direct from the Registrar to the Court without any appeal to the Law Officer. Direct appeal from Registrar to Court.
46. If a person giving notice of opposition or appeal does not reside in Australia, the Registrar Law Officer or the Court may order him to give security for costs, and if the order is not complied with the opposition or appeal shall be deemed to be abandoned. Security for costs.

DIVISION 4.—*Registration and Effect of Registration.*

47. When an application for registration has been accepted and has not been opposed and the time for notice of opposition has expired, or has been opposed and has been granted, the Registrar shall register the trade mark as on the date of the lodging of the application, which date shall be deemed to be the date of the registration, and shall issue to the applicant a certificate of registration of the trade mark in the prescribed form. Date of Registration.
Cf. 5 Edw. VII. c. 15, s. 16.
48. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act. Duration of Registration.
ib. s. 28.
49. (1.) Subject to this Act the person for the time being entered in the register as proprietor of a trade mark shall have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment. Rights of registered proprietor.
Cf. *ib.* s. 39.
- (2.) No entry of any name shall affect the right of any owner of the same name to use it or its foreign equivalent. Cf. 51 & 52 Vict. c. 50, s. 16.
- (3.) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.
50. The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark upon the goods in respect to which it is registered and of the validity of the registration. Register to be *prima facie* evidence.
46 & 47 Vict. c. 57, s. 76.
51. The registration of a person as proprietor of a trade mark shall, Registers to be conclusive

evidence after
five years.
Cf. *ib.* s. 76.

after the expiration of five years from the date of registration (in the absence of fraud) be conclusive evidence of the validity of the registration, and, subject to this Act, of his right to the exclusive use of the trade mark in respect of the goods in respect of which it is registered, upon the registered proprietor proving that he or his predecessors in title have continuously used the trade mark in respect of the goods to a substantial extent for the five years immediately preceding the commencement of the legal proceedings.

For the purposes of this section user shall be deemed to be continuous if there has been no actual interruption thereof for a longer total period than twelve months.

Unregistered
trade mark.
Cf. *ib.* s. 77.

52. No person shall be entitled to institute any proceeding to prevent or recover damages for the infringement of a trade mark, unless in the case of a registrable trade mark it is registered under this Act or a State Trade Marks Act.

Infringement.

53. The rights acquired by registration of a trade mark shall be deemed to be infringed by the use, in respect of the goods in respect of which it is registered, of a mark substantially identical with the trade mark or so nearly resembling it as to be likely to deceive.

Cf. 5 Edw.
VII. c. 15,
s. 43.

In an action for the infringement of a trade mark the Court, in trying the question of infringement, shall admit evidence of the usages of the trade in respect to the get-up of those goods and of any trade marks or get-up legitimately used in respect of them by other persons.

DIVISION 5.—*Renewal of Registration.*

Renewal of
registration.
Cf. *ib.* s. 29.

54. The Registrar may, on application made by the registered proprietor of a trade mark in the prescribed manner, at any date not later than fourteen years from the date of the original registration or the last renewal of registration, as the case may be (in this division termed "the date of the last registration"), renew the registration of the trade mark for a period of fourteen years from the date of the expiry of the period of the last registration.

Procedure on
expiry of
period of
registration.
Cf. *ib.* s. 30.

55. At the prescribed time before the expiration of fourteen years from the date of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor or his agent in Australia of the date at which the existing registration will expire and the conditions as to proof of substantial user and as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the trade mark from the register, but any party aggrieved shall have a right to appeal in manner prescribed.

Restoration of
trade mark
removed for
non-payment
of renewal fee.
Cf. 5 Edw.
VII. c. 15,
s. 30.

56. Where a trade mark has been removed from the register for non-payment of the prescribed fee the Registrar may within three months from such removal if satisfied that it is just so to do restore such trade mark to the register on payment of the prescribed additional fee for renewal.

Status of
unrenewed
trade mark.
Cf. *ib.* s. 31.

57. Where a trade mark has been removed from the register for non-payment of the fee for renewal, it shall, nevertheless, for the purpose of any application for registration during one year next after the date of the removal, be deemed to be a trade mark which is

already registered, unless it is shown to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bankruptcy or liquidation of the proprietor of the trade mark, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark.

PART V.—ASSIGNMENT OF TRADE MARKS.

58. A trade mark when registered may be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or class of goods in respect of which it has been registered and shall be determinable with that goodwill.

Assignment and transmission of trade marks.
46 & 47 Vict. c. 57, s. 70.

59. In any case where by reason of dissolution of partnership or other cause a person ceases to carry on business, and the goodwill of the person does not pass to one successor but is divided, the Court may (subject to the provisions of this Act as to associated trade marks and series of trade marks), on the application of any of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications as it thinks necessary in the public interest.

Apportionment of marks on dissolution of partnership.
Cf. 5 Edw. VII. c. 15, s. 23.

60. Associated trade marks may be assigned or transmitted only as a whole.

Assignment of associated trade marks.
Cf. *ib.* s. 27.

PART VI.—THE REGISTER OF TRADE MARKS.

61. There shall be kept at the Trade Marks Office a Register of Trade Marks wherein shall be entered particulars of—

Register of trade marks.
Cf. *ib.* s. 4.

(a) all registered trade marks, with the names and addresses of their proprietors, together with the date of registration and expiry thereof;

(b) notifications of assignments and transmissions, and disclaimers; and

Notification of assignments and transmissions.

(c) any other matters relating to registered trade marks which are prescribed.

62. Where a trade mark has been lawfully assigned or transmitted, a notification of the assignment or transmission, in the form and authenticated in the manner prescribed, may be given to the Registrar, who shall thereupon register the assignment.

Trusts not to be noticed.
Cf. 5 Edw. VII. c. 15, s. 5.

63. No notice of any trust, expressed implied or constructive, shall be entered in the register, or be received by the Registrar.

Inspection of register.

64. The register shall be open to the inspection of the public at all convenient times, on payment of the prescribed fee.

Ib. s. 7.
Certified copies to be supplied.

65. Certified copies of entries in the register shall be given to any person applying for them on payment of the prescribed fee.

Ib. s. 7.

66. Documents purporting to be copies of or extracts from the register, and to be certified by the Registrar and sealed with the seal of the Trade Marks Office, shall be admitted in evidence in all Federal and State Courts without further proof or production of the originals.

Certified copies evidence.
Cf. 46 & 47 Vict. c. 57, s. 89

False entries
in register.
Id. s. 93.

67. No person shall wilfully—

- (a) Make any false entry in the register ; or
- (b) Make any writing falsely purporting to be a copy of an entry in the register ; or
- (c) Produce or tender in evidence any writing falsely purporting to be a copy of an entry in the register.

Penalty: Three years' imprisonment.

Correction of
register.

Cf. ib. s. 91.

Cf. 5 Edw.
VII. c. 15,
s. 32.

68. (1.) The Registrar may, on request made in the prescribed manner by the registered proprietor of a trade mark, amend or alter the register by—

- (a) correcting any error in the name or address of the registered proprietor of the trade mark ; or
- (b) altering the name or address of the registered proprietor who has changed his name or address ; or
- (c) cancelling the registration of the trade mark ; or
- (d) striking out any goods or classes of goods from those in respect of which the trade mark is registered ; or
- (e) entering a disclaimer or memorandum relating to the trade mark which does not in any way extend the rights given by the registration of the trade mark.

(2.) Where the register has been amended or altered under this section the Registrar may—

- (a) cancel the certificate of registration of the trade mark, and issue a new certificate of registration ; or
- (b) make such amendments or alterations in the certificate of registration of the trade mark as are rendered necessary by the amendment or alteration of the register.

Registration
of assign-
ments, &c.

Cf. 46 & 47
Vict. c. 57,
s. 87.

Alteration in
registered
trade mark.

Cf. 46 & 47
Vict. c. 57,
s. 92.

Cf. 5 Edw.
VII. c. 15,
s. 34.

Rectification
of register by
Court.

Cf. 46 & 47
Vict. c. 57,
s. 90.

51 & 52 Vict.
c. 50, s. 23.

Cf. 5 Edw.
VII. c. 15,
s. 35.

69. Subject to the provisions of this Act, where a person becomes entitled to a registered trade mark by assignment, transmission, or otherwise, the Registrar shall on request, and on proof of title to his satisfaction, cause the name and address of the person to be entered on the register as proprietor of the trade mark.

70. The registered proprietor of a trade mark may apply to the Court for leave to add to or alter the trade mark in any manner not substantially affecting its identity, and the Court may refuse or grant the leave on such terms as it thinks fit. If leave be granted, the Registrar shall, on service of the order of leave, cause the register to be altered in accordance with the order, and shall, in the prescribed manner, advertise the trade mark as altered.

71. (1.) Subject to this Act, the Court, on the application of any person aggrieved or of the Registrar, may order the rectification of the register by—

- (a) the making of any entry wrongly omitted to be made in the register ; or
- (b) the expunging of any entry wrongly made in or remaining on the register ; or
- (c) the insertion in the register of any exception or limitation affecting the registration of a trade mark which in the opinion of the Court ought to be inserted ; or
- (d) the correction of any error or defect in the register.

(2.) The Registrar shall only make application to the Court under this section in cases where he thinks the application necessary or desirable in the public interest.

(3.) Notice of every application to the Court pursuant to this section (other than an application by the Registrar) shall be given to the Registrar, who may be heard thereon.

72.—(1.) The Court may, on the application of any person aggrieved, if it is shown that there has been no *bonâ fide* user of a trade mark for a consecutive period of three years since the date of the last registration thereof, order its removal from the register, unless it was at the date of the application in *bonâ fide* use and had been so for a period of six months immediately prior to the date of the application.

Removal of trade mark from register if no *bonâ fide* user.

Cf. 5 Edw. VII. c. 15, s. 37.

(2.) For the purpose of this section *bonâ fide* user or use means user or use of a trade mark in respect of the goods in respect of which it is registered for the purposes of trade by the proprietor of the trade mark or a predecessor in title.

73. The Registrar, upon being served with any order of the Court for the rectification of the register or for the removal of the registration of a trade mark from the register by the party seeking to enforce it, shall cause the rectification or removal to be made accordingly.

Registrar to carry out orders for rectification.

PART VII.—WORKERS' TRADE MARKS.

74. (1.) No person shall—

(a) falsely apply to any goods for the purpose of trade or sale; or

(b) knowingly sell or expose for sale, or have in his possession for sale or for any purpose of trade or manufacture, any goods to which there is falsely applied; or

(c) knowingly import into Australia any goods not produced in Australia to which there is applied

a mark which is a distinctive device, design, symbol, or label registered by any individual Australian worker or association of Australian workers corporate or unincorporate for the purpose of indicating that articles to which it is applied are the exclusive production of the worker or of members of the association (and which mark is hereby declared to be a workers' trade mark), or any mark substantially identical with a registered workers' trade mark, or so nearly resembling it as to be likely to deceive.

False application of workers' trade marks prohibited.

(2.) The workers' trade mark is falsely applied unless in truth—

(a) the goods to which it is applied are exclusively the production of the worker or of members of the association; or

(b) the goods to which it is applied are in part but not exclusively the production of the worker or of members of the association, and the mark is applied in such manner as clearly to indicate that its application does not refer to, describe, or designate the parts of the goods not being the production of the worker or of members of the association; and

(c) the mark is applied to the goods (being goods produced in Australia) by the employer for whom they are produced, or, with the authority of the employer, by the worker or a member of the association registering the mark.

(3.) In this section—

“Association” includes any number of associations acting together, and in such case the members of the “association” shall be the members of the associations which are acting together;

“Production” means production, manufacture, workmanship, preparation, or product of labour;

“Produced” has a meaning corresponding with “production.”

Penalty: Fifty pounds, in addition to any liability to forfeiture provided by law.

Registration.

75. (1.) A worker or association may register a workers' trade mark in the prescribed manner and shall thereupon be deemed the registered proprietor thereof, and be entitled to institute legal proceedings to prevent and recover damages for any contravention of this Part in respect of that trade mark.

Removal from register.

(2.) A workers' trade mark may be removed from the register for the causes and in the manner prescribed, and subject thereto the registration of the trade mark shall continue for fourteen years, at the expiration of which it shall cease unless renewed in the manner prescribed.

Duration.

No assignment.

(3.) A workers' trade mark shall not be capable of assignment either by act of the parties or by operation of law.

Non-application.

(4.) Parts III., IV., V., and VI. of this Act shall not apply in relation to workers' trade marks.

Deception prohibited.

(5.) A workers' trade mark shall not be registered if it is substantially identical with any registered trade mark within the meaning of this Act or so nearly resembles it as to be likely to deceive.

Illegality not authorised.

76. Nothing in this Part shall be so construed as to make it lawful for any person or association or combination of persons to do any act which it would have been unlawful for such person, association, or combination of persons to do before the commencement of this Act.

This Part not to apply to agricultural, viticultural, and similar products.

77. This Part shall not apply to any primary products of the agricultural, viticultural (including wine-making), horticultural, dairying (including butter-making and cheese-making), or pastoral industries.

PART VIII.—THE COMMONWEALTH TRADE MARK.

Application of Part.

78. (1.) This Part shall apply to all goods included in or specified by a resolution passed by both Houses of the Parliament that in their opinion the conditions as to the remuneration of labour in connection with their manufacture are fair and reasonable.

(2.) A resolution shall be deemed to have been passed at the commencement of this Act by both Houses of the Parliament that the conditions as to the remuneration of labour are fair and reasonable in respect of goods which are manufactured in any part of the Commonwealth under conditions as to the remuneration of labour prescribed, required, or provided in relation to the goods, by an industrial award or order, or an industrial agreement, under an industrial law.

(3.) In this Part “an industrial law” means any Act or State Act existing at the commencement of this Act and providing for conciliation or arbitration or both conciliation and arbitration, or the determination of the remuneration of labour in connection with industrial matters or the manufacture of goods, or any statutory modification amendment or re-enactment thereof respectively, or any Act or State Act passed after the commencement of this Act and declared by resolution of both Houses of the Parliament to be an industrial law within the meaning of this Part; and “industrial award or order” includes any determination of any Special Board or Court under an industrial law.

(4.) A resolution passed or deemed to have been passed as aforesaid may be by both Houses of the Parliament revoked in whole or in part, and thereupon this Part shall to the extent of the revocation cease to apply.

79. (1.) The Minister may cause to be designed and registered a trade mark (in this Part called the Commonwealth Trade Mark), consisting of a distinctive device or label bearing the words "Australian Labour Conditions."

Registration of Commonwealth trade mark.

(2.) The Commonwealth trade mark shall not contain the name of or indicate any State.

(3.) Parts III., IV., V., and VI. of this Act shall not apply in relation to the Commonwealth trade mark.

80. (1.) Upon the registration of the Commonwealth trade mark, the Minister shall be deemed to be the proprietor thereof, and shall be entitled to prevent the unauthorised application of the Commonwealth trade mark.

Effect of registration of Commonwealth trade mark.

(2.) The rights of the proprietor of the Commonwealth trade mark shall be deemed to be infringed by the unauthorised application to goods of a mark identical or substantially identical with the Commonwealth trade mark, or so nearly resembling it as to be likely to deceive.

(3.) The Minister may sue to prevent infringement of the Commonwealth trade mark.

81. The application of the Commonwealth trade mark to goods shall be deemed to be unauthorised unless—

Unauthorised application of Commonwealth trade mark.

(a) it is applied by or by direction of the first proprietor of the goods, and is so applied by the authority of the Minister; and

(b) it is applied to goods to which this Part applies; and

(c) the first proprietor of the goods has personally manufactured them, or has paid for the labour other than his own in connection with their manufacture at least the minimum amount prescribed, required, or provided to be paid to persons actually making the goods by an industrial award or order, or an industrial agreement under an industrial law.

82. (1.) The authority of the Minister to any person to apply the Commonwealth trade mark may be given either generally or in respect of specific goods, and shall be given if in his opinion the trade mark will not be applied except as authorised by this Part.

Authority of Minister.

(2.) The Minister may revoke his authority in whole or in part if in his opinion a person to whom it has been given has applied or is likely to apply the trade mark in a manner unauthorised by this Part.

83. (1.) No person shall wilfully infringe the rights of the Minister as proprietor of the Commonwealth trade mark.

Penalty for infringing Commonwealth trade mark.

Penalty: Fifty pounds.

(2.) No person shall knowingly sell or expose for sale, or have in his possession for sale or for any purpose of trade or manufacture, any goods to which any mark is applied in infringement of the rights of the Minister as proprietor of the Commonwealth trade mark.

Penalty: Fifty pounds.

84. No person shall knowingly import into Australia any goods, not manufactured or produced in Australia, to which there is applied—

Prohibition of importation of goods to which Commonwealth trade mark applied.

(a) the Commonwealth trade mark, or

(b) a mark substantially identical with the Commonwealth trade mark, or

(c) a mark so nearly resembling the Commonwealth trade mark as to be likely to deceive.

Penalty: One hundred pounds in addition to any liability to forfeiture provided by law.

Removal from register of Commonwealth trade mark.

85. The Commonwealth trade mark may, on the application of the Minister, be removed from the register in the manner prescribed.

PART IX.—PROTECTION OF TRADE MARKS.

Forgery or false application of trade marks.

Cf. 50 & 51 Vict. c. 28, s. 2 (1).

86. Whoever—

(a) forges a registered trade mark; or

(b) falsely applies a registered trade mark to any goods; or

(c) makes any die, block, machine, or instrument for the purpose of forging or of being used for forging a registered trade mark; or

(d) disposes of or has in his possession any die, block, machine, or instrument for the purpose of forging or of being used for forging a registered trade mark,

shall, unless he proves that he acted without intent to defraud, be guilty of an indictable offence, and liable to imprisonment for any term not exceeding three years.

Selling, &c., goods with false marks.

Ib. s. 2 (2).

87. Whoever sells or exposes for sale, or has in his possession for sale or for any purpose of trade or manufacture, any goods to which any forgery of a registered trade mark is applied or to which any registered trade mark is falsely applied, shall be guilty of an offence against this Act, unless he proves—

(a) that he acted without intent to defraud; or

(b) that the goods were manufactured in or imported into Australia and the trade mark was applied to them before the commencement of this Act, and were held by him *bonâ fide* and without intent to defraud.

Penalty: One hundred pounds.

Importing goods with false marks.

88. Whoever imports into Australia any goods to which any forgery of a registered trade mark is applied or to which a registered trade mark is falsely applied shall, unless he proves that he did not knowingly import the goods in contravention of this Act, be guilty of an offence against this Act.

Penalty: One hundred pounds.

Aiding and abetting offences.

Ib. s. 11.

89. Whoever aids, abets, counsels, or procures, or is in any way knowingly directly or indirectly concerned in or privy to—

(a) the commission of any offence against this Act; or

(b) the commission of any act outside Australia which if committed in Australia would be an offence against this Act,

shall be guilty of an offence against this Act.

Penalty: One hundred pounds.

Prohibition of importation of fraudulently marked goods.

Ib. s. 16.

90. (1.) The following goods are prohibited to be imported, and, if imported, may be seized as forfeited to the King:—

(a) all goods to which any forgery of a registered trade mark is applied, or to which any registered trade mark is falsely applied; and

(b) all goods manufactured at any place outside Australia and having applied to them any trade mark being the registered trade

mark of any manufacturer, dealer or trader in Australia, unless the trade mark is accompanied by a definite indication of the country in which the goods were made or produced.

(2.) Subject to the regulations, the Comptroller-General, or on appeal from him the Minister, may, if in his opinion the contravention has not occurred either knowingly or negligently, permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the owner or importer upon security being given to the satisfaction of the Comptroller-General that the improper marks will be effectually removed from the goods or that the goods will be forthwith exported.

(3.) All imported goods liable to be seized under this section may be seized by any officer of Customs.

(4.) The provisions of the *Customs Act*, 1901, shall apply to the seizure and forfeiture of goods under this section to the same extent as if they were prohibited imports under that Act.

(5.) Before taking any action under this section or permitting any officer of Customs to act thereunder, the Collector of Customs for the State may require any person requesting any action on the part of the Customs to give security in accordance with the regulations, but the Collector of Customs may act under this section without any request.

91. A person shall be deemed to forge a registered trade mark who either—

- (a) without the assent of the proprietor of the trade mark or the authority of this Act, makes it or a mark so nearly resembling it as to be likely to deceive; or
- (b) falsifies any registered trade mark, whether by alteration, addition, effacement, or otherwise.

92. (1.) A trade mark shall be deemed to be applied to any thing if it is woven in, impressed on, worked into, or annexed or affixed to, the thing.

(2.) A trade mark shall be deemed to be applied to goods if—

- (a) it is applied to the goods themselves; or
- (b) it is applied to any covering, label, reel, or thing in or with which the goods are sold or exposed or had in possession for any purpose of trade or manufacture; or
- (c) it is used in any manner likely to lead to the belief that it refers to or describes or designates the goods.

(3.) "Covering" includes any stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper; and "label" includes any band or ticket.

(4.) A trade mark shall be deemed to be falsely applied to goods if, without the assent of the proprietor of the trade mark or the authority of this Act, it or a mark so nearly resembling it as to be likely to deceive is applied to the goods.

93. In any indictment, information, pleading, or proceeding in relation to a registered trade mark, it shall not be necessary to set out a copy or facsimile of the trade mark or a description of it, but the trade mark may be referred to as a registered trade mark.

What deemed forgery of trade mark.

50 & 51 Vict. c. 28, s. 4.

When trade mark deemed applied.

Ib. s. 5 (2).

When trade mark deemed applied to goods.

Ib. s. 5 (1).

What deemed false application of a trade mark.

Ib. s. 5 (3).

Trade mark, how described in pleading.

50 & 51 Vict. c. 28, s. 9.

PART X.—MISCELLANEOUS.

Governor-General may make regulations.

Patents Act, 1903, s. 108.

Incidental powers of Court.

Ib. s. 111.

Powers of Registrar and Law Officer.

Ib. s. 14.

Penalty for disobedience to summons.

Ib. s. 15.

Penalty for refusing to give evidence.

Ib. s. 16.

Recovery of costs.

Certificate of validity.

51 & 52 Vict. c. 50, s. 18.

False representation to Registrar or officer.

Patents Act, 1903, s. 112.

94. The Governor-General may make regulations, not inconsistent with this Act, prescribing the fees to be paid under this Act and all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Trade Marks Office.

95. In addition to any other powers conferred on it by this Act, the Court may in relation to any appeal or application under this Act—

(a) refuse to make any order ;

(b) order any issue of fact to be tried in such manner as it directs ;

(c) order any party to deliver to the Court or to the Registrar the certificate of registration of any trade mark ; and

(d) order any party to pay costs to any other party.

96. The Registrar and the Law Officer, respectively, may for the purposes of this Act—

(a) summon witnesses ;

(b) require the production of documents ; and

(c) award costs against any party to any proceeding before him.

97. No person who has been summoned to appear as a witness before the Registrar or the Law Officer shall, without lawful excuse, and after tender of reasonable expenses, fail to appear in obedience to the summons.

Penalty : Fifty pounds.

98. No person who appears before the Registrar or the Law Officer as a witness shall, without lawful excuse, refuse to be sworn or make an affirmation or to produce documents or to answer questions which he is lawfully required to answer.

Penalty : Fifty pounds.

99. Any sum awarded for costs by the Registrar or the Law Officer may, in default of payment, be recovered in any civil court of competent jurisdiction as a debt due by the person against whom the order is made to the person in whose favour the order is made.

100. (1.) In any legal proceeding in which the validity of the registration of a registered trade mark comes into question, the Court or a Justice may certify that the right to the exclusive use of the trade mark came in question and was decided in favour of the registered proprietor of the trade mark, and then in any subsequent action for infringement of the trade mark the plaintiff on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or a Justice trying the subsequent action certifies that he ought not to have them.

(2.) In this section "Court" means any Federal Court or any superior State Court having jurisdiction to entertain an action for infringement of a trade mark, and "Justice" means a Justice of any such Court.

101. No person shall wilfully make any false statement or representation to deceive the Registrar or any officer in the execution of this Act, or to procure or influence the doing or omission of anything in relation to this Act or any matter thereunder.

Penalty : Three years' imprisonment.

102. The Registrar may at any time before registration of a trade mark permit the amendment of the application for the registration of the trade mark and may at any time permit the amendment of any notice of opposition on such terms as to costs or otherwise as he thinks just.

Power of amendment.

103. Where any discretionary power is by this Act given to the Registrar, he shall not exercise that power adversely to the applicant for registration of a trade mark without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Exercise of discretionary power.

46 & 47 Vict. c. 57, s. 94.

104. Where any prescribed fee is payable in respect of any act or document the Registrar may refuse to permit or perform the act or to receive or issue the document as the case requires until the fee payable in respect thereof is paid.

Fees to be paid in advance.

105. Where by this Act any time is specified within which any act or thing is to be done, the Registrar may, unless otherwise expressly provided, extend the time either before or after its expiration.

Extension of time.

106. Any application, notice, or other document, authorised or required under this Act to be left, made, or given at the Trade Marks Office, or to the Registrar, or to any other person, may be sent by a prepaid letter through the post.

Applications and notices by post.

Ib. s. 97.

107. (1.) Any address for service stated in any application or notice of opposition shall for all purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case requires, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them to the address for service of the applicant or opponent, as the case requires.

Address for service.

(2.) Any address for service may be changed by notice in writing to the Registrar.

108. If any person is, by reason of infancy, lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or the regulations, then the guardian or committee (if any) of such incapable person, or if there be none any person appointed by any Federal or State Court or Justice thereof, possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of the incapable person or of any other person interested in the making of such declaration or doing such thing, may make the declaration or a declaration as nearly corresponding thereto as circumstances permit, and do the thing in the name and on behalf of the incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

Declaration by infant, lunatic, &c.

Cf. 46 & 47 Vict. c. 57, s. 99.

109. If a person who is party to a proceeding under this Act dies pending the proceeding, the Registrar may on request made in the prescribed manner, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if he is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without such substitution.

Death of party to a proceeding.

110. Subject to the regulations the Registrar may permit any agent to do, on behalf of any other person, any act in connection with the registration of trade marks or any procedure relating thereto.

Registrar may recognise agent.

T.M. Rules (Eng.), s. 9.

Certificate of Registrar evidence.

111. A certificate purporting to be under the hand of the Registrar and the seal of the Trade Marks Office as to any entry, matter, or thing which he is authorised by this Act to make or do shall be *prima facie* evidence of the entry having been made and of the contents thereof, and of the matter or thing having been done or left undone.

Penalty on falsely representing a trade mark as registered.

112. (1.) No person shall falsely represent that any trade mark, applied to any article sold by him, is registered.

Cf. 46 & 47 Vict. c. 57, s. 105.

Penalty : Five pounds.

(2.) A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered, if he sells the article with the word "registered" or any word or words expressing or implying that a registration has been obtained for the trade mark stamped, engraved, or impressed on, or otherwise applied to, the article.

Penalty on unauthorised assumption of Royal Arms.
Ib. s. 106.

113. No person shall without the authority of the King, or of some member of the Royal Family, or of the Governor-General, or of the Governor of a State, or of some Department of the Government of the Commonwealth or a State (proof whereof shall lie upon the person accused), assume or use in connection with any trade business calling or profession the Royal Arms, or arms so nearly resembling them as to be likely to deceive, in such a manner as to be likely to lead other persons to believe that he is carrying on his trade business calling or profession by or under such authority.

Penalty : Twenty pounds.

Scandalous and improper marks.
Cf. 46 & 47 Vict. c. 57, s. 73.

114. No scandalous design, and no mark the use of which would by reason of its being likely to deceive or otherwise be deemed disintituled to protection in a court of justice, or the use of which would be contrary to law or morality, shall be used or registered as a trade mark or part of a trade mark.

International arrangements for protection of trade marks.

115. (1.) If upon the request of the Governor-General the King is pleased to apply to the Commonwealth any law of the United Kingdom for carrying into effect any arrangement made with the Government of any foreign State for the mutual protection of trade marks, then any person who has applied for protection for any trade mark in the United Kingdom or the Isle of Man, or in any foreign State with which the arrangement has been made, shall be entitled to registration of his trade mark under this Act in priority to other applicants, and such registration shall have the same date as the date of the original application in the United Kingdom or the Isle of Man or such foreign State as the case may be :

Sec 46 & 47 Vict. c. 57, s. 103.

Provided that such application shall be made within six months from such person applying for protection in the United Kingdom or the Isle of Man or the foreign State with which the arrangement is in force :

Patents Act, 1903, s. 121.

Provided also that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Commonwealth.

(2.) The use of the trade mark in the Commonwealth during the period aforesaid shall not invalidate its registration.

(3.) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Act.

(4.) The provisions of this section shall, in the case of foreign States, apply only to those foreign States with respect to which His Majesty, by Order in Council, has before or after the commencement of this Act declared the provisions of the aforesaid law to be applicable, and so long only in the case of each such State as the order continues in force with respect to that State.

116. (1.) Where it is made to appear to the Governor-General that any British possession has made satisfactory provision for the protection in that possession of trade marks registered in the Commonwealth, the Governor-General may by order apply all or any of the provisions of the last preceding section with such variations or additions (if any) as to him seem fit to trade marks registered in that British possession.

(2.) An order under this section shall, from a date to be mentioned therein, take effect as if its provisions were contained in this Act, but it shall be lawful for the Governor-General to revoke any such order.

Provision for
intercolonial,
&c.,
arrangements.
Cf. 46 & 47
Vict. c. 57,
s. 104.

Patents Act,
1903, s. 122.

APPENDIX XVIII.

FOREIGN AND COLONIAL TRADE MARK LAWS.¹

1. PRINCIPAL FOREIGN LAWS.

ARGENTINE REPUBLIC.

The Act in force is No. 3973 of 1900. A new bill was brought forward in 1907.

AUSTRIA-HUNGARY.²

The law of December 7th, 1858, which for thirty-two years regulated the protection to property in trade marks in Austria-Hungary, gave way in 1890 to a new law, which was published in Vienna on January 6th, and in Buda-Pesth on April 6th of that year.

The law in question is the same for both halves of the Dual Monarchy, and came into force three months after the date of its publication in Austria and Hungary respectively.

This law, subject to certain modifications hereinafter mentioned, still regulates all questions as to trade marks in Austria-Hungary, and contains full particulars as to procedure, forms, and fees for registration.

Sec. 4, para. 32, of the law enacts that, with reference to the protection of marks, as also of names, firms, arms, or business descriptions of foreign establishments or undertakings, the conventions or treaties concluded with the respective foreign States are decisive.

The subjects of His Britannic Majesty, therefore, by virtue of Article VI. of the treaty concluded between Great Britain and Austria on December 5th, 1876, enjoy in Austria-Hungary the same protection as native subjects with regard to rights of ownership over trade marks, and other distinctive marks of goods, or their packages, as well as over patterns and designs for manufactures.

British subjects, however, in order that they may enjoy the benefit of protection, must obtain the registration of their trade marks both at Vienna and Buda-Pesth, and, to this end, must deposit four specimens of such marks in the Chambers of Commerce at each capital, whereas under the law of 1858 only two copies were required.

¹ The summary contained in the 2nd edition was prepared from the following Blue Books:—*Reports relative to Legislation in Foreign Countries*, 1879 (C. 2284, 2420); *Reports from Her Majesty's Representatives Abroad on Trade Marks Laws and Regulations*, 1900 (Cd. 104). In this edition the editors have endeavoured, with the use of the infor-

mation to which they have access in the Patent Office Library and elsewhere, to bring the summary accurately up to date, but they are conscious of the possibility of error in so large a field.

² A law as to Patents, Designs and Trade Marks, dated December 31st, 1907, has been enacted.

It should be further noted that under the old law it was only necessary for an applicant for registration to prove that his trade mark had been registered in the United Kingdom in order to effect its registration in Austria-Hungary. Now, however, the law enacts that the mere fact of a mark being registered abroad does not necessarily imply that it is qualified for registration by the Austrian and Hungarian authorities, foreigners being called upon to satisfy the same requirements for registration as any native of the Dual Monarchy.

By virtue of an enactment, dated July 30th, 1895, the following amendments and additions to the Law of 1890 were made. These modifications of the law are still in force :—

1. The stipulations of sec. 3, No. 2, of the Law of 1890, enacting that those marks of goods which consist only of words are excluded from registration, are restricted to those words which contain exclusively statements as to place, time, and manner of production, and as to quality, price, designation, quantity, and weight. Amendment

2. (1) It is enacted, with reference to sec. 2 of the Law of 1890, that the sole right to a mark consisting of words is not restricted only to the deposited forms of a mark in words, but also extends to the use of those forms of execution by which the protected word or words are rendered in other characters, colours, or sizes, wholly or in part. Addition.

(2) It is enacted, with reference to sec. 21, sec. (e), of the Law of 1890, that a mark can be annulled when it is found that the same has a striking resemblance to a mark previously granted upon a similar class of goods, the Minister of Commerce to give his decision in the matter after he has heard the owner of the trade mark, and, if necessary, called in the evidence of experts.

(3) It is enacted, with reference to sec. 21 of the Law of 1890, that the actual user of a non-registered mark can bring an action for annulment against the owner, or his legal successor, of a registered mark, if, at the time of registration of the contested mark, or one strikingly similar, the said mark was known in commercial circles as the mark of his goods. Such an action for annulment shall be considered inadmissible when the mark in question has been registered with the consent of the plaintiff, or when the firm or other undertaking which has registered the mark has used the mark unregistered for the same period as the plaintiff, or even longer.

The complaint must be lodged with the Ministry of Commerce within two years of the registration of the mark, the annulment to come into force from the date of the filing of the action, where such action is successful.

The successful plaintiff is entitled to register the annulled mark in his own name as soon as the annulment has been declared valid.

This enactment is only applicable to those marks which have been registered since August 2nd, 1895.

(4) In those cases where a party is non-resident in Austria-Hungary, including Bosnia and Herzegovina, and has no settled abode, the said party will only be able to establish his claims under the Law of 1890, or the supplementary enactment of 1895, by nominating an attorney resident within the territory in question. The name of the said attorney may, but need not necessarily, be entered in the register of marks. Where such name has not been entered, judgment may be given in any

action brought for annulment of a mark without having the evidence of the non-resident owner.

(5) The Minister of Commerce has the right, according to his own free judgment, to determine in all disputes occurring subsequent to August 2nd, 1895, the proportion of the costs of the proceedings and of the legal representatives to be borne by the parties in question. Any legal decision concerning costs can be enforced by legal distraint.

(6) In those cases where marks have been annulled consequent upon a delay in the re-registration, or upon an action at the instance of the legitimate claimant, the same or strikingly similar marks for the same or a similar class of goods cannot be registered in favour of another or of the previous owner, or his legal successor, until two years after the legal annulment.

The foregoing supplementary enactment to the Law of 1890 came into force on February 2nd, 1896.¹

From January 1st, 1908, the two States administer matters relating to trade marks separately and independently, but a reciprocity arrangement was made on February 10th, 1908.

BRAZIL.

All matters relating to the registration and protection of trade marks in Brazil are at present regulated by the Law of October 14th, 1887.²

In its main provisions this law is very similar to the decree of October 23rd, 1875, a French translation of which was published in Parliamentary Blue Book, "Commercial, No. 25, 1879." Contrary, however, to the British Act, while no prohibition appears of the importation of goods bearing the name or trade mark of a Brazilian dealer, an endeavour has been made (Law of December 16th, 1896), "with the view of protecting national industry, and in order to give greater publicity to its products, to prohibit, under penalty of a fine of from 1,000 to 5,000 milreis (about £30 to £150), the printing or importation of labels and marks of foreign products, or in a foreign language, to be affixed to Brazilian products, and to prohibit the sale of products of Brazilian origin to which such labels have been affixed."

As regards registration of trade marks, the following modifications appear in the Law of 1887 :—

The manufacturer or his special delegate is required to present three facsimiles of a trade mark for registration, instead of two as formerly; after registration two of these are returned to him.

An explanation or description of the trade mark must accompany the facsimile, with a declaration of the branch of trade or commerce for which the mark is destined.

The application and the print or sketch of the mark must be on thick paper 33 × 22 centims. in dimension, with a margin for binding. This paper must not be folded, nor must other parts be attached to it. Each sheet must be stamped, dated, and signed.

¹ See also the Ordinance of August 10th, 1903, respecting the renewal and transfer of foreign marks; and the Ordinance, concerning the deposit of marks, of December 15th, 1906, which

came into force on January 1st, 1906; and note (2), p. 782.

² Now modified by Decree No. 1236 of September 24th, 1904. Regulations thereunder were issued on January 10th, 1905.

Within thirty days after the date of registration the applicant is required to publish in the official *Gazette* the certificate of registration, with an explanation of the distinguishing features of the mark.

Within sixty days from the same date he must also deposit a copy of the *Gazette* containing this publication at the office of the Commercial Tribunal of Rio.

Trade marks composed of arms, national or foreign medals, or emblems are prohibited; also a trading name to which the applicant is not entitled; also the partial or entire imitation of a mark already registered for goods of the same description.

As regards the system of official fees for registration of trade marks, it appears to be impossible to give precise information, as the system of registration fees in Brazil is so complicated and variable.

In the first place the power of attorney (*pouvoir*) and the certificate of registration of the country of origin must be taken to the stamp office to be stamped, the value of such stamp varying according to the dimensions of the paper and the number of sheets. The next step is to present these two documents at the Ministry of Foreign Affairs, where a fee of 550 reis (about 4½*d.* at present rate of exchange) has to be paid for each. These two documents must then be translated by a sworn translator on stamped paper; the price charged for these two translations is very variable. This done, a form of application, with a 300-reis stamp (about 2½*d.*) affixed, and a description in triplicate of the trade mark with a 900-reis stamp (about 7½*d.*) affixed, must be deposited at the Junta Commercial, together with a fee of 2 milreis (about 1*s.* 4*d.*).

The stamps required for the certificate of deposit amount to 6\$600 reis (about 3*s.* 11*d.*): the publication of the certificate of registration in the official *Gazette* costs 200 reis (about 1½*d.*) per line.

Lastly, it is required to furnish a copy of the official *Gazette* (100 reis=about ½*d.*), stamped with a 1\$200-reis stamp (about 9½*d.*), together with a stamped petition (100 reis=about ½*d.*) accompanied by a fee of 2 milreis (about 1*s.* 4*d.*).

Brazil, on January 9th, 1903, approved the additional Act of December 14th, 1900, modifying the International Convention, which was signed at Brussels.

DENMARK.

The Danish Trade Mark Law of April 11th, 1890, replaced the old one of July 2nd, 1880. The reason for making a new law was that Sweden and Norway were to get a uniform law (there was already a law in Sweden, but none in Norway), and the two countries invited Denmark to join and have similar rules as to protection and reciprocity. In Sweden and Norway there were a good many timber and iron firms, who used as marks single letters ("A," "B," "BB," "BC," &c.).

Such letter combinations could be registered by the owners within six months from the date of the coming into force of the law. After the expiration of the six months they could not be registered (sec. 14, para. 7).

The following is a translation of Articles 4 and 7:—

ART. 4.—A trade mark cannot be registered—

(1) When it consists exclusively of numbers, letters, or words, which

do not possess such a distinctive form as to qualify them to be considered as figure marks ;

(2) When it contains without due warrant another name or another firm than that of the applicant, or the name of another person's (landed) estate ;

(3) When it contains public armorial bearings or signs ;

(4) When it contains statements which might give rise to offence.

ART. 7.—If a registered trade mark contains numbers, letters, or words, which do not possess so distinctive a form as to qualify them to rank as figure marks, or if it is composed entirely or in part of such signs or marks as are of common employment in certain branches of trade, other persons cannot be thereby prevented from making use of the same indications as their trade mark, or as a portion thereof.

On September 28th, 1894, Denmark joined the International Convention for the protection of trade marks of March 20th, 1883, and to which almost all civilised States have adhered.

On December 19th, 1898, an amendment was passed for the purpose of enabling traders to register words or figures, but the law prescribes that to make registration possible these words or figures should not contain any indication as to the origin, kind, use, quality, or price of the goods.

On March 29th, 1904, certain further amendments in the law of 1890 were made.

FRANCE.

(Law of June 23rd, 1857.)

Part I.—The Ownership of Trade Marks.

ART. I.—(Sec. 1.) Trade marks are optional. Nevertheless, decrees in the form of administration orders may, by way of exception, declare trade marks compulsory for certain specified articles.

The following are considered trade marks :—Names of a distinctive character, appellations, emblems, imprints, stamps, seals, vignettes, reliefs, letters, numbers, wrappers, and every other sign serving to distinguish the products of a manufacture or the articles of a trade.

ART. II. No person can assert his exclusive ownership of a trade mark, unless two copies of the pattern of the mark have been deposited (registered) at the Tribunal of Commerce of his domicile.¹

ART. III. This deposit (registration) is effective for a period of fifteen years only. The ownership of the mark may, however, be secured for a further term of fifteen years by means of a fresh deposit (registration).

ART. IV. A fixed fee of one franc is charged for entering the minute of deposit of each mark, and making a copy thereof, exclusive of stamp and registration fees.

Part II.—Provisions Relating to Foreigners.

ART. V. Foreigners who have industrial or commercial establishments in France enjoy the protection of the present law for the products thereof, provided they comply with the formalities herein prescribed.²

¹ This article has been amended by the Law of May 3rd, 1890 (see *infra*, p. 787).

² Compare Art. III. of the International Convention of 1883 (p. 744).

ART. VI.—(Sec. 1.) Foreigners and Frenchmen whose houses or places of manufacture are situate out of France also enjoy the protection of the present law for the products thereof, if, in the countries where such houses or factories are situate, diplomatic conventions have stipulated reciprocity for French trade marks.

Sec. 2. Foreign marks in this case shall be registered at the Tribunal of Commerce of the Department of the Seine.

The Law of June 23rd, 1857, is still in force, with the exception of Article II., which has been amended by the Law of May 3rd, 1890.

A Presidential Decree of February 27th, 1891, regulates the working of the provisions of the Law of 1857 in its amended form, and annuls the Imperial Decree of June 23rd, 1857.

Under Article II. thus modified the applicant for a trade mark must, in order to claim exclusive rights over that trade mark, deposit at the "Tribunal de Commerce" of his place of domicile, or, in the case of a foreigner, at the "Tribunal de Commerce du Département de la Seine":

1. Copies in triplicate (instead of in duplicate, as heretofore) of his trade mark; and

2. The plate (or die) of that trade mark.

This plate must not exceed 12 centim. in length; it must be of metal, and of such a kind as is usually employed for printing purposes, 23 millim. in thickness, and must be inclosed in a solid wooden box.

It is returned to the interested party after the official publication of the trade mark in the "Bulletin Officiel de la Propriété Industrielle et Commerciale."

The delay between the time of application for the registration of a trade mark and its publication is usually about forty-five days.

A fee of 1 fr. is charged for each *procès-verbal* of deposit besides the stamp and registration fees, which amount together to about 8 fr. 38 c. (see annexed table):—

(A.) *Dépôt de la Marque de Fabrique et délivrance de l'Expédition.*

	Fr.	c.
1. Timbre de la minute du procès-verbal. (Décret du 18 Juin, 1880, Article XII., s. 3)	0	60
2. Enregistrement de la minute du procès-verbal... ..	5	63
3. Rédaction du procès-verbal y compris le coût de l'expédition. (Décret du 27 Février, 1891, Article XII. Décret du 18 Juin, 1880, Articles VIII. et X.)	1	00
4. Mention sur le répertoire et remboursement du timbre. (Décret du 18 Juin, 1880, Articles X. et XII.)	0	35
5. Timbre de l'expédition	1	80

If more than one trade mark is deposited by the same person, an additional fee of 1 fr. is charged for each trade mark, the other stamp and registration fees of 8 fr. 38 c. being sufficient to cover the registration of any number of trade marks.

The *procès-verbal* of deposit should be renewed every fifteen years.

Any person wishing to have an extract from the Trade Marks Register must pay a fee of 1 fr. for each trade mark, together with

stamp and registration fees, amounting together to 4 fr. 8 c. or 4 fr. 68 c., as the case may be (see annexed table).—

(B.) *Délivrance du Certificat d'Identité de la Marque de Fabrique.*

	Fr.	c.
1. Timbre du certificat 60 c. ou	1	20
2. Enregistrement de la Minute	1	88
3. Délivrance du certificat. (Décret du 18 Juin, 1880, Article VIII., s. 8)	1	00
4. Mention sur le répertoire et remboursement du timbre. (Décret du 18 Juin, 1880, Articles X. et XII.) ...	0	35
5. Légalisation. Décret du 18 Juin, 1880, Article X., s. 1)	0	25

A Presidential Decree of December 17th, 1892, relates to International Registration of Trade Marks.

GERMANY.

The 1874 law on trade marks and its defects.

The first uniform Law on trade marks for the Empire of Germany was that of November 30th, 1874, which, however, proved to be defective, and was replaced twenty years later by the present Law of May 12th, 1894 (supplemented by "regulations to carry the same into effect").

The present Law extended legal protection to trade marks which did not fall within the limits of the old Law. The 1874 Law had this peculiarity, that it was uniform in its application to all parts of the Empire, but each Federated State was allowed to retain its separate offices for the registration, cancellation, &c. of trade marks, and each Commercial Court in each Federated State still continued to have its separate register of trade marks, though all the registered marks were published in the *Imperial Gazette (Reichsanzeiger)*, but without any central reference index.

The inconveniences occasioned by this state of things, which may be described as a want of centralisation, together with the non-examination of applications for trade marks, the exclusion of the registration of "word marks," and the fact that marks could only be protected by such traders or merchants as were inscribed on the official Commercial Registers ("Handelsregister") brought about changes that were urgently needed in the interests of the public.

The 1894 law on trade marks: position of foreigners.

The Trade Marks Law of 1894 is characterised by the fact that any person whatsoever can acquire protection for a trade mark, and that all foreigners in Germany are placed on an exactly equal footing with Germans in the eye of the law, so long as they have a domicile ("Niederlassung") within the Empire (*i.e.*, a place of business or a residence which involves the payment of German taxes). Failing this domicile in Germany, protection for a trade mark is made strictly dependent upon the reciprocity of trade mark rights in the country of the foreign applicant; therefore, in order that a foreigner may obtain the benefit of the German Trade Mark Law, there must have been previously published in the *Imperial Gazette (Reichsanzeiger)* a notice

stating that German trade marks are granted legal protection, in the country or State in which the foreign applicant's domicile is located, to the same extent as the national trade marks of that country. (Sec. 23 of Law.)

If that reciprocity is accorded, the nationality of the applicant is immaterial. Such notifications have been published for Austria-Hungary, Belgium, Brazil, Bulgaria, Denmark, France, Greece, the United Kingdom, Guatemala, Italy, Japan, Luxembourg, the Netherlands, Mexico, Roumania, Russia, Sweden and Norway, Switzerland, Servia, Venezuela, and the United States.

As such a notice has been published as regards the United Kingdom, the only other condition to be fulfilled by a British applicant (not having a domicile in Germany) for the registration of a foreign trade mark is that he produce proof that he has applied for and has secured protection for the mark in the United Kingdom by registration there (sec. 23 of Law). His application, however, for a similar registration in Germany does not follow as a matter of course. The German Trade Marks Office (a branch of the Patent Office) first examines his application to see if it conforms to the requirements of the 1894 Act in every particular; and registration in the German Empire may be refused on various grounds, such as the previous registration of the same mark by another applicant, or the too great similarity of the mark to some other mark already registered for a German or foreign trader.

The German Empire on March 21st, 1903, signified its adhesion to take effect from May 1st, 1903, to the "International Union for the Protection of Industrial Property," founded in 1883, including the addition protocol of Madrid of April 15th, 1883, and the additional Act of Brussels of December 14th, 1900.

As in Germany non-registered marks can be used by anyone, notwithstanding the fact that such marks are the property of British firms or individuals in Great Britain and are there registered for them, it may happen that German or other firms or persons in the German Empire have already adopted certain British marks, in which case there is not much hope of redress for such British firms or persons as have neglected to register their marks in due time in Germany. Moreover, the previous use of a registered British mark for a lengthened period in the German Empire would not entitle the owner to any rights or priority in the matter of registration, as against a German or any foreigner who had already applied for its registration as his own trade mark. The actual date of the application for registration is determinative. No registration of such a British trade mark by a German or other foreigner would be cancelled in favour of the British owner, even if previous use and consequent material ownership of the said mark over a lengthened period in Germany were proved, save under exceptional circumstances (under the provisions of sec. 9 of Trade Marks Law). It is therefore most important that all British exporters of goods, going both to the German Empire and to all other important neutral markets abroad, should, if they have not already done so, effect immediately a proper registration of their trade marks. Otherwise they may suffer unnecessary injury all over the world, merely because they have not taken the trouble to effect a proper registration in Germany, as well as in the United Kingdom, for their trade marks.

Germany is now a member of the "Union for the Protection of Industrial Property."

British trade marks may be appropriated by other persons if not registered in Germany.

Fees for registration and renewal.

The actual procedure to be followed in order to obtain registration of a British trade mark is to be found in the "Regulations for Applications for the Registration of Trade Marks."¹ The preliminary fee is £1 10s., of which £1 will be returned if the application for registration is not accepted. A further 10s. is payable for each application for the renewal of a mark on the expiration of the first ten years (sec. 2 of Law). There are no other fees or expenses whatever. In Germany there are forty-two classes of trade marks, and the initial fee of £1 10s. covers the registration of the mark for all these classes of goods if noted in the complete list of goods to which the mark is to be applied accompanying the application.

Conditions of the renewal of registration.

The registration of a trade mark expires *ipso facto* after ten years from the date of registration or from the date of renewal. It can also be cancelled if the registration ought to have been refused in the first instance. Notice of cancellation on account of failure to renew is given to the proprietor of the mark by the Trade Mark Branch of the Patent Office. If 10s. fine besides the renewal fee of 10s., or £1 altogether, be paid within one month of the delivery of the notice, then the renewal will be considered to have been properly made on the day of the expiration of the former registration (sec. 8 of Law). But, even after this time, the expired mark can nevertheless be again registered afresh by an entirely new application. In this case, however, the application has no priority whatever on account of its previous registration, and such re-registration may meantime have been barred by the fact that some other firm or person has registered the same mark or one nearly resembling it.

Testamentary and contract transfer of trade mark rights.

The rights in trade marks can be transferred to other persons by contract, or they can pass over by a testamentary enactment, but only together with the business to which the trade mark belongs. Such transfers are officially registered (sec. 7 of Law).

Grounds for cancellation of a mark.

Anyone can petition for the cancellation of a mark on the following grounds (sec. 9 of Law):—

1. If the mark has been entered in the Trade Marks Register in his name for the same or similar goods on the basis of a prior application, or in pursuance of the Trade Marks Act of November 30th, 1874.

2. If the business to which the mark belongs is no longer carried on by the registered proprietor.

3. If there are any circumstances that show that the mark used is misleading and is calculated to deceive.

These provisions are valuable where the British owner of a trade mark wishes to try to remove the registration and to prevent the use of his mark in Germany by some other person. It is only under the provisions of sec. 9 that he might possibly obtain redress.

Sec. 17 of the Law is important, and reads thus:—

Penalties for wrongfully using German trade marks.

"Foreign products which wrongfully bear the name and locality of a German firm, or which wrongfully bear a registered trade mark, on entering Germany as imports or for transit through the country are liable to seizure and confiscation if the injured party files a petition to that effect and gives security. The seizure is effected by the Custom

¹ See the Ordinances of June 30th, 1894, and of November 28th, 1898.

House authorities, and the confiscation is decided according to the Penal Code (sec. 459 of Code)."

Actions in the Courts in trade mark matters are provided for in sec. 21.

A most important provision is found in sec. 22; but the important rights conferred by it have not as yet been made use of by the Federal Council. It is as follows:—

"If German goods must bear a certain mark or sign on being imported into, or for transit through, a foreign country to show that they are of German origin, or if such goods are not so favourably treated at the Custom House in respect of trade marks as the goods of other countries, then the Federal Council is empowered to subject goods imported into Germany from such other countries, or for transit through Germany, to the same obligations, and to order that, in the case of violation of this regulation, the goods shall be seized and confiscated. The seizure is effected by the Custom House authorities, and the confiscation will be decided by the verdict of the Department of Administration (sec. 459 of the Regulations of the Criminal Law)."

It is, therefore, to be noticed that the above regulation might be applied to British goods entering Germany whenever, in Great Britain, German goods imported there, or for transit merely, are obliged to bear a mark showing that they are of German origin, or whenever German imports do not, in the matter of trade marks, receive most-favoured-nation treatment at the British Custom House.

Any kind of sign can become a trade mark, either on the article itself or on its covering when packed, if it affords a clear and distinguishing mark. But by sec. 4 entry in the Register is to be denied to merchandise marks—

- (1) Which are composed exclusively of figures, letters, or of such words as go to describe the kind, date, and place of manufacture of the goods, their nature, use, or conditions of price, quantity, or weight;
- (2) Which contain home or foreign State armorial bearings, or the armorial bearings of any German town, commune, or other commercial union;
- (3) Which contain representations capable of giving offence, or which convey implications which manifestly do not correspond with actual conditions, and create a danger of deception.

In the registration of "word marks" it is important to state in the application whether protection is wanted only for it as a design or for its sound, or for both; for the Trade Marks Office, in its examination, investigates this point.

The use of German or foreign State coats-of-arms, as well as of the arms of German municipalities or corporations, in order to unduly enhance the market value of goods, is forbidden under a penalty of a fine of £250, or by imprisonment not exceeding six months (sec. 16 of Law).

The Trade Mark Office in Berlin publishes a list of so-called "Free Marks" ("Freizeichen"). These consist of marks that are generally used by the public to indicate certain trades, such as crossed hammers for the coal trade, and an anchor for some marine trades, which cannot be acquired by anyone as a private trade mark. Additions are often

Powers of Federal Council as to compelling goods to bear a mark showing their origin.

Liability of British imports to bear a mark showing their origin.

Definition of what may be registered as a trade mark.

As to use of coats-of-arms.

Definition of "free marks."

made to this list, and applications for the registration of trade marks are refused if it is found that the mark applied for resembles too closely a listed "Free Mark."

German colonies and protectorates. Special agreements.

The German Trade Marks Law was also put into force for the German Colonies and Protectorates on October 1st, 1894.

Special agreements, dealing with trade marks, &c., exist with Austria-Hungary (December 6, 1891), with Italy (January 18, 1892), with Switzerland (April 13, 1892), and with Serbia (August 21, 1892).

Trade mark relations between the United Kingdom and Germany.

The relations, in trade mark matters between the United Kingdom and the German Empire were formerly governed by Art. VI. of the Treaty of Commerce of May 30th, 1865 (extended to the whole German Empire by the Declaration of April 14th, 1875), which expired on July 30th, 1898. Since that date our rights in Germany with regard to trade marks are regulated by the German law.

Protection of German trade marks in China.

The German Government has concluded agreements with several other countries including France in 1898, with Holland in 1899, with Belgium in 1901, with Great Britain and the United States in 1906, regarding the protection of German trade marks in China. Under these several agreements German Consular officers in China will take legal proceedings against any German subjects residing in China who may imitate French, Dutch, Belgian, British or United States trade marks registered in the German Empire. The representatives of the above-mentioned Governments in China are likewise bound to act similarly in the case of their subjects.

GREECE.

The Law in force is that enacted in 1893. According to this Law in order for a British subject to obtain registration of a trade mark, it must be on the Register in England. By a declaration of July 27th, 1894, between Great Britain and Greece, each declared that the subjects of the other should have the same rights as the subjects of their own States or subjects of the most favoured nation.

GUATEMALA.

The Law is contained in decrees of 1897 and 1899. There is a convention with Great Britain, dated July 20th, 1898, each party placing subjects of the other on the same footing as their own subjects.

ITALY.

No change has taken place in internal Italian legislation with regard to trade marks since the report presented to Parliament in 1879.

Legislative effect has, however, been given with regard to foreign trade marks to the requirements of the Paris Convention of 1883, and the similar requirements of the Italo-German Convention of 1892. These modifications in the existing Law only affect the period of delay conceded to the proprietors of foreign trade marks during which the priority of a trade mark registered abroad may be made valid in Italy. Special regulations issued in 1898 determine the formalities necessary

to obtain the notification on the certificate of registration of the right of priority of a trade mark claimed under the above-mentioned Conventions.

Further, a Law of November 19th, 1894, puts in force the provisions of the Madrid Convention of 1891 for the international registration of trade marks, and affords protection in this country, without the fulfilment of the formalities required by the Law of Italy, to trade marks registered in the countries adhering to the Union, and fulfilling the conditions contemplated by that instrument.

A decree of 1905 relates to applications for trade marks by foreigners.

JAPAN.

The present Japanese Law relating to trade marks is one of a series of Laws which came into force on July 1st, 1899.

According to this Law, which has superseded the Trade Mark Regulations contained in the Imperial Ordinance No. 86 of 1888, the protection of property in trade marks in Japan depends upon registration, but trade marks which were actually in use before July 1st last would appear to be protected by sub-heading 5 of Article II., unless their registration has meanwhile been obtained by other persons and three years have been allowed to elapse without protest.

The course to be pursued by owners of foreign trade marks to obtain registration in Japan is laid down in the Law and in the "Detailed Regulations for carrying out the Trade Marks Law" of July 20th, 1899, as modified by the Regulations No. 3 of January 4th, 1905.

The reference in Article XX. to Articles VI. to X. of the Japanese Patent Law is important, as it makes it obligatory on persons not resident in Japan to appoint a duly qualified agent through whom the application for registration of a trade mark should be made. The registration may be cancelled if the owner of a trade mark fails to appoint an agent within six months (Article XI., 2).

In the case of British subjects previous registration of their trade marks in the United Kingdom does not appear to be necessary, but if it has taken place certified copies of the original certificate of registration and specifications must accompany the application for registration in Japan (Detailed Regulations, Article II.). Article IX. of the Law also gives priority to a trade mark registered in a country belonging to the Union for the Protection of Industrial Property, provided that application for its registration in Japan is made within four months.

No limit of time is stated within which persons who have used trade marks before registration are obliged to register them. Penalties, however, are imposed by Article XVII. on persons who use a trade mark "to which a deceptive mark, which suggests that it has been registered, is applied."

In order to obtain redress in the event of the infringement of trade marks which have been registered in Japan, proceedings must be instituted by the injured party either by an application to the Patent Bureau for a trial of the case, or by a criminal action for an infraction of Article XVI. of the present Law.

All documents relating to an application for the registration of a trade

mark, or any other matter connected therewith, must be in Japanese, and all copies of foreign documents must be accompanied by a Japanese translation.

The fee for registration is £3 2s. 6d. (30 yen) for each trade mark and each class of goods for which it is used. The application for registration must bear revenue stamps to the amount of 6s. 3d. (3 yen). Further payments in connection with trade marks are enumerated in the list of fees contained in the Imperial Ordinance No. 195, or in Regulations No. 4 of January 4th, 1905.

MEXICO.

A new Law was passed and new Regulations made in the year 1903.

NETHERLANDS.

Since the publication by the Foreign Office in 1879 of "Reports relative to Legislation in Foreign Countries on the subject of Trade Marks" a completely new Law has been passed on the subject in the Netherlands, distinct from the draft bill which appeared in the above-mentioned Blue-Book.

The Law now in force on the subject for the Netherlands is dated September 30th, 1893, as amended by that of December 30th, 1904.

For the colonial possessions of the Netherlands three other Laws on trade marks exist, all dated November 9th, 1893—*i.e.*, for the Netherlands East Indies in twenty-six articles, and for Surinam and Curaçao in twenty-five articles each. All three are practically identical, with the exception of that regulating trade marks in the Netherlands Indies, which has one additional article. It has, therefore, merely been necessary to have one of these Laws translated for the purposes of this report; for, if Article XII. of the Law for the Netherlands Indies be omitted, the rest of that Law and the twenty-five articles of the other two are the same; they are, therefore, applicable, not only to the Netherlands East Indies, but also to Surinam and Curaçao. The Laws of November 9th, 1893, have since been modified by those of May 30th, 1905, which practically make all the changes in the Law, introduced in the Netherlands in 1904, applicable to the colonial possessions.

The Trade Marks Law of September 30th, 1893, for the Netherlands came into force on December 1st, 1893, and it completely superseded the former law of May 25th, 1880, and the subsequent amendments of the Law of July 22nd, 1885. The Law of 1904 came into force on January 21st, 1904.

Trade Marks in the Netherlands are now entirely controlled by the Industrial Property Office at The Hague, which was established there on December 1st, 1893, from which date applications for the registration of trade marks had to be directed to that office instead of to the registrars of the local Courts as had previously been the case.

The Netherlands (including Dutch colonies) have joined the International Convention for the Protection of Industrial Property, concluded at Paris on March 20th, 1883, which was approved by the Law of April 23rd, 1884. Trade marks can, therefore, obtain in the Netherlands

international registration (including Dutch colonies). There are thus two distinct forms of registration possible at The Hague Bureau :—

(a) Merely for the Netherlands.

(b) For international registration—*i.e.*, for Holland, France, Spain, Portugal, Switzerland, Belgium, Italy, Brazil, and Tunis, as well as for the colonies of the first four countries, and in Netherlands India, Surinam, and Curaçao.

The regulations to be followed to secure this international registration are to be found in Part B of "The Regulations for Registration," issued by the Industrial Property Office at The Hague. Part A of those regulations contain the rules for registration in Holland only. An official note giving the formalities required for registration under the amended Law of 1904 was issued in 1905. The formalities for renewal of trade marks will be found in Regulations issued on January 3rd, 1908.

With regard to the course of procedure to be followed by owners of British trade marks to obtain protection for their marks, it is to be observed that no difference whatever is made between natives and foreigners in such applications; but the foreigner must choose a "domicile" in order to be able to follow the ordinary procedure for the registration of a trade mark. The Industrial Property Office at The Hague states that this merely means a "trade domicile," which is constituted by merely giving an address in Holland, such as a lawyer's address, or the name of an hotel at which the applicant for a trade mark might be residing. The actual steps to be taken by a British applicant, either for registration in Holland only or for international registration, are to be found in "The Regulations for Registration."

The previous registration of British trade marks in the United Kingdom is not required. In applications for international registration, sec. 3 of Article III. of "The Law on Trade Marks for the Netherlands" says :—

"The person who, within the period fixed by Article IV. of the International Convention of Paris has sent in a mark to the Office for Industrial Property, which, with due observance of Article VI. of the said Convention, he has deposited according to the regulations of one of the States that is a party to that Convention, shall be considered to have already made use of the mark in the Netherlands."

A similar provision is found in the Laws on trade marks for the Dutch colonies.

There is no limit of time within which persons who have used trade marks before registration in the Netherlands are obliged to register their trade marks in order to secure the benefit of the Dutch Laws on trade marks.

The steps to be taken by the owners of trade marks used in the Netherlands, to obtain redress in the event of infringement, are the following :—

(a) By a prosecution, founded upon Article 337 of the Penal Law. This is effected by denouncing (to the justice of the local Court of the place of the occurrence) the infringement.

(b) By means of a civil law suit, founded upon—

1. Article X. of the Dutch Law on Trade Marks. This is effected by petitioning the Court of Justice at The Hague to cancel the registration

of a trade mark which is similar or nearly similar to a mark which has already been made use of by some other person for the same kind of merchandise.

2. Article 1,401 of the Dutch Civil Law, in order to obtain indemnification.

The consequence of neglect on the part of British subjects to observe the regulations as to trade marks entails possible adoption of those marks by Dutchmen or by other foreigners. It is most advisable to register marks, which are then protected by the Office for Industrial Property, which will prevent similar or nearly similar marks from being registered.

NICARAGUA.

The Law of November 20th, 1907, regulates the registration of trade marks.

PERU.

Law of December 19th, 1892, as modified by that of December 31st, 1895.

PORTUGAL.

The Law in force is that of December 15th, 1894. Regulations of March 16th, 1905.

RUSSIA.

The question of trade marks in Russia is regulated by the Law of February 26th (March 9th), 1896, and the following are its main provisions :—

Trade marks may be adopted and used by all persons engaged in trade and manufacturing industries; such adoption, however, is not compulsory.

No trade marks may be used with designs and inscriptions contrary to public morality, nor such as may fraudulently mislead and deceive a purchaser; also are prohibited trade marks showing medals, &c. of distinction on which the year of award is not indicated. Marks exhibiting such honorary awards may, moreover, be exhibited only on goods and articles of the class for which the award was made.

The exclusive use of a trade mark is secured by application to the Department of Trade and Manufactures, which, on approval of the mark, issues a certificate of registration.

Application for more than one trade mark can be made by a single applicant for distinguishing goods differing in kind and variety.

Exclusive right to a trade mark cannot be secured if it does not differ distinctly from one already registered in the name of another person for goods of a kindred nature.

The registration of trade marks may be effected, according to the desire of applicants, for terms ranging from one to ten years. On the expiration of the term of registration the same may be renewed for a further period.

A trade mark registered in any one colour and in one size may be used in other colours and sizes.

A trade mark is registered in the name of the first person applying for its registration.

The registration of a trade mark does not deprive any other person of the right during three years after such registration of contesting at law the validity of the same.

The transfer of a trade mark to another person or firm is allowed under certain conditions, and subject to the sanction of the Department of Trade and Manufactures.

The exclusive right of using a particular trade mark ceases at the request of the person to whom such right was granted, or on the close of the manufacturing or other business in which it was used. It also lapses on the non-renewal of the registration or non-notification to the Department of Trade and Manufactures of the transfer of a business, &c., within six months of such transfer; moreover, the exclusive right of using a trade mark expires when a Court of law shall declare such right to be non-existent.

The fee payable to the Government for registering or renewing a trade mark is 3 roubles for the first year of duration of the certificate of registration, and 1 rouble for each succeeding year.

All applications for the registration of a trade mark must have affixed on each sheet of the same a Russian revenue stamp of the value of 80 copecks.

Fraudulent use and counterfeit of trade marks are punishable by imprisonment from four to eight months.

A dealer found in possession of goods bearing fraudulent trade marks is liable to the same punishment.

Persons selling or found in possession of goods bearing prohibited trade marks are liable to a fine not exceeding 100 roubles for the first offence, and for the second and succeeding offences in a sum not exceeding 200 roubles on each occasion.

SPAIN.

Law of May 16th, 1902. Royal Ordinances of July 30th, 1904, concerning International Trade Marks, of July 26th, 1905, and of November 13th, 1905, respecting trade marks in foreign languages.

SWEDEN.

With the exception of stamps set on iron goods, no legislation existed in Sweden until the year 1885 protecting trade marks, other than the very incomplete regulations which were to be found in the general Penal Law. The affixing of stamps on iron and steel goods has, on the other hand, been from time immemorial and continues to be obligatory in Sweden on the Swedish manufacturers. Up to the year 1885 the control and registration of the iron stamps belonged to the Director-General of the Mining Department, now the Commercial Department of the Royal Board of Trade.

In the year 1877 a committee sat for the purpose of drawing up a bill regarding patents and protection for patterns and models as well as trade marks. The proposals made by this committee led, however, as far as concerned the protection of trade marks, to no result.

In the year 1881, however, committees met simultaneously in Sweden, Norway, and Denmark with the object, among others, of drawing up a bill concerning the protection of trade marks as nearly as possible in the same form for the three countries.

When these committees met together for united work in 1882, they laid on the table bills respecting the protection of trade marks which were in all essentials similar. After some slight amendments the Swedish bill was passed in the 1884 session of the Riksdag, and the Law on the protection of trade marks now in force was promulgated on July 5th of the same year and came into force on January 1st, 1885.

The provisions of this Law have since been modified, partly by a Law of March 5th, 1897, which provided protection to certain so-called "word marks," and partly by Decrees which were issued later.

The Decrees which are at present in force are (1) the Royal Proclamation of December 31st, 1895, relating to the character of the documents which are to be presented on the registration of trade marks; (2) the Royal Proclamation of June 25th, 1897, relating to a change in the wording of paragraph 2 of the above-mentioned Royal Proclamation; (3) the Royal Proclamation of November 18th, 1898, relating to the register of trade marks; and (4) a Law of June 16th, 1905, modifying one article of the Law of 1884 relating to illegal applications of names or marks.

Paragraph 3 of the Law on trade marks relates to the formalities required for registration and the costs attached thereto. It runs as follows:—

Anyone who wishes to have a trade mark registered shall hand into the registration authority, or send in a prepaid letter, a written application containing a clear description of the mark and a full statement of the name, business, and postal address of the applicant or firm, and also in cases where the right to the trade mark embraces only certain kinds of wares, a statement of those kinds. The application must be accompanied by (1) a drawing upon good stout paper of the mark, in triplicate, not more than 10 centims. long and 15 centims. broad; (2) two stamps such as are used in printing the mark (*clichés*), of the same size as the drawing; (3) a fee of 40 kroner for registration and publication.

There are no fixed forms of publication, but more detailed information as to what the application should contain will be found in the above-mentioned Royal Proclamation of June 25th, 1897.

Beyond the above-mentioned fee of 40 kroner, the applicant has nothing more to pay for registration. The protection of a registered trade mark ceases, however, when an application for its renewal is not made, the first time, within ten years of the day of registration, and subsequently, within ten years from the previous day of renewal. A person wishing to renew his registration must hand or send in (in the way stated in paragraph 3 of the Law on trade marks) a written application to that effect, accompanied by one copy of such drawing as is there prescribed, and also a registration fee of 10 kroner.

To insure mutual protection of trade marks between Sweden and foreign States, the King has come to an understanding with certain States, and also, by an Act of Adhesion on behalf of Sweden on June 26th, 1885, has become a party to the Convention for the International Protection of Industrial Property, concluded at Paris on March 20th, 1883. His Majesty, by a Royal Proclamation of June 26th, 1885, in regard to States belonging to the Union founded through the above-mentioned convention, has also decreed, among other things, that protection of trade marks, according to the Law of July 5th, 1884, belongs to those persons who, in a foreign State forming one of the Union, carry on manufactures or trades, agricultural, mining, or other business; and also to those who are the subjects of such a State, or have a fixed residence there but carry on their business in another State.

Besides the documents which, as above stated, must accompany an application for registration, such applications from foreigners must also be accompanied by an attestation, consisting of an extract from the proper register of trade marks, that the applicant has fulfilled the conditions which in the foreign State are required in order to insure protection of the trade mark.

The Norwegian Law of May 26th, 1884, is believed to be similar to that of Sweden of July 5th, 1884.¹

SWITZERLAND.

The law of December 19th, 1879, respecting the registration and protection of trade marks, was superseded by that of September 26th, 1890.

Articles 1 and 3 are as follows:—

ART. 1.—“Sont considérés comme marques de fabrique et de commerce—

(1) Les raisons de commerce ;

(2) Les signes appliqués sur les produits ou marchandises industriels et agricoles ou sur leur emballage, à l'effet de les distinguer ou d'en constater la provenance.”

ART. 3.—“Les armoiries publiques et tous autres signes devant être considérés comme propriété d'un Etat ou propriété publique, qui figurent sur les marques des particuliers, ne peuvent être l'objet de la protection légale.

Il est interdit de faire figurer, sur une marque de fabrique, aucune indication de nature à porter atteinte aux bonnes mœurs.”

The formalities required by the latter for the registration of a trade mark are the following:—

An application must be made to the Bureau Fédéral de la Propriété Intellectuelle in French, German, or Italian, in the prescribed form, in duplicate, with a designation of the goods for which it is to be used.

Further, an exact reproduction, in duplicate, of the trade mark, with the date of deposit, signed by the owner, or his representative, must be sent in, together with a stereotype of the same.

¹ See also Norwegian Law of May 31st, 1900, modifying the Law of May 26th, 1884.

In the case of firms or individuals whose industry is carried on in Switzerland, an official attestation is required as regards their entry in the commercial register, or, in default of such entry, respecting the domicile of the depositor.

In the case of firms or individuals established in other countries which accord reciprocity of treatment, an official attestation certifying the registration of the trade mark in question in the country of origin is required.

The right of the depositor to any honorary distinctions mentioned on the trade mark must be duly established, and it must be shown that a power of attorney has been conferred on the representative who acts for the owner if the latter does not appear personally in the business.

All papers in connection with the application for registration must be in the same language, or a translation furnished at the same time.

The fee for registration is 20 fr. At the expiration of twenty years it is necessary to renew the registration within six months for a fresh term of twenty years, the registration fee being, as before, 20 fr.

A trade mark which is not made use of during three consecutive years is regarded as having lapsed.

In the case of refusal on the part of the Bureau Fédéral to register the trade mark, appeal can be made to the competent department; if the decision of the former is upheld, final appeal can be made to the Conseil Fédéral.

A registered trade mark can only be transferred with the industry the products of which it served to identify. Such transfer is subject to a fee of 20 fr., in addition to the same formalities as were required for the original registration, and is valid for a period of twenty years.

Any change or modification in the designation of the firm must be duly registered, the registration being gratuitous when such modification does not consist of a change of partners, or involve an alteration in the trade mark. If, on the other hand, the change or modification affects the trade mark, a tax of 10 fr. is levied, the publication of the trade mark, as modified, being necessary.

An extension of the use of a registered trade mark beyond the original limits specified at the time of registration involves formalities identical with those previously required, the fee for such extension being 20 fr., and a fresh period of twenty years commencing from that date.

A restriction, on the other hand, as regards its employment may be simply notified by letter, no tax attaching to such notification.

The cancelling of a registered trade mark can take place—

By a written renunciation of the same from the owner.

On the expiration of the period of twenty years for which protection was originally granted, if a renewal of the term has not been formally made.

By decision of the competent Federal Department: or, in virtue of a legal sentence justifying the demand for such a step.

The owners of trade marks applied to products at an exhibition from countries which have no convention with Switzerland on the subject can enjoy temporary protection for a period not exceeding two years, on the payment of a fee of 10 fr. for registration.

Their application must be accompanied by a stereotype of the trade mark.

THE UNITED STATES.

The Act of 1905 is, so far as material, printed above, pp. 754 *et seq.* It has been somewhat amended by an Act of May 4th, 1906, and an Act of March 2nd, 1907. Under the Act of 1906, a new classification was made to take effect on July 1st, 1906. Rules under the Act of 1905 took effect from April 1st, 1905, the date of the commencement of the Act. These were amended by rules of April 13th, 1905, of June 13th, 1906, and of July 19th, 1906.

2. LAWS OF THE BRITISH EMPIRE.

(Outside the United Kingdom.)

The Australian Trade Marks Act of 1905 is fully set out above.

It has not been thought necessary to increase the size of the book by a summary of the provisions of the trade marks laws of all the colonies and British possessions, as these follow very closely the lines of British legislation on the subject at the date of the local Acts, but the following information as to the dates of the various Acts, &c., may be useful.

Where a statute is stated to follow one of the British Acts, this is intended to mean in the main provisions, and especially as to essential particulars.

AUSTRALIA.

The Act of 1905 is set out above, pp. 761 *et seq.*

The existing rules thereunder are those of 1906, Statutory Rules, No. 122.

The Commonwealth adhered to the International Convention as from August 5th, 1907.

BAHAMAS.

The existing Law is contained in the Trade Marks Act, 1906. It practically follows the British Act of 1905. There are rules of 1908.

BERMUDA.

The Act in force is the Patents, Designs and Trade Marks Act, 1902. It is as regards trade marks on the lines of the British Act of 1883, as amended by the Act of 1888. An amendment Act of 1904 makes some unimportant amendments.

BRITISH CENTRAL AFRICA PROTECTORATE.

Under an Ordinance, No. 9 of 1903, the Registrar of the Protectorate is Registrar of trade marks, and the law as in England is applied to the Protectorate.

CANADA.

The Acts in force are the Trade Marks and Designs Act of 1879 (Revised Statutes of Canada, c. 63), and an Amendment Act of 1891, which lays down rules as to refusal of registration.

CAPE OF GOOD HOPE.

The principal Act is the Trades Marks Registration Act, 1877. As regards "essential particulars," it followed the British Act of 1875. It has been amended by the Trade Marks Registration Amendment Acts of 1891 and 1895, which follow respectively the British Acts of 1883 and 1888. Some minor amendments were made by the Patent and Designs Trade Marks Act of 1904.

CEYLON.

The Trade Marks Ordinance No. 14 of 1883 follows the provisions of the British Act of 1875, and the amending Ordinance No. 4 of 1890 follows the British Act of 1888. An amending Ordinance No. 6 of 1904 relates to international and intercolonial arrangements. The Trade Marks and Designs Ordinance, 1906, establishes the office of a Registrar-General. The rules in force are those of June 1st, 1906.

FIJI.

The Law is contained in the Trade Marks Registration Ordinance, 1886, and general rules thereunder. The Ordinance follows the terms of the British Act of 1875.

GOLD COAST COLONY.

The Law in force is the Trade Marks Ordinance, 1899, which follows the British Act of 1888; there is also an Ordinance of 1902, relating to international and intercolonial arrangements and making some minor amendments. By an Ordinance of 1903, no trade mark is to be registered for imported cotton piece goods, silk piece goods or goods in the miscellaneous class, unless such trade mark is registered in the United Kingdom as the trade mark for such goods. The rules in force are those of 1902 as amended by those of 1905.

HONG-KONG.

The Trade Marks Ordinance, 1898, follows the British Act of 1888. There are also rules of 1898.

INDIA.

There is no registration law. A notice in the *Board of Trade Journal* of December 12th, 1907, states that according to the *Times of India* (Bombay) the Upper India Chamber of Commerce has decided to undertake the registration of trade marks.

JAMAICA.

The Registration of Trade Marks Law, 1888, follows the British Act of 1883. But an amending Act of 1889 introduces amendments corresponding to the British Act of 1888. A slight amendment as to application was made in 1905.

LAGOS.

The Trade Marks Ordinance, 1901, follows the British Act of 1888.

LEEWARD ISLES.

The original Act is that of 1887, but it is amended by an Act of 1890, which follows the British Act of 1888.

MALTA.

The Patents, Designs and Trade Marks Ordinance, No. 11 of 1899, follows as regards trade marks the British Act of 1888. There is an amending Ordinance, No. 7 of 1907. There are regulations of 1902 and 1907.

NATAL.

The Act in force is that "To establish a Register of Trade Marks in Natal, 1885." It follows the British Act of 1883. The Rules, Regulations and Scale of Fees are those of 1885 (No. 456) as amended in 1898 (No. 704) and 1901 (No. 433).

NEWFOUNDLAND.

The Law in force is No. 112 of the Consolidated Statutes. It follows the Act of 1888.

NEW ZEALAND.

The Patents, Designs and Trade Marks Act, 1889, contains the statutory law following the British Act of 1888. The rules in force as to trade marks are the Trade Mark Rules, 1890.

ORANGE RIVER COLONY.

The Law in force is No. 3 of 1891 as amended by No. 13 of 1893. It approximates closely to that of Cape Colony.

RHODESIA.

By virtue of a Proclamation of June 10th, 1891, the Cape of Good Hope Registration Act (No. 22 of 1877) came into force in Mashonaland, but

its provisions have since been modified by Ordinance No. 5 of 1893, Regulations No. 59 of 1897, which have the effect of making the law as to what may be registered similar to that contained in the British Act of 1888. See also the rules contained in Government Notice, No. 60 of 1897.

SOUTHERN NIGERIA.

An Ordinance dated January 27th, 1907, consolidates the Law as to Trade Marks.

TRANSVAAL.

The Trade Marks Registration Proclamation, 1902, which repealed the Law No. 6 of 1892, so far as inconsistent with it, follows the British Act of 1888. It has been slightly amended by an Ordinance of 1904. The rules in force are those of 1902.

ZANZIBAR.

The Trade Marks Act, 1890, follows the British Act of 1888. There are general rules of 1890.

APPENDIX XIX.

MERCHANDISE MARKS ACT, 1887.¹

(50 & 51 Vict. c. 28.)

ARRANGEMENT OF SECTIONS.

SEC.

1. Short title.
2. Offences as to trade marks and trade descriptions.
3. Definitions.
4. Forging trade mark.
5. Applying marks and descriptions.
6. Exemption of certain persons employed in ordinary course of business.
7. Application of Act to watches.
8. Mark on watch case.
9. Trade mark, how described in pleading.
10. Rules as to evidence.
11. Punishment of accessories.
12. Search warrant.
13. Extension of 22 & 23 Vict. c. 17, to offences under this Act.
14. Costs of defence or prosecution.
15. Limitation of prosecution.
16. Prohibition on importation.
17. Implied warranty on sale of marked goods.
18. Provisions of Act as to false description not to apply in certain cases.
19. Savings.
20. False representation as to Royal Warrant.
21. Application of Act to Scotland.
22. Application of Act to Ireland.
23. Repeal of 25 & 26 Vict. c. 88.

An Act to consolidate and amend the Law relating to Fraudulent Marks on Merchandise. [23rd August, 1887.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Merchandise Marks Act, 1887.
2. (1.) Every person who—
 - (a) forges any trade mark ; or
 - (b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive ;or

Short title.
Offences as to
trade marks
and trade
descriptions.

¹ See Book II. of 2nd edition, p. 554. under the Act are printed in that edition
The general Orders and Regulations at pp. 818 *et seq.*

- (c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark ; or
- (d) applies any false trade description to goods ; or
- (e) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark ; or
- (f) causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

(2.) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

- (a) That having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description ; and
 - (b) That on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things ; or
 - (c) That otherwise he had acted innocently ;
- he guilty of an offence against this Act.

(3.) Every person guilty of an offence against this Act shall be liable—

- (i.) on conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine ; and
- (ii.) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds ; and
- (iii.) in any case, to forfeit to her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(4.) The Court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the Court thinks fit.

(5.) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

(6.) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

3. (1.) For the purposes of this Act—

The expression "trade mark" means a trade mark registered in the register of trade marks kept under the Patents, Designs, and Trade Marks Act, 1883,¹ and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable :²

Definitions.
46 & 47 Vict.
c. 57.

The expression "trade description" means any description, statement, or other indication, direct or indirect,

- (a) as to the number, quantity, measure, gauge, or weight, of any goods, or
- (b) as to the place or country in which any goods were made or produced, or
- (c) as to the mode of manufacturing or producing any goods, or
- (d) as to the material of which any goods are composed, or
- (e) as to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act :

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act :

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise :

The expressions "person," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate :

The expression "name" includes any abbreviation of a name.

(2.) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3.) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials

¹ The reference must now be taken to be to the Trade Marks Act, 1905 ; see sec. 38 of the Interpretation Act, 1889,

above, p. 654.

² See above, pp. 576 *et seq.*, and p. 741.

were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials of a person which—

- (a) are not a trade mark, or part of a trade mark, and
- (b) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials, and
- (c) are either those of a fictitious person or of some person not *bond fide* carrying on business in connection with such goods.

Forging trade mark.

4. A person shall be deemed to forge a trade mark who either—
- (a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or
 - (b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

Applying marks and descriptions.

5. (1.) A person shall be deemed to apply a trade mark or mark or trade description to goods who—

- (a) applies it to the goods themselves; or
- (b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or
- (c) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or
- (d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

(2.) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied, whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3.) A person shall be deemed to falsely apply to goods a trade mark, or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

Exemption of certain persons employed in ordinary

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade

mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

course of business.

- (a) That in the ordinary course of his business he is employed on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (b) That he took reasonable precautions against committing the offence charged; and
- (c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- (d) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied—

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

Application of Act to watches.

8. (1.) Every person who after the date fixed by Order in Council sends or brings a watch case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch case made in the United Kingdom), and in such a mode as may be from time to time directed by Order in Council.

Mark on watch case.

(2.) The declaration may be made before an officer of an assay office, appointed in that behalf by the office (which officer is hereby authorised to administer such a declaration), or before a justice of the peace, or a commissioner having power to administer oaths in the Supreme Court of Judicature in England or Ireland, or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.

(3.) Every person who makes a false declaration for the purposes of this section shall be liable, on conviction on indictment, to the penalties of perjury, and on summary conviction to a fine not exceeding twenty pounds for each offence.

Trade mark,
how described
in pleading.

9. In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Rules as to
evidence.

10. In any prosecution for an offence against this Act,—

(1.) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.

(2.) In the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced.

Punishment of
accessories.

11. Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act which, if committed in the United Kingdom, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanour had been there committed.

Search
warrant.

12. (1.) Where, upon information of an offence against this Act, a justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said justice on or after issuing the summons or warrant, or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

(2.) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3.) Any goods or things forfeited under this section, or under any

other provision of this Act, may be destroyed or otherwise disposed of, in such manner as the Court by which the same are forfeited may direct, and the Court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

13. The Act of the session of the twenty-second and twenty-third years of the reign of her present Majesty, chapter seventeen, intituled, "An Act to prevent vexatious indictments for certain misdemeanours," shall apply to any offence punishable on indictment under this Act, in like manner as if such offence were one of the offences specified in section one of that Act, but this section shall not apply to Scotland.

Extension of 22 & 23 Vict. c. 17, to offences under this Act.

14. On any prosecution under this Act the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

Costs of defence or prosecution.

15. No prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Limitation of prosecution.

16. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Act; be it therefore enacted as follows:

Prohibition on importation.

(1.) All such goods, and also all goods of foreign manufacture, bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section forty-two of the Customs Consolidation Act, 1876.

39 & 40 Vict. c. 36.

(2.) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3.) The Commissioners of Customs may from time to time make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4.) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom, that name, unless accompanied by the name of the

country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.

- (5.) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
- (6.) The Commissioners of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Commissioners of her Majesty's Treasury.
- (7.) The regulations may provide for the informant reimbursing the Commissioners of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.
- (8.) All regulations under this section shall be published in the "London Gazette" and in the "Board of Trade Journal."
- (9.) This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.
- (10.) Section two of the Revenue Act, 1883, shall be repealed as from a day fixed by regulations under this section, not being later than the first day of January one thousand eight hundred and eighty-eight, without prejudice to anything done or suffered thereunder.

46 & 47 Vict.
c. 55.

Implied
warranty on
sale of marked
goods.

17. On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Provisions of
Act as to false
description
not to apply
in certain
cases.

18. Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Savings.

19. (1.) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2.) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.

(3.) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who *bond fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

20. Any person who falsely represents that any goods are made by a person holding a royal warrant, or for the service of her Majesty, or any of the Royal Family, or any government department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds. False representation as to royal warrant.

21. In the application of this Act to Scotland the following modifications shall be made:— Application of Act to Scotland.

The expression "Summary Jurisdiction Acts" means the Summary Procedure Act, 1864, and any Acts amending the same.

The expression "justice" means sheriff.

The expression "Court of Summary Jurisdiction" means the Sheriff Court, and all jurisdiction necessary for the purpose of this Act is hereby conferred on sheriffs.

22. In the application of this Act to Ireland, the following modifications shall be made:— Application Act to Ireland.

The expression "Summary Jurisdiction Acts" means, so far as respects the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace of such district, and as regards the rest of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same. 14 & 15 Vict. c. 93.

The expression "Court of Summary Jurisdiction" means justices acting under those Acts.

23. The Merchandise Marks Act, 1862, is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this Act; provided that this repeal shall not affect— Repeal of 25 & 26 Vict. c. 89.

- (a) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor
- (b) the institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Act; nor
- (c) any right, privilege, liability, or obligation acquired, accrued, or incurred under any enactment hereby repealed.

APPENDIX XX.

MERCHANDISE MARKS ACT, 1891.

(54 VICT. c. 15.)

An Act to amend the Merchandise Marks Act, 1887.

[11th May, 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Customs entry
to be trade
description.

50 & 51 Vict.
c. 28.

Official
prosecutions.

1. The customs entry relating to imported goods shall, for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

2. (1.) The Board of Trade may, with the concurrence of the Lord Chancellor, make regulations providing that in cases appearing to the Board to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution of offences under the Merchandise Marks Act, 1887, shall be undertaken by the Board of Trade, and prescribing the conditions on which such prosecutions are to be so undertaken. The expenses of prosecutions so undertaken shall be paid out of moneys provided by Parliament.

(2.) All regulations made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act, and shall be published under the authority of Her Majesty's Stationery Office.

(3.) Nothing in this Act shall affect the power of any person or authority to undertake prosecutions otherwise than under the said regulations.

Short title.

3. This Act may be cited as the Merchandise Marks Act, 1891, and the Merchandise Marks Act, 1887, and this Act may be cited together as the Merchandise Marks Act, 1887 and 1891.

APPENDIX XXI.

MERCHANDISE MARKS (PROSECUTION) ACT, 1894.

An Act for enabling the Board of Agriculture to undertake Prosecutions in certain cases under the Merchandise Marks Act, 1887.

[20th July, 1894.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The powers exercisable by the Board of Trade under the Merchandise Marks Act, 1891, with respect to the prosecution of offences under the Merchandise Marks Act, 1887, may in cases which appear to the Board of Agriculture to relate to agricultural or horticultural produce be exercised by that Board, and in such cases the former Act shall apply as if the Board of Agriculture were referred to therein instead of the Board of Trade.

Power of Board of Agriculture to prosecute in certain cases.
54 & 55 Vict. c. 28.

2. This Act shall not extend to Ireland.

Extent of Act.
Short title.

3. This Act may be cited as the Merchandise Marks (Prosecutions) Act, 1894, and shall be read with the Merchandise Marks Acts, 1887 and 1891.

APPENDIX XXII.

STATUTES REQUIRING PARTICULAR CLASSES OF GOODS TO BE MARKED IN A SPECIFIED MANNER¹ IN ENGLAND.²

ANCHORS AND CHAIN CABLES.]—Manufacturer to place his name or initials and the number and weight of the anchor on every anchor (57 & 58 Vict. c. 60, s. 543); contract for sale of chain cable or anchor exceeding in weight 168 lbs. to imply a warranty of testing and stamping (62 & 63 Vict. c. 23, s. 2 (1)); no chain cable or anchor of greater weight than 168 lbs. to be sold unless tested and stamped according to the Anchor and Chain Cables Act, 1899 (62 & 63 Vict. c. 23, s. 1 (1)).

BREAD.]—Penalty for making or exposing for sale any bread made wholly or partially of peas, beans, potatoes (not including potato-yeast), or any sort of corn or grain other than wheat, unless it be marked with a Roman M. The Act applies only beyond ten miles from the Royal Exchange, London. 6 & 7 Will. 4, c. 37, s. 10. But the same provision is made for the excepted area by 3 Geo. 4, c. cvi.

BUTTER.]—Imitations of butter to be sold only as “margarine.” See “Margarine.”

BUTTONS (metal).]—Penalties for marking, ordering, or exposing for sale any words or marks denoting quality on metal buttons, or any words or marks on the undersides thereof, unless the buttons be silver-plated or gold-gilt; only the marks, gilt, plated, double or treble gilt to be marked; penalties for falsely marking buttons; Act not to extend to buttons of gold, silver, tin, pewter, lead, tin and lead, tinned iron, Bath metal, white metal, any of these metals inlaid with steel, or buttons plated on shells. 36 Geo. 3, c. 60.

CARDS.]—Playing cards (except toy cards) to be sold in stamped wrappers. 25 & 26 Vict. c. 22, ss. 1, 2, 28, 36; 27 & 28 Vict. c. 56, s. 6. So as to foreign cards. 16 & 17 Vict. c. 107, ss. 114—116; 39 & 40 Vict. c. 36, s. 286.

CHAIN CABLES.]—See “Anchors.”

CHICORY AND COFFEE.—Imitations of coffee and coffee mixtures not to

¹ A more detailed summary of all or most of these statutes will be found in Mr. Safford's “Law of Merchandise Marks,” Appendix D., and in Mr. Sebastian's “Trade Marks.” I am indebted to the former book for the suggestion of many of the classes of goods referred to, and to the Official Index to Statutes for reference to the statutes mentioned under the different heads. Statutes (as the Copyright Acts,

for example) which require marks to be put upon particular goods in order to secure some right or privilege (as copyright in designs, for instance) are not here included. They would naturally be sought for in works devoted to the law regarding the rights or privileges in question.

² The Scotch and Irish statutes are given by Mr. Safford.

be sold, except in packets containing one or more quarters of a pound, each packet bearing a label showing the amount of duty, and a label showing the constituents of the mixture. 45 & 46 Vict. c. 41, s. 6.

CLOCKS.]—Bearing marks implying manufacture in the United Kingdom not to be imported. 39 & 40 Vict. c. 36, s. 42.

CUTLERY.]—*See* above, p. 587, and Sheffield marks, p. 112.

GOLD.]—*See* "Plate."

GUNPOWDER.]—If sold in quantities greater than 1lb., to be packed in closed packages and labelled "Gunpowder." 38 & 39 Vict. c. 17, s. 32.

HOPS.]—Bags to be marked with the name of the owner, the parish and county where they were grown, and the date, number, and weight; penalty for false marking. 54 Geo. 3, c. 123, s. 1; 29 & 30 Vict. c. 37, s. 2. Implied warranty that the marks are genuine. 29 & 30 Vict. c. 37, s. 18.

LINEN.]—Penalties for affixing counterfeit marks to linen. 17 Geo. 2, c. 30; 18 Geo. 2, c. 24. English linen for exportation to be marked with name and place of abode of the maker and of the exporter, the year and number and length. 18 Geo. 2, c. 24, s. 2.

MARGARINE.]—All imitations of butter to be sold, and marked, when exposed for sale, as "margarine." 50 & 51 Vict. c. 29, ss. 3—7. Penalties for dealing in, selling, or exposing for sale any margarine contrary to the Act. *Ibid.* s. 7. Considerable amendments affecting butter, milk-blended butter, and margarine are made by the Butter and Margarine Act, 1907 (7 Edw. 7, c. 21). *See* also the Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51).

MEDALS (Exhibition).]—Penalties for false representations as to grants of medals or certificates of the Exhibitions of 1851 or 1862. 26 & 27 Vict. c. 119.

PLATE.¹]—The rules regulating the marking and standards of fineness required and allowed in respect of gold and silver goods are contained in the statutes referred to below.² They require to be marked on the goods the first letters of the christian and surnames of the worker (12 Geo. 2, c. 26, s. 5), and the *assay mark* of the town where the goods were made, or (if they were not made in an assay town) marked (2 Hen. 6, c. 17, London; 12 & 13 Will. 3, c. 4, York,³ Exeter, Bristol,⁴ Chester, and Norwich; ⁵ 1 Anne, c. 3, Newcastle-on-Tyne; 13 Geo. 3, c. 52, Sheffield; 5 Geo. 4, c. lii. s. 1, *local*, Birmingham), the variable or date mark to show the year of marking (12 & 13 Will. 3, c. 4, s. 3; 12 Geo. 2, c. 26, s. 5). And, in addition, on gold wares of twenty-two or eighteen carats fineness, the *standard* and *quality* marks of a crown and 22 (7 & 8 Vict. c. 22, s. 15), or a crown and 18 (38 Geo. 3, c. 69, s. 2) respectively; and on silver wares of 11 ozs. 10 dwts. and 11 ozs. 2 dwts. fineness, the standard marks of Britannia and a lion *passant* respectively (6 Geo. 1, c. 11, s. 41; 12 Geo. 2, c. 26), and a *duty* mark⁵ of the king's head. (24 Geo. 3, sess. 2, c. 53, s. 5.)

Before 1854, gold wares were required to be of either twenty-two or eighteen carats fineness (38 Geo. 3, c. 69); but her Majesty was

¹ See "Encyclopædia Britannica," "Plate."

² These statutes are summarised by Mr. Sebastian, 4th ed., p. 614, and Mr. Safford, p. 204.

³ The marks for these towns are now

discontinued.

⁴ Bristol never exercised its right to mark: Sebastian, 4th ed., p. 614.

⁵ The duty on plate is now abolished: 53 Vict. c. 8, s. 10.

authorised, under an Act of that year (17 & 18 Vict. c. 96), by Order in Council, to allow any standard for gold plate not being less than one-third part of the whole in fine gold, and to approve any instrument for stamping or marking the wares, setting forth in figures the actual fineness thereof according to the standard declared. The new inferior standard gold wares were declared not to be liable to duty. Under this Act, the nine, twelve, and fifteen carat gold standards have been authorised.

Silver wares must all be of either the 11 ozs. 10 dwts. or 11 ozs. 2 dwts. of silver to the pound troy standard. (6 Geo. 1, c. 11.)

The following wares are exempted from marking:—chains, necklace beads, lockets, filigree work, shirt buckles or brooches, stamped medals, or spouts to china, stone, or earthenware teapots, or any of them, of any weight; tippings, swages, or mounts, or any of them, not exceeding 10 dwts. of silver each, except only necks and collars for castors, cruets, or glasses, appertaining to any sort of stands or frames; silver goods not weighing 5 dwts., except necks, collars, and tops for castors, cruets, or glasses appertaining to any sort of stands or frames, buttons to be affixed or set on any wearing apparel, solid sleeve buttons, and solid studs, not having a bisseled edge soldered on, wrought seals, blank seals, bottle tickets, shoe clasps, patch boxes, salt spoons, salt shovels, salt ladles, tea-spoons, tea-strainers, caddy ladles, buckles (shirt buckles or brooches before mentioned excepted), and pieces to garnish cabinets, or knife cases, or tea-chests, or bridles, or stands, or frames. (30 Geo. 3, c. 31.) Gold wedding rings are to be marked as gold plate. (18 & 19 Vict. c. 60, s. 1.)

Imported foreign plate, except ornamental plate, made before 1800 (5 & 6 Vict. c. 56, s. 6), is to be marked as English plate (5 & 6 Vict. c. 47, s. 59), and under sec. 2 of 39 & 40 Vict. c. 35 had to be marked with the figure F. on an oval shield. That section is now repealed by the Hall-marking of Foreign Plate Act, 1904 (4 Edw. 7, c. 6) and by the last-mentioned Act foreign plate is to be marked in such manner as determined by Order in Council so as readily to distinguish whether the plate was wrought or made in England, Scotland, or Ireland, or was imported from foreign parts.

Penalties for counterfeiting assay marks and connected offences are provided by 7 & 8 Vict. c. 22.

The importation of clocks and watches, or any other article of metal impressed with any mark or stamp, representing or in imitation of any legal British assay mark or stamp, or purporting by any mark or appearance to be of the manufacture of the United Kingdom, is forbidden (39 & 40 Vict. c. 36, s. 42).

Watch cases of foreign manufacture brought for assay to any assay office in the United Kingdom are to be marked as directed by an Order in Council of November 28th, 1887, made under the Merchandise Marks Act, 1887, s. 8, that is to say, with the word "foreign," and a shield which is cross-shaped for gold and octagon-shaped for silver.

Gold and silver watch-cases, forming parts of finished watches imported into the United Kingdom from abroad are gold and silver plate within the meaning of the Customs Act, 1842: *Goldsmiths' Company v. Wyatt*, [1907] 1 K. B. 95. In 1907 an Act (7 Edw. 7, c. 8) was passed exempting existing stocks of such goods.

PLATED GOODS.]—Makers of plated goods in Sheffield, or within 100 miles thereof, are authorised to strike on their goods their surnames, or the names of their firm, with a mark (not being an imitation of an assay-mark) which is approved by the guardians of the assay office and registered (24 Geo. 3, sess. 2, c. 20, ss. 2 and 3).

SILVER.]—See "Plate."

STORES (PUBLIC).]—The marks enumerated below to denote that stores to which they are affixed are his Majesty's property; the marks not to be applied by unauthorised persons¹; obliterating the marks with intent to conceal his Majesty's property in the stores is a felony; regimental necessaries, &c., issued to soldiers, militiamen, or volunteers are excepted from the Act (38 & 39 Vict. c. 25; 44 & 45 Vict. c. 58, s. 156).

Stores.	Marks.
Hempen cordage and wire rope ...	White, black, or coloured worsted threads laid up with the yarns and wire respectively.
Canvas, fearnought, hammocks, and seamen's bags.	A blue line in a serpentine form.
Hunting	A double tape in the warp.
Candles	Blue or red cotton threads in each wick, or wicks of red cotton.
Timber or metal. Any stores not before enumerated, whether similar to the above or not.	The name of her Majesty (Queen Victoria), her predecessors, her heirs or successors, or of any public department or any branch thereof, or the broad arrow, or a crown, or her Majesty's arms, whether such broad arrow, crown, or arms be alone or be in combination with any such name as aforesaid, or with any letters denoting any such name.

TOBACCO.]—Cavendish and negro-head tobacco to be delivered for home consumption in separate packets not exceeding 1 lb. or less than 1 oz. in weight, and wrapped in a wrapper and label approved by the Commissioners of Customs; not to be sold, or had in possession, except wrapped and labelled as aforesaid; penalties for forging labels (26 & 27 Vict. c. 7, ss. 3—8).

WEIGHTS AND MEASURES.]—To be marked with proper indicating marks: see the Weights and Measures Acts, 1878 to 1904, 41 & 42 Vict. c. 49; 52 & 53 Vict. c. 21; 4 Edw. 7, c. 28.

YARN.]—Penalty for reeling short lengths of yarn, 17 Geo. 3, c. 11 (ss. 17—19, 24, in part repealed by the S. L. Rev. Act, 1861; ss. 12, 22, repealed in part; ss. 20, 23, repealed by 47 & 48 Vict. c. 43, s. 4; and s. 24 by 56 & 57 Vict. c. 61, s. 2).

¹ See 28 & 29 Vict. c. 89, s. 45 (Greenwich Hospital Mark) and 38 & 39 Vict. c. 25, s. 17.

APPENDIX XXIII.



THE following are a few of the very numerous words which have been allowed by the Board of Trade under sec. 9 (5) of the Act.¹ The references are to the number and pages of the *Trade Marks Journal* :—

- "Grosvenor." Paper. Grosvenor, Chater & Co., Ltd. 1504, p. 145.
- "Fruit Salt." Medical Preparation. J. C. Eno, Ltd. 1515, p. 624.
- "Paisley Flour." Raising Powder for cooking purposes. Brown and Polson. 1519, p. 807.
- "Valentine." Meat Juice. Valentine Meat Juice Co. 1523, p. 950.
- "Iron Ox." Medical Preparation. Iron Ox Remedy Co. 1525, p. 1046.
- "Hudson's Soap." R. W. Hudson. 1528, p. 1202.
- "Napier." Motor Vehicles. D. Napier & Son, Ltd. 1529, p. 1237.
- "Benefit Brand." Boots. Public Benefit Boot Co., Ltd. 1533, p. 1412.
- "Wood Milne." India Rubber Heels. T. H. Roberts. 1547, p. 2058.
- "Neave" and "Neave's Food." A Foodstuff Preparation. J. R. Neave. 1547, p. 2058.
- "Ilford." Photographic Apparatus. Ilford, Ltd. 1548, p. 2083.
- "Colman's Mustard." J. & J. Colman, Ltd. 1551, p. 2218.
- "Peugeot." Motor Cars. Société Peugeot. 1556, p. 103.
- "Pears' Soap." Common Soap. A. & F. Pears, Ltd. 1556, p. 119.
- "Rolls Royce." Motor Cars. Rolls Royce, Ltd. 1561, p. 300.
- "Leyland." Rubber Goods. Leyland & Birmingham Rubber Co., Ltd. 1562, p. 349.
- "Smith." Typewriters. Smith's Premier Typewriter Co. 1570, p. 684.
- "Eadie." Cycle and Car parts. Eadie Manufacturing Co., Ltd. 1571 p. 717.
- "Mellin" and "Mellin's Food." Foods. Mellin's Food, Ltd. 1575, p. 913.

¹ See above, pp. 82 and 172.

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NOTE.—A collection of words and names of marks occurring in trade marks considered in the decided cases has been inserted in the Index, with the names of the cases in which they occur, in order to facilitate reference to cases of which the names have been forgotten.

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THE END.

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