

or quality of the goods, and not being a geographical name.]

Page 153. Descriptive words, pp. 36 *et seq.*, 145 *et seq.*  
Secondary distinctive meaning of word *primâ facie* descriptive, pp. 36, 127, 147.

Geographical names, pp. 141, 147.

Name of a person, p. 149.

[(2.) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words, or figures, or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade-mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.]

Additions and disclaimers, Chap. IX., p. 164.

Effect of disclaimer, p. 173.

Addition of matter common to the trade, sect. 74, p. 169.

Disclaimer of person's own name, see next sub-section.

"Figures" means "numerals," *Ex parte Stephens*, 3 C. D. 659 (1876), Jessel, M.R.

Essential particulars, pp. 112, 167.

[(3.) Provided as follows:

(i) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof:

Page 167.

As to a trader's right of monopoly in his trade-name, see p. 168, Chap. XVI., pp. 384, 391; and as to the right of anyone to trade honestly under his own name, pp. 420 *et seq.*

(ii) Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures, used as a trade-mark before the thirteenth day of August one thousand eight hundred and seventy-five, may be registered as a trade-mark under this part of this Act.]

Registration of old marks, p. 153.

"Figure" means "numeral," *Ex parte Stephens*, 3 C. D. 659 (1876), Jessel, M.R.

13th August, 1875, date of commencement of first Registration Act.

Special and distinctive, p. 154; cf. distinctive in sub-sect. (1) (c), pp. 118—127.

Used as a trade-mark, p. 158, and Chap. II., p. 24. The mark must have been used as it is to be registered, p. 160.

Alteration of registered old mark under sect. 92, p. 248.

Connection of trade-mark with goods.

65. A trade-mark must be registered for particular goods or classes of goods.

Classification of goods, Chap. V., p. 87 ; list of classes, p. 618.

A trade-mark is assignable only in connection with the goodwill of the business concerned in the goods for which it is registered, sect. 70.

Registration for part of a class, pp. 88, 181.

Registration of a series of marks.

66. When a person claiming to be the proprietor of several trade-marks which, while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed to be used, or (b) statements of numbers, or (c) statements of price, or (d) statements of quality, or (e) statements of names of places, seeks to register such trade-marks, they may be registered as a series in one registration. A series of trade-marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade-marks composing a series shall be deemed and treated as registered separately.

Series of marks, p. 90 ; Representations, Rules 14 and 30, pp. 597, 599 ; Instructions 17, p. 630.

Trade-marks may be registered in any colour.

Act, 1888, s. 11.

67. A trade-mark may be registered in any colour [or colours], and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour [or colours].

Colour, p. 162. The mark must be distinctive, apart from colour, p. 129.

Advertisement of application.

Act, 1888, s. 12.

68. Every application for registration of a trade-mark under this part of this Act shall as soon as may be after its receipt be advertised by the comptroller, [unless the comptroller refuse to entertain the application].

Advertisement, p. 69 ; Rules 27 to 30, p. 598 ; Instructions 20 to 27, p. 630.

Notice of refusal is to be given to the applicant, Rule 19, p. 598 ; see further, as to refusal, sect. 62 (4).

Opposition to registration.

Act, 1888, s. 13, sub-ss. 1, 2.

69. (1.) Any person may within *two months* [one month or such further time, not exceeding three months, as the comptroller may allow,] of the *first* advertisement of the application, give notice in duplicate at the Patent Office of opposition to registration of the trade-mark, and the comptroller shall send one copy of such notice to the applicant.

Opposition, pp. 71--78 ; Rule 31 ; Instructions 32, p. 632 : Summary of procedure, p. 75 ; Forms, pp. 655 *et seq.*

Opposition is limited to the grounds stated in the notice, p. 76 ; amendment, p. 76.

Act, 1888, s. 13, sub-s. 3.

(2.) Within *two months* [one month] after receipt of such notice or such further time as the comptroller may allow, the applicant may send to the comptroller a counter statement in

duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

Counter-statement, Form, p. 636.

Abandonment: cf. abandonment of application, sect. 63. Apparently the abandonment of the opposition would not estop the opponent from applying to remove the mark from the register under sec. 90, see *Arbenz's application*, 35 C. D., at p. 257; 4 R. P. C. p. 145, (1887) C. A.

Enlargement of time, p. 76.

(3.) *If the applicant sends such counter statement, the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the comptroller may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the comptroller may allow, the opposition shall be deemed to be withdrawn.* Repealed. Act, 1888, s. 13, sub-s. 4.

The requirement of security from an opponent was abandoned at the suggestion of Lord Herschell's Committee, Report of 1888, xiii.

(4.) *If the person who gave notice of opposition duly gives such security as aforesaid, the comptroller shall inform the applicant thereof in writing, and thereupon the case shall be deemed to stand for the determination of the Court.*

[(3.) If the applicant sends such counter-statement the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall, after hearing the applicant and the opponent, if so required, decide whether the trade-mark is to be registered, but his decision shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the opponent and the comptroller, and may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.] Act, 1888, s. 13, sub-s. 4.

Appeal to Board of Trade and to the Court, pp. 78—85; cf. sect. 62 (4) and (5).

Costs, p. 85.

Forms, pp. 635 *et seq.*

Modification of application on appeal, p. 83.

Registration subject to conditions, p. 83, and see limitation of the registration and variation in its form, p. 235; and registration with a note, pp. 54, 90, (class of goods), p. 103, (colour), and p. 182 (use).

[(4.) The Board of Trade may, however, if it appears expedient, refer the appeal to the Court, and in that event the Court shall have jurisdiction to hear and determine the appeal, and may make such order as aforesaid.]

See last note.

An order of the Court, disallowing an opposition, must be served on the comptroller, Rule 46, p. 602.

[(5.) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the comptroller may determine to be reasonable.]

The power to give costs in respect of an abandoned application was conferred, at the suggestion of Lord Herschell's Committee, with a view to spare owners of registered trade-marks the expense of contesting unwarrantable applications to register marks which would prejudice their rights.

There is no power to give costs, in respect of proceedings before the comptroller, against an opponent: *Australian Wine Importers' Tm.*, 41 C. D. 278; 6 R. P. C. 311 (1889), C. A.; *Brandreth's Tm.*, 9 C. D. 618 (1878), Jessel, M.R.

[(6.) Where the opponent is out of the United Kingdom, he shall give the comptroller an address for service in the United Kingdom.]

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Assignment  
and trans-  
mission of  
trade-mark.

70. A trade-mark, when registered, shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Classes of goods, sect. 65. Registration is restricted to the goods for which the mark is registered, p. 256; and trade-mark rights are limited by the actual signification of the trade-marks, that is, to the goods of the original proprietor, or his successor in business, upon which it has been used, pp. 31, 256, 304.

Assignment and devolution, Chap. XIII., p. 272.

Assignment where a mark has been registered in the wrong name, pp. 62, 236.

Registration of assignments and transmissions, sects. 78 and 87, Rules 36 to 40, p. 601. Form of request for the registration of a subsequent proprietor, Form K., p. 611. Such registration is not essential in order to enable the subsequent proprietor to sue for infringement: *Ihlee v. Henshaw*, 31 C. D. 323; 3 R. P. C. 15 (1886), North, J.

Determination of trade-mark rights, Chap. XIV., p. 283.

Conflicting  
claims to  
registration.

71. Where each of several persons claims to be registered as proprietor of the same trade-mark, the comptroller may refuse to register any of them until their rights have been determined according to law, and the comptroller may himself submit or require the claimants to submit their rights to the Court.

Page 177, Rules 44 and 45, p. 602. The comptroller may require a written or oral explanation from any of the claimants in regard to his claim, Rule 43, p. 603. Old marks, up to three, which have existed independently as trade-marks, are allowed to be registered; if there are more than three, they are treated as common marks: see the "three marks rule," pp. 172, 177, and sect. 74 (3).

An old mark may be registered although a similar mark has been on the register for five years: *Jackson v. Napper*, p. 326.

Restrictions  
on registra-  
tion.

72. (1.) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade-mark, the comptroller shall not register in

respect of the same goods or description of goods a trade-mark identical with one already on the register with respect to such goods or description of goods.

Duplicate marks, Chap. X., p. 176.

“Except, &c.,” refers to sect. 71.

Same goods or description of goods, 180.

An order of the Court, allowing registration under this section, must be served on the comptroller, Rule 46, p. 602.

(2.) [Except as aforesaid] the comptroller shall not register with respect to the same goods or description of goods a trade-mark so nearly resembling [having such resemblance to] a trade-mark already on the register with respect to such goods or description of goods as to be calculated to deceive. Act, 1888, s. 14.

See last note.

Mark resembling a registered mark, Chap. XII., pp. 182 to 209.

Comptroller's direction, p. 63.

73. It shall not be lawful to register as part of or in combination with a trade-mark any words the *exclusive* use of which would by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a court of justice, or any scandalous design. Further restriction on registration. Act, 1888, s. 15.

Deceptive marks, Chap. XIII., pp. 209 to 217.

“Exclusive” was omitted as misleading, at the suggestion of Lord Herschell's Committee, Report of 1888, p. xiii.

Cf. sect. 86, which forbids the registration of a trade-mark, the use of which would, in the comptroller's opinion, be contrary to law or morality.

74. (1.) Nothing in this Act shall be construed to prevent the comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade-mark— Saving for power to provide for entry on register of common marks as additions to trade-marks.

(a) In the case of an application for registration of a trade-mark used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made ;

(b) In the case of an application for registration of a trade-mark not used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made ;

Additions and disclaimers, Chap. IX., p. 164 ; of. sect. 64 (2).

“Distinctive” means *prima facie* distinctive: *Burland v. Broxburn Oil Co.*, 42 C. D. 274 ; 6 R. P. C. 482 (1889) ; for its meaning in sect. 64, see pp. 118--127.

“Common to the trade” means open to the trade, p. 171; see the case last cited.

Clause (a), dealing with old marks, is wider than clause (b), because the policy of the Acts is to register old marks exactly as they were used: p. 170; *Phillips' Tm.*, (1891) 3 Ch. 139; 8 R. P. C. 469, Chitty, J.; *Henry Clay & Co.'s Tm.*, (1892) 3 Ch. 549; 9 R. P. C. 449, Kekewich, J.

Repealed.  
Act, 1888,  
s. 16.

(2.) *The applicant for entry of any such common particular or particulars must, however, disclaim in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.*

Act, 1888,  
s. 16.

[(2.) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade-mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

Provided that a person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.]

The amendment is in accord with that of sect. 64 (2) and (3) (i), p. 166. Right to honestly trade under one's own name, pp. 167, 420 *et seq.*

(3.) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were, before the thirteenth day of August one thousand eight hundred and seventy-five, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.

The “three mark rule,” pp. 172, 177.

13th of August, 1875, is the date of commencement of the first Registration Act.

### *Effect of Registration.*

Registration  
equivalent to  
public use.

Act, 1888,  
s. 17.

75. *Registration of a trade-mark shall be deemed to be equivalent to public use of the trade-mark.*

[Application for registration of a trade-mark shall be deemed to be equivalent to public use of the trade-mark, and the date of the application shall for the purposes of this Act be deemed to be, and as from the first day of January one thousand eight hundred and seventy-six to have been, the date of the registration.]

Page 254.

Effect of registration, Chap. XII., p. 252. As to the acquisition of trade-marks by user, see Chap. II., p. 24.

Date of application. It was the practice, from the first, to register the

entry as of the date when the application was received by the registrar, see Rule 20 of the Rules of 1876, and Rule 32 of the Rules of 1883. The amendment was made to give this practice statutory authority; report of Lord Herschell's Committee, p. xiii.

Entry post-dated, *Hayward's Case*, p. 235.

76. 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, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade-mark, subject to the provisions of this Act. Right of first proprietor to exclusive use of trade-mark.

Page 255. Registration is evidence of title, conclusive only after five years, pp. 304, 324.

Rectification of the register after five years, pp. 229, 258.

Test of infringement where the registered mark is actually copied, p. 312.

See note to sect. 71.

77. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade-mark unless, in the case of a trade-mark capable of being registered under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade-mark in use before the thirteenth of August one thousand eight hundred and seventy-five, registration thereof under this part of this Act, or of an enactment repealed by this Act, has been refused. The comptroller may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused. Restrictions on actions for infringement, and on defence to action in certain cases.

Registration as a condition precedent to an action for infringement, p. 260.

The prohibition does not affect actions for passing off, pp. 265, 382. It applies to foreigners, pp. 264, 300.

13th of August, 1875, is the date of commencement of the first Registration Act.

Certificate, p. 264; Rule 60, p. 605; Instructions 35, p. 633; Form of application, Form L., p. 611; Fee 17.

[77a. In an action for infringement of a registered trade-mark the Court or a judge may certify that the right to the exclusive use of the trade-mark came in question, and if the Court or a judge so certifies, then in any subsequent action for infringement the plaintiff in that action, 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 judge trying the subsequent action certifies that he ought not to have the same.] Certificate as to exclusive use and costs thereon.  
Act, 1888,  
s. 18.

Page 370.

This section was added on the precedent of sect. 31, which applied to patent actions only.

*Register of Trade-Marks.*

Register of  
trade-marks.

78. There shall be kept at the patent office a book called the Register of Trade-Marks, wherein shall be entered the names and addresses of proprietors of registered trade-marks, notifications of assignments and of transmissions of trade-marks, and such other matters as may be from time to time prescribed.

Cf. sect. 87.

The register, Chap. III., p. 52. The date of the application for registration, and such other particulars as the comptroller thinks necessary, are to be entered, Rule 34, p. 601.

An application to the Court has been allowed under this section where the comptroller refused to register an assignment, p. 280; *Bancroft's Tm.*, 5 R. P. C. 209 (1888), Stirling, J.

*Quare*, whether an abandoned mark can be removed under the section, p. 291.

Removal of  
trade-mark  
after fourteen  
years, unless  
fee paid.

79. (1.) At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade-mark, the comptroller shall send notice to the registered proprietor that the trade-mark will be removed from the register unless the proprietor pays to the comptroller before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee: and if such fee be not previously paid, he shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect.

Page 292. The cause of the removal is to be entered, Rule 47, p. 602.

(2.) If such fee be not paid before the expiration of such fourteen years the comptroller may after the end of three months from the expiration of such fourteen years remove the mark from the register, and so from time to time at the expiration of every period of fourteen years.

Fee 17., Form X., p. 616.

(3.) If before the expiration of the said three months the registered proprietor pays the said fee together with the additional prescribed fee, the comptroller may without removing such trade-mark from the register accept the said fee as if it had been paid before the expiration of the said fourteen years.

Additional fee, 10s., Form Y., p. 616.

(4.) Where after the said three months a trade-mark has been removed from the register for non-payment of the prescribed fee, the comptroller may, if satisfied that it is just so to do, restore such trade-mark to the register on payment of the prescribed additional fee.

Additional fee, 17., Form Z., p. 617.



(5.) Where a trade-mark has been removed from the register for non-payment of the fee or otherwise, such trade-mark shall nevertheless for the purpose of any application for registration during *the five years* [one year] next after the date of such removal, be deemed to be a trade-mark which is already registered [unless it is shown to the satisfaction of the comptroller that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, 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.]

Act, 1888, s. 19, sub-s. 1.

Act, 1888, s. 19, sub-s. 2.

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*Fees.*

80. There shall be paid in respect of applications and registration and other matters under this part of this Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

Fees for registration, &c.

List of fees, p. 606.

*Sheffield Marks.*

81. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company) and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect:

Registration by Cutlers' Company of Sheffield marks.

Sheffield marks, Chap. VI., p. 91, Rules 56 to 59, p. 604.  
 "Metal goods" is defined in sub-sect. (14).

- (1.) The Cutlers' Company shall establish and keep at Sheffield a new register of trade-marks (in this Act called the Sheffield register):
- (2.) *The Cutlers' Company shall enter in the Sheffield register, in respect of cutlery, edge tools, or raw steel and the goods mentioned in the next sub-section all the trade-marks entered before the commencement of this Act in respect of cutlery, edge tools, or raw steel and such goods in the register established under the Trade-Marks Registration Act, 1875, belonging to persons carrying on business in Hallamshire, or within six miles thereof, and shall also enter in such register, in respect of the same goods, all the trade-marks*

Act, 1888, s. 20, sub-s. 1.

*which shall have been assigned by the Cutlers' Company and actually used before the commencement of this Act, but which have not been entered in the register established under the Trade-Marks Registration Act, 1875 :*

Act, 1888,  
s. 20, sub-s. 1.

38 & 39 Vict.  
c. 91.

[(2.) The Cutlers' Company shall enter in the Sheffield register, in respect of metal goods as defined in this section, all the trade-marks entered before the first day of January one thousand eight hundred and eighty-nine in respect of metal goods either in the register established under the Trade-Marks Registration Act, 1875, or in the register of trade-marks under this Act, belonging to persons carrying on business in Hallamshire or within six miles thereof. The Cutlers' Company shall also, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods, all the trade-marks which shall have been assigned by the Cutlers' Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in either of the said other registers :]

Act, 1888,  
s. 20, sub-s. 2.

- (3.) An application for registration of a trade-mark used *on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge* [on metal goods] shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company :
- (4.) Every application so made to the Cutlers' Company shall be notified to the comptroller in the prescribed manner, and unless the comptroller within the prescribed time gives notice to the Cutlers' Company that he objects to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner :
- (5.) If the comptroller gives notice of objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may appeal to the Court :
- (6.) Upon the registration of a trade-mark in the Sheffield register the Cutlers' Company shall give notice thereof to the comptroller, who shall thereupon enter the mark in the register of trade-marks ; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the comptroller on that day :

- (7.) *The provisions of this Act, and of any general rules made under this Act, with respect to application for registration in the register of trade-marks, the effect of such registration, and the assignment and transmission of rights in a registered trade-mark shall apply in the case of applications and registration in the Sheffield register; and notice of every entry made in the Sheffield register must be given to the comptroller by the Cutlers' Company, save and except that the provisions of this sub-section shall not prejudice or affect any life, estate, and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register:* Act, 1888, s. 20, sub-s. 3.
- [(7.) The provisions of this Act and of any general rules made under this Act with respect to the registration of trade-marks, and all matters relating thereto, shall, subject to the provisions of this section, apply to the registration of trade-marks on metal goods by the Cutlers' Company, and to all matters relating thereto; and this Act and any such general rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the comptroller, the Patent Office, and the Register of Trade-Marks, respectively; and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the comptroller by the Cutlers' Company: provided that this section shall not affect any life estate and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register:] Act, 1888, s. 20, sub-s. 3.
- (8.) Where the comptroller receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade-mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge [on metal goods], he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company: Act, 1888, s. 20, sub-s. 2.
- (9.) At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade-marks, and thereupon all marks entered therein shall, unless entered in the Sheffield register, be deemed to have been abandoned:
- (10.) A person may (notwithstanding anything in any Act

relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade-marks:

- (11.) A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade-mark or trade-marks:
- (12.) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the comptroller, who shall have power to confirm reverse or modify the decision, but the decision of the comptroller shall be subject to a further appeal to the Court:

Person aggrieved, cf. sect. 90, p. 221.

- (13.) So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers' Company's Act of 1814, and the provisions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of 1791, shall apply to any mark entered in the Sheffield register:

See pp. 92 and 544.

Act, 1888,  
s. 20, sub-s. 4.

- [(14.) For the purposes of this section the expression "metal goods" means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal.]
- [(15.) For the purpose of legal proceedings in relation to trade-marks entered in the Sheffield register a certificate under the hand of the master of the Cutlers' Company shall have the same effect as the certificate of the comptroller.]

Certificate of the comptroller, sect. 96, Rule 60, p. 605.

## PART V.—GENERAL.

### *Patent Office and Proceedings thereat.*

Patent Office.

82. (1.) The Treasury may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.

As to the Patent Office, Trade-Marks Branch, see Chap. III., p. 52.

(2.) Until a new patent office is provided, the offices of the Commissioners of Patents for inventions and for the registra-

tion of designs and trade-marks existing at the commencement of this Act shall be the patent office within the meaning of this Act.

(3.) The patent office shall be under the immediate control of an officer called the comptroller-general of patents, designs, and trade-marks, who shall act under the superintendence and direction of the Board of Trade.

Pages 53, 67.

(4.) Any act or thing directed to be done by or to the comptroller may, in his absence, be done by or to any officer for the time being in that behalf authorized by the Board of Trade.

83. (1.) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the comptroller-general of patents, designs, and trade-marks, and so many examiners and other officers and clerks with such designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks. Officers and clerks.

(2.) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

84. There shall be a seal for the patent office, and im-  
pressions thereof shall be judicially noticed and admitted in  
evidence. Seal of patent office.

Cf. sect. 89, sealed and certified copies of the registers; and sect. 96, the certificate of the comptroller to be evidence.

85. There shall not be entered in any register kept under  
this Act, or be receivable by the comptroller, any notice  
of any trust expressed, implied, or constructive. Trust not to be entered in registers.

The section does not forbid the entry of a note upon the register stating the effect of an undertaking limiting the right of user of the trade-mark, see pp. 54, 90 (class of goods), 163 (colour), 182 (use of mark), 235 (note entered under sect. 90).

By reason of this section, and sect. 87, the registered proprietor can make a good title to any purchaser of the trade-mark and of the goodwill of the business concerned (sect. 70), who has no notice of any equitable rights in the trade-mark or goodwill existing in any third person.

86. The comptroller may refuse to grant a patent for an  
invention, or to register a design or trade-mark, of which the  
use would, in his opinion, be contrary to law or morality. Refusal to grant patent, &c., in certain cases.

Cf. sect. 73.

Entry of assignments and transmissions in registers.

Act, 1888, s. 21.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade-mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade-mark, in the register of patents, designs, or trade-marks, as the case may be. The person for the time being entered in the register of patents, designs, or trade-marks, as proprietor of a patent, copyright in a design or trade-mark as the case may be, shall, subject to [the provisions of this Act and to] any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, licence, or dealing. Provided that any equities in respect of such patent, design, or trade-mark may be enforced in like manner as in respect of any other personal property.

Assignment and devolution of trade-marks, Chap. XIII., p. 272. Registration of assignments, p. 278, Rules 36 to 40, p. 601.

Licence to use a trade-mark, p. 281. Licensee cannot sue, pp. 282, 302. Licence as a defence in an infringement action, p. 333.

Inspection of and extracts from registers.

Act, 1888, s. 22.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to [the provisions of this Act and to] such regulations as may be prescribed; and certified copies, sealed with the seal of the patent office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Inspection, searches and indexes, pp. 55, 56. Hours of inspection, Rule 52, p. 603. Searches, Instructions 7, p. 628. Fees, for inspection or searching, 1s. for every quarter of an hour; for office copy of documents, for every 100 words (but never less than 1s.), 4d.; for certifying office copies, MS. or printed, 1s.

Sealed copies to be received in evidence.

89. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the patent office, of or from patents specifications disclaimers and other documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts in her Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Cf. sect. 84, seal of the patent office; and sect. 96, the certificate of the comptroller.

Fees, see sect. 88.

Rectification of registers by Court.

Act, 1888, s. 23.

90. (1.) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person [or of any other particulars] from any

register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

Rectification of the register, Chap. XI., p. 218. As a defence, p. 338.

An entry may be rectified after five years' registration, notwithstanding sect. 76, p. 258.

Costs, p. 244. Security for costs by a foreigner, p. 241.

Procedure, p. 237. Four clear days' notice of the application must be given to the comptroller, Rule 49, p. 603.

Forms, p. 642. Fee, 10s.

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

Damages, p. 243.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the comptroller.

An office copy of the order, with a notice in Form N., p. 612, must be left at the patent office forthwith, Rule 46, p. 602. Publication of the order, Rule 50, p. 603.

**91.** The comptroller may, on request in writing accompanied by the prescribed fee—

Power for  
comptroller  
to correct  
clerical errors.

(a) Correct any clerical error in or in connexion with an application for a patent, or for registration of a design or trade-mark; or

Pages 70, 76. The comptroller has a general power to amend documents and correct irregularities in procedure under Rule 54, p. 71.

Fee on request to amend application, 5s. Form Q., p. 613.

(b) Correct any clerical error in the name, style, or address of the registered proprietor of a patent, design, or trade-mark.

Page 246. Form of request, Q., p. 613. Fee 5s. Alteration of address, Rule 48, p. 603. Form N., p. 612. Fee 5s. Fee on entry of a rectification or alteration other than of alteration of address, or cancellation of the entry or part of it at the owner's request, 10s.

(c) Cancel the entry or part of the entry of a trade-mark on the register: provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on

the register as the proprietor of the said trade-mark.

Page 246. Statutory declaration, Rules 61, 32, p. 605. Form P., p. 613. Form of request, O., p. 612. Fee 5s.

Act, 1888,  
s. 24.

[(d) Permit an applicant for registration of a design or trade-mark to amend his application by omitting any particular goods or classes of goods in connexion with which he has desired the design or trade-mark to be registered.]

Page 71. The sub-section was added to allow an applicant to disclaim any right to use the mark for some of the goods in the register class or classes to which his application refers, in order, for instance, to avoid opposition by the proprietors of trade-marks used or registered for the disclaimed goods. Report of Lord Herschell's Committee, p. xiv. Form of request, Q., p. 613. Fee 5s.

Alteration of  
registered  
mark.

92. (1.) The registered proprietor of any registered trade-mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act, and the Court may refuse or grant leave on such terms as it may think fit.

Alterations in non-essential particulars, p. 247.

Alterations of old marks, p. 248.

Procedure, p. 250.

Forms, p. 642. Fee 10s.

(2.) Notice of any intended application to the Court under this section shall be given to the comptroller by the applicant; and the comptroller shall be entitled to be heard on the application.

Fourteen days' notice of the application must be given to the comptroller, and if the application is granted representations of the trade-mark as altered must be sent to him, Rule 61, p. 603.

(3.) If the Court grants leave, the comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

An office copy of the order with a notice in Form N., p. 612, must be left at the patent office forthwith, Rule 46, p. 602. Publication of the order, Rule 50, p. 603.

Falsification  
of entries in  
registers.

93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanour.

Exercise of  
discretionary  
power by  
comptroller.

94. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to



the applicant for a patent, or for amendment of a specification, or for registration of a trade-mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Pages 65, 79. The course of events laid down by the rules is as follows:— Notice by the comptroller to the applicant of his objection; application by the applicant to be heard, Form E., p. 608, within one month; ten days' notice by the comptroller of a time when the applicant may be heard; notice by the applicant to the comptroller whether he desires to be heard or not, within five days; Rules 17 to 19, p. 597. Fees on hearing by the comptroller, by the applicant, and by the opponent respectively, 11.

95. The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter.

Power of comptroller to take directions of law officers.

See p. 53, note (f).

96. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorized by this Act, or any general rules made thereunder, 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.

Certificate of comptroller to be evidence.

Page 57, Rule 60.

Cf. sect. 84, seal of the patent office, and sect. 89, sealed and certified copies to be evidence.

Request for certificate for use in obtaining registration abroad, Form R.; for use in legal proceedings, Form S.; for other general certificates, Form T.; form of general certificate, U.; request for copy of official notification of registration, Form V., pp. 614, 615.

Fees for the various certificates, p. 606.

97. (1.) Any application, notice, or other document authorized or required to be left, made, or given at the patent office or to the comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left, made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

Applications and notices by post.

(2.) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

98. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the patent office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or

Provision as to days for leaving documents at office.

to pay such fee on the day next following such excluded day, or days, if two or more of them occur consecutively.

The comptroller has a general power to enlarge the times prescribed by the rules, Rule 55, p. 604.

Declaration  
by infant,  
lunatic, &c.

99. 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 by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any Court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such 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.

Declarations, Rules 61, 62, p. 605.

The comptroller has a general power to dispense with any act or thing required to be done by the rules, or any document or declaration or evidence to be signed, made, or produced, Rule 53, p. 603.

Transmission  
of certified  
printed copies  
of specifica-  
tions, &c.

100. Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after the same shall respectively have been accepted or allowed at the Patent Office; and certified copies of or extracts from any such documents shall be given to any person requiring the same on payment of the prescribed fee; and any such copy or extract shall be admitted in evidence in all Courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

Power for  
Board of  
Trade to make  
general rules  
for classifying  
goods and  
regulating  
business of  
patent office.

101. (1.) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act—

- (a) For regulating the practice of registration under this Act:
- (b) For classifying goods for the purposes of designs and trade-marks:
- (c) For making or requiring duplicates of specifications, amendment, drawings, and other documents:
- (d) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the

Board of Trade think fit, of specifications, drawings, amendments and other documents :

- (e) For securing and regulating the making, printing, publishing and selling of indexes to, and abridgments of, specifications and other documents in the patent office; and providing for the inspection of indexes and abridgments and other documents :
- (f) For regulating (with the approval of the Treasury) the presentation of copies of patent office publications to patentees and to public authorities, bodies and institutions at home and abroad :
- (g) Generally for regulating the business of the patent office, and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.

(2.) Any of the forms in the First Schedule to this Act may be altered or amended by rules made by the Board as aforesaid.

The forms prescribed by the rules of 1890 are printed at pp. 607 *et seq.* They must be used in all cases to which they are applicable, Rule 5, p. 595.

(3.) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

The Rules of 1890 are printed at p. 595. They repeal all former rules, Rule 63.

“Prescribed,” where it occurs in the Act, means prescribed by any of the schedules to the Act, or by general rules under or within the meaning of the Act, sect. 117.

(4.) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the comptroller.

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

102. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which Annual reports of comptroller.

each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

Proceedings  
of Board of  
Trade.  
Act, 1888,  
s. 25.

[102a. (1.) All things required or authorized under this Act to be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.]

[(2.) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorized in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.]

[(3.) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.]

#### *International and Colonial Arrangements.*

International  
arrangements  
for protection  
of inventions,  
designs, and  
trade-marks.

Act, 1885,  
s. 6.

103. (1.) If Her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade-marks, or any of them, then any person who has applied for protection for any invention, design, or trade-mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade-mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the *date of the protection obtained* [date of the application] in such foreign state.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade-mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade-mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade-mark in this country, as the case may be.

Registration of foreign and colonial trade-marks, Chap. XX., p. 454.

The International Conventions of 1883 (signed at Paris, 20th March, 1883; ratified 6th June, 1884) and 1891 (signed at Madrid, 14th April, 1891; ratified 15th June, 1892) are printed at p. 658, and the list of foreign states to which the section is applicable, at p. 656.

(2.) The publication in the United Kingdom, or the Isle of Man, during the respective periods aforesaid, of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade-mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade-mark :

This seems to be surplusage so far as regards trade-marks, see p. 458.

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade-mark under this section, must be made in the same manner as an ordinary application under this Act: provided that, in the case of trade-marks, any trade-mark the registration of which has been duly applied for in the country of origin may be registered under this Act :

Page 459.

(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

104. (1.) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade-marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time by Order in Council to apply the provisions of the last preceding section, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

Provision for colonies and India.

Registration of foreign and colonial trade-marks, Chap. XX., p. 454.  
List of British Possessions to which the section is applicable, p. 656.  
Definition of British Possession, sect. 117.

(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act.

### *Offences.*

105. (1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade-mark applied

Penalty on falsely representing articles to be patented.

to any article sold by him as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade-mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

Pages 345, 484, 540, and cf. the application of a false trade description under the M. M. A., pp. 476, 483.

Penalty on unauthorized assumption of Royal arms.

**106.** Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connexion with any trade, business, calling, or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Page 642.

*Scotland, Ireland, &c.*

Saving for Courts in Scotland.

**107.** In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the Court shall otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the Courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those Courts.

For the purposes of this section "Court of Appeal" shall mean any Court to which such action is appealed.

Summary proceedings in Scotland.

**108.** In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the sheriff court.

Proceedings for revocation of patent in Scotland.

**109.** (1.) Proceedings in Scotland for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only.

(2.) Service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act.

110. All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Ireland only.

Reservation of remedies in Ireland.

An entry registered in the name of an Irish proprietor can be rectified under sect. 90 by the English Courts; *Re King & Co.'s Tm.*, (1892) 2 Ch. 462; 9 R. P. C. 350; Kekewich, J., and C. A. pp. 237, 240.

111. (1.) The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any Court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade-marks; and with reference to any such proceedings in Scotland, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "the Court of Appeal" respectively mean the High Court of Justice in Ireland and Her Majesty's Court of Appeal in Ireland.

General saving for jurisdiction of Courts.

See note to sect. 110.

(2.) If any rectification of a register under this Act is required in pursuance of any proceeding in a Court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly.

112. This Act shall extend to the Isle of Man, and—

Isle of Man.

(1.) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade-mark competent to those Courts;

(2.) The punishment for a misdemeanour under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the Court;

(3.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

[112a. The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding of Lancashire

Palatine  
Court.  
Act, 1888,  
s. 26.

in relation to trade-marks the registration whereof is applied for in the Manchester Office, have the like jurisdiction under this Act as Her Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly.

Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.]

*Repeal, Transitional Provisions, Savings.*

Repeal and  
saving for  
past operation  
of repealed  
enactments,  
&c.

113. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not—

- (a) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade-mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act; or
- (b) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed; or
- (c) Take away or abridge any protection or benefit in relation to any such action or proceeding.

As to which Act applied to the registration of a trade-mark where the application was pending at the date of commencement of a new Act, see p. 111. And see sect. 27 of the Act of 1888, p. 586.

Former  
registers to  
be deemed  
continued.

114. (1.) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of patents kept under this Act.

(2.) The registers of designs and of trade-marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade-marks kept under this Act.

Saving for  
existing rules.

115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed altered or amended by the Board of Trade, as if they had been made by the Board under this Act, but so that no such repeal alteration



or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act.

116. Nothing in this Act shall take away abridge or pre-judicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof. Saving for prerogative.

*General Definitions.*

117. (1.) In and for the purposes of this Act, unless the context otherwise requires,— General definitions.

“Person” includes a body corporate :

“The Court” means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty’s High Court of Justice in England :

“Law officer” means Her Majesty’s Attorney-General or Solicitor-General for England :

“The Treasury” means the Commissioners of Her Majesty’s Treasury :

“Comptroller” means the Comptroller General of Patents, Designs, and Trade-Marks :

“Prescribed” means prescribed by any of the Schedules to this Act, or by general rules under or within the meaning of this Act :

“British possession” means any territory or place situate within Her Majesty’s dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act :

“Legislature” includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, “summary conviction” means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District, the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

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[SCHEDULES.]

## SCHEDULES.

## THE FIRST SCHEDULE.

## FORMS OF APPLICATION, &amp;c.

Section 62.

## FORM F.

FORM OF APPLICATION FOR REGISTRATION OF TRADE-MARK.

See Form F., Trade-Marks Rules, 1890, p. 608.

Section 113.

## THE THIRD SCHEDULE.

*Enactments repealed.*

- 38 & 39 Vict. c. 91. The Trade-Marks Registration Act, 1875.  
 [1875.]
- 39 & 40 Vict. c. 33. The Trade-Marks Registration Amendment Act,  
 [1876.] 1876.
- 40 & 41 Vict. c. 37. The Trade-Marks Registration Extension Act, 1877.  
 [1877.]

No. 2.

PATENTS, DESIGNS, AND TRADE-MARKS  
ACT, 1888.

(51 & 52 VICT. c. 50.)

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\* \* The several sections of this Act are printed and annotated together with the principal Act above; they are printed here for convenience of reference.

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*An Act to amend the Patents, Designs, and Trade-Marks Act, 1883.* [24th December, 1888.]

WHEREAS it is expedient to amend the Patents, Designs, and Trade-Marks Act, 1883, hereinafter referred to as the principal Act: 46 & 47 Vict. c. 57.

Be it therefore 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.—(1.) After the first day of July one thousand eight hundred and eighty-nine a person shall not be entitled to describe himself as a patent agent, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent in pursuance of this Act. Register of patent agents.

(2.) The Board of Trade shall, as soon as may be after the passing of this Act, and may from time to time, make such general rules as are in the opinion of the Board required for giving effect to this section, and the provisions of section one hundred and one of the principal Act shall apply to all rules so made as if they were made in pursuance of that section.

(3.) Provided that every person who proves to the satisfaction of the Board of Trade that prior to the passing of this Act he had been bonâ fide practising as a patent agent shall be entitled to be registered as a patent agent in pursuance of this Act.

(4.) If any person knowingly describes himself as a patent

agent in contravention of this section he shall be liable on summary conviction to a fine not exceeding twenty pounds.

(5.) In this section "patent agent" means exclusively an agent for obtaining patents in the United Kingdom.

Amendments  
of 46 & 47  
Vict. c. 57.  
s. 7, as to  
applications.

2. For section seven of the principal Act the following section shall be substituted, namely:—

"7. (1.) If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not, or have not, been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject matter of the invention, the comptroller may refuse to accept the application, or require that the application, specification, or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the comptroller so directs, bear date as from the time when the requirement is complied with.

"(2.) Where the comptroller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the law officer.

"(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions (if any), the application shall be accepted.

"(4.) The comptroller shall, when an application has been accepted, give notice thereof to the applicant.

"(5.) If, after an application for a patent has been made, but before the patent thereon has been sealed, another application for a patent is made, accompanied by a specification bearing the same or a similar title, the comptroller, if he thinks fit, on the request of the second applicant, or of his legal representative, may, within two months of the grant of a patent on the first application, either decline to proceed with the second application or allow the surrender of the patent, if any, granted thereon."

s. 9, as to  
disclosure of  
reports of  
examiners.

3. In sub-section five of section nine of the principal Act the words "other than an appeal to the law officer under this Act" shall be omitted.

s. 11, as to  
opposition  
to grant of  
patent.

4. In sub-section one of section eleven of the principal Act the words from "or on the ground of an examiner" to "a previous application," both inclusive, shall be omitted, and there shall be added in lieu thereof the following words, namely, "or on the ground that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification."

5. For sub-section ten of section eighteen of the principal Act the following sub-section shall be substituted, namely:—  
“(10.) The foregoing provisions of this section do not apply when, and so long as any action for infringement or proceeding for revocation of a patent is pending.”

s. 18, as to amended specifications.

6. After sub-section one of section fifty-two of the principal Act the following words shall be added; namely,  
“Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.”

s. 52, as to inspection of designs.

7.—(1.) In section fifty-eight of the principal Act the words “or cause to be applied” shall be added after the word “apply.”

s. 58, as to piracy of registered designs.

(2.) To the same section the following words shall be added: “Provided that the total sum forfeited in respect of any one design shall not exceed one hundred pounds.”

8.—(1.) In sub-section two of section sixty-two of the principal Act for the words “the patent office in the prescribed manner” shall be substituted the words “such place and in such manner as may be prescribed.”

s. 62, as to application for registration.

(2.) To the same section of the principal Act the following sub-section shall be added:—

“(6.) Where an applicant for the registration of a trade-mark otherwise than under an international convention is out of the United Kingdom at the time of making the application he shall give the comptroller an address for service in the United Kingdom, and if he fails to do so the application shall not be proceeded with until the address has been given.”

9. In section sixty-three of the principal Act for the words “the application shall be deemed to be abandoned” shall be substituted the words “the comptroller shall give notice of the non-completion to the agent employed on behalf of the applicant, and, if at the expiration of fourteen days from that notice the registration is not completed, shall give the like notice to the applicant, and if at the expiration of the latter fourteen days, or such further time as the comptroller may in special cases permit, the registration is not completed, the application shall be deemed to be abandoned.”

s. 63, as to limit of time for proceeding with application.

10.—(1.) For section sixty-four of the principal Act the following section shall be substituted, namely—

s. 64, as to fancy words.

“64.—(1.) For the purposes of this Act, a trade-mark must consist of or contain at least one of the following essential particulars:

“(a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

“(b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade-mark ; 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.

“(2.) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words, or figures, or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade-mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

“(3.) Provided as follows :

“(i.) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof :

“(ii.) Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade-mark before the thirteenth day of August one thousand eight hundred and seventy-five, may be registered as a trade-mark under this part of this Act.”

s. 67, as to colours of trade-marks.

11. In section sixty-seven of the principal Act the words “or colours” shall be added after the word “colour” in each place where that word occurs.

s. 68, as to advertisement of applications.

12. In section sixty-eight of the principal Act after the word comptroller shall be added the words “unless the comptroller refuse to entertain the application.”

s. 69, as to opposition to registration.

13.—(1.) In sub-section one of section sixty-nine of the principal Act for the words “two months” shall be substituted the words “one month or such further time, not exceeding three months, as the comptroller may allow.”

(2.) In the same sub-section the word “first” shall be omitted.

(3.) In sub-section two of the same section for the words “two months” shall be substituted the words “one month.”

(4.) For sub-sections three and four of the same section the following sub-sections shall be substituted ; namely,

“(3.) If the applicant sends such counter-statement the

“comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall, after hearing the applicant and the opponent, if so required, decide whether the trade-mark is to be registered, but his decision shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the opponent and the comptroller, and may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.

“(4.) The Board of Trade may, however, if it appears expedient, refer the appeal to the Court, and in that event the Court shall have jurisdiction to hear and determine the appeal, and may make such order as aforesaid.

“(5.) If the applicant abandons his application after notice of opposition in pursuance of this section he shall be liable to pay to the opponent such costs in respect of the opposition as the comptroller may determine to be reasonable.

“(6.) Where the opponent is out of the United Kingdom he shall give the comptroller an address for service in the United Kingdom.”

14. In sub-section two of section seventy-two of the principal Act, the following words shall be added at the beginning of the sub-section, namely, “except as aforesaid,” and for the words “so nearly resembling” shall be substituted the words “having such resemblance to.” s. 72, as to restrictions on registration.

15. In section seventy-three of the principal Act the word “exclusive” shall be omitted. s. 73, as to restriction on registration.

16. For sub-section two of section seventy-four of the principal Act the following sub-section shall be substituted; namely, s. 74, as to additions to trade-marks.

“(2.) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade-mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

“Provided that a person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.”

17. For section seventy-five of the principal Act the following section shall be substituted; namely, s. 75, as to effect of registration.

“Application for registration of a trade-mark shall be deemed to be equivalent to public use of the trade-mark, and the date of the application shall for the purposes of this Act be deemed to be, and as from the first day of January one

“thousand eight hundred and seventy-six to have been, the date of the registration.”

Certificate as to exclusive use and costs thereon.

18. After section seventy-seven of the principal Act the following section shall be added and numbered 77A; namely,  
 “In an action for infringement of a registered trade-mark the Court or a judge may certify that the right to the exclusive use of the trade-mark came in question, and if the Court or a judge so certifies, then in any subsequent action for infringement the plaintiff in that action, 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 judge trying the subsequent action certifies that he ought not to have the same.”

Amendments of 46 & 47 Vict. c. 57.

19.—(1.) In sub-section five of section seventy-nine of the principal Act, for the words “the five years” shall be substituted the words “one year.”

s. 79, as to removal of trade-mark from the register.

(2.) To the same sub-section the following words shall be added; namely, “unless it is shown to the satisfaction of the comptroller that the nonpayment of the fee arises from the death or bankruptcy of the registered proprietor, 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.”

s. 81, as to Sheffield marks.

20.—(1.) For sub-section two of section eighty-one of the principal Act the following sub-section shall be substituted:

38 & 39 Vict. c. 91.

“(2.) The Cutlers’ Company shall enter in the Sheffield register, in respect of metal goods as defined in this section, all the trade-marks entered before the first day of January one thousand eight hundred and eighty-nine in respect of metal goods either in the register established under the Trade-Marks Registration Act, 1875, or in the register of trade-marks under this Act, belonging to persons carrying on business in Hallamshire or within six miles thereof. The Cutlers’ Company shall also, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods, all the trade-marks which shall have been assigned by the Cutlers’ Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in either of the said other registers.”

(2.) In sub-sections three and eight of the same section, for the words “on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge,” shall be substituted the words “on metal goods.”

(3.) For sub-section seven of the same section the following sub-section shall be substituted:

(7.) The provisions of this Act and of any general rules



made under this Act with respect to the registration of trade-marks, and all matters relating thereto, shall, subject to the provisions of this section, apply to the registration of trade-marks on metal goods by the Cutlers' Company, and to all matters relating thereto; and this Act and any such general rules shall, so far as applicable, be construed accordingly, with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield Register, for the Comptroller, the Patent Office, and the Register of Trade-Marks, respectively; and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the Comptroller by the Cutlers' Company: Provided that this section shall not affect any life estate and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register.

(4.) To the same section the following sub-sections shall be added; namely,—

(14.) For the purposes of this section the expression "metal goods" means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal.

(15.) For the purpose of legal proceedings in relation to trade-marks entered in the Sheffield register a certificate under the hand of the master of the Cutlers' Company shall have the same effect as the certificate of the comptroller.

21. In section eighty-seven of the principal Act, after the words "subject to," shall be added the words "the provisions of this Act and to." s. 87, as to entry of assignments, &c.

22. In section eighty-eight of the principal Act, after the words "subject to," shall be added the words "the provisions of this Act and to." s. 88, as to inspection.

23. In section ninety of the principal Act, after the words "of the name of any person," shall be added the words "or of any other particulars." s. 90, as to rectification of register.

24. To section ninety-one of the principal Act the following sub-section shall be added; namely, s. 91, as to correction of errors.

"(d) Permit an applicant for registration of a design or trade-mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the design or trade-mark to be registered."

25. After section one hundred and two of the principal Act the following section shall be added and numbered 102A; namely, Proceedings of Board of Trade.

"(1.) All things required or authorised under this Act to

“be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.

“(2.) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

“(3.) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.”

Jurisdiction  
of Lancashire  
Palatine  
Court.

26. After section one hundred and twelve of the principal Act the following section shall be added and numbered 112A; namely,

“The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade-marks the registration whereof is applied for in the Manchester Office, have the like jurisdiction under this Act as Her Majesty’s High Court of Justice in England, and the expression ‘the Court’ in this Act shall be construed and have effect accordingly.

“Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.”

Construction  
of principal  
Act.

27. The principal Act shall, as from the commencement of this Act, take effect subject to the additions, omissions, and substitutions required by this Act, but nothing in this Act shall affect the validity of any act done, right acquired, or liability incurred before the commencement of this Act.

Commence-  
ment of Act.

28. This Act shall, except so far as is by this Act otherwise specially provided, commence and come into operation on the first day of January one thousand eight hundred and eighty-nine.

Short title.

29. This Act may be cited as the Patents, Designs, and Trade-Marks Act, 1888, and this Act and the Patents, Designs, and Trade-Marks Acts, 1883 to 1886, may be cited collectively as the Patents, Designs, and Trade-Marks Acts, 1883 to 1888.

No. 3.

THE TRADE-MARKS REGISTRATION ACTS,  
1875—77.

THE TRADE-MARKS REGISTRATION ACT, 1875.

38 & 39 VICT. c. 91.

An Act to establish a Register of Trade-Marks.

[13th August, 1875.]

*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. *A register of trade-marks as defined by this Act, and of the proprietors thereof shall be established under the superintendence of the Commissioners of Patents, and from and after the first day of July one thousand eight hundred and seventy-six a person shall not be entitled to institute any proceeding to prevent the infringement of any trade-mark as defined by this Act until and unless such trade-mark is registered in pursuance of this Act.*

Registration  
of trade-  
marks.

2. *A trade-mark must be registered as belonging to particular goods, or classes of goods; and when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in such particular goods or classes of goods, and shall be determinable with such goodwill, but subject as aforesaid registration of a trade-mark shall be deemed to be equivalent to public use of such mark.*

Character-  
istics of  
registered  
trade-mark.

3. *The registration of a person as first proprietor of a trade-mark shall be primâ facie evidence of his right to the exclusive use of such trade-mark, and shall, after the expiration of five years from the date of such registration, be conclusive evidence of his right to the exclusive use of such trade-mark, subject to the provisions of this Act as to its connection with the goodwill of a business.*

Title of first  
proprietor of  
a trade-mark.

Title of proprietor claiming by transmitted proprietorship.

4. Every proprietor registered in respect to a trade-mark subsequently to the first registered proprietor shall, as respects his title to that trade-mark, stand in the same position as if his title were a continuation of the title of the first registered proprietor.

Rectification of register.

5. If the name of any person who is not for the time being entitled to the exclusive use of a trade-mark in accordance with this Act, or otherwise in accordance with law, is entered on the register of trade-marks as a proprietor of such trade-mark, or if the registrar refuses to enter on the register as proprietor of a trade-mark the name of any person who is for the time being entitled to the exclusive use of such trade-mark in accordance with this Act, or otherwise in accordance with law, or if any mark is registered as a trade-mark which is not authorized to be so registered under this Act, any person aggrieved may apply in the prescribed manner for an order of the Court that the register may be rectified; and the Court may either refuse such application, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may award damages to the party aggrieved.

Where each of several persons claims to be registered as proprietor of the same trade-mark, the registrar may refuse to comply with the claims of any of such persons until their rights have been determined by the Court, and the registrar may himself submit or require the claimants to submit in the prescribed manner their rights to the Court.

The Court may, in any proceeding under this section, decide any question as to whether a mark is or is not such a trade-mark as is authorised to be registered under this Act, also any question relating to the right of any person who is party to such proceeding to have his name entered on the register of trade-marks, or to have the name of some other person removed from such register, also any other question that it may be necessary or expedient to decide for the rectification of the register.

The Court may direct an issue to be tried for the decision of any question of fact which may require to be decided for the purposes of this section.

Whenever any order has been made rectifying the register the Court shall by its order direct that due notice of such rectification be given to the registrar.

Restrictions on registry of trade-marks.

6. The registrar shall not, without the special leave of the Court, to be given in the prescribed manner, register in respect of the same goods or classes of goods a trade-mark identical with one which is already registered with respect to such goods or classes of goods, and the registrar shall not register with respect to the same goods or classes of goods a trade-mark so nearly resembling a trade-mark already on the register with respect to such goods or classes of goods as to be calculated to deceive.

*It shall not be lawful to register as part of or in combination with a trade-mark any words the exclusive use of which would not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a Court of Equity; or any scandalous designs.*

*7. Subject as aforesaid, a register office shall be established from and after such time (not being later than the first day of January one thousand eight hundred and seventy-six), in such manner and with such officers, and at such salaries, to be paid out of moneys provided by Parliament, as the Lord Chancellor may, with the consent of the Treasury, direct; and the Lord Chancellor may from time to time, with the assent of the Treasury as to fees, make, and, when made, alter, annul, or vary, such general rules as to the registry of trade-marks, and as to notices to be given by advertisement before the registration of trade-marks, and as to the classification of goods for the purposes of this Act, and as to the registration of first and subsequent proprietors of trade-marks, and as to the fees to be charged for registration, and also for the continuance of a trade-mark on the register or otherwise, and as to the removal from the register of any trade-mark, as to notices, and as to the persons entitled to inspect the register, and as to any proceedings to be taken to obtain the judgment or leave of the Court in any matter in which the judgment or leave of the Court is required to be obtained under this Act, and generally for the purpose of carrying into effect this Act, as he may deem expedient.*

Establishment of registry and general rules.

*Any rules made in pursuance of this section shall be laid before both Houses of Parliament if Parliament be then sitting, or if not then sitting, then within ten days from the then next assembling of Parliament, and shall be of the same validity as if they had been enacted by Parliament; provided that if either House of Parliament resolve, within one month after such rules have been laid before such House, that any of such rules ought not to continue in force, any rule in respect of which such resolution has been passed shall, after the date of such resolution, cease to be of any force, without prejudice, nevertheless, to the making of any other rule in its place, or to anything done in pursuance of any such rules before the date of such resolution.*

*8. The certificate of the registrar as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be evidence of such entry having been made, and of the contents thereof, and of such matters and things having been done or left undone.*

Certificate of registrar to be evidence.

*9. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called "the Cutlers' Company"), and the marks or devices (in this Act called "Sheffield corporate*

Provision as to Cutlers' Company and Sheffield corporate marks.

“marks”) assigned or to be assigned by the master, wardens, searchers, and assistants of that company, be it enacted as follows:—

- (1.) Within the prescribed time and in the prescribed manner the Cutlers' Company shall at their own expense deliver to the registrar under this Act copies of all Sheffield corporate marks in force at the time of such delivery:
- (2.) When any person, after the passing of this Act, applies to the said master, wardens, searchers, and assistants to assign to him any mark or device, notice of such application, with a copy of such mark or device, shall, within the prescribed time and in the prescribed manner, be delivered to the registrar under this Act; and such mark or device shall not be assigned until after the expiration of the prescribed period from the giving of such notice. In like manner, when any person applies for the registration under this Act of a trade-mark as belonging to any goods or class of goods specified in section two of the Cutlers' Company's Act of 1860, notice of such application, with a copy of such trade-mark, shall, within the prescribed time and in the prescribed manner, be delivered to the Cutlers' Company; and such trade-mark shall not be registered until after the expiration of the prescribed period from the giving of the last-mentioned notice:
- (3.) Upon the assigning of any such mark or device, or the registration of any such trade-mark as aforesaid, notice of the assignment or registration shall, within the prescribed time and in the prescribed manner, be given to the registrar under this Act, or to the Cutlers' Company, as the case may be:
- (4.) The registrar under this Act, without the special leave of the Court, to be given only in cases where the applicant proves his right, shall not in respect of any goods or classes of goods with respect to which a Sheffield corporate mark shall have been assigned and actually used, and of which mark a copy or description or notice of the assigning whereof shall have been delivered or given to the registrar as aforesaid, register a trade-mark identical with such Sheffield corporate mark, or so nearly resembling the same as to be calculated to deceive:
- (5.) The master, wardens, searchers, and assistants of the Cutlers' Company, shall not assign to any person a mark or device identical with any trade-mark registered under this Act, and notice of the registration whereof shall have been given to the Cutlers' Company as aforesaid, or so nearly resembling the same as to be calculated to deceive:

(6.) *Any person to whom a Sheffield corporate mark legally belongs shall be entitled to have the same mark registered also as a trade-mark under this Act, in respect of any particular goods or classes of goods, in the same manner and upon the same terms and conditions in and upon which he might have registered the same if it were not a Sheffield corporate mark:*

(7.) *Nothing in this Act shall prejudice or affect the rights and privileges of the Cutlers' Company, nor, save as is otherwise in this Act expressly provided, shall any of the provisions of this Act apply to or in the case of any Sheffield corporate mark.*

10. *For the purposes of this Act—*

Defini-  
tions (a).

*A trade-mark consists of one or more of the following essential particulars; that is to say,*

*A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or*

*A written signature or copy of a written signature of an individual or firm; or*

*A distinctive device, mark, heading, label, or ticket;*

*and there may be added to any one or more of the said particulars any letters, words, or figures, or combination of letters, words, or figures; also*

*Any special and distinctive word or words or combination of figures or letters used as a trade-mark before the passing of this Act may be registered as such under this Act.*

*“Prescribed” means prescribed by general rules made in pursuance of this Act; and*

*“Court” means any of Her Majesty's superior courts of law or equity at Westminster, or any Court to which the jurisdiction of such Courts may be transferred, or any one or more of such Courts which may be declared to be the Court for the purposes of this Act by such general rules as aforesaid; but the provisions of this Act conferring a special jurisdiction on the Court as above defined shall not, excepting so far as such jurisdiction extends, affect the jurisdiction of any Court in Scotland or Ireland in causes, actions, suits, or proceedings relating to trade-marks; and if the register requires to be rectified in consequence of any proceedings in any such Court in Scotland or Ireland, due notice of such requirements shall be given to the registrar, and he shall rectify the register accordingly.*

11. *This Act may be cited for all purposes as the Trade-Marks Registration Act, 1875.*

Short title  
of Act.

(a) See sect. 64 of the present Act, ante, p. 552.

THE TRADE-MARKS REGISTRATION AMENDMENT  
ACT, 1876.

39 & 40 VICT. c. 33.

An Act for the Amendment of the Trade-Marks Registration  
Act, 1875. [24th July, 1876.]

38 & 39 Vict.  
c. 91.

*Whereas by the Trade-Marks Registration Act, 1875, in this Act referred to as the principal Act, it is provided that from and after the first day of July one thousand eight hundred and seventy-six, a person shall not be entitled to institute any proceeding to prevent the infringement of any trade-mark as defined by the principal Act until and unless such trade-mark is registered in pursuance of that Act :*

*And whereas by reason of the number of trade-marks, and especially by reason of the difficulties attending the registration of trade-marks in relation to textile fabrics, it has been found impossible to complete the registration of existing trade-marks within the time specified by the said section ; and it is therefore expedient to prolong the time for the completion of such registration as aforesaid, and otherwise to amend the principal Act :*

*Be it therefore 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 :—*

Amendment  
of s. 1 of the  
principal Act.

1. *There shall be repealed so much of section one of the principal Act as provides that from and after the first day of July one thousand eight hundred and seventy-six, a person shall not be entitled to institute any proceeding to prevent the infringement of any trade-mark as defined by that Act until and unless such trade-mark is registered in pursuance of that Act, and in place thereof be it enacted that—*

*From and after the first day of July one thousand eight hundred and seventy-seven, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade-mark as defined by the principal Act until and unless such trade-mark is registered in pursuance of that Act, or until and unless, with respect to any device, mark, name, combination of words, or other matter or thing in use as a trade-mark before the passing of the principal Act, registration thereof as a trade-mark under the principal Act shall have been refused as hereinafter is mentioned.*

Saving of  
marks and  
devices not  
capable  
of being

2. *When an application by any person to register as a trade-mark a device, mark, name, word, combination of words, or other matter or thing proposed for registration as a trade-mark, which has been in use as a trade-mark before the passing of the recited*



*Act, has been refused, it shall be the duty of the registrar, on request, and on payment of the prescribed fee, to give to the applicant a certificate of such refusal, and a certificate so granted shall be conclusive evidence of such refusal.* registered under Act.

*3. This Act may be cited for all purposes as the Trade-Marks Registration Amendment Act, 1876.* Short title.

## THE TRADE-MARKS REGISTRATION EXTENSION ACT, 1877.

40 & 41 VICT. c. 37.

An Act for extending the Time for the Registration of Trade-Marks, in so far as relates to Trade-Marks used in Textile Industries. [6th August, 1877.]

*Whereas by section one of the Trade-Marks Registration Amendment Act, 1876, it is provided that from and after the first day of July one thousand eight hundred and seventy-seven, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade-mark as defined by the Trade-Marks Registration Act, 1875 (referred to in such Amendment Act and in this Act as the principal Act), until and unless such trade-mark is registered in pursuance of the principal Act, or until and unless, with respect to any device, mark, name, combination of words, or other matter or thing in use as a trade-mark before the passing of the principal Act, registration thereof as a trade-mark under the principal Act shall have been refused, as is in the said Act thereafter mentioned:* 39 & 40 Vict. c. 33.

*And whereas by reason of the difficulties attending the registration of trade-marks used in the textile industries it has been found impossible to complete the registration of such trade-marks within the time specified by the said section, and it is therefore expedient to prolong such time as aforesaid:* 38 & 39 Vict. c. 91.

*Be it therefore 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. In so far as relates to the registration of trade-marks used in the textile industries, but not further or otherwise, section one of the Trade-Marks Registration Amendment Act, 1876, shall be construed as if for the words "from and after the first day of July one thousand eight hundred and seventy-seven" there were* Extension of time for registration of trade-marks used in textile industries.

*substituted the words "from and after the first day of January one thousand eight hundred and seventy-eight, or such further time as Her Majesty may by Order in Council determine."*

Definition of  
"trade-marks  
used in the  
textile in-  
dustries."

*2. The expression in this Act "Trade-marks used in the textile industries" means the trade-marks relating to goods comprised in classes 23 to 35, both inclusive, of the First Schedule to the rules under the Trade-Marks Registration Acts, 1875—76, dated September, 1876.*

Short title  
of Act.

*3. This Act may be cited for all purposes as "The Trade-Marks Registration Extension Act, 1877," and this Act and the Trade-Marks Registration Amendment Act, 1876, and the Trade-Marks Registration Act, 1875, may be cited together as "The Trade-Marks Registration Acts, 1875—77."*

No. 4.

TRADE-MARKS RULES, 1890.



By virtue of the provisions of the Patents, Designs, and Trade-Marks Acts, 1883 to 1888, the Board of Trade do hereby make the following Rules:—

*Preliminary.*

1. These Rules may be cited as the Trade-Marks Rules, 1890, and shall come into operation from and immediately after the 31st day of December, 1889.

*Interpretation.*

2. In the construction of these Rules any words herein used defined by the said Acts shall have the meanings thereby assigned to them respectively. Interpreta-  
tion.

*Fees.*

3. The fees to be paid in pursuance of the said Acts, so far as they relate to trade-marks, shall be the fees specified in the First Schedule hereto. Fees.

*Forms.*

4. The Form F in the First Schedule to the Patents, Designs, and Trade-Marks Act, 1883, shall be altered or amended by the substitution therefor of the Form F in the Second Schedule to these Rules. Forms.

5. (1) An application for registration of a trade-mark shall be made in the Form F in the Second Schedule to these Rules; (2) the remaining forms in such schedule may be used in all cases to which they are applicable.

*Classification of Goods.*

6. For the purposes of trade-marks registration and of these Rules goods are classified in the manner appearing in the Third Schedule hereto. Classification  
of goods.

If any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the Comptroller.

*Application for Registration.*

- Application by firm.** 7. An application for registration of a trade-mark, if made by any firm or partnership, may be signed by some one or more members of such firm or partnership, as the case may be.  
If the application be made by a body corporate it may be signed by the secretary or other principal officer of such body corporate.
- Address of application.** 8. Where a trade-mark for registration of which application is made is in classes 23, 24 or 25 of the Third Schedule to these Rules, the applicant shall address and send his application to the Manchester Trade-Marks Branch, 48, Royal Exchange, Manchester. Other applications (except applications which under Section 81 of the said Acts should be made to the Cutlers' Company) shall be addressed and sent to the Patent Office, Trade-Marks Branch, 25, Southampton Buildings, Chancery Lane, London, W.C.
- Agency.** 9. An application for registration and all other communications between the applicant and the Comptroller may be made by or through an agent duly authorised to the satisfaction of the Comptroller.
- Acknowledgment of application.** 10. On receipt of the application the Comptroller shall furnish the applicant with an acknowledgment thereof.
- Contents of form of application.** 11. Where application is made to register a trade-mark which was used by the applicant or his predecessors in business before the 13th of August, 1875, the application shall contain a statement of the time during which and of the person by whom it has been so used in respect of the goods mentioned in the application.
- Size, &c., of documents.** 12. Subject to any other directions that may be given by the Comptroller, all applications, notices, counter-statements, representations of marks, papers having representations affixed, or other documents required by the said Acts or by these Rules to be left with or sent to the Comptroller or to the Cutlers' Company, shall be upon foolscap paper of a size of 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half.
- Representations of trade-mark.** 13. Subject to any other directions that may be given by the Comptroller, three representations of each trade-mark, except in the case of marks applied for in classes 23 to 35 inclusive, must be supplied upon paper of the size aforesaid, and must be of a durable nature. One of such representations must be made upon or affixed to the form of application, the others upon separate half sheets. In the case of trade-marks exceeding the limits of the foolscap paper of the size aforesaid, such marks may be pasted and folded upon the sheets of foolscap.

In the case of marks applied for in classes 23 to 35 inclusive, the applicant shall supply four representations of each mark for each class.

Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade-mark may be sent either of full size or on a reduced scale, and in such form as the Comptroller may think most convenient.

The Comptroller may, if dissatisfied with the representation of a trade-mark, require a fresh representation, either before he proceeds with the application or before he registers the trade-mark.

The Comptroller may also, in exceptional cases, deposit in the Patent Office a specimen or copy of any trade-mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

14. When an application relates to a series of trade-marks differing from one another in respect of the particulars mentioned in section 66 of the said Acts, a representation of each trade-mark of the series shall be made or affixed upon the form of application and also upon each of the separate half-sheets of paper aforesaid. Representations of a series of trade-marks.

15. Wherever a mark consists of or includes words printed in other than Roman character, there shall be given at the foot or on the back of each representation a translation of such words, signed by the applicant or his agent. Translation of foreign characters.

16. Any application, statement, notice, or other document authorized or required to be left, made, or given at the Patent Office, or to the Comptroller, or to any other person under these Rules, may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post. Mode of sending notices, &c.

In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

*Exercise of Discretionary Powers.*

17. Before exercising any discretionary power given to the Comptroller by the said Acts adversely to the applicant for registration of a trade-mark, the Comptroller shall (if so required by the applicant within one month from the date of the Comptroller's objection) give the applicant an opportunity of being heard personally or by his agent by sending the applicant ten days' notice of a time when he may be so heard. Hearing by Comptroller.

18. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant shall Notice of wish to be heard

before Comptroller. notify to the Comptroller whether or not he intends to be heard upon the matter.

Notification of decision. 19. The decision of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified to the applicant.

*Appeal to the Board of Trade.*

Notice of appeal. 20. When any person intends to appeal to the Board of Trade from a decision of the Comptroller in any case in which an appeal is given by the said Acts, he shall, within one month from the date of the decision appealed against, leave at the Patent Office, Trade-Marks Branch, a notice of such his intention.

Grounds of appeal to be stated. 21. The notice shall be accompanied by a statement in writing of the grounds of appeal, and of the appellant's case in support thereof.

Transmission of notice. 22. A copy of the notice of intention to appeal, accompanied by a statement of the case, shall also be forthwith sent to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London; and where there has been an opposition before the Comptroller, to the opponent or applicant, as the case may be.

Directions by Board. 23. The Board of Trade may thereupon give such directions (if any) as they may think fit with respect to evidence, or otherwise, for the purpose of the hearing of the appeal by the Board of Trade, or for the purpose of their referring the appeal to the Court to hear and determine the same.

Hearing of appeal. 24. Where the Board of Trade intend to hear the appeal, seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing, shall be given to the Comptroller and to the appellant, and where there has been an opposition before the Comptroller, to the opponent or applicant, as the case may be.

No appeal unless notice duly given. 25. No appeal shall be entertained of which notice has not been given within one month from the date of the decision appealed against, or such further time as the Comptroller may allow, except by special leave of the Board of Trade.

Evidence on appeal. 26. Subject to the directions and leave of the Board of Trade, the evidence to be used on an appeal to the Board of Trade in the matter of an opposition shall be the same as that used at the hearing before the Comptroller.

*Advertisement of Application.*

Advertisement of application. 27. Every application shall be advertised by the Comptroller in the official paper, during such times and in such manner as the Comptroller may direct, unless he refuse to entertain the application.

If no representation of the trade-mark be inserted in the official paper in connection with the advertisement of an application, the Comptroller shall refer in such advertisement to the place or places where a specimen or representation of the trade-mark is deposited for exhibition.

28. The official paper for the purposes of these Rules shall be some paper published under the direction of the Board of Trade, or such other paper as such Board may from time to time direct. Definition of official paper.

29. For the purposes of such advertisement the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of the trade-mark, of such dimensions as may from time to time be directed by the Comptroller, or with such other information or means of advertising the trade-mark as may be required by the Comptroller; and the Comptroller, if dissatisfied with the block or electrotype furnished by the applicant or his agent, may require a fresh block or electrotype before proceeding with the advertisement. Means of advertising trade-mark to be supplied to official paper.

30. When an application relates to a series of trade-marks differing from one another in respect of the particulars mentioned in section 66 of the said Acts, the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of any or of each of the trade-marks constituting the series; and the Comptroller may, if he thinks fit, insert with the advertisement of the application a statement of the manner in respect of which the several trade-marks differ from one another. Advertisement of series.

### *Opposition to Registration.*

31. (1.) A notice of opposition to the registration of a trade-mark shall state the ground or grounds on which the opponent intends to oppose the registration, and be signed by him or by his solicitor, and shall also contain an address for service in the United Kingdom, and shall be in the Form J in the Second Schedule to these Rules, with such variations as circumstances may require. Notice of opposition.

(2.) Where the ground, or one of the grounds, of opposition is that the applicant is applying for the registration of a trade-mark identical with one already on the register with respect to the same goods or description of goods, or having such resemblance to a trade-mark already on the register with respect to such goods or description of goods as to be calculated to deceive, the notice shall state the date of registration, and the number on the register of such trade-mark already on the register. Opposition of the ground of trade-mark already on the register.

(3.) Within two months after the expiration of one month, or such further time not exceeding three months, as the Comptroller may direct, the opponent shall file with the Comptroller such evidence as he may think fit to produce in support of his opposition. Opponent's evidence.

troller may allow from the date of the advertisement of the application, the opponent shall leave at the Patent Office, Trade-Marks Branch, such evidence by way of statutory declaration as he may desire to adduce in support of his opposition, and deliver to the applicant copies thereof.

Applicant's evidence.

(4.) \* Within one month from the delivery of the opponent's copies of his statutory declarations the applicant shall leave at the Patent Office, Trade-Marks Branch, his evidence by way of statutory declaration in answer, and deliver to the opponent copies thereof, and within seven days from such delivery the opponent shall leave at the Patent Office, Trade-Marks Branch, his evidence by way of statutory declaration in reply, and deliver to the applicant copies thereof. Such last-mentioned evidence shall be confined to matters strictly in reply.

Evidence in reply.

Closing of evidence.

(5.) No further evidence shall be left on either side except by leave of the Comptroller upon the written consent of the parties duly notified to him, or by special leave of the Comptroller given on an application made to him.

Applications for leave to adduce further evidence.

(6.) Either party making such application shall give notice thereof to the opposite party, who shall be entitled to oppose the application.

Appointment of time for hearing.

(7.) On the completion of the evidence the Comptroller shall, upon application by either party, upon Form E in the Second Schedule to these Rules, and upon payment of the prescribed fee, appoint a time for the hearing of the case, and shall give the parties at least seven days' notice of such appointment.

Disallowance of opposition in certain cases.

(8.) On the hearing of the case no opposition shall be allowed in respect of any ground not stated in the notice of opposition, and where the ground or one of the grounds of opposition is that registration is being applied for in respect of a trade-mark identical with one already on the register with respect to the same goods or description of goods, or having such resemblance to a trade-mark already on the register with respect to such goods or description of goods as to be calculated to deceive, the opposition shall not be allowed upon such ground, unless the date of registration and the number on the register of the said trade-mark already on the register have been duly specified in the notice of opposition.

Decision to be notified to parties.

(9.) The decision of the Comptroller in the case shall be notified to the parties.

#### *Register of Trade-Marks.*

Time of registration of trade-marks.

32. As soon as may be after the expiration of one month from the date of the advertisement of the application, the

\* The counter-statement required by the Acts must also be delivered by the applicant within one month from the date of the receipt of the opponent's notice of opposition.



Comptroller shall, subject to opposition to the application and the determination thereof, if he is satisfied that the applicant is entitled to registration, and on payment of the prescribed fee, enter the name, address, and description of the applicant in the Register of Trade-Marks as the registered proprietor of the trade-mark in respect of the particular goods or classes of goods described in his application.

33. In case of the death of any applicant for a trade-mark after the date of his application, and before the trade-mark applied for has been entered on the register, the Comptroller, after the expiration of the prescribed period of advertisement, may, on being satisfied of the applicant's death, enter on the register, in place of the name of such deceased applicant, the name, address, and description of the person owning the goodwill of the business, if such ownership be proved to the satisfaction of the Comptroller.

Where applicant dies before registration, the trade mark may be registered for successor to goodwill of business.

34. Upon registering any trade-mark the Comptroller shall enter in the register the date on which the application for registration was received by the Comptroller, and such other particulars as he may think necessary.

Entries to be made in register.

35. The Comptroller shall send notice to the applicant of the registration of his trade-mark, together with a reference to the advertisement of such trade-mark in the official paper.

Notice of registration.

36. Where a person becomes entitled to a registered trade-mark by assignment, transmission, or other operation of law, a request for the entry of his name in the register as proprietor of the trade-mark shall be addressed to the Comptroller, and left at the Patent Office, Trade-Marks Branch.

Request by subsequent proprietor.

37. Such request shall in the case of an individual be made and signed by the person requiring to be registered as proprietor, and in the case of a firm or partnership by some one or more members of such firm or partnership, or in either case by his or their agent respectively duly authorised to the satisfaction of the Comptroller, and in the case of a body corporate by their agent, authorised in like manner.

Signature of request.

38. Every such request shall state the name, address, and description of the person claiming to be entitled to the trade-mark (hereinafter called the claimant), and the particulars of the assignment, transmission, or other operation of law, by virtue of which he requires to be entered in the register as proprietor, so as to show the manner in which, and the person or persons to whom, the trade-mark has been assigned or transmitted, and so as to show further that it has been so assigned or transmitted in connection with the goodwill of the business concerned in the particular goods or classes of goods for which the trade-mark has been registered.

Contents of request.

39. Every such request shall be accompanied by a statutory declaration to be thereunder written, verifying the several

Declaration to accompany request.

statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the trade-mark as claimed by such request.

Further proof of title if required.

40. The claimant shall furnish to the Comptroller such other proof of title and of the existence and ownership of such goodwill as aforesaid as he may require for his satisfaction.

Body corporate.

41. A body corporate may be registered as proprietor by its corporate name.

Definition of applicant.

42. The term "applicant" in Rules 17, 18, and 19 shall include each of several persons claiming to be registered as proprietor of the same trade-mark.

Comptroller may require statement from rival claimants.

43. Whether all such persons so claiming require to be heard before the Comptroller or not, he may, before exercising the discretion vested in him by section 71 of the said Acts, require such persons, or any or either of them, to submit a statement in writing within a time to be notified by him, or to attend before him and make oral explanations with respect to such matters as the Comptroller may require.

Submission to Court of conflicting claims.

44. Where each of several persons claims to be registered as proprietor of the same trade-mark, and the Comptroller refuses to register any of them until their rights have been determined according to law, the manner in which the rights of such claimants may be submitted to the Court by the Comptroller, or if the Comptroller so require, by the claimants, shall, unless the Court otherwise order, be by a special case; and such special case shall be filed and proceeded with in like manner as any other special case submitted to the Court, or in such other manner as the Court may direct.

Settlement of special case.

45. Where the special case is to be submitted by the parties it may be agreed to by them, or if they differ, may be settled by the Comptroller, on payment of the prescribed fees.

Order of Court.

46. Where an order has been made by the Court in either of the following cases, viz. :—

- (a) allowing an appeal under section 62 of the said Acts;
- (b) disallowing an opposition to registration under section 69; or,
- (c) under the provisions of sections 72, 90, or 92 of the said Acts,

the person in whose favour such order has been made, or such one of them, if more than one, as the Comptroller may direct, shall forthwith leave at the Patent Office, Trade-Marks Branch, an office copy of such order. The register shall thereupon be rectified or altered, or the purport of such order shall otherwise be duly entered in the register, as the case may be.

Removal of mark from register.

47. Where a trade-mark has been removed from the register for nonpayment of the prescribed fee or otherwise, under the

provisions of section 79 of the said Acts, the Comptroller shall cause to be entered in the register a record of such removal and the cause thereof.

48. If the registered proprietor of a trade-mark send to the Comptroller, together with the prescribed fee, notice of an alteration in his address, the Comptroller shall alter the register accordingly. Alteration of address in register.

49. Four clear days' notice of every application to the Court under section 90 of the said Acts, for rectification of the register, shall be given to the Comptroller. Notice to Comptroller of applications to rectify register.

50. Whenever an order is made by the Court for making, expunging, or varying an entry from or in the register, the Comptroller shall, if he thinks that such rectification or variation should be made public, and at the expense of the person applying for the same, publish, by advertisement or otherwise, and in such manner as he thinks just, the circumstances attending the rectification or variation in the register. Publication of rectification or variation of register.

51. Whenever the registered proprietor of any trade-mark intends to apply for the leave of the Court to add to or to alter such trade-mark, under section 92 of the said Acts, the notice to be given to the Comptroller shall be given fourteen days at least before such application. If leave be granted on such application the applicant shall forthwith supply to the Comptroller such a number of representations of the trade-mark as altered as he may deem sufficient. Notice to Comptroller of order of Court for alteration of trade-mark under section 92 of Acts.

*Inspection of Register.*

52. The Register of Trade-Marks shall be open to the inspection of the public, on payment of the prescribed fee, on every week day, between the hours of ten and four, except on the days and at the times following:— Hours of inspection.

- (a) Christmas Day, Good Friday, the day observed as Her Majesty's Birthday, days observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England; or
- (b) Days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office;
- (c) Times when the register is required for any purpose of official use.

*Power to Dispense with Evidence.*

53. Where under these rules any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Comptroller, or at the Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign Dispensing with evidence.

such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

*Amendments.*

Amendment  
of documents.

54. Any document or drawing or other representation of a trade-mark for the amending of which no special provision is made by the said Acts may be amended, and any irregularity in procedure which in the opinion of the Comptroller may be obviated without detriment to the interests of any person may be corrected, if the Comptroller think fit, and on such terms as he may direct.

*Enlargement of Time.*

Comptroller  
may enlarge  
time.

55. The time prescribed by these rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Comptroller, if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct.

*Cutlers' Company.*

Sheffield ap-  
plications in  
duplicate.

56. All applications to the Cutlers' Company for registration of a trade-mark, under section 81 of the said Acts, shall be in duplicate, accompanied by the prescribed fees and representations.

Notice to  
Comptroller.

57. The Cutlers' Company shall, within seven days of the receipt by them of an application to register a trade-mark, send the Comptroller one copy of such application, by way of notice thereof, together with two representations of the mark for each class for which the applicant seeks registration.

Time within  
which Comp-  
troller may  
object to  
application  
made at  
Sheffield.

58. (1.) The time within which the Comptroller shall give notice to the Cutlers' Company of any objection he may have to the acceptance of an application for registration made to the said company shall be one month from the date of the receipt by the Comptroller of the notice from the said company of the making of the application.

Advertis-  
ment of  
application  
made at  
Sheffield.

(2.) If no such objection is made by the Comptroller, the Cutlers' Company shall require the applicant to send the Comptroller a wood block or electrotype as the Comptroller may direct, and the Comptroller shall, if satisfied with such wood block or electrotype, advertise the application in the same manner as an application made to him at the Patent Office.

Manner of  
notifying to  
Cutlers' Com-  
pany applica-

(3.) The manner in which the Comptroller shall notify to the Cutlers' Company an application and proceedings thereon made as mentioned in sub-section 8 of section 81 of the said

Acts shall be by sending to the Cutlers' Company a copy of the official paper containing the application of which notice is required to be given, with a note distinguishing such application. tion received by Comptroller.

59. The provisions of these rules as to forms, representations, the proceedings on opposition to registration, registration, and all subsequent proceedings shall, as far as the circumstances allow, apply to all applications to register made to the Cutlers' Company, and to all proceedings consequent thereon. Similarity of proceedings at London and at Sheffield.

*Certificates.*

60. The Comptroller, when required to give a certificate as to any entry, matter, or thing which he is authorized by the said Acts or any of these rules to make or do, may, on receipt of a request in writing, and on payment of the prescribed fee, give such certificate; but every certificate of registration shall have specified on the face thereof whether the same is to be used in legal proceedings or for the purpose of obtaining registration in a foreign country, or for purposes other than use in legal proceedings or obtaining registration in a foreign country. Certificate by Comptroller.

*Declarations.*

61. The statutory declarations required by the said Acts and these rules, or used in any proceedings thereunder, shall be made and subscribed as follows:— Manner in which, and persons before whom, declaration is to be taken.

- (a) In the United Kingdom, before any justice of the peace, or any commissioner or other officer authorized by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding;
- (b) In any other part of Her Majesty's dominions, before any court, judge, justice of the peace, or any officer authorized by law to administer an oath there for the purpose of a legal proceeding; and
- (c) If made out of Her Majesty's dominions, before a British Minister, or person exercising the functions of a British Minister, or a Consul, Vice-Consul, or other person exercising the functions of a British Consul, or a notary public, or before a judge or magistrate.

62. Any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal or signature of any person hereby authorized to take such declaration in testimony of such declaration having been made and subscribed before him, may be admitted by the Comptroller without proof of the genuineness of any such seal or signature, or of the official character of such person or his authority to take such declaration. Notice of seal of officer taking declaration to prove itself.

*Repeal.*

Previous rules  
repealed.

63. All general rules as to the registration of trade-marks heretofore made by the Board of Trade under the Patents, Designs, and Trade-Marks Acts, 1883 to 1888, and in force on the 31st day of December, 1889, shall be, and they are hereby repealed, as from that date, without prejudice, nevertheless, to anything done under such rules, or to any application pending at the said date.

M. E. HICKS-BEACH,  
President of the Board of Trade.

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SCHEDULES.

FIRST SCHEDULE.

FEEs.

	£	s.	d.
1. On application to registrar a trade-mark for one or more articles included in one class .....	0	5	0
2. For registration of a trade-mark for one or more articles included in one class .....	1	0	0
3. For registering a series of trade-marks, for every additional representation after the first in each class .....	0	5	0
4. On appeal from Comptroller to Board of Trade—by appellant .....	1	0	0
5. On notice of opposition for each application opposed—by opponent .....	1	0	0
6. On hearing by Comptroller—by applicant and by opponent respectively .....	1	0	0
7. On application to register a subsequent proprietor in cases of assignment or transmission, the first mark .....	1	0	0
8. For every additional mark assigned or transmitted at the same time .....	0	2	0
9. For continuance of mark at expiration of 14 years .....	1	0	0
10. Additional fee where fee is paid within three months after expiration of 14 years .....	0	10	0
11. Additional fee for restoration of trade-mark where removed for nonpayment of fee .....	1	0	0
12. For altering address on the register, for every mark .....	0	5	0
13. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged .....	0	10	0
14. For cancelling the entry or part of the entry of a trade-mark upon the register, on the application of the owner of such trade-mark .....	0	5	0
15. On request to Comptroller to correct a clerical error, or permit amendment of application under section 91 .....	0	5	0
16. For certificate of refusal to register a trade-mark under section 77 .....	1	0	0
17. For certificate of refusal at the same time for more than one trade-mark, for each additional trade-mark after the first .....	0	10	0

18. For certificate of registration to be used in legal proceedings .....	£	s.	d.
	1	0	0
19. For certificate of registration to be used for the purpose of obtaining registration in foreign countries .....	0	5	0
20. For certificate of Comptroller under section 96, other than certificate of registration to be used in legal proceedings, or for the purpose of obtaining registration in a foreign country .....	0	5	0
21. For copy of notification of registration .....	0	2	0
22. Settling a special case by Comptroller .....	2	0	0
23. For inspecting register, for every quarter of an hour ....	0	1	0
24. For making a search amongst the classified representations of trade-marks, for every quarter of an hour .....	0	1	0
25. For office copy of documents, for every 100 words (but never less than one shilling) .....	0	0	4
26. For certifying office copies, MS. or printed .....	0	1	0
27. In cases where the wood block or electrotype of the trade-mark exceeds 2 inches in breadth or depth, or in breadth and depth—for every inch or part of an inch over 2 inches in breadth .....	0	2	0
For every inch or part of an inch over 2 inches in depth ..	0	2	0
28. Manchester Trade-Marks Office .....	Same as above		
29. Sheffield Marks .....	Same as above		
30. On appeal from Cutlers' Company, Sheffield, to Comptroller .....	1	0	0

M. E. HICKS-BEACH,  
*President of the Board of Trade.*

Approved,

FRANK MOWATT,  
*Assistant Secretary for the  
Lords Commissioners of Her Majesty's Treasury.*

SECOND SCHEDULE.

FORMS.

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PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.)

Form E.

*Form of Application for Hearing by the Comptroller.*

In Cases of Opposition, &c.

SIR,

of (a) hereby apply to be heard in reference to  
and request that I may receive due notice of the day fixed for the  
hearing.

Sir, your obedient Servant,

*To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.*

(a) Here insert full address.

PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.)

Form F.

*Application for Registration of Trade-Mark.*

One representation to be fixed within this square, and  
two others to be sent on separate half sheets of foolscap.

Representations of a larger size may be folded, but  
must be mounted upon linen and affixed thereto.

You are hereby requested to register the accompanying Trade-Mark in



Class \_\_\_\_\_, in respect of (a) \_\_\_\_\_ in the name of (b) \_\_\_\_\_ who claims to be the proprietor thereof (c).

The essential particulars of the Trade-Mark are the following (d) and \_\_\_\_\_ disclaim any right to the exclusive use of the added matter.

(Signed) \_\_\_\_\_ (e).

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_ .  
To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

[Or where the application is for a mark in Classes 23, 24, or 25.]  
To the Comptroller, Manchester Trade Marks Branch,  
48, Royal Exchange, Manchester.

NOTE.—If the Trade-Mark has been in use in respect of the goods since before August 13th, 1875, state length of such user.

(a) Only goods contained in one and the same class should be set out here. A separate application form is required for each separate class.

(b) Here insert legibly the full name, address, and description of the individual firm or company. Add trading style (if any).

(c) Alter to "claim to be the proprietors thereof" in the case of a firm or company.

(d) See sub-sections (2) and (3) of section 64 of the Act.

(e) To be signed by the applicant or by an agent duly authorized.

**PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.**

**Form G.**

*Additional Representation of Trade-Mark, to accompany Application for Registration.*

One representation of the Trade-Mark to be affixed within this square.

It must correspond *exactly*, in all respects, with the representation affixed to the Application Form.

Any representation of a larger size than foolscap may be folded, but must then be mounted upon linen and affixed thereto.

Two of these ADDITIONAL REPRESENTATIONS of the Trade-Mark must accompany *each* Form of Application.

In the case of a Trade-Mark claimed in one of the CLASSES 23 to 35, THREE of these ADDITIONAL REPRESENTATIONS of the Mark must accompany the Form of Application.

## Appendix—No. 4.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.) Form H.

*Form of Appeal from the Comptroller 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 Comptroller of the day of 18, whereby he (c)

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

(Signed) \_\_\_\_\_.

Dated day of 18 .

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London, and to  
[Name of Respondent to Appeal.]

(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.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.) Form I.

*Fee for Registration of a Trade-Mark.*

SIR,

In reply to your request I hereby transmit the prescribed fee for the registration of the Trade-Mark No. in Class

I am, Sir, your obedient Servant,

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.) Form J.

*Notice of Opposition to Application for Registration.*

[To be accompanied by an unstamped duplicate.]

In the matter of an application, No. by of  
I, (a) hereby give notice of my intention to oppose the registration of the Trade-Mark advertised under the above number for Class in the Trade-Marks Journal of the day of 18, No. , page

The grounds of opposition are as follows:— (b)

(Signed) \_\_\_\_\_.

Dated the day of 18 .

Address for service:—

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) Here state full name and full address.

(b) See pp. 78 and 635.

PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.)

FORM K.

*Request to Enter Name of Subsequent Proprietor of Trade-Mark upon the Register, with Declaration in support thereof.*

I, (a) hereby request that you will enter (b) name (c) in the Register of Trade-Marks as proprietor of the Trade-Mark No. in Class

(d) entitled to the said Trade-Mark and to the goodwill of the business concerned in the goods with respect to which the said Trade-Mark is registered.

(e) And I do solemnly and sincerely declare that the above several statements are true, and the particulars above set out comprise every material fact and document affecting the proprietorship of the said Trade-Mark as above claimed.

(f) And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at this day of (g)———  
18 .

}  
Before me,  
(h)———.

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) Or we. Here insert name, full address, and description.

(b) My or our.

(c) Or names.

(d) I am, or we are.

(e) Here state whether Trade-Mark transmitted by death, marriage, bankruptcy, or other operation of law, and if entitled by assignment state the particulars thereof as e. g., "by deed dated the day of 18 , made between So-and-So of the one part."

(f) This paragraph is not required when the declaration is made out of the United Kingdom.

(g) To be signed here by the person making the declaration.

(h) Signature and title of the authority before whom the declaration is made.

PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.)

FORM L.

*Request for Certificate of Refusal to Register a Trade-Mark in use before 13th August, 1875.*

In the matter of an application for registration of an old 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 , 18 .

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) Signature of applicant.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.)

Form M.

*Notice of Application for Alteration of Address on Register of Trade-Marks.*

In the matter of the Trade-Mark, No. \_\_\_\_\_ registered in  
Class \_\_\_\_\_

SIR,

NOTICE is hereby given that I \_\_\_\_\_, of \_\_\_\_\_, the registered proprietor of the Trade-Mark numbered as above, desire that my address on the Register of Trade-Marks be altered to

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(a) \_\_\_\_\_.

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) Signature of proprietor.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.)

Form N.

*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 \_\_\_\_\_, 18 \_\_\_\_, it was directed that the entry on the Register of Trade-Marks in respect of the Trade-Mark numbered as above should be rectified in the manner therein specified.

An office copy of the Order of the Court is enclosed herewith.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(a) \_\_\_\_\_.

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

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

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.)

Form O.

*Form of Application by Proprietor of Registered Trade-Mark to Cancel Entry on Register.*

Trade-Mark No. \_\_\_\_\_, Class \_\_\_\_\_, advertised in Trade-Marks Journal No. \_\_\_\_\_, page \_\_\_\_\_

Name of registered proprietor or firm \_\_\_\_\_, place of business \_\_\_\_\_

I, the undersigned, \_\_\_\_\_, of \_\_\_\_\_, [or I, the undersigned, \_\_\_\_\_, a

member of the firm of \_\_\_\_\_, of \_\_\_\_\_, on behalf of my said firm] apply that the entry upon the Register of the Trade-Marks in Class of the Trade-Mark No. \_\_\_\_\_ may be cancelled.

The \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_ . (Signed) \_\_\_\_\_.

This is the statement marked "O" referred to in the Declaration of \_\_\_\_\_, made before me the \_\_\_\_\_ of \_\_\_\_\_, 18 \_\_\_\_ .

PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

Form P.

*Form of Declaration in support of Application for Cancellation of Trade-Mark by Owner.*

I, \_\_\_\_\_ of \_\_\_\_\_; [or I, \_\_\_\_\_, a member of the firm of \_\_\_\_\_ of \_\_\_\_\_], do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows:—

(1) The application signed by me, and dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, and marked with the letter "O," and shown to me at the time of making this Declaration, is true.

(2) I am the person whose name appears on the Register of Trade-Marks as the proprietor of the Trade-Mark referred to in the said application marked with the letter "O."

[or My said firm is the firm whose name appears on the Register of Trade-Marks as the proprietor of the Trade-Mark referred to in the said application marked with the letter "O."]

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

Declared at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_ . (Signed) \_\_\_\_\_.  
Before me, \_\_\_\_\_.

If the declaration be made before a Commissiuer to administer oaths it will require to be stamped with a 2s, 6d. impressed Inland Revenue stamp.

PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.) Form Q.

*Form of Request for Correction of Clerical Error or for Permission to amend Application under Section 91.*

Sir,

I HEREBY request that  
To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.)

Form R.

*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 \_\_\_\_\_, 18 \_\_\_\_\_.

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

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

(b) Signature.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.)

Form S.

*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 \_\_\_\_\_, 18 \_\_\_\_\_.

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) Signature.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

[TRADE-MARKS.]

Form T.

*Application for Settlement of a Special Case on Application to Register a Trade-Mark.*

In the matter of the application of \_\_\_\_\_ and of the application  
of \_\_\_\_\_.

SIR,

NOTICE is hereby given that I, \_\_\_\_\_, of \_\_\_\_\_, and I, \_\_\_\_\_, of \_\_\_\_\_, are unable to agree upon the facts on which the opinion of the Court is to be taken, and that we request you to fix a day on which we may

attend before you and obtain your finding on the matters of fact to be submitted to the Court as settled.

(a) \_\_\_\_\_.

Dated this        day of        18 .  
To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) To be signed by both parties.

PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

[TRADE-MARKS.]                      Form T 1.

*Request for General Certificate of Comptroller (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        , 18 .  
To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) Here set out the particulars which the Comptroller is requested to certify.

(b) Signature.

PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

[TRADE-MARKS.]                      Form U.

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

Patent Office, Trade-Marks Branch,  
London,        18 .

I,        , Comptroller-General of Patents, Designs, and Trade-Marks, hereby certify        .

PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

[TRADE-MARKS.]                      Form V.

*Request for Copy of Official Notification of Registration of Trade-Mark.*

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

SIR,  
I,        , of        , the registered proprietor of the Trade-Mark above named hereby request that you will furnish me with a copy of the official notification of the registration of the same.

(a) \_\_\_\_\_.

Dated this        day of        18 .  
To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) Signature.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.) FORM W.

*Form of Appeal from Cutlers' Company at Sheffield to  
Comptroller.*

[To be accompanied by an unstamped duplicate.]

SIR,

I HEREBY give notice of appeal against the decision of the Cutlers' Company of Sheffield in regard to my application for registration of a Trade-Mark No.            in Class            for            and I beg to submit my case (a) for your decision accordingly.

(b)———.

Dated this            day of            18 .

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) The statement of the case to be written upon foolscap paper (on one side only), with a margin of two inches on the left-hand side thereof.

(b) Signature.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.) FORM X.

*Continuance of Mark at Expiration of Fourteen Years from the  
date of Registration.*

SIR,

In pursuance of the notice received from you, I hereby transmit the prescribed fee of 1l. for continuance on the Trade-Marks Register of the Trade-Mark No.            , in Class            .

Dated the            day of            18 .

(a)———.

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) Signature of proprietor.

## PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.) FORM Y.

*Additional Fee of 10s. to accompany "Continuance Fee"  
(Form X), within Three Months after Expiration of Four-  
teen Years.*

SIR,

In pursuance of the notices issued by you, and of the provisions of sect. 79 (3), of the above Acts, I hereby transmit the additional fee of 10s. (along with Form X) for the continuance on the Trade-Marks Register of the Trade-Mark No.            in Class            .

Dated the            day of            18 .

(a)———.

To the Comptroller, Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(a) Signature of proprietor.



PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

(TRADE-MARKS.) FORM Z.

Restoration of Trade-Mark where Removed for Nonpayment of Fee.

(To accompany Form X.)

SIR,

In pursuance of the notices issued by you, and of the provisions of sect. 79 (4), of the above Acts, I hereby transmit the additional fee of 1l. (along with Form X) for restoration to the Trade-Marks Register of the Trade-Mark No. in Class

Dated the day of 18 .

(a) \_\_\_\_\_.

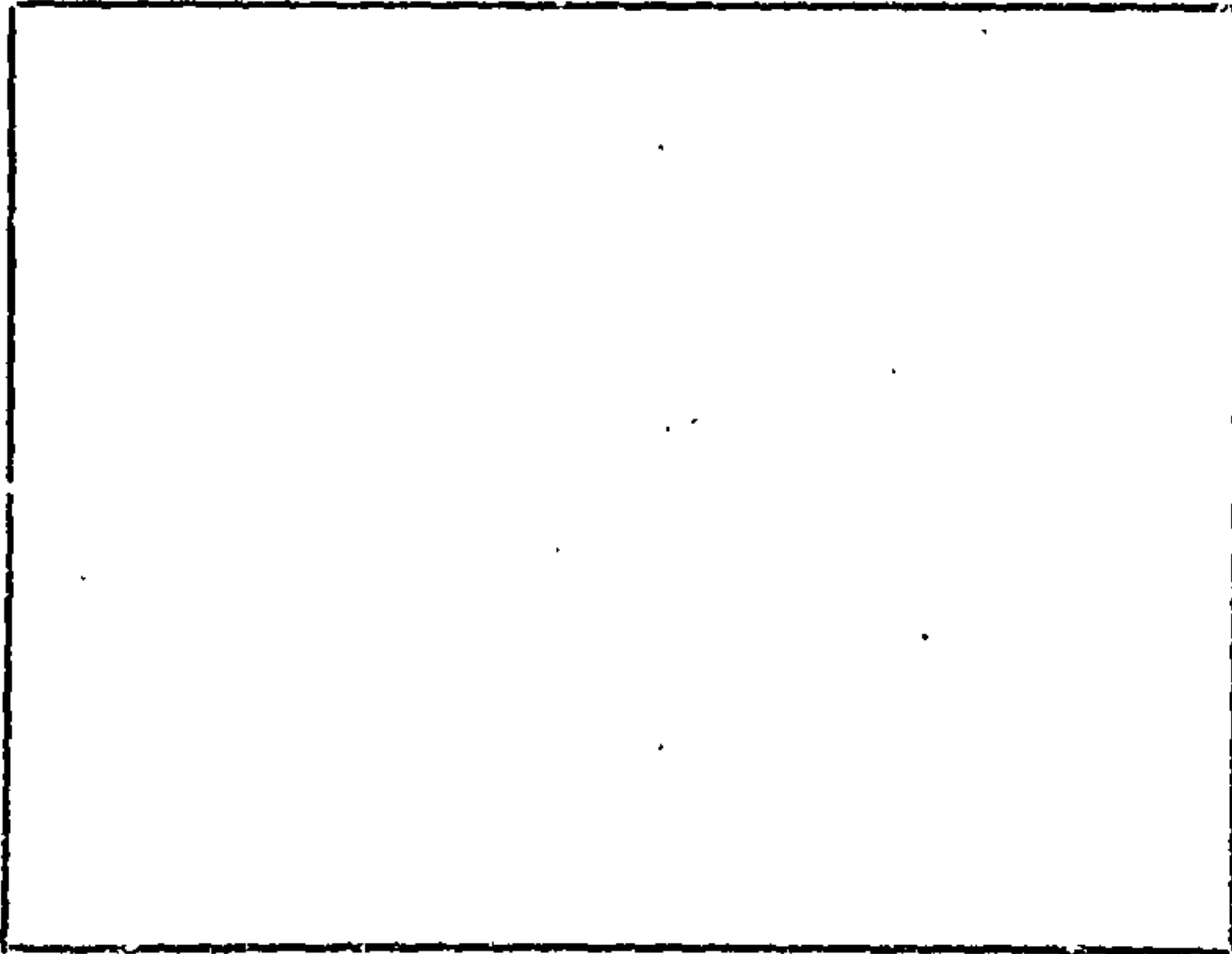
To the Comptroller, Patent Office, Trade-Marks Branch, 25, Southampton Buildings, London.

(a) Signature of proprietor.

PATENTS, DESIGNS, AND TRADE-MARKS ACTS, 1883—1888.

Application for Registration of Old Corporate Trade-Mark.

(CORPORATE TRADE-MARK.)



You are hereby requested to register the accompanying old Corporate Trade-Mark in Class , in respect of , in the name of , who claims to be the proprietor thereof.

(Signed) \_\_\_\_\_.

Dated the day of 18 .

To the Cutlers' Company, Cutlers' Hall, Sheffield.

M. E. HICKS-BEACH, President of the Board of Trade.

## THIRD SCHEDULE.

## GENERAL NOTE.

Any wares made of mixed materials (for example, of both cotton and silk) shall be included in such one of the classes appropriated to those materials as the comptroller may desire.

## CLASSIFICATION OF GOODS (a).

*Illustrations.*

*Note.*—Goods are mentioned in this column 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; alkalis; artists' colours; pigments; mineral dyes.

## 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.

(a) See Chap. V. p. 87.

By rule 6, "If any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the comptroller."

An alphabetically arranged list comprising a great number of kinds of goods with references to their proper register classes, is published by authority, and is called the "Guide to the Classification of Goods under the Patents, &c. Acts, 1883—1888." It is prefaced by the following direction:—

"If any person intending to apply for registration of a Trade-Mark is, on examining the following enumeration of goods, uncertain as to the class to which his goods belong, he should send to the Comptroller-General a letter addressed—

"The Comptroller-General,  
"The Patent Office, Trade-Marks Branch,  
"25, Southampton Buildings, Chancery Lane, London, W.C.

"giving a full description of the goods and of the purposes for which they are used. He will then be informed by the Comptroller-General what class he should name in his application."

**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; thrashing 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.

- 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, and sewing cotton not on spools or reels.
- (b) Sewing cotton on spools or reels.

**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 38.

Such as—  
Cotton lace; cotton braids; cotton tapes.

**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.**

Woollen 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; port-manteaus; 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.
- 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—

Such as—  
Coopers' wares.

- (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, tents, rickcloths, 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.

(Signed) **M. E. HICKS-BEACH,**  
*President of the Board of Trade.*

## No. 5.

INSTRUCTIONS TO PERSONS WHO WISH TO  
REGISTER TRADE-MARKS.

## PRELIMINARY.

1. All communications relating to trade-marks, not being marks in Classes 23, 24, or 25, or Sheffield marks, should be addressed to the Comptroller, Patent Office, Trade-Marks Branch. All applications should be in the English language.

They may be made by post, or left at the Patent Office, Trade-Marks Branch, 25, Southampton Buildings, Chancery Lane, London, W.C. (See also paragraphs 8 and 33.)

2. The fees in relation to trade-marks registration cannot be received at the Patent Office. They should be paid in exchange for the *stamped forms* required, which may be obtained at the following places:—

(a) The Inland Revenue Office, Royal Courts of Justice, London (Room No. 6).

(b) 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, 12, Parliament Street, S.W., or

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

## IN ENGLAND AND WALES.

Accrington.  
Altrincham.  
Ashton-under-Lyne.  
Barnaley.  
Barrow-in-Furnees.  
Bath.  
Bedford.  
Beverley.  
Birkenhead.  
Birmingham.  
Blackburn.

Bolton.  
Bradford.  
Brighton.  
Bristol.  
Bromsgrove.  
Burnley.  
Burslem.  
Burton-on-Trent.  
Bury.  
Cambridge.  
Cardiff.

Carlisle.  
Chatham.  
Chester.  
Clitheroe.  
Congleton.  
Coventry.  
Crewe.  
Croydon.  
Darlaston.  
Derby.  
Dewsbury.



IN ENGLAND AND WALES—continued.

Doncaster.	Macclesfield.	Scarborough.
Dorchester.	Manchester.	Sedgley.
Driffield.	Middlesbrough.	Sheffield.
Droitwich.	Nantwich.	Southampton.
Dudley.	Newcastle.	Stafford.
Durham.	Newport (Mon.)	Stalybridge.
Exeter.	Northallerton.	Stockport.
Gateshead.	Northampton.	Stoke-on-Trent.
Gcole.	Nottingham.	Stourbridge.
Greenwich.	Nuneaton.	Stourport.
Guildford.	Oldbury.	Sunderland.
Halifax.	Oldham.	Swansea.
Hartlepool.	Patrington.	Tamworth.
Huddersfield.	Plymouth.	Truro.
Hull.	Pontefract.	Tunstall.
Ipswich.	Portsmouth.	Wakefield.
Keighley.	Prescot.	Walsall.
Kendal.	Preston.	Warrington.
Kidderminster.	Reading.	Wednesbury.
Knarbro'.	Redditch.	West Bromwich.
Knutsford.	Richmond (Yorks.)	Whitby.
Lancaster.	Ripon.	Widnes.
Leamington.	Rochdale.	Wigan.
Leeds.	Rotherham.	Wolverhampton.
Leicester.	Rugby.	Wolverton.
Lichfield.	Salford.	Woolwich.
Lincoln.	St. Helens.	York.
Liverpool.		

IN SCOTLAND.

Aberdeen.	Glasgow.	Leith.
Dumbarton.	Greenock.	Paisley.
Dundee.	Inverness.	Perth.
Edinburgh.	Lanark.	Renfrew.

IN IRELAND.

Belfast.	Dundalk.	Londonderry.
Cork.	Galway.	Waterford.
Dublin.	Limerick.	Wexford.

NOTE.—Arrangements have also been made by which any of the forms required may be ordered at any Money Order Office in the United Kingdom not included in the above List.

3. The following is a list of the stamped forms under the Patents, Designs, and Trade-Marks Acts, 1883-1888, which relate to trade-marks, and which may be obtained at the places mentioned above:—

TRADE-MARKS.

Letter.	Title of Form.	Fee.
E	Application for hearing by comptroller .....	£ s. d. 1 0 0
F	Application for registration of trade-mark .....	0 5 0
G	Additional representation form .....	No stamp.

K.

S S

## TRADE-MARKS—continued.

Letter.	Title of Form.	Fee.		
		£	s.	d.
H	Appeal to Board of Trade from decision of comptroller .....	1	0	0
I	Registration fee .....	1	0	0
J	Notice of opposition to application for registration ..	1	0	0
K	Request to enter name of subsequent proprietor, with declaration in support thereof .....	1	0	0
L	Request for certificate of refusal to register a trade-mark .....	1	0	0
M	Notice of application for alteration of address .....	0	5	0
N	Notice of order of court for alteration or rectification of register .....	0	10	0
O	Application to cancel entry of mark on register ....	0	5	0
Q	Request for correction of clerical error or for amendment of application under sect. 91 .....	0	5	0
R	Request for certificate of registration for use abroad.	0	5	0
S	Request for certificate of registration for use in legal proceedings .....	1	0	0
T	Application for settlement of a special case .....	2	0	0
T <sup>1</sup>	Request for general certificate of comptroller .....	0	5	0
V	Request for copy of official notification .....	0	2	0
W	Appeal from Cutlers' Company at Sheffield to comptroller .....	1	0	0
X	Fee for continuance of trade-mark at expiration of fourteen years .....	1	0	0
Y	Additional fee where fee is paid within three months after expiration of fourteen years .....	0	10	0
Z	Additional fee for restoration of trade-mark where removed for non-payment of fee .....	1	0	0

Of the above forms, those bearing the letters F, G, and I, are kept in stock at the various offices named in paragraph 2. Any of the others when required must be bespoke.

If it should not be convenient to apply in person at any of the above offices, the forms may be ordered by persons in this country or abroad *by post* from the Controller of Stamps, Room No. 7, Inland Revenue Office, Somerset House, London, W.C.

An application by post for forms must be accompanied by a banker's draft, or by a Money Order or Postal Order, payable to the Commissioners of Inland Revenue, and crossed "Bank of England," for the value of the stamp together with the cost of the postage and of the *registration* of the letter in which the forms will be forwarded to the applicant.

## SALE OF OFFICIAL PUBLICATIONS.

4. The Patents, Designs, and Trade-Marks Acts, 1883-1888, and the Trade-Marks Rules, 1890, should be carefully studied. Copies of the Acts and of the Rules can be purchased at the Sale Branch of the Patent Office, 38, Cursitor Street, Chancery Lane, London, E.C. The price of the Acts and Rules together is 2s. 6d., postage, 2d.; of the Acts alone, 2s., postage, 1½d.;

and of the Rules alone, 6*d.*, postage, 1*d.* Sums exceeding 1*s.* should be remitted by Postal Order or Post Office Order.

5. Copies of the *Trade-Marks Journal* may also be obtained from the Sale Branch of the Patent Office, 38, Cursitor Street, Chancery Lane, London, E.C.

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

Nos. 1 to 509 (Years 1876 to 1887) - 1*s.* per number.

Nos. 510 to 561 (Year 1888) - - 1*s.* 6*d.* ,,

No. 562 and following Nos. from

1 January, 1889 - - - - 6*d.* ,,

#### DEFINITION OF A TRADE-MARK.

6. The definition of a trade-mark is given in the 64th section of the Acts, as follows:—

“(1.) For the purposes of this Act, a trade-mark must consist of or contain at least one of the following essential particulars:

(a) A name of an individual or firm, printed, impressed, or woven in some particular and distinctive manner; or

(b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade-mark; 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.

(2.) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words, or figures, or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade-mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3.) Provided as follows:—

(i.) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;

(ii.) Any special and distinctive word or words, letter, figure, or combination of letters or figures or of

letters and figures used as a trade-mark before the thirteenth day of August one thousand eight hundred and seventy-five may be registered as a trade-mark under this part of this Act."

#### SEARCHES.

7. A person wishing to adopt a trade-mark should, before engraving a block and circulating impressions of the mark among his customers, make a search or a formal application at the Trade-Marks Branch of the Patent Office with the view of ascertaining whether his proposed mark is already registered, or whether, from its being calculated to deceive by a resemblance to other marks already on record, it would be refused registration under the 72nd section of the Acts.

The fee payable by a person making a search amongst the classified representations of trade-marks is 1s. for each quarter of an hour. The fee for a formal application is 5s. See paragraphs 9 and 3 of these instructions as to the mode of making a formal application.

The comptroller does not undertake to make searches amongst the trade-marks recorded at his office, *except in connexion with formal applications for registration.*

#### APPLICATIONS FOR REGISTRATION.

8. Applications sent by post should be addressed—

The Comptroller,  
The Patent Office, Trade-Marks Branch,  
25, Southampton Buildings,  
London, W.C.

In the case of marks claimed in Classes 23, 24, or 25, applications should be addressed—

The Comptroller,  
Manchester Trade-Marks Branch,  
48, Royal Exchange,  
Manchester.

Agents and other persons who may be interested in more than one application are particularly requested to make communications relating to different applications in *separate* letters.

9. An application for the registration of a trade-mark consists of:—

(a) An application form (Form F) bearing an impressed stamp of 5s. (*see* paragraph 3).

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

(b) Certain additional representations of the trade-mark, mounted on forms (Form G) (*see* paragraphs 3 and 15).

10. 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.

11. If the mark be the property of a firm, the Form F should be signed by a member of the firm, who should add, after his signature, "A member of the firm"; if of a company, by the secretary or other principal officer, who should add, after his signature and designation, "For the company."

12. 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 by the owner or owners; the necessary authority should be signed by the owner or owners.

Applications made by agents should have, after the name of the agent, the description "Agent."

13. When an applicant for the registration of a trade-mark otherwise than under an International Convention, is out of the United Kingdom at the time of making the application, he must give the comptroller an address for service in the United Kingdom.

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

In the case of marks claimed in Classes 23, 24, or 25, the applicant should state by what name the particular mark claimed would be referred to in the invoices of his house.

#### *Additional Representations of Mark.*

15. Each of the additional representations should be placed in the centre of a separate Form G.

In the case of a trade-mark which is not claimed in Classes 23 to 35, *two* additional representations are required for *each* class claimed.

In the case of a trade-mark claimed in any one or more of the Classes 23 to 25, *four* additional representations should be sent for *each* of such classes. In the case of a trade-mark claimed in any one or more of the Classes 26 to 35, *three* additional representations should be sent for each of such classes.

The representations of the mark on the Forms G must agree *in every respect* with each other, and with that on the Form F.

16. Representations of a mark of a large size may be folded. In that case they must, however, be backed with linen 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.

## SERIES OF TRADE-MARKS.

17. By section 66 of the Acts, the comptroller is empowered to register under one registration a series of trade-marks which, whilst they resemble each other in the material particulars, differ from each other in respect of the statements of the goods for which they are used, of the statements of numbers, of the statements of price, of the statements of quality, or of the statements of names of places. When an application is made for such a series, a representation of *each* of the marks included in the series must be affixed to the Form F, and also to each of the Forms G.

## COMMON OR OPEN MARKS.

18. In the case of a trade-mark used before the 13th August, 1875, common or open marks of any kind may be registered in connection with it; but in the case of a trade-mark not so used, common or open marks consisting of *a word or combination of words only* can be registered as a part of the mark.

In each case, the applicant for entry of such common particular or particulars must disclaim the right to the exclusive use of the same in a note at the foot of the application form, such note to be signed by the applicant or his agent.

*See* section 74 of the Acts, sub-section 3, for definition of common marks.

## CLASSIFICATION OF GOODS.

19. 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.

## ADVERTISEMENT IN THE TRADE-MARKS JOURNAL.

20. A trade-mark cannot in any case be entered upon the register until one month after its advertisement in the official paper.

21. A wood-block or electrotype must be furnished for each mark in each class claimed, except in the case of Class 23A (cotton yarn and sewing cotton, not on spools or reels), and Classes 24 and 25, for which no blocks or electrotypes are required.

A wood-block or electrotype will be required for an application in Class 23 whenever it is in respect of, or covers, sewing cotton on spools or reels.

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

22. In the case of a series of trade-marks differing only in respect of the particulars mentioned in section 66 of the Acts, a wood-block or electrotype must be furnished for each mark in the series, for each class claimed.

23. 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.

24. 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 depth or breadth*, a charge for additional space is made, at the rate of two shillings for every inch or part of an inch in depth or breadth beyond the two inches.

25. The number given by the comptroller 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 its identification.

26. All blocks or electrotypes should be sent to the Patent Office, Trade-Marks Branch, together with the paper marked "Form 2," and with the representation of the mark sent for the guidance of the applicant in preparing the block or electrotype.

27. The blocks or electrotypes supplied for the advertisement of trade-marks cannot in any case be returned to applicants.

#### RESTRICTIONS ON REGISTRATION.

28. 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.

29. The words "registered," "registered design," "copyright," "entered at Stationers' Hall," "to counterfeit this is forgery," will not be registered under the Acts, and should not, therefore, appear upon the representations of trade-marks forming part of an application.

30. The following will not be registered as trade-marks, or as prominent parts of trade-marks, unless the marks have been used before 13th August, 1875:—

The royal arms, or arms so nearly resembling them as to be calculated to deceive.

Representations of Her Majesty the Queen, or of any member of the Royal Family.

Representations of the Royal Crown.

The National Arms or Flags of Great Britain.

31. When there appears on the face of a trade-mark an indication of the goods to which the mark is applied, the claim for its registration must be in respect of *those goods only*.

#### OPPOSITIONS.

32. Notice of opposition to the registration of a trade-mark (Form J) must be filed within one month (or such further time, not exceeding three months, as the comptroller may allow) from the date of advertisement of the mark in the *Trade-Marks Journal*.

The applicant's counter-statement must be filed within one month from the date of receipt of the opponent's notice of opposition.

The opponent's evidence, in support of the opposition, must be filed within two months after the expiration of one month (or such further time, not exceeding three months, as the comptroller may allow) from the date of advertisement of the mark in the *Trade-Marks Journal*, and a copy forthwith sent to the applicant.

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

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

On the completion of the evidence, either party may apply (upon Form E) for the case to be heard by the comptroller.

#### FORM OF COUNTER-STATEMENT.

The following is a form of counter-statement:—

Patent, Designs, and Trade-Marks Acts, 1883-1888.

Trade-Marks.

In the matter of an application No.  
and of the opposition thereto No.

In reply to the notice of opposition in this matter by \_\_\_\_\_ of \_\_\_\_\_,  
I give notice by way of counter-statement that I rely for my application  
on the following grounds:—

(To be dated and signed by the applicant or his solicitor.)

To the Comptroller,  
Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

#### OUTLERS' COMPANY.

33. By section 81 of the Acts, 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. *See* Rules 56 to 59.

Applications made to the Cutlers' Company in pursuance of section 81 of the Acts should be made on Form F, the address in the left-hand corner to be, "To the Cutlers' Company, Sheffield," instead of "To the Comptroller," and should be left at, or sent by post to, the Cutlers' Hall, Sheffield.

Each application should be accompanied by an unstamped copy on foolscap paper. *See* Rule 56.

Applications sent by post should be addressed—

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

#### MANCHESTER OFFICE.

34. For the convenience of merchants and manufacturers engaged in the cotton trade, and for the purpose of facilitating the recording of trade-marks used in respect of cotton goods, an office is open at 48, Royal Exchange, Manchester, where searches can be made, on payment of 1s. for each quarter of an hour, for marks in classes of textiles from Class 23 to Class 35.

#### CERTIFICATES.

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

- (i.) For use in legal proceedings.
- (ii.) For use in applying for registration in foreign countries.
- (iii.) Of any application made and of proceedings thereon.
- (iv.) A certificate of refusal of a mark in use before 13th August, 1875, and not registerable.

36. A person desirous of obtaining any of the above certificates should forward Form S, Form R, Form T<sup>1</sup>, or Form L (*see* paragraph 3), as the case may be, to the comptroller, giving the comptroller's official number of the mark, and stating whether the certificate is required for use in legal proceedings, or for use in applying for the registration of the mark in a foreign country, or for what other purpose.

37. 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 must 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 the certificate cannot in any such case be prepared until these unmounted copies are received by the comptroller.

REGISTRATION OF SUBSEQUENT PROPRIETORS OF REGISTERED  
TRADE-MARKS.

38. The request and declaration 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 K (*see* paragraph 3).

H. READER LACK,  
Comptroller.

No. 6.

PRECEDENTS OF FORMS UPON AN OPPOSED  
APPLICATION TO REGISTER A TRADE-  
MARK AND ON APPEAL (a).

	PAGE
1. Application for registration.....	608
2. Notice of opposition .....	635
3. Counter-statement.....	636
4. Evidence in support .....	637
5. Application for hearing .....	608
6. Appeal to the Board of Trade.....	610
7. Case on appeal .....	637
8. Reference by the Board of Trade to the Court .....	640
9. Notice of motion for the determination of the appeal .....	640

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1. APPLICATION FOR REGISTRATION.

(Form F., above, p. 608.)

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2. NOTICE OF OPPOSITION.

(Form J., above, p. 610.)

*(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 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 has such resemblance

(a) See Chap. IV., p. 58.

to our said registered trade-mark, numbered \_\_\_\_\_, and also to our said trade-mark in paragraph 2 hereof referred to, as to be calculated to deceive.

(For other grounds of opposition, see pp. 63, 78; Chap. VIII., p. 106, "What marks may be registered as trade-marks"; Chap. X., p. 175, "Restrictions on registration" (b).)

### 3. COUNTER-STATEMENT.

(In answer to the Notice of Opposition, No. 2.)

[*Heading as in the Form, p. 632.*]

1. We [*the applicant's*] deny that the mark which is the subject of our application has such resemblance to 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 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.

(Signed) \_\_\_\_\_.

To the Comptroller,  
Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(b) See also *Kutnow's Tr.*, 10 R. P. C. 403.

4. EVIDENCE IN SUPPORT OF THE APPLICATION OR OPPOSITION (c).

The formal parts of the declarations are as follows:—

[Heading as in the counter-statement, p. 632.]

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 } (Signed) \_\_\_\_\_  
this of 18 , }  
before me,  
A commissioner for oaths.

5. APPLICATION FOR HEARING BY THE COMPTROLLER.

(Form E., above, p. 608.)

6. FORM OF APPEAL FROM THE COMPTROLLER TO THE BOARD OF TRADE.

(Form H., above, p. 610.)

7. STATEMENT OF CASE (d).

[Heading as in the counter-statement, p. 632.]

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 to that employed by the appellants.

2. On or about the of , 18 , the appellants

(c) This is given by statutory declaration. Rule 31 (3), (4), p. 73, and Rules 61, 62, p. 605. As to the comptroller's power to dispense with evidence, see Rule 53, p. 603; and as to cases of infancy, lunacy, or other incapacity, sect. 99, p. 573.

(d) This is substantially the case made use of in *The Sphincter Co.'s Tm.*, 10 R. P. C. 84.

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.

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 indiarubber and hose trade, and amongst their customers and others from the said \_\_\_\_\_ of \_\_\_\_\_, 18\_\_\_\_, 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 had (as was alleged) such a resemblance to 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

sitting for the comptroller, and on the                    of                   , 18                   , 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 (*e*), and also to the written decision of the learned registrar.

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:—

- (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. Grounds of appeal.
- (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.

The matters with which this appeal is concerned are of great importance to the appellants, and they are desirous that the same may be referred to the decision of the Court under sect. 69 of the above-mentioned Act (*f*).

(Signed)

(*e*) See Rule 26, p. 598.

(*f*) If the Board of Trade see no reason for differing from the decision of the comptroller, they generally refer the appeal at once to the Court, and so save a step.

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

7, Whitehall Gardens, S.W.

\_\_\_\_\_, 18 .

Dear Sirs,

[The application of \_\_\_\_\_, No. \_\_\_\_\_]

and

[The opposition of \_\_\_\_\_, No. \_\_\_\_\_].

Referring to the notice of appeal by \_\_\_\_\_ in this matter dated the \_\_\_\_\_, I am instructed to inform you that the Board of Trade have deemed it expedient to refer this appeal to the Court by virtue of the provisions of sub-sect. 4 of sect. 69 of the Patents, Designs, and Trade-Marks Acts, 1883 and 1888, and have, pursuant to Rule 23 of the Trade-Marks Rules, 1890, directed the appellants to make application by motion, summons, or otherwise, as they may be advised, 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 Comptroller-General of Patents, Designs, and Trade-marks, and upon [*the opponents*], and that [*the opponents*], in default of being served within two months from this date with notice of any such application as aforesaid by the appellants, be at liberty to apply to the Chancery Division of the High Court of Justice as they may be advised. And that upon the hearing of any such application as aforesaid, the appellants, the said [*the opponents*], and the Comptroller-General be respectively at liberty to adduce such evidence as they respectively may be advised.

I am, dear Sir, yours truly,

(Signed) \_\_\_\_\_,

Solicitor, Board of Trade.

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

18 , No. .

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

[*Heading as in the Counter-statement above, p. 632.*]

TAKE NOTICE that the Court will be moved before the Honourable Mr. Justice \_\_\_\_\_ at 10.30 in the forenoon on the \_\_\_\_\_ of \_\_\_\_\_, 18 \_\_\_\_\_, 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 Comptroller-General of Patents, Designs, and Trade-marks 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 Comptroller-General of Patents, Designs, and Trade-marks to proceed with the registration of the trade-mark referred to in the said application.

Dated this            of            , 18 .

(Signed) \_\_\_\_\_

Solicitors for the above-named .

To the Comptroller-General of Patents,  
Designs, and Trade-marks,  
and

To [*the opponents*].

## No. 7.

## NOTICE OF MOTION TO RECTIFY THE REGISTER.

18 . 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 Patents, Designs, and Trade-  
Marks Acts, 1883-1888.

TAKE NOTICE that this Court will be moved before the Honourable Mr. Justice , on the of 18 , 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 Acts 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 (*a*),

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 Comptroller-General of Patents,  
Designs, and Trade-Marks.

(a) For other forms of rectification see above, p. 231. For forms of orders, see Seton, 6th ed. vol. 3, p. 1987.

**No. 8.**

**PRECEDENTS OF PLEADINGS IN ACTIONS  
FOR INFRINGEMENT AND PASSING  
OFF (a).**

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**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 (b).

(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.

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.

The plaintiff's registered 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

Use of the trade-mark.

(a) For the Forms given in the Appendix to the Rules of the Supreme Court, see p. 372. 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.

(b) See a fuller form, p. 644, and other precedents, p. 648 *et seq.*

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.

Imitation of the get-up.

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.

Use of "dagger" by the defendant.

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.

Infringement of the registered trade-mark.

Imitation of get-up.

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.

Passing off goods: profits.

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 (c).
- (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 words "dagger," for erasure or cancellation of the devices, labels, and words, or for destruction.
- (4.) Costs.

---

### 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.

Traverses of the allegations in the statement of claim.

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

Devices and word common to the trade.

(c) See other forms of injunction, *post*, p. 648.

or shovel, namely, a hoe or shovel having an unusually narrow blade.

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

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 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 (*d*). ("Common Law Trade-Mark.")

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.

2. The defendants have lately commenced the business of

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

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."

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 (*e*).

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### 5. DEFENCE

(In answer to the above-printed Statement of Claim, No. 1).

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.

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, 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.)

(*e*) For forms of claim, see pp. 644 and 648 *et seq.*

## No. 9.

FORMS OF ORDERS IN TRADE-MARK CASES  
AND CASES ANALOGOUS THERETO (a).

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## 1. MORISON v. MOAT (b), 20 L. J. Ch. 529 (1851), Turner, V.-C.

*Trade Secret.*

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

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 "*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.

(a) The forms are 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, 5th ed., Vol. I., p. 534 *et seq.* A large number of orders have been collected by Mr. Sebastian, and are printed in his book, 3rd ed., p. 510.

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



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.

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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 distinguishing 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. 523 (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.*

Injunction  
against use of  
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).

## 6. ORR-EWING &amp; Co. v. JOHNSTON &amp; Co., 13 C. D. p. 450 (1880), Fry, J., and C. A. (c).

*Trade-Mark and Trade-Name.*

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

To restrain the defendants, Robert Johnston & 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 to (c) (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;

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

(c) The words in italics were struck out by the House of Lords. 7 App. Cas. p. 234.

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.

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

against  
imitation of  
marks and  
get-up.

Circulars and  
advertise-  
ment.

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

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

*Company's Trade-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.”

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.

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## 9. READ v. RICHARDSON, 45 L. T. N. S. p. 69 (1881), C. A.

*Trade-Mark.*

Undertaking  
as to damages.

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

Costs.

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.

10. LEVER v. GOODWIN, 4 R. P. C. p. 503 (1886),  
Chitty, J., and C. A.*Trade-Mark and Passing off.*

Trade-mark  
action  
dismissed.

Injunction  
against use of  
particular  
wrapper;

against  
passing off.

Account.

Payment of  
amount found  
due.

Costs.

“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."

Costs of account reserved.

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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 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.

Interim injunction against use of name for a particular business; and use of particular labels.

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

*Trade-Marks.*

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*."

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

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

*Trade-Mark and Passing Off.*

Injunction  
against  
infringement  
by circulars  
or advertise-  
ments;  
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. (*d*).

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

*Trade-Name and Passing off.*

Injunction  
against the  
use of a  
particular  
label.  
Inquiry as  
to damages.  
Costs.

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 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.

(*d*) The injunction was made perpetual, and was upheld by the House of Lords; (1891) A. C. 227.

16. 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.

## No. 10.

**ORDERS IN COUNCIL APPLYING THE PROVISIONS OF SECT. 103 OF THE PATENTS, ETC. ACT OF 1883 TO BRITISH POSSESSIONS AND FOREIGN STATES.**

**COLONIAL ARRANGEMENTS.**

Colony.	Date of Order in Council.	London Gazette.
Queensland .....	17 Sept., 1885 .....	22 Sept., 1885, p. 4429.
New Zealand .....	8 Feb., 1890 .....	11 Feb., 1890, p. 727.

**INTERNATIONAL ARRANGEMENTS.**

Foreign State.	Date of Order in Council.	London Gazette.
Belgium .....	26 June, 1884 .....	1 July, 1884, p. 2993.
Brazil .....	26 June, 1884 .....	1 July, 1884, p. 2993.
Dominican Republic..	21 Oct., 1890 .....	28 Oct., 1890, p. 5661.
Ecuador .....	16 May, 1893 .....	19 May, 1893, p. 2899.
France .....	26 June, 1884 .....	1 July, 1884, p. 2993.
Guatemala .....	26 June, 1884 .....	1 July, 1884, p. 2993.
Italy .....	26 June, 1884 .....	1 July, 1884, p. 2993.
Mexico .....	28 May, 1889 .....	31 May, 1889, p. 2054.
Netherlands .....	26 June, 1884 .....	1 July, 1884, p. 2993.
Netherlands (East Indian Colonies) }	17 Nov., 1888 .....	23 Nov., 1888, p. 6412.
Netherlands(Caraçoa and Surinam) }	17 May, 1890 .....	20 May, 1890, p. 2891.
Paraguay .....	24 Sept., 1886 .....	28 Sept., 1886, p. 4726.
Portugal .....	23 June, 1884 .....	1 July, 1884, p. 2993.
Roumania .....	5 Aug., 1892 .....	12 Aug., 1892, p. 4554.
Servia .....	26 June, 1884 .....	1 July, 1884, p. 2993.
Spain .....	26 June, 1884 .....	1 July, 1884, p. 2993.
Sweden and Norway..	9 July, 1885 .....	10 July, 1885, p. 3173.
Switzerland .....	26 June, 1884 .....	1 July, 1884, p. 2993.
Tunis .....	26 June, 1884 .....	1 July, 1884, p. 2993.
United States .....	12 July, 1887 .....	15 July, 1887, p. 3827.
Uruguay .....	24 Sept., 1886 .....	28 Sept., 1886, p. 4725.



PLACES UNDER BRITISH JURISDICTION.

Penalties on British subjects committing offences against the Patents, &c. Acts, 1883 to 1888 (*b*).

Places.	Date of Order in Council.	London Gazette.
Africa (Madagascar and certain other parts)	15 Oct., 1889 .....	22 Oct., 1889, p. 5557.
Brunei .....	22 Nov., 1890 .....	28 Nov., 1890, p. 6671.
Morocco .....	28 Nov., 1889 .....	13 Dec., 1889, p. 7163.
Persia .....	13 Dec., 1889 .....	24 Dec., 1889, p. 7417.
Persian Coast .....	13 Dec., 1889 .....	24 Dec., 1889, p. 7459.
Somali Coast .....	13 Dec., 1889 .....	24 Dec., 1889, p. 7467.
Zanzibar .....	16 May, 1893 .....	19 May, 1893, p. 2899.

(*b*) Orders in Council issued under 41 & 42 Vict. c. 67, now replaced by 53 & 54 Vict. c. 37.

## No. 11.

## THE INTERNATIONAL CONVENTION (a).

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

*Signed at Paris, March 20, 1883.*

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

(Translation.)

ART. I.—THE Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, Holland, Portugal, Salvador,\* 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.

\* Salvador withdrew from this Convention by notice dated September 6, 1886.

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(a) 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. 664, were agreed upon at the Conference at Madrid in 1889, and they have been duly ratified by Great Britain, Spain, France, Switzerland, and Tunis. There are numerous other Treaties and arrangements existing between this country and foreign States for the protection of the trade-marks of each other's subjects. See Parliamentary Papers (1888), Commercial, No. 12, and (1872) C.—633.

ART. III.—Subjects or citizens of States not forming part of the Union, who are domiciled, or have 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.

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.

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.

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.

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.

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.

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.

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 seizure shall be effected at the request of either the proper public department or 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 manufacturer of, or trader in, such goods, established in the locality falsely designated as the place of origin, shall be deemed an interested party.

ART. XI.—The high contracting parties agree to grant temporary protection to patentable inventions, to industrial designs or models, and trade-marks, for articles exhibited at official or officially recognized international exhibitions.

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 organized 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.

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.*]

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*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 recognized 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.

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, 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, 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.

5. The organization 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.

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 co-efficients 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 centralize 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.*]

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*Accessions and Withdrawals (b).*

Dominican Republic acceded December 8, 1884.

Equator acceded December 21, 1883; but withdrew February 27, 1886.

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

Sweden acceded June 18, 1885.

United States acceded May 30, 1837.

(b) See the list printed at p. 656.

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

*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 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.

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



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.

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.]

## No. 12.

## MERCHELANDISE MARKS ACT, 1887 (a).

(50 &amp; 51 VICT. c. 28.)

Section.	ARRANGEMENT OF SECTIONS.
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 :

Short title.	1. This Act may be cited as the Merchandise Marks Act, 1887.
Offences as to trade-marks and trade descriptions.	2.—(1.) Every person who— (a) forges any trade-mark (pp. 465 to 472); or (b) falsely applies to goods any trade-mark or any mark so

(a) See Book II., p. 460.

nearly resembling a trade-mark as to be calculated to deceive (pp. 472 to 475); or

- (c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade-mark (pp. 465 to 472); or
- (d) applies any false trade description to goods (pp. 475 to 498); or
- (e) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade-mark (pp. 465 to 472); or
- (f) causes any of the things above in this section mentioned to be done (p. 500),

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud (pp. 505 to 509), 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;
- be guilty of an offence against this Act (pp. 510 to 513).

(3.) Every person guilty of an offence against this Act shall be liable (p. 513)—

- (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 (p. 514).

(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 (p. 519).

(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 (p. 514).

42 & 43 Vict.  
c. 49.

Definitions.

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, 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 (p. 465):

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 (pp. 476 to 487):

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 (pp. 487 to 491):

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise (p. 472):

The expressions "person," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate (p. 463):

The expression "name" includes any abbreviation of a name (p. 495).

(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 (p. 491).

(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 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 (pp. 493 to 498).

4. A person shall be deemed to forge a trade-mark who either— Forging trade-mark.

- (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 (p. 468).

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 (p. 473).

(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 (p. 474).

(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 (p. 474).

Exemption  
of certain  
persons em-  
ployed in  
ordinary  
course of  
business.

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—

- (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 (pp. 501 to 504).

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 (p 522).

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 (pp. 525, 695).

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 authorized 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 (p. 696).

(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 (p. 541).

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 (p. 468).

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 (p. 509).

(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 (p. 481).

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 (p. 504).

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 realized 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 (pp. 520 to 522).

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 (p. 517).

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 (p. 518).

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 (p. 517).

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 (pp. 526 to 539):

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 (pp. 531 *et seq.*).

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 (p. 536).
- (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 (p. 536).
- (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 (p. 483).
- (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.

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 (p. 431).

Implied warranty on sale of marked goods.

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 (p. 498).

Provisions of Act as to false description not to apply in certain cases.

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.

Savings.

(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 *bona 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 (p. 520).

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 (p. 542).

False representation as to royal warrant.

Application  
of Act to  
Scotland.

21. In the application of this Act to Scotland the following modifications shall be made:—

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.

Application  
of Act to  
Ireland.

22. In the application of this Act to Ireland, the following modifications shall be made:—

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.

Repeal of  
25 & 26 Vict.  
c. 88.

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—

- (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.

**No. 13.**

**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:

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 (p. 486).

Customs entry  
to be trade  
description.

50 & 51 Vict.  
c. 28.

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.

Official  
prosecutions.

(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 (pp. 515, 707).

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 Acts, 1887 and 1891.

Short title.

## No. 14.

THE GENERAL ORDERS ON THE MER-  
CHANDISE MARKS ACT (a).

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## A.—GENERAL ORDER 81/1887.

CUSTOM HOUSE, LONDON,  
20th October, 1887.

SIR,

Herewith you will receive the usual number of copies of the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28).

You are carefully to note the meanings given by the Act to the following expressions, viz. :—

“Goods,” section 3.

“Applied,” section 5; sub-sections 1 and 2.

“Falsely applied,” section 5; sub-section 3.

(a) The Order dated 1st February, 1889, and those preceding it, are published in the 32nd and 33rd Reports, Commissioners of Customs. I am indebted to the courtesy of the Board of Customs for copies of the remaining Orders.

- “Trade-mark”
- “Trade description”
- “False trade description”
- “Person”
- “Manufacturer”
- “Dealer” or “Trader”
- “Proprietor”
- “Name”
- “Name or initials”

Section 3.

You will also especially note, as applying to imported goods, the provisions of section 10, sub-section (2), and section 18 of the Act.

You will observe that by section 5 of the Act the word “applies” in connection with goods is extended to “applying” the name or mark to any “covering, label, reel, or other thing.”

You will understand that, in future, as hitherto, this will not be held to extend to “coverings” or other such things, including boxes, bottles, or the like, imported alone and with the intention of using them as auxiliary means of carrying into the market goods really British or goods (such as wine) incapable of being mistaken as British goods, where the description applied to the coverings or such other things does not relate to *them*, but has reference to the goods which they are to cover to carry into the market. Coverings.

There is, however, on this point one article to be specially noticed, viz., “watch cases;” and, as to this, your attention is called to section 7 of the Act, which lays down that, in the absence of a counter description of the watch itself, the description on the watch *case* shall be always held to describe the watch. Watch cases.

Under section 16 of the Act, regulations have been prepared by the Board which are now under the consideration of the Lords of the Treasury.

As soon as these regulations are finally approved, a copy will be sent to you, together with instructions as to the manner in which you are to carry them into effect.

These regulations will come into force on a date to be fixed under them, but not later than the first day of January next.

It is highly desirable, therefore, that in the meanwhile you should make yourself familiar with the general scope of the Act, and especially with the provisions contained in section 16 as to the importation of goods coming within its powers, and with the points to which your attention is now more particularly directed.

I am, Sir, your obedient servant,

E. GOODWYN.

To the Collector.



## B.—GENERAL ORDER 99/1887.

CUSTOM HOUSE, LONDON,  
22nd December, 1887.

SIR,

1. As a sequel to G. O. 81/1887 you will receive herewith a copy of the regulations made by the Board under section 16 of the Merchandise Marks Act, 1881, published in the *London Gazette* of the 2nd of December, 1887, and in the *Board of Trade Journal* for the present month.

2. You will observe that the regulations do two things:

- (i.) They direct that goods prohibited by the Act which are detected by the officers upon examination (that is to say, upon ordinary examination for revenue purposes), are to be detained without previous information.
- (ii.) They provide what is to be done in cases where prohibited importation, and the ground of such prohibition, are matters not of detection, in the ordinary way, but of information by an informant.

3. You will require guidance as to what goods, in the opinion of the Board, the officers ought to detect as mentioned in sub-paragraph (i); and as to the action to be taken by officers, after information, as mentioned in sub-paragraph (ii).

4. The Act extends so largely the area of prohibited goods, for the benefit not only of British subjects, but also of the subjects and citizens of foreign states, that as to a considerable proportion of goods liable to prohibition on importation, the officers cannot be expected to act without some guidance by information. It must not be, however, held or worked so as in any way to diminish the care at present taken by the officers in respect to "British marks," involving names of British places, or indications of British manufacture, and to this extent, at least, the officers must continue to act without previous information.

5. You will observe that names or trade-marks of British manufacturers, dealers, or traders on imported foreign goods (section 16, sentence beginning "all goods of foreign manufacture") are to be only admissible if distinctly qualified, not merely, as heretofore, by words showing manufacture abroad, but by a definite indication of the country in which the goods were made or produced; and this same principle is contained, even more emphatically, in section 18 of the Act, as regards lawful and general "trade descriptions," which include the name of a place or country.

6. The goods, therefore, which the Board distinctly expect the officers themselves to detect upon ordinary examination, and without previous information, will be as follows, viz.:—

Class (a). Goods of foreign manufacture, by whomsoever imported having applied to them, either,

A name or trade-mark which is or purports to be the

Twofold  
object of  
regulations.

General  
points on  
which  
guidance is  
necessary.

As to the  
scope of the  
Act with  
reference to  
"British  
marks."

Reference to  
particular  
provisions as  
to place or  
country of  
origin.

Classification  
of goods  
specially  
indicated  
for detection  
without  
information.



name or trade-mark of a manufacturer, dealer, or trader in the United Kingdom; or a trade description which indicates a particular class or method of manufacture, and includes the name of a place in, or a part of the United Kingdom, and is thereby calculated to mislead as to the place of the manufacture or production of goods which have not been manufactured or produced in the United Kingdom;

unless such name, mark, or description is accompanied by a definite indication of the place or country in which the goods were made or produced, that is to say, an addition immediately before or after the said name, mark, or description, in an equally conspicuous manner therewith, of the name of the place or country in which the goods were actually made or produced, with, in the case of a trade description including name of place, a statement, that they were made or produced there.

Class (b). Goods of foreign manufacture, by whomsoever imported, having applied to them any description, figures, words, or marks, or arrangement or combination thereof, so as to constitute, by being or including, either expressly or by reference, the name of a place in or a part of the United Kingdom, or in any other way, a statement or other indication, direct or indirect, that the goods were made or produced in the United Kingdom (b).

7. On the above classification you will note this paragraph and the paragraphs to 10 inclusive.

It will obviously not be in the power of the officers, nor are they expected, to decide whether goods falling within class (a) were actually made or produced in the country from which they come; but, in practice, it will be sufficient if the officers satisfy themselves that the name of some foreign country, or of some place in a foreign country is applied to the goods in a manner equally indelible or irremovable, and as equally conspicuous, as the name or trade-mark itself, and in close proximity to it.

As to the requirement of a definite indication of place or country of origin.

8. The word "purports," also in (a), is to be understood as referring to any name or names reasonably suggesting a British manufacturer, dealer, or trader, without regard to the fact of whether the name is or is not known to the officer; or as referring to a trade-mark not being merely matter of decoration or ornament, which reasonably suggests itself as British by containing English wording, or national devices or figures distinctly indicating British manufacture.

As to the meaning of the word "purports."

2. The words "a trade description which indicates a particular class or method of manufacture, and includes the name of a place in or a part of the United Kingdom, and is thereby

As to "trade description," including name of place

(b) See G. O. 26/1888, below.

calculated to mislead.

As to other, less definite, inscriptions indicating in any way make or production in the United Kingdom.

Classification, generally, of goods prohibited by the Act.

Scope of Head (i).

Registration for this purpose (c).

calculated to mislead" mean such terms as Kidderminster carpets, Windsor soap, "Balbriggan" on hosiery, or "Shetland" on shawls, and the like, which, although they might be held to be merely phrases descriptive of method of manufacture, are yet calculated to mislead as to place of origin.

10. Class (b) refers to and includes such inscriptions as "present from such and such a place," and the like; or, even without a name, any phrases, words, language or devices, which state or indicate, directly or indirectly, make or production in the United Kingdom; and the words "by reference" mean that "Irish," for instance, is equivalent to "of Ireland." Any goods bearing such marks will be detained, and you will refer the matter to the Board (b).

11. Passing from the goods thus specially mentioned, those generally prohibited by the Act to be imported may be summarized as follows:—

(Head i.) Goods whether of foreign manufacture or British goods brought back, having a false trade description as to name or initials, or a forged trade-mark applied to them.

(Head ii.) Like goods having applied to them a false trade description as to the place or country in which they were made or produced; or as to number, quantity measure, gauge or weight, mode of manufacture or production, or material of which composed; or as to the goods being the subject of any existing patent, privilege, or copyright.

A false trade description is a description or indication, whether original or by addition, effacement or otherwise, and whether by figures, words, or marks, or any arrangement or combination thereof, directly or indirectly false in a material respect.

12. With regard to Head (i). This is the protection of a manufacturer, dealer, or trader against the fraudulent or unfair use of his name or trade-mark by any other person. It would not be possible for officers to enter into examination of all names and marks in respect to their use as between various importers. At the same time, a manufacturer, dealer, or trader who has reason to believe that his name or trade-mark is one not unlikely to be imitated, so as to constitute a false trade description, or forged trade-mark, is entitled to ask that, without the requirement of special information, such description or mark may, upon any importation, be stopped.

13. For this purpose the Board sanction the system of registration of names or marks in a way *similar* to that which has hitherto existed; and a manufacturer, dealer, or trader

(b) See G. O. 26/1888, below.

(c) As to notice to the owner of a registered name or mark when goods are detained, see G. O. 50/1893, below.

may register his name or mark at such port or ports as he desires. In respect of names or marks so registered, it will be the duty of the officers at the particular port or ports, to prevent the delivery of goods to which such names or marks are applied, unless the delivery is authorized by the registered proprietor. Apart from names or marks as to which such registration exists, the officers are not expected to examine goods with reference to Head (i).

14. Any manufacturer, dealer, or trader, whether British or foreign, may register his name or mark; but you may refuse registration to any name or mark which you consider to be of a character too indefinite or indistinct for officers to recognize, referring to the Board in any case of doubt. An applicant for registration must prove his proprietorship of the name or mark by declaration; and if, in order to avoid delay, he desires to do so, he may appoint an agent to give authority for delivery of his goods, and prove (also by declaration) the appointment of such agent.

Who may register, and on what terms.

See paragraph 32.

15. You must understand, very distinctly, that the use by the British manufacturer, dealer, or trader of even his own name on foreign goods, and the use by any manufacturer, dealer, or trader, on like goods, of words, figures, or marks of any kind stating or indicating, directly or indirectly, make or production in the United Kingdom, are prohibited unless the qualifying conditions specified in paragraph 6 are complied with. You must, therefore, clearly explain to every person registering a name or mark which involves any such statement or indication, as will probably often be the case, that while the name or mark will be guarded by such registration, it will not be rendered admissible unless duly qualified, as the law may require, in every case. The register at your port under the law now expiring will cease to be operative with the expiry of that law.

Registration to be subject to provisions mentioned in paragraph 6.

16. As regards Head (ii): if (apart from the goods specially mentioned in paragraph 6, and notwithstanding that classification) the officers should in any case upon that ordinary examination for revenue purposes, detect anything constituting an infringement of any of the prohibitions of the Act as thus set forth, you will detain such goods and refer the matter to the Board.

Notwithstanding classification in paragraph 6, any other infringement detected is to be followed by detention.

17. Such detection by officers may happen, for instance, as to number, quantity, measure, gauge, or weight; while, on the other hand, as to mode or material of manufacture, as to any patent, privilege, or copyright,\* or foreign trade-marks, the officers, upon ordinary examination, may probably, in the absence of special knowledgo, fail in detecting false descriptions or forged trade-marks.

Indication as to where such detection may happen.

\* As to copyright, this instruction in no way affects the practice under sections 42 and 44 of "The Customs Consolidation Act, 1876."

Directions as to question of place or country of origin.

18. False descriptions as to place of origin affecting the interests of "British possessions" or "foreign states" are matters which, unaided by information, officers will not generally be expected to trace; but wherever they observe goods conspicuously known as the usual product of a particular place or country, and marked with that name, shipped from a port in another country altogether, as, for instance, wine marked "Xeres" or "Spanish" from Belgium, or cigars marked "Havana" from Germany, such goods may, in the absence of proof of make or produce at the place or in the country named on them, be properly detained.

Action upon information—two stages of such action.

19. Some directions (beyond what is shown in the regulations) are desirable as to your action upon "information," and you will observe that there are two stages of procedure in this, viz., one up to and including the arrival and examination or identification of the goods; and the other after the examination or identification.

As to special examination of goods in such case.

20. With regard to the first stage—the two points for consideration are, whether any, and if so what, special examination of the goods should be made, and what deposit should be taken to cover the expense of such examination, if it is made.

On what it will depend.

21. The character and extent of examination will require careful discretion on your part, and will depend on the manner in which the goods are alleged in the notice to infringe the Act. An indication has been given you above as to what the Board consider that officers can detect and what they cannot, upon ordinary examination; and this will furnish you with a guide as to what they may be able to trace upon fuller examination after information.

Course where such examination would not be serviceable.

22. Wherever, in accordance with such indication, you are of opinion that the officers could not, even on fuller examination, discover whether the goods infringe the Act, you need not order a special examination, and consequently you will not require any deposit in respect of such examination, but you may at once order detention of the goods as if the officers had seen cause to detain them, and proceed to require security, in conformity with directions given in paragraph 29 of this Order.

Course where such examination would be serviceable.

23. Wherever, on the other hand, you are of opinion that a fuller examination than that ordinarily directed for revenue purposes may reasonably enable the officers to discover whether or not there is the infringement alleged, as, for instance, by careful weighing, measuring, counting, or gauging, you will direct that such an examination shall take place, examining as to free goods, for this purpose, not less than twice the usual number of packages, and in the case of goods imported in bulk, such as machinery and the like, treating each piece imported as a package.

24. Assuming examination to be ordered by you in accordance with the lines above indicated, you will take, as a deposit to cover the additional expense of this examination, such sum as you may think necessary, having regard to the nature of the goods, and to the number of packages which, according to the informant's knowledge, will have been stated in the notice.

Deposit to cover such examination.

25. The case of false description as to place of origin affecting the interests of "British possessions" or "foreign states" is here again one for special mention. As above stated it is one which, as a rule, officers cannot be expected to detect without information; but, for an officer examining upon information, the following rules may be laid down, viz., if it is ascertained that the name of place or country complained of is not applied to the goods at all, or, if applied, is accompanied by a definite indication or addition, as contemplated by the Act, of make or production elsewhere, the officer may be satisfied that there is no ground existing to justify the notice received; but if the name complained of is found to be applied to the goods, and is the name of a country, or of a place in a country, not the country of a port or shipment, the officer may, in the absence of proof of make or produce at the place or in the country named on them, be satisfied that the alleged infringement clearly exists.

Special rules in such examination in regard to place or country of origin as affecting British possessions or Foreign States.

26. In the case of a notice alleging the application of a forged trade-mark where the mark is one protected in a British possession or foreign State, such a notice will only be good, and need only be accepted by you, if it relates to possessions or States included in the definition of trade-marks.

As to British possessions and Foreign States to which the provisions in relation to forged trade-marks apply.

Up to the present time the British possessions and foreign States so included are (d).

27. As to transshipment and transit goods; where information and "notice" relate to these goods you will deal with them exactly as if they were goods for home use. Apart from information you will not, as regards the ordinary examination of such goods for revenue purposes, examine more packages than at present; but the Board, in addition to the existing rules as to transshipment and transit goods, direct that, as to all such goods, no marks of any kind or description shall be allowed to be applied to them in this country, and you will see that this is strictly carried out in your port.

Transshipment and transit.

28. As to goods examined upon information generally, you will be guided by the following rules. If upon examination the officer is satisfied that there is no ground existing to justify the notice received, he will pass the goods; if he is satisfied that the alleged infringement clearly exists, he will detain the goods as in a case of detention upon ordinary

Rules as to special examination generally.

(d) See list, p. 656.

examination; but in cases where the officer is not so satisfied, and in cases where you may have considered that official examination cannot test the point, you will order the detention of the goods at the risk of the informant, and thus arrive at the second stage of the procedure upon information, viz., the taking of security.

As to security where detention ordered.

29. You will observe that (except in cases where the informant prefers to give a bond, and where time allows such a step to be taken before the goods arrive and are examined), there are two things to be done in taking security—first, to take an *ad valorem* money deposit to cover the possibility of the bond not being completed, and secondly, to see that the bond is completed, after which you will return the deposit. The amount of both the deposit and the bond will depend on the value of the goods.

Enquiries as to sufficiency of sureties.

30. The form of notice given in the schedule to the regulations requires a statement of the names of persons proposed as sureties. As to the sufficiency of these you will make enquiries in the usual way, and have the bond completed as in other transactions.

As to goods after security taken, and as to delivery up of security.

31. The security having once been taken, the goods will, without further special examination, remain in charge, and the regulations contain definite provisions as to when, in the various contingencies that may arise, the security will be delivered up.

Supply of forms.

32. A form is annexed of the declaration mentioned in paragraph 14; and also of a bond, when it is preferred to give one before examination, as mentioned in paragraph 29. Supplies of these forms, and of those given in the schedule to the regulations, can be obtained in the usual way.

33. A general order as to watch cases and watches will shortly be issued; and further directions will be given, from time to time, as decisions are arrived at, under paragraphs 9 and 10, and paragraphs 16, 17, and 18 of this order.

I am, sir, your obedient servant,  
The collector                      , at                      .                      E. GOODWYN.

### C.—MERCHANDISE MARKS ACT, 1887.

(50 & 51 Vict. c. 28.)

#### *Declaration on Registration under Paragraph 13 of General Order 99/1887.*

Port of . . . . .

I\*                      , hereby declare that †                      , † the proprietor                      ,  
of §                      , viz.,                      , which ||                      expect to be applied to  
goods imported, from time to time, at this port; and that ||

have appointed Mr. ¶ of , to be\*\* agent, to give authority for the delivery of such goods.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declaration Act, 1835.

Declared this       day of       , 188       , at       ,  
Before me       ,  
(Signed)       .

A commissioner to administer oaths, &c.

N.B.—Registration in pursuance of this declaration is subject to the provisions of the Act which forbid the importation, by a registered proprietor, oven of his own goods which bear, in name or mark, any statement or indication, direct or indirect, of make or produce in the United Kingdom unless qualified as the Act requires.

\* Full name and address of declarant.

† "I," or "I and my partners, trading as Messrs.       , " or "such and such a company, of which I am the representative official," or "so and so, of such and such a place abroad, whom I represent in this country."

‡ "Is" or "are."

§ "The following name as a trade description," or "the following trade-mark," or "the following name as a trade description and trade-mark."

|| "I" or "we."

¶ This portion as to appointment of agent may be erased, where such appointment is not desired.

\*\* "My" or "our."

**D.—BOND ACCOMPANYING REQUEST FOR THE DETENTION OF GOODS.**

KNOW ALL MEN by these presents that we       are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith, in the sum of       pounds to be paid to our said Lady the Queen, her heirs or successors, for which payment well and truly to be made we bind ourselves jointly and severally, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this       day of       in the year of our Lord one thousand eight hundred and eighty       .

WHEREAS the above named       has by a notice dated the       day of       informed the collector of customs at       that the undermentioned goods, that is to say,       are about to be imported into the port of       contrary to section 16 of the Merchandise Marks Act, 1887, and has requested that the said goods shall be detained and dealt

with accordingly. Now the condition of this obligation is such that if the said his executors or administrators, shall well and effectually indemnify, save harmless, and keep indemnified her Majesty, her heirs and successors, and all her and their officers of customs and their executors or administrators, from and against all loss or damage, payment or payments, and all costs and expenses which her said Majesty, her heirs or successors, and her or their officers of customs, their executors and administrators, shall or may sustain or incur by reason or on account of any detention or delay in the delivery of the said goods, following upon the information contained in such notice and any proceedings consequent upon such detention or delay, then this obligation shall be void, otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered .

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**E.—REGULATIONS MADE BY THE COMMISSIONERS OF CUSTOMS UNDER SECTION 16 OF THE MERCHANDISE MARKS ACT, 1887 (e).**

WHEREAS by the Merchandise Marks Act, 1887 (hereinafter called "the Act"),

After various provisions against the sale, or exposure for sale, or possession for sale, trade or manufacture, of goods with forged trade-marks or false descriptions, or trade-marks falsely applied to them :

And after defining (amongst other things), the expression "trade-mark" in manner therein set forth, with reference to "the Patents, Designs, and Trade-Marks Acts, 1883," and the law of indicated British possessions and foreign states :

And after defining the expression "trade description" as any description, statement or other indication, direct or indirect, as to number, quantity, measure, gauge, or weight, of goods, as to place or country in which any goods were made or produced, as to the mode of manufacturing or producing any goods, or as to the material of which any goods are composed, or as to any goods being the subject of any existing patent privilege, or copyright :

And after defining the expressions "false trade description" and "goods," "apply," and "falsely apply,"



It is provided by section 16, that—

- (i.) All such goods as above mentioned, and
- (ii.) 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 mark be accompanied by definite indication of the country in which such goods were made or produced, shall be prohibited to be imported, and, subject to the provisions of the said section, shall be included among goods prohibited to be imported, as if they were specified in section 42 of “the Customs Consolidation Act, 1876” :

And whereas by section 18 of the Act, after authorising the continued use of trade descriptions lawfully and generally applied to goods of the particular class, or manufactured by a particular method, to indicate such class or method, it is provided that, where such trade description includes the name of a place or country calculated to mislead as to where the goods were actually made or produced, such goods not having been actually made or produced there, the said reciting section should not apply (and, consequently, goods so marked would be prohibited), unless there be added to the trade description, immediately before or after the name of the 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 :

And whereas it is also provided, by the said section 16, that the Commissioners of Customs (hereinafter called “the Commissioners”), 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 as hereinbefore mentioned, 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 the said section, and the mode of verification of such evidence :

And it is further provided by the said last-mentioned section :

That before detaining goods or taking proceedings with a view to the forfeiture thereof under the law relating to the Customs, the commissioners may require that such regulations as aforesaid shall be complied with, and satisfy themselves as to the liability of the goods to forfeiture :

That such regulations may apply to all goods, the importa-

tion of which is prohibited by the said section, or different regulations may be made respecting different classes of such goods :

And also that the regulations may provide for the informant reimbursing the commissioners all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention :

And it is also provided, by the said section, that section 2 of the Revenue Act, 1883, shall be repealed from a day to be fixed by regulations under the said reciting sections, such day not being later than the first day of January, 1888, without prejudice to anything done or suffered thereunder :

And whereas section 2 of the Revenue Act, 1883 is the law under, and by virtue of which, goods of foreign manufacture infringing the proprietary rights of British subjects in names, addresses, and trade-marks, or bearing or having upon them, under certain conditions, the name of a place in or a part of the United Kingdom, are, at the present time, detected and stopped by officers of Customs acting on their own observation and responsibility, under directions laid down by the commissioners, and without the requirement of previous information, security, or other conditions :—

Now, therefore, the commissioners under and by virtue of the hereinbefore recited power in that behalf, hereby make and require to be complied with the following regulations, viz.,

Goods to be detained.

1. Goods prohibited to be imported as hereinbefore recited, having applied to them forged trade-marks, false trade descriptions, or marks, names, or descriptions otherwise illegal, which, upon examination are detected by the officers of Customs, are to be detained by them without the requirement of previous information.

Information to ensure detention.

2. In giving information with a view to detention an informant must fulfil the following conditions, viz. :—

- (i.) He must give to the collector or superintendent, or the chief officer of Customs of the port (or sub-port) of expected importation, notice in writing stating,
  - the number of packages expected, as far as he is able to state the same ;
  - the description of the goods by marks or other particulars sufficient for their identification ;
  - the name or other sufficient indication of the importing ship ;
  - the manner in which the goods infringe the Act ;
  - the expected day of the arrival of the ship ;
- (ii.) He must deposit with the collector or other officer as aforesaid a sum sufficient, in the opinion of that officer, to cover any additional expense which may be incurred in the examination required by reason of his notice.

3. If, upon arrival and examination of the goods, the officer of Customs is satisfied that there is no ground for their detention, they will be delivered. If he is not so satisfied, he will decide either to detain the goods, as in a case of detention upon ordinary examination, or to require security from the informant, for reimbursing the commissioners or their officers all expenses and damages incurred in respect of the detention made on his information and of any proceedings consequent thereon.

4. The security thus required must be an immediate *ad valorem* deposit of ten pounds per cent. on the value of the goods, as fixed by the officer from the quantities of value shown by the entry; and, also, subsequently a bond to be completed within four days in double the value of the goods, with two approved sureties. The *ad valorem* deposit will be returned upon completion of the bond, and will not be required if, as an alternative where time permits, the informant prefers to give a like bond before examination, upon estimated value of the goods declared to by him under statutory declaration. If the security is not duly given as above required, there will be no further detention of the goods.

5. In the above regulations the words "officer of Customs" mean an officer acting under the general or special direction of the Commissioners, and the words "value of the goods" mean value irrespective of duty.

6. The "notice" and "bond" required as above shall be in the forms contained in the Schedule to these regulations, or in such other forms as the commissioners may from time to time order and direct.

7. The security taken under these regulations will be given up at the times following, that is to say:—

Where given before examination, and if no detention, forthwith.

Where given on detention:—

If the forfeiture is completed, either by lapse of time or ultimate condemnation by a court of justice, then on such completion of forfeiture.

If the forfeiture is not completed, then

If the goods are released by the commissioners, and no action or suit has been commenced against them, or any of their officers, in respect of the detention, then at the expiration of three months from the time of detention; or, if the goods are released for failure of proceedings taken for the forfeiture and condemnation thereof upon information under section 207 of "The Customs Consolidation Act, 1876," and no action or suit has been commenced against the commissioners, or any of their officers, in respect of the detention, then at the expiration of three months from the trial of such information.

If within such periods as aforesaid any such action or suit as aforesaid has been commenced, then upon the ultimate conclusion of such action or suit, and the fulfilment of the purpose for which the security was given.

8. These regulations apply to transshipment and transit goods as well as to goods landed to be warehoused, or for home consumption.

9. The 1st day of January, 1888 is, by these "regulations," fixed as the day from which section 2 of the "Revenue Act, 1883," shall be repealed, subject to the terms of the recited Act; and these regulations will take effect from the date of such repeal.

CHARLES DU CANE H. MURRAY HORACE SEYMOUR.	}	Commissioners of H. M. Customs.
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Custom House, *London*,  
1st December 1887.

## F.—SCHEDULE.

(NOTICE.)

*The Merchandise Marks Act, 1887.*

To the Collector, Superintendent, or Chief  
Officer of Customs at the Port [or  
Sub-Port] of

I hereby give you notice that the undermentioned goods, that is to say,\* are about to be imported into your port on or about the day of next, in the

That such goods are liable to detention and forfeiture being †  
That Mr. of and Mr. of are prepared to become my sureties in such bond as may be required upon detention of the goods.

And I request that the said goods may be detained and dealt with accordingly.

Dated this        day of        188 .

A. B.  
[or agent for] .

NOTE.—Mr.        refers to        his bankers [or solicitors], and Mr.        to        his bankers [or solicitors] as to his sufficiency for the penalty of the bond.

\* Describe the goods, number of packages, marks used, and any other particulars necessary for their identification.

† Describe the ship, and give name or indication.

‡ State how the goods infringe the Act, and if the infringement is one as to a forged trade-mark protected in a British possession or foreign state, state the possession or state, or if the infringement is one as to place or country of origin, state the name of the place or country falsely used.

(BOND.)

*The Merchandise Marks Act, 1887.*

KNOW ALL MEN BY THESE PRESENTS, THAT WE **A. B.** and  
 are firmly bound unto Our Sovereign Lady Victoria, by the Grace  
 of God, of the United Kingdom of Great Britain and Ireland, Queen,  
 Defender of the Faith, in the sum of \_\_\_\_\_ pounds to be paid to our  
 said Lady the Queen, her heirs or successors. For which payment  
 well and truly to be made we bind ourselves, jointly and severally,  
 our heirs, executors, and administrators, firmly by these presents.  
 Sealed with our seals. Dated this \_\_\_\_\_ day of \_\_\_\_\_ in the year of  
 our Lord, one thousand eight hundred and \_\_\_\_\_.

Whereas the abovenamed **A. B.** has by a notice dated the  
 \_\_\_\_\_ day of \_\_\_\_\_ informed the collector of customs at \_\_\_\_\_ that the  
 undermentioned goods, that is to say, \_\_\_\_\_ were about to be imported  
 into the port of \_\_\_\_\_ contrary to section 16 of the Merchandise Marks  
 Act, 1887, and requested that the said goods should be detained and  
 dealt with accordingly. And whereas the said goods duly arrived in the  
 said port on the \_\_\_\_\_ day of \_\_\_\_\_ last, and are now detained pursuant  
 to the said notice. Now the condition of this obligation is such that if  
 the said **A. B.** his executors or administrators, shall well and  
 effectually indemnify, save harmless, and keep indemnified, her Majesty,  
 her heirs and successors, and all her and their officers of customs, and  
 their executors or administrators, from and against all loss or damage,  
 payment or payments, and all costs and expenses which her said Majesty,  
 her heirs or successors, and her and their officers of customs, their execu-  
 tors or administrators, shall or may sustain or incur by reason or on  
 account of any detention of the said goods following upon the information  
 contained in such notice and any proceedings consequent upon such deten-  
 tion, then this obligation shall be void, or otherwise shall be and remain  
 in full force and virtue.

Signed, sealed, and }  
 delivered. }

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G.—GENERAL ORDER 9/1888.

CUSTOM HOUSE, LONDON,

18th January, 1888.

SIR,

In accordance with paragraph 33 of General Order 99/1887,  
 I now transmit to you the directions of the Board, to enable  
 you to deal with watch cases and watches, under the Merchan-  
 dise Marks Act; the latter term, watches, meaning as pre-  
 vided by section 7 of the Act, "all that portion of a watch  
 which is not the watch case."

Your attention has already, by G.O. 81/1887, been called to  
 the position in which watch cases, under this section, stand in  
 relation to watches; and the consequent importance of the  
 assay mark on watch cases, which mark, by virtue of sec-  
 tion 3 (1) of the Act, would be deemed a trade description as  
 to place or country of origin.

You will note, in addition, that by section 8 (1) of the Act,  
 provision is made for preventing foreign-made watch cases

from obtaining the mark placed on a watch case made in the United Kingdom: and it is enacted that a different mark shall be placed on foreign watch cases of such pattern, and in such mode as directed by Order in Council.

An Order in Council to this effect, dated the 28th of November last, was published in the "London Gazette" of 9th December last, and a copy of this order, together with sheets 1 and 2 of Appendix to Schedule II. therein referred to, which contain diagrams of the required new marks, are sent to you herewith.

You will carefully study these sheets, and note how the marks apply variously to the different assay offices in the United Kingdom.

The directions to be observed by you in applying this new law will relate to—

- (a) Watch cases with assay marks imported alone.
- (b) Like watch cases imported with the watches, that is to say watches of foreign manufacture in them.

(a) *Watch Cases with Assay Marks imported alone.*

If the cases are wholly unmarked, or are duly marked in accordance with the Order in Council, or with a foreign assay mark, and there is not, in addition, any wording on any part of the case proper, or on the dome, indicating make or produce in the United Kingdom, the goods may be delivered. If, on the other hand, there is any such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with a British Hall Mark as placed on watch cases made in the United Kingdom, you will detain the goods unless they are entered as "British goods brought back," in which case they may be admitted under the usual regulations.

(b) *Watch Cases imported with the Watches in them.*

If the cases are wholly unmarked, or are marked either  
In accordance with the Order in Council, or  
With a foreign assay mark, or

With a British assay mark as placed on a watch case made in the United Kingdom, and with an equally conspicuous statement either above or below the assay mark, that the watch is of foreign make;

And if there is no wording either as an addition on the case or dome, or upon the watch itself, whether on the dial or the plate, or any part of the works, indicating make or produce in the United Kingdom, then the goods may be delivered.

If, on the other hand, there is any such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with a British assay mark as placed on a watch case made in the United Kingdom, and with no statement of foreign make on the cases, as required above, you will detain them as a seizure, unless there is upon the dial of each watch and also on the top "plate" (where the watch is of that construction) or on the bottom "plate" (where the watch is of that construction) visibly, between the "bridges," an indelible and definite indication of the place or country in which the watches were made. Such an indication will be considered definite, if it is, or contains only the name of the place or country of origin; if in addition, it contains the name of a place in, or a part of the United Kingdom, as, for instance, "Geneva and London," or if there is anywhere on the watch an indication by figures, words, or otherwise, that the watch might be the make or produce of the United Kingdom, then, in addition to the name of place or country of origin, there must be a distinct statement that the watches were there made.

I am, Sir, your obedient Servant,  
E. GOODWYN.

The Collector                      at

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**H.—ORDER IN COUNCIL AS TO ASSAY MARKS ON WATCH CASES (f).**

At the Court at Windsor, the 28th day of November, 1887.

PRESENT—The Queen's Most Excellent Majesty in Council.

WHEREAS by the Merchandise Marks Act, 1887, 50 and 51 Vict. c. 28, it is amongst other things, provided that—

- (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.

(f) London Gazette, 9 Dec., 1887, p. 6862.

- (2.) The declaration may be made before an officer of an assay office appointed in that behalf by the office (which officer is hereby authorized 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 or indictment to the penalties of perjury, and, on summary conviction, to a fine not exceeding twenty pounds for each offence.

Now, therefore, her Majesty, by and with the advice of her Privy Council, and in exercise of the powers vested in her by the above-recited provisions of the said Act, is pleased to order and declare, and doth hereby order and declare, that where it appears by such declaration that such watch cases have been made in some country or place out of the United Kingdom, then the following authorities, that is to say:—

The Wardens and Commonalty of the Mystery of Goldsmiths of the City of London;  
 The Guardians of the Standard of Wrought Plate. Birmingham;  
 The Company of Goldsmiths of the City of Chester;  
 The Guardians of the Standard of Wrought Plate, Sheffield;  
 The Incorporation of Goldsmiths of the City of Edinburgh;  
 The Goldsmiths' Company of the City of Glasgow;  
 The Fraternity or Company of Goldsmiths of the City of Dublin;

shall respectively cause to be placed on such watch cases the marks more particularly described and delineated in Schedule II. hereunto annexed, and no other mark or marks, and such marks are hereby authorized accordingly.

And it is hereby further ordered and declared that the declaration to be made shall be in the form set forth in Schedule I. hereunto annexed.

This order shall come into operation on the first day of January, one thousand eight hundred and eighty-eight.

C. L. PEEL.

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#### SCHEDULE I.

##### FORM OF DECLARATION.

I \* do hereby declare that the [watch case] or [watch cases] [brought] or [sent] by me this day to the Assay Office



at \_\_\_\_\_ in number \_\_\_\_\_ and in a parcel marked \_\_\_\_\_ [was]  
 [were] made in \_\_\_\_\_ †.

Declared at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

Before me \_\_\_\_\_ ‡.

Officer of the aforesaid Assay Office appointed in that behalf  
 or, Justice of the Peace for \_\_\_\_\_ or, Commissioner having power to  
 administer oaths in the Supreme Court of Judicature in England.

[Supreme Court of Judicature in Ireland].

[Court of Session in Scotland].

\* Here insert name and address of declarant.

† Signature of declarant.

‡ Signature and title of person before whom the declaration is made.

SCHEDULE II. (g).

On a foreign gold case:—

Within a shield of the form of a cross, and of the size shown in  
 Figure I. of the Appendix hereto, the word "Foreign," over  
 which a hall mark particular to each office shown in Figure III.  
 and the carat value of the gold, and under which the decimal  
 equivalent of the carat value of the gold together with the variable  
 annual date letter.

On a foreign silver case:—

Within a shield of the form of a regular octagon and of the size  
 shown in Figure II. of the Appendix hereto, the word "Foreign,"  
 over which a hall mark particular to each office shown in Figure III.  
 and under which the variable annual date letter.

The particular hall mark above referred to for each of the seven assay  
 offices at which foreign cases may be stamped is shown in Figure V. of  
 the Appendix hereto (g).

I.—GENERAL ORDER 14/1888.

CUSTOM HOUSE, LONDON,

4th February, 1888.

SIR,

With reference to paragraph (b) of the 5th section of the  
 Merchandise Marks Act, 1887, I am desired to acquaint you  
 that a name of a port or place of destination applied to mere  
 packing cases, in which goods are clearly not intended to be  
 sold, or exposed for sale, either wholesale or retail, will not  
 render the goods liable to detention; but where a package  
 containing goods is not of this description, the port or place  
 of destination should be accompanied by a definite indication  
 of the country of origin (h).

Names on  
 packing cases  
 not shown to  
 purchasers.

I am, sir, your obedient servant,

To the Collector.

E. GOODWYN.

(g) The figures referred to are shown in the London Gazette, 9 Dec.,  
 1887, p. 6862.

(h) See G. O. 26/1888, below.

## J.—GENERAL ORDER 26/1888.

CUSTOM HOUSE, LONDON,  
10th March, 1888.

SIR,

Names  
applied to  
packages for  
the informa-  
tion of dealers  
only.

I am desired to acquaint you, for the information and guidance of yourself and of the officers under your survey, that, with reference to paragraph 6 (b) and to paragraph 10 of General Order 99/1887, the Board are of opinion that inscriptions applied to goods by means of labels or tickets, or applied to boxes, cartons, parcels, or other ultimate packages containing goods, manifestly only for the purpose of distinguishing the goods for the convenience of dealers and shopkeepers, and not specially intended to attract the eye of the consumer, should not be practically treated as trade descriptions, whenever the inscription consists simply of the bare name of the goods or indication of number, quantity, size, and the like.

For instance,—  
on hosiery,

“Hose”

“White Cotton—size 10.”

on textile fabrics,

“No.—Qual.—Colour—Dess.—Yards,”

or

“No.—Size—Quality—Shade.”

on goloshes,

“1 Doz. pairs—Men’s 2nd Quality—No. 7.”

Goods bearing labels, tickets, &c., of this character only are not to be detained, whatever may be the language in which the inscriptions are printed or written.

You are to cause these directions to be carried into effect accordingly.

It is to be understood that this order does not apply to wording on the goods themselves, nor to any wording which includes the name of a place or country, the name of any trader, manufacturer or dealer, or a trade-mark,

Name of  
port of  
unshipment.

I am further to acquaint you that the last clause of General Order 14/1888 is not to be read as applying to the names of ports of unshipment, used for the mere purpose of indicating where the goods are to be unladen, as required frequently in bills of lading, whatever may be the description of package used. The officers are to exercise their discretion in distinguishing whether those names are used solely for the purpose specified above.

I am, sir, your obedient servant,

To the Collector.

R. T. PROWSE.

K.—GENERAL ORDER 33/1888.

CUSTOM HOUSE, LONDON,  
24th March, 1888.

SIR,

With reference to paragraph 33 of the General Order 99/1887, I am desired to acquaint you that Swedish iron bearing the words "Lancashire Swedish," or the abbreviation thereof, "Lancash. Swedish," is to be admitted into this country without question so far as the provisions of the Merchandise Marks Act, 1887, are concerned. Lancashire  
Swedish iron.

This arrangement is sanctioned upon the understanding that the words of the mark shall not be inverted, and that under no circumstances will Swedish iron marked "Lancashire" alone be admitted into this country.

I am, sir, your obedient servant,  
To the Collector. R. T. PROWSE.

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L.—GENERAL ORDER 44/1888.

CUSTOM HOUSE, LONDON,  
9th April, 1888.

SIR,

With reference to section 33 of the General Order 99/1887, I am desired to acquaint you that packages used for the importation from any place of natural flowers, fresh fruit, vegetables and potatoes, and bearing upon them marks which the officers are satisfied are merely address marks, such as "Wm. Evans, Leeds," "Thos. Jones, London," are to be treated as packing cases to which the provisions of the General Orders 14 and 26/1888 apply, and are not to be detained under the Merchandise Marks Act on account of such marks only. Address  
marks on  
flowers,  
fruit, and  
vegetables.

Moreover, packages of the above description coming from the Channel Islands, Malta, Gozo, and Gibraltar, and bearing on them, in addition to address marks, any words in the English language describing the goods contained in the packages, are not to be detained on this account, provided such words do not constitute a trade-mark, nor include the name of a place in the United Kingdom to which the General Orders quoted above do not apply.

I am, sir, your obedient servant,  
To the Collector. R. T. PROWSE.

## M.—BY BOARD'S ORDER ON No. 37366/1888.

*Sardine Trade.*

Sardines from Spain and Portugal imported into this country, *marked with names of French places or in the French language*, but without the qualification required by the Merchandise Marks Act, 1887, may be delivered, up to the 30th of June, 1889 (inclusive). After that date, sardines which are not imported from France will not be admitted to this country unless duly qualified, when they bear upon them the names of places in France or descriptions in the French language other than the trade description "sardines à l'huile," which will be admissible on sardines from whatever part of the world they may be imported.

By order,

(Signed)

E. GOODWYN.

Custom House, London,

18th December, 1888.

## N.—GENERAL ORDER 147/1888.

CUSTOM HOUSE, LONDON,

31st December, 1888.

## Merchandise Marks Act.

*Grain.*

The Board direct that grain, of a description which is grown in the United Kingdom, imported in sacks, be delivered without reference to the marks upon them, for a period of six months from the 1st proximo, provided such marks constitute correct descriptions and do not include the name of a place in the United Kingdom. The Board make this concession with the view of allowing importing merchants time in which to add to the marks on their sacks an indication that the grain is of foreign production.

The officers are informed that descriptions of grain which are not grown in this country, including linseed and rapeseed, do not require to have an indication merely of British origin qualified by an indication that the grain is of foreign production, nor are descriptions in the English language on grain from English-speaking countries, including India, to be considered open to objection, provided they are correct descriptions and do not include the name of a place in the United Kingdom.

The officers are also informed that on and after the 1st July next the name *and address* of a merchant in this country, on grain sacks, will be dealt with as an indication that the grain is of British origin.

The Board have directed that, in the case of grain imported in bulk and transferred into sacks on board the importing ship, the marking of the sacks need not be qualified with a statement of the foreign origin of the grain.

By order, R. T. PROWSE.

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O.—GENERAL ORDER 7/1889.

CUSTOM HOUSE, LONDON,  
1st February, 1889.

Merchandise Marks Act, 1887.

*Certain discretionary Powers given to Officers.*

The importation sections of the Merchandise Marks Act, 1887, having now been in force for over twelve months, and its provisions having become familiar both to importers of goods and to the officers of Customs, the Board have considered whether some discretionary power may not be given to the collectors, surveyors, or other superior officers in releasing goods, which although at first sight they appear to be liable to detention, yet on further explanation from the importer may properly be released, so far as the Merchandise Marks Act is concerned, such, for instance, as genuinely marked British returned goods, or private property in actual use.

The Board accordingly give to the collectors and surveyors at the outports, and to the inspectors and surveyors in London, a discretionary power to deliver goods without a special order when they are satisfied that they come under any one of the following heads:—

(1.) Articles not dutiable, however marked, sent over to one individual as presents, or for personal use, and not in any process of sale or purchase, on the officers satisfying themselves that the importer's statement in this respect is correct.

(1.) Articles for private use.

(2.) Articles which are not new and which are manifestly private property, such as clothing or other personal effects, and old, used, and damaged articles sent to this country for repairs and imported by or consigned to the persons whose names are on the goods. Under this head, however, such goods as old lace, old china, or old violins, and similar articles sent by dealers for sale as antiquities, are not included; goods

(2.) Used articles either private property or sent for repairs.

of this kind are strictly merchandise. Wherever age, apparent or real, adds to the value of the goods, they are not to be delivered under this paragraph, unless they are private property, not in any process of sale or purchase, but the directions of the Board must be obtained.

(3.) British samples returned.

(3.) Samples of *no value*, made by competing firms in the United Kingdom, and sent to manufacturers in this country for the purposes of trade, may be delivered on a statement being made in writing by the importer that the articles are samples of no value, and that they are imported for trade purposes, as samples, and not for sale or use, provided the officers are satisfied that they are of British manufacture.

(4.) Foreign samples.

(4.) Foreign samples *not* bearing the names or trade-marks of manufacturers or dealers in the United Kingdom, but bearing trade descriptions which are misleading in language as to the country from which they come, may be also admitted upon being duly qualified, and on the officers being satisfied that they are imported for purposes of manufacture or comparison in this country. Foreign samples, however, bearing the names or trade-marks of British manufacturers or dealers, or indirect indications of British manufacture, without qualification, sent for the purpose of soliciting orders for sale in this country, are to be placed under detention, and not delivered without the Board's sanction.

(5.) British returned goods.

(5.) British returned goods, not dutiable, or in respect to which no drawback can have been received, may be released under the 6th section of the Act 42 & 43 Vict. c. 21, without a special order of the Board, so far as the marks are concerned, either by a bill of store, or by declaration of the importer that the goods are within his knowledge British returned, so long as the collector or surveyor sees no reason to doubt its truth.

Should, however, the goods be admitted to entry as British under the second alternative allowed by the section, viz., "by and with the consent in writing of the proprietor of such name, brand, or mark, or his legal representative," such consent in each case must be accompanied by a statement from the persons whose names appear upon the goods that the articles have been manufactured by them in this country.

Should the officer who examines the goods have any doubt as to the truth of the statement, the matter is to be reported to the Board.

The officers will not call for statutory declarations made under the Statutory Declarations Act, 1835, without the Board's sanction in each case.

(6.) Abandoned detained goods.

(6.) In London, goods which have been placed under detention on account of illegal marks, and in respect of which no applications have been made by the importers or no steps taken to carry out the conditions imposed by the Board on

their release, within two months from the date of the Board's order for their detention, are to be removed to the Queen's warehouse, without special directions in each case, should the officers see no circumstances which call for exceptional treatment.

(7.) The officers are to take care that, in all cases where the Board allow qualifying words to be added before the delivery of goods, such words are applied in characters clear, conspicuous, and as indelible as the marks requiring qualification, and in close proximity to those marks. (7.) Qualifying marks.

By order, E. GOODWYN.

To the Collector.

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P.—GENERAL ORDER 8/1890.

CUSTOM HOUSE, LONDON,  
25th January, 1890.

Merchandise Marks Act.

*As to marking of imported Bales of Wool.*

The officers are informed that wool imported from New Zealand and the Australian and Cape Colonies, in bales marked with the names of the Stations upon which the wool is grown, or the breed of sheep, such as "Bridgwater," "Cheviot," "Lincoln Slipes," &c., and which are often identical with the names of towns or districts in the United Kingdom, need not, until further orders, be detained for want of an accompanying indication of the country of origin.

By order of the Board,  
R. T. PROWSE.

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Q.—GENERAL ORDER 50/1893.

CUSTOM HOUSE, LONDON,  
12th July, 1893.

Merchandise Marks Act, 1887.

*The Proprietor of a Registered Mark to be apprized when goods have been detained for an infringement of such Mark.*

With reference to the provisions contained in the regulations made by the Commissioners of Customs under section 16 of the Merchandise Marks Act of 1887, and to those of General Order 99/1887, the Board direct that, when goods are detained on account of names or marks which have been registered in

this department, care be taken in every case that, in addition to the usual notice of seizure required under section 207 of the Customs Consolidation Act, information of the detention, and of the cause of such detention, be at once given in writing to the person who has so registered his name or mark, or to the representative appointed by him to authorize delivery of the goods, who is at the same time to be called upon to enter into the required security without delay, and informed that unless immediate attention is given to the matter the goods will be released.

If, at the end of four days, the collector (or other principal officer concerned) does not receive a reply he will release the goods; but the collectors will observe that the limit to the time of detention here laid down does not apply in cases where the marks are such as to render the goods liable to detention irrespective of the question of registration; and in such cases the above clause intimating an early release of the goods in the absence of due attention being paid to the matter is to be omitted from the notice given to the owner of the mark or his representative.

By order of the Board,  
JOHN COURROUX.

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**R.—GENERAL ORDER 68/1893.**

CUSTOM HOUSE, LONDON,  
31st August, 1893.

**Merchandise Marks Acts.**

*Saumur Champagne.*

The Board, having had their attention recently called to the marks on French sparkling wines, hereby inform officers for their guidance, that on and after the 1st October next, the words "Saumur Champagne," or the like words, when applied as a description to sparkling wines of Saumur, will not be admissible under the provisions of the Merchandise Marks Acts. Any such importations marked descriptively with expressions involving the word "Champagne," or otherwise than merely "Saumur," "Saumur Mousseux," "Sparkling Saumur," or the like, must therefore, on and after the date above named, be detained for the Board's directions.

By order of the Board,  
JOHN COURROUX.



## No. 15.

**ERRORS IN TRADE DESCRIPTIONS OF MEASURE ALLOWED UNDER THE INDIAN M. M. A.**

NOTIFICATION.—No. 1118.—Simla, 13th August, 1889.

In the exercise of the power conferred by section 16 of the Indian Merchandise Marks Act, IV. of 1889, the Governor General in Council directs that criminal courts, in giving effect to the provisions of the Act in respect of trade descriptions of quantity, measure, or weight of the goods specified hereunder, shall observe the following instructions:—

I. A trade description of length stamped on *grey, white, or coloured cotton piece goods* shall not be deemed to be false in a material respect unless—

(a) Where a single length is stamped, the description exceeds the actual length by more than—

4 inches	in pieces stamped as 10 yards long and under ;
5	"    "    "    above 10 yards and up to 23 yards long ;
7	"    "    "    "    23   "    "    36   "
9	"    "    "    "    36   "    "    47   "
18	"    "    "    "    47 yards long ;

provided that the average length of the goods in question shall not be less than the stamped length.

(b) Where a maximum and a minimum length are stamped, the described maximum length is greater than the actual length by more than—

9 inches	in piece goods under 35 yards long ;
18	"    "    35 yards and up to 47 yards long ;
36	"    "    above 47 yards long ;

provided that no such piece shall measure less than the minimum stamped length.

II. A trade description of width stamped on *grey, white, or coloured cotton piece goods* shall not be deemed to be false in a material respect unless the description exceeds the actual width by—

$\frac{1}{4}$ inch	in pieces stamped as 40 inches or less in width ;
$\frac{1}{2}$	"    "    over 40 inches or under 59 inches in width ;
1	"    "    59 inches or more in width ;

provided that the average width of the goods in question shall not be less than the stamped width.

- III. A trade description of count or number, length or weight, applied to *grey cotton yarn* shall not be deemed to be false in a material respect unless—
- (a) The described count or number is greater or less than the actual count or number by more than 5 per cent.; or
  - (b) The average length of the whole number of hanks in a bundle of such yarn is less than 840 yards; or
  - (c) In a bundle described as being 10 lbs. in weight, the number of knots or *moras* of 10 hanks each is not the same as, and the number of knots or *moras* of five hanks is not double, the described count or number of the yarn.
- IV. A trade description of count or number applied to a bundle of *dyed cotton yarn* shall be accepted as indicating length only, the hank being taken to measure 840 yards, and it shall be deemed to be false in a material respect if it exceeds the actual length by more than 5 per cent. ;
- Provided that the average length of the whole number of hanks in the yarn in question shall not be less than the described length.
- V. A trade description of length applied to *thread of any kind* (of cotton, wool, flax, or silk) shall not be deemed to be false in a material respect unless it exceeds the actual length by more than 1 per cent.
- VI. The dimensions of goods on which their length or width is stamped shall be determined by measurement in imperial yards of 36 inches.

A. P. MacDONNELL,  
Secretary to the Government of India.

**No. 16.**

**REGULATIONS MADE BY THE BOARD OF TRADE WITH THE CONCURRENCE OF THE LORD CHANCELLOR UNDER SECTION 2 OF THE MERCHANDISE MARKS ACT, 1891, WITH REGARD TO THE PROSECUTION OF OFFENCES UNDER THE MERCHANDISE MARKS ACT, 1887 (a).**

1. The prosecution of offences under the Merchandise Marks Act, 1887, shall, subject to the condition hereinafter prescribed, be undertaken by the Board of Trade in cases which appear to the Board to affect the general interests of the country, or of a section of the community, or of a trade.

2. Every application to the Board to undertake a prosecution shall be accompanied by the following documents :

(a) A statement showing the nature and circumstances of the case, and sufficient to enable the Board to form an opinion whether the case affects the general interests of the country, or of a section of the community, or of a trade.

(b) A statement showing the facts which, if the Board undertake the prosecution, will be capable of proof, and setting out the proofs and names of the witnesses available to prove such facts.

The Board may require the above statements to be supplemented; or additional evidence to be furnished.

3. If, on the evidence, the Board is of opinion that there is no reasonable prospect of a conviction being obtained, the Board will not, unless it thinks fit, undertake the prosecution.

4. If the Board is of opinion that the prosecution would be better or more properly conducted under some other Act of Parliament other than the said Act, the Board will not undertake the prosecution.

5. The Board may, before undertaking a prosecution, require the applicant to give security for costs on such terms and in such manner as it thinks proper.

6. For the purpose of carrying these regulations into effect, the Board may, from time to time, prescribe the use of such forms and give such directions as it may deem expedient.

M. E. HICKS-BEACH,

President of the Board of Trade.

21st May, 1892.

I concur,

HALSBURY, C.

(a) Statutory Rules and Orders, 1892, p. 973.

## No. 17.

## FORMS OF INDICTMENT AND INFORMATION.

## FORM OF INDICTMENT.

Middlesex } The jurors for our Lady the Queen upon their  
to wit. } oath present that C. D. before and on the  
day of            was the proprietor of a certain trade-mark duly  
registered in the register of trade-marks kept under the  
Patents, Designs and Trade-Marks Act, 1883, and in the said  
register numbered (            ) (a); and that A. B. on the  
day of            , the said C. D. then being the proprietor of the  
said trade-mark as aforesaid, did unlawfully, and with intent  
to defraud, apply the said trade-mark to certain goods, to wit  
[describing them], without the assent of the said C. D., con-  
trary to the Merchandise Marks Act, 1887;

And the jurors aforesaid, upon their oath aforesaid, do fur-  
ther present that C. D., before and on the            day of            ,  
was the proprietor of a certain trade-mark duly registered in  
the register of trade-marks kept under the Patents, Designs,  
and Trade-Marks Act, 1883, and in the said register numbered  
(            ) (a), and that A. B., on the            day of            , the  
said C. D. then being the proprietor of the said trade-mark as  
aforesaid, did unlawfully, and with intent to defraud, and  
without the assent of the said C. D., apply to certain goods,  
to wit [describing them], a certain mark, to wit [describing it], so  
nearly resembling the said trade-mark as to be calculated to  
deceive, contrary to the Merchandise Marks Act, 1887.

INFORMATION FOR AN OFFENCE AGAINST THE MERCHANDISE  
MARKS ACT, 1887 (b).

In the County of            , Petty Sessional Division of            .  
The information of C. D. [address and description], who,  
upon oath, states that A. B. [address and description] on the  
day of            did [here state the offence, as below].

Taken before me,

J. P.,

Justice of the Peace for the county  
of            aforesaid.

(a) If the date of the offence charged is more than one year before that of the presentation of the indictment, add, "and that the said C. D. first discovered the commission of the offence herein charged after the of            ." See sect. 15.

(b) Summary Jurisdiction Act, 1879, s. 31; the information must be for one offence only; Summary Jurisdiction Act, 1848, s. 10.

*Statement of Offences.*

Unlawfully and with intent to defraud forge a certain trade-mark duly registered in the register kept under the Patents, Designs and Trade-Marks Act, 1883, and therein numbered \_\_\_\_\_, of which trade-mark one C. D. was then the proprietor, within the meaning of the Merchandise Marks Act, 1887, contrary to the said Act.

Unlawfully and with intent to defraud falsely apply to certain goods, to wit [*describing them*], a certain trade-mark duly registered [*as above*], of which [*as above*], within the meaning of the Merchandise Marks Act, 1887, contrary to the said Act.

Unlawfully and with intent to defraud apply to certain goods, to wit, gelatine (on the \_\_\_\_\_ day of \_\_\_\_\_, sold by the said A. B. to \_\_\_\_\_), a false trade description as to the materials of which such goods were composed, by which description the said goods were falsely indicated to be isinglass (c), contrary, &c.

Unlawfully and with intent to defraud sell or expose for sale certain goods, to wit, gelatine (on the \_\_\_\_\_ day of \_\_\_\_\_, sold by the said A. B. to \_\_\_\_\_), to which had been applied a false trade description as to the materials of which such goods were composed, whereby the goods were falsely indicated to be isinglass (c), contrary, &c.

Unlawfully and with intent to defraud apply a false trade description, whereby the said goods were falsely described to be subject to an existing patent (c), contrary, &c.

Unlawfully sell [or expose for sale] (d) goods, to wit [*describing them*], to which a false trade description had been applied (c), contrary, &c.

At the parish of Saint Michael in the said city, on the 16th of January, 1890, unlawfully apply a certain false trade description, namely, "barrel," to certain goods, to wit, a certain cask of beer, false as to the measure or gauge thereof, contrary to the provisions of the Merchandise Marks Act, 1887 (e).

On the 7th and 11th of February, 1889, at Purfleet, in the parish of \_\_\_\_\_, and the county of \_\_\_\_\_, unlawfully apply [or cause to be applied] (d) a false trade description, to wit, the letters, figures, and words "Gunpowder, Chilworth Gunpowder Company, R.L.G.4," to certain goods, viz., gunpowder, contrary to the statute 50 & 51 Vict. c. 28, s. 2 (f).

(c) See *Gridley v. Swinburne*, 52 J. P. 791.

(d) Summary Jurisdiction Act, 1879, s. 31; the information must be for one offence only, Summary Jurisdiction Act, 1848, s. 10.

(e) *Budd v. Lucas*, 55 J. P. 550.

(f) *Stacey v. Chilworth Gunpowder Co.*, 54 J. P. 436.

## No. 18.

**STATUTES REQUIRING PARTICULAR CLASSES  
OF GOODS TO BE MARKED IN A SPECI-  
FIED MANNER (a) IN ENGLAND (b).**

**ANCHORS AND CHAIN CABLES.]**—Manufacturer to place his name or initials and the number and weight of the anchor on every anchor (17 & 18 Vict. c. 104, s. 483); contract for sale of chain cable to imply a warranty of testing and stamping; no chain cable or anchor of greater weight than 168lbs. to be sold unless tested and stamped according to the statute 37 & 38 Vict. c. 51

**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.

**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, 23, 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.”

(a) 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 1892 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.

(b) The Scotch and Irish statutes are given by Mr. Safford.

**CHICORY AND COFFEE.]**—Imitations of coffee and coffee mixtures not to 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. 542, and Sheffield marks, p. 91.

**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.

**MEDALS (Exhibition).]**—Penalties for false representations as to grants of medals or certificates of the Exhibitions of 1851 or 1861. 26 & 27 Vict. c. 119.

**PLATE.]**—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 (c). 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 (d), Exeter, Bristol (e), Chester, and Norwich (d); 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

(c) These statutes are summarized by Mr. Sebastian, p. 602, and Mr. Safford, p. 204.

(d) The marks for these towns are now discontinued.

(e) Bristol never exercised its right to mark: Sebastian, 3rd ed., p. 603.

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* mark (*f*) 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 authorized, 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 heads, lockets, filigree work, shirt buckles or brooches, stamped medals, or spouts to china, stone, or earthenware tea-pots, 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 kni<sup>g</sup> 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 1880 (5 & 6 Vict. c. 56, s. 6), is to be marked as English plate (5 & 6 Vict. c. 47, s. 59), and with the figure F. on an oval shield. (39 & 40 Vict. c. 35.)

Penalties for counterfeiting assay marks and connected offences are provided by 7 & 8 Vict. c. 22.

(*f*) The duty on plate is now abolished: 53 Vict. c. 8, s. 10.



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 the Order in Council of the 28th of November, 1887 (p. 695), 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 (p. 522).

**PLATED GOODS.]**—Makers of plated goods in Sheffield, or within 100 miles thereof, are authorized 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 her Majesty's property; the marks not to be applied by unauthorized persons; obliterating the marks with intent to conceal her 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.
Buntin .....	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, 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 Acts 41 & 42 Vict. c. 49; 52 & 53 Vict. c. 21.

**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; and ss. 20, 23, repealed by 47 & 48 Vict. c. 43, s. 4).

# INDEX.

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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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