

indicated by the name, whether prepared by the original inventor of the recipe, or his successors in business, or not. Until the secret is discovered or betrayed the goods of the original inventor or his successors can be the only goods to which the name is applicable, or which are denoted by it;¹ but when other people can make them, the difficult question of fact, discussed in previous chapters of this book² arises, whether the name is merely that of the goods themselves, or that of goods of the kind prepared or sold by the original inventor or his successors in business. This was clearly put by Fry, J., in *The Angostura Bitters* case.³ "I cannot say," the learned judge said, "that Meinhard⁴ may not, if he can, make a bitter identical with the plaintiffs', and, if he does, I cannot prevent him from selling it as *Angostura Bitters*. It is to be observed that the person who produces a new article, and is the sole⁵ maker of it, has the greatest difficulty (if it is not an impossibility) in claiming the name of that article as his own, because, until somebody else produces the same article, there is nothing to distinguish it from. No distinction can arise from using the name of the class so long as the class consists of only one species, for then the name of the species and the name of the class will be the same."

The use of the name or secret may be a breach of contract or of confidence.

But, as regards any particular person, the use of a mark or name which is open to the world at large may be restrained by reason of a contract which he has entered into, or of circumstances which make it contrary to conscience for him to avail himself of the general right. Putting aside cases of express contract,—as where, for instance, a partner or servant has covenanted not to use the firm name, or any particular name or marks, or not to engage in any particular business, after the

27 R. P. C. 268; 25 R. P. C. 265 (*Chartreuse*), where the fact that the process of the monks (plaintiffs) was a secret one, was adverted to in the judgments. See also the form of the injunction, 25 R. P. C. at p. 294.

¹ Thus, in *Birmingham Vinegar Brewery Co. v. Powell*, [1897] A. C. 710; 14 R. P. C. 720, the defendants were restrained from describing their sauce as *Yorkshire Relish* without clearly distinguishing it from the plaintiff's sauce. They had not succeeded in discovering the recipe, but only in making a wonderful match.

See above, p. 540.

² Above, pp. 39 *et seq.*, and p. 563.

³ *Siegert v. Findlater*, 7 C. D. 801, at p. 813.

⁴ The maker of the defendant's bitters.

⁵ On the principle of *Dent v. Turpin* (above, p. 427), if there were two or three makers only, each of them might claim to restrain an outsider from using the name. See observations of Ld. Watson during the argument in *The Yorkshire Relish* case, 14 R. P. C. at p. 726. Cf. sec. 39 of the Trade Marks Act, 1905.

determination of the partnership or employment,—the most important cases of this kind are cases of trade secrets. The law relating to trade secrets does not properly fall within the scope of this book, but as it touches upon the limitation of trade mark and trade name rights referred to above, it is convenient shortly to refer to the leading cases on the subject.

Wherever secret information has been obtained under circumstances which import a contract not to disclose or make use of it, or by breach of confidence, or under other circumstances which make the disclosure, or the use of the information, contrary to conscience, the Court will restrain the person who has obtained it, or anyone to whom it has been communicated by him, from using or disclosing it.¹

Thus, in *Prince Albert v. Strange*,² the publication of a catalogue of a number of etchings made by the late Queen and Prince Albert for their private use and amusement, and never published or authorised to be published by them, and the exhibition of the etchings, was restrained, the copies of the etchings which had passed into the defendant's possession having been obtained surreptitiously and in breach of confidence from or through a printer employed to print them. And in *Morison v. Moat*³ the defendant, who had obtained the secret of manufacturing *Morison's Universal Medicine* from his father, was restrained from using it. Both the defendant and his father had formerly been in partnership with the plaintiff, but the father of the defendant, to whom alone the original inventor had disclosed the secret, had entered into a bond not to divulge it to any other person. The injunction restrained the defendant, his agents, &c., from selling, under the title of *Morison's Universal Medicine*, any medicine made by him or under his

Information obtained by breach of contract or of confidence.

¹ For a case in which the Court enforced the trusts of a settlement of a trade secret, see *Green v. Folgham*, 1 S. & S. 398; 1 L. J. (O. S.) Ch. 203 (1822).

² 2 De G. & Sm. 652; 1 Mac. & G. 25; 18 L. J. Ch. 120 (1849), Knight-Bruce, V.-C., and Cottenham, L.C. Under the Copyright Act, 1911, "copyright" in reference to an unpublished work means the sole right to publish the work, or any substantial part thereof.

³ 9 Hare, 241; 20 L. J. Ch. 513; 21 *ib.* 248 (1851), Turner, V.-C., and

Knight-Bruce and Ld. Cranworth, L.JJ., App., p. 730. The case of *Canham v. Jones*, 2 Ves. & B. 219; 13 R. R. 70, was distinguished by Turner, V.C., on the ground that it was not put forward as one of breach of confidence or contract; but the report shows that the bill stated the employment of the defendant, and that the plaintiff's counsel, on the demurrer, to some extent rested their case on breach of confidence. The case would now be differently decided on the alleged facts.

directions, and also from making any medicines according to the secret, or in any manner using the secret of compounding the medicines, or any part thereof.

Information obtained by a clerk;

table of dimensions by engineer's draughtsman;

book of advertisements by canvasser; lectures;

private letters; copies of pictures by lithographer;

photograph of the plaintiff.

Injunctions have been granted on the same principles to restrain the use or publication of secret information obtained by a clerk or servant in the course of his employment¹—and it is said that “every clerk employed in a merchant’s counting-house is under an implied contract that he will not make public that which he learns in the execution of his duty as a clerk”²—of a list of the names and addresses of the plaintiff’s customers copied by the defendant from his books when employed as his manager;³ of a table of details of the dimensions of machinery designed by, or for the plaintiffs, collected from their plans by one of their draftsmen, although the details could all have been gathered from the machines made according to the designs and sold, if access could have been obtained to them;⁴ of materials for the construction of a book of advertisements collected by the plaintiff’s advertising canvassers;⁵ of lectures delivered to a class of students, and not published or authorised to be published by the lecturer;⁶ of private letters written by the plaintiff, or by a person whose estate the plaintiff represents;⁷ of copies of the plaintiffs’ pictures, delivered to the defendants for the making of copies, in excess of the number made for and delivered to the plaintiffs;⁸ and of prints from a photographic

¹ *Youatt v. Winyard*, 1 Jac. & W. 394 (1820), Eldon, L.C. A recent illustration of the exercise of the jurisdiction is *Liquid Vencer Co., Ltd. v. Scott*, 29 R. P. C. 639 (1912), Swinfen Eady, J., interlocutory injunction against divulging secret process for making liquid vincer, or using the same.

² Per Wigram, V.-C., in *Tipping v. Clarke*, 2 Hare, 383 (1842); and per North, J., in *Pollard v. Photographic Co.*, 40 C. D. 345 (1888). See next case.

³ *Robb v. Green*, [1895] 2 Q. B. 1, 315, Hawkins, J., and C. A.; damages for breach of the implied contract to observe good faith were also recovered. *Measures Bros., Ltd. v. Measures*, [1910] 1 Ch. 336, Joyce, J., director of company ordered, after his service had terminated, to deliver up such lists made for his own purposes and inquiry

as to damages granted.

⁴ *Merryweather v. Moore*, [1892] 2 Ch. 518, Kekewich, J. The defendant had been apprenticed to the plaintiffs, and had remained in their employment after his articles expired; cf. *Reuter's Telegram Co. v. Byron*, cited below, p. 637, note (3).

⁵ *Lamb v. Evans*, [1892] 3 Ch. 462; [1893] 1 Ch. 218, Chitty, J., and C. A.

⁶ *Abernethy v. Hutchinson*, 3 L. J. Ch. (O. S.) 214 (1824), Eldon, L.C.; *Caird v. Sime*, 12 App. Ca. 326 (1887). See also the Copyright Act, 1911.

⁷ *Perceval v. Phipps*, 2 Ves. & B. 19 (1813), Plumer, V.-C.; *Earl of Lytton v. Devey*, 54 L. J. Ch. 293 (1884), Bacon, V.-C. See also *Macmillan v. Dent*, [1907] 1 Ch. 107; and *Philip v. Pennell*, [1907] 2 Ch. 577.

⁸ *Tuck & Sons v. Priester*, 19 Q. B. D. 629 (1887), C. A.

negative likeness of the plaintiff, which the defendants had been employed by the plaintiff to take.¹ As to some of the above matters protection is also now given by the Copyright Act, 1911.

“Different grounds have been assigned for the exercise of the jurisdiction. In some cases it has been referred to property, in others to contract, and in others, again, it has been treated as founded upon trust or confidence, meaning, as I conceive, that the Court fastens the obligation on the conscience of the party, and enforces it against him in the same manner as it enforces, against a party to whom a benefit is given, the obligation of performing a promise, on the faith of which the benefit has been conferred.”² But it is submitted that the true ground is always implied contract,³ for if information, which both parties understand the present possessor intends to be kept, and to remain secret, is communicated by him to another, or the means of obtaining it are placed by him within the reach of another, for particular purposes, for instance, in the course of an employment, an undertaking not to use or disclose the information ought almost necessarily to be inferred.

The jurisdiction rests on implied contract.

As already stated, the jurisdiction extends to enable the Court to restrain a third party from using secret information which has been, to his knowledge, obtained or communicated in breach of faith⁴ or contract. On similar grounds the right of a person, who has collected information and supplied it for the sole use of his customers, to restrain them from disclosing it to others,⁵ and

¹ *Pollard v. Photographic Co.*, p. 636, note (2). See also the Copyright Act, 1911, s. 5.

² Per Turner, V.-C., in *Morison v. Moat*, 20 L. J. Ch. p. 522. So, per Kekewich, J., in *Merryweather v. Moore*, [1892] 2 Ch. p. 522.

³ *Merryweather v. Moore*, supra; *Reuter's Telegram Co. v. Byron*, 43 L. J. Ch. 661 (1874), Jessel, M.R.; *Robb v. Green*, p. 636, note (3), was decided on the ground that there is an implied contract to keep good faith on the part of a servant. And see *Kirchner & Co. v. Gruban*, [1909] 1 Ch. 413, Eve, J. In *Amber Size and Chemical Co., Ltd. v. Menzel*, [1913] 2 Ch. 299; 30 R. P. C. 433, Astbury, J., said that the Court would restrain an ex-servant from publishing or divulging that which had been

communicated to him in confidence or under a contract by him, express or implied, not to do so, and generally from making an improper use of information obtained in the course of a confidential employment; and further from using to his master's detriment information and knowledge surreptitiously obtained from him during the servant's employment. He found as a fact that the defendant knew the process was secret, and acquired knowledge of it during his employment; and made an improper use of the knowledge so acquired; an injunction was granted. The principle extends to information retained in the memory.

⁴ Page 635, notes (2) and (3).

⁵ *Exchange Telegraph Co. v. Gregory*, [1896] 1 Q. B. 147, C. A.

to restrain others from surreptitiously obtaining it from the subscribers, has been protected.¹

Patents taken out by agent in breach of confidential relation towards principal.

The mere existence of a contract for service does not *per se* disqualify a servant from taking out a patent for an invention made by him during his term of service, even although the invention may relate to subject matter germane to and useful for his employers in their business; and that, even although the servant may have made use of his employers' time and servants and materials in bringing his invention to completion, and may have allowed his employers to use the invention while in their employment, but all the circumstances must be considered in each case. Thus it was held by Byrne, J., in a case in which he summed up the principle established by the authorities in the above words, that the confidential agent and manager in this country of an American corporation, who had taken out two patents in this country, could not, having regard to the nature and scope of his employment, to the obligations and duties arising therefrom, to the trust imposed in him, and to his own conduct in endeavouring to establish a trade for them in the articles in question, hold the patents as against the corporation, and he was declared to be a trustee for them of the two patents.²

Use of agent's information where no breach of contract or confidence.

Reuter's Co. v. Byron.

The mere fact that the defendant obtained information as and while he was the agent of the plaintiff, is not a sufficient ground for restraining him from using it, provided there is nothing of a secret character in the information itself, or confidential or surreptitious in the manner in which it was communicated or obtained, so that a contract not to communicate or use it can be implied. "The plaintiffs here do not seek to restrain the defendant from publishing anything," Jessel, M.R., said, in *Reuter's Telegram Co. v. Byron*,³ "but from making use of knowledge acquired while the relation of principal and agent subsisted, after that relation had terminated. Now I am not aware of any authority in which this has been done in the absence of a contract, expressed or implied." And he added, "the jurisdiction of the Court cannot be stretched on an interlocutory application. I do not mean to say it cannot be done at all." The circumstances of the case just cited were, that the plaintiffs

¹ *Exchange Telegraph Co. v. Central News*, [1897] 2 Ch. 48, Stirling, J.

² *Worthington Pumping Engine Co. v. Moore*, 20 R. P. C. 41 (1902). A claim as to a third patent was dropped,

See also *Richmond & Co., Ltd. v. Wrightson*, 22 R. P. C. 25 (1905), Buckley, J., and *Edisonia, Ltd. v. Forse*, 25 R. P. C. 546 (1908), Warrington, J.

³ See n. (3), ante, p. 637.

had invented a large number of telegraphic cyphers indicating the names of their customers, which were communicated to the defendant while he was the plaintiffs' agent, and after he had left their employment, and started a rival business, he sent circulars to their customers, stating that he had their cyphers, and soliciting their custom. It was said that the defendant had committed no breach of confidence with regard to the cyphers, because these were known to the customers, and could have been obtained by the defendant from such of them as chose to do business through him. It may be doubted whether the importance of having access to the large number of cyphers invented or collected by the plaintiffs was fully appreciated in this case, and whether the decision is consistent with the reasoning accepted in the later cases of *Lamb v. Evans*, and *Merryweather v. Moore*, cited above.¹ It was, however, as appears from the judgment of the learned Master of the Rolls, a decision on an interlocutory application only. The principle stated in the judgment, and quoted above, is undoubtedly sound, whatever may be thought of its application to the facts of the case.

Following the ordinary rule in regard to injunctions, no injunction to restrain the communication of a secret will be granted unless by reason of a threat or otherwise the Court is satisfied that there is a danger of the communication being made.²

No injunction unless there is danger of the secret being communicated.

Section 15 of the Patents and Designs Act, 1907, contains provisions protecting a true and first inventor against applications for patents in fraud of his rights and from the consequences of use or publication subsequent to a fraudulent application during the period of provisional protection.

Where the owners of an alleged secret process brought an action to restrain the use of it, and the defendants denied that the process was secret, and denied that they were using it, it was held that the defendants were entitled to discovery; and an order for inspection was made limited to the legal advisers and experts of the defendants not exceeding four in number.³

Discovery.

¹ Page 636, notes (5), (4).

² *Morison v. Moat*, 20 L. J. Ch. p. 529.

³ *Reddaway & Co., Ltd. v. Flynn*, 30

R. P. C. 16 (1913), C. A., the limit was inserted with the consent of the defendants.

CHAPTER XX.

REGISTRATION OF FOREIGN AND COLONIAL TRADE MARKS.

BEFORE the introduction of the Register of trade marks a foreigner, not being an alien enemy, was allowed to sue for the infringement of his trade mark in the English Courts,¹ provided that the trade mark had become his trade mark in England by user, or to prevent or obtain damages for the passing off the goods of others as his goods, in the same way and on the same terms as an English subject. And many treaties existed by which this country agreed to give to the subjects of other countries the same right of protection, in respect of their trade marks, as it gave to its own subjects.² The prohibition contained in sec. 42 of the present Act, and the corresponding sections of the Acts of 1883 and 1875, restraining actions in respect of the infringement of unregistered trade marks,³ however, apply to the trade marks of foreigners,⁴ and therefore actions for infringement could not, since 1875 (in general),⁵ be brought by a foreigner without his trade mark being registered in England; actions for passing-off, to which the prohibitory sections of the former or the present Acts do not apply,⁶ remaining as before.

A foreigner, or any resident in a British possession, may apply for and obtain registration under sec. 12; but if he does not reside or carry on business in the United Kingdom at the time of making the application, he must, if so required, give an address for service in the United Kingdom;⁶ and under sec. 91 of the Patents and Designs Act, 1907, replacing secs. 103 and

¹ *The Collins Co. v. Reeves*, 28 L. J. Ch. 56 (1858), Stuart, V.-C.

² See a paper presented to Parliament, 1872, C. 693. For later instances of similar treaties, see the Convention between Great Britain and Guatemala, July 20, 1898 (1899, C. 9504), which withdrew from the International Convention during 1895, and the Convention between Great Britain and Luxem-

burg, Jan. 25, 1900 (1900, C. 31).

³ For the precise effect of the section, see its terms, and Chap. XII., p. 373.

⁴ *Goodfellow v. Prince*, 35 C. D. 9 (1887), C. A.; decided under the Act of 1883, sec. 77, see above, pp. 375, 382.

⁵ Sect. 45.

⁶ Rule 9, corresponding to Act of 1888, s. 8.

104 of the Act of 1883,¹ further provisions are made in his favour if he is a subject of a State in respect of which, or a British subject resident in a British possession to which the provisions of the section have been, by Order in Council, declared to be applicable.²

Section 91, so far as it relates to trade marks,³ provides that—

“(1.) If His Majesty is pleased to make any arrangement with the government of any foreign state for mutual protection of trade marks, then any person who has applied for protection for any trade mark in that state, shall be entitled to registration of his trade mark under the Trade Marks Act, 1905, in priority to other applicants; and the registration shall have the same date as the date of the application in the foreign state.

International
and colonial
arrange-
ments.

Provided that—(a) the application is made, in the case of a trade mark, within four months from the application for protection in the foreign state; and

(b) Nothing in this section shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the actual date on which his trade mark is registered in this country.⁴

(2.) The registration of . . . a trade mark shall not be invalidated (c) . . . in the case of a trade mark, by reason only of the use of the trade mark in the United Kingdom or the Isle of Man during the period specified in this section as that within which the application may be made.

(3.) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under the Trade Marks Act, 1905:⁵ Provided that (b), 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 the Trade Marks Act, 1905.⁶

¹ Sec. 65 of the Trade Marks Act of 1905 made those sections applicable to trade marks registrable under the Act of 1905. And see p. 642, note (3).

² Cf. the provisions as to international copyright contained in section 29 of the Copyright Act, 1911.

³ The words referring only to patents or designs are here omitted.

⁴ The ordinary rule is, that where trade mark rights exist, damages for

infringements before the registration may be recovered: *Barlow v. Johnson*, 7 R. P. C., p. 411 (1890), Chitty, J., ante, p. 376. Cf. with this sub-section the International Copyright Acts (now repealed). See *Moul v. Groenings*, [1891] 2 Q. B. 443; and *Schauer v. Field*, [1893] 1 Ch. 35; *Sarpy v. Holland*, [1908] 1 Ch. 443.

⁵ Sec. 12, Chap. IV., p. 84.

⁶ See p. 647.

(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which His Majesty by Order in Council declares 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.¹

(5.) Where it is made to appear to His Majesty that the legislature of any British possession has made satisfactory provision for the protection of (inventions, designs, and) trade marks, (patented or²) registered in this country, it shall be lawful for His Majesty, by Order in Council, to apply the provisions of this section to that possession with such variations or additions, if any, as may be stated in the Order.”

Section 88 of the same Act provides that “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 may be revoked or varied by a subsequent Order.”¹

The provisions of secs. 103 and 104 of the Act of 1883, as amended by sec. 6 of the Act of 1888 were to the like effect, although the wording and arrangement have been altered in the later sections.³

At the time when the section of the Act of 1883 was passed into law, the International Convention for the Protection of Industrial property, as it was originally settled at Paris, had been drawn up and agreed to by several of the countries which are parties to it, and in the following year⁴ this country acceded to the Convention. Practically all civilised States, except Russia, have now acceded to the original Convention.⁵

At a subsequent conference at Madrid, in 1891, besides an agreement to endow the International Bureau at Berne, two Conventions were signed by most of the States of the Union. Of these, one which was signed by Great Britain,⁶ related to false

The Inter-
national
Convention.

International
registration
of trade
marks.

¹ For list of States and Possessions to which the section applies, see Appendix, p. 811.

² The brackets are not part of the Act: see note (3), above, p. 641.

³ Section 98 of the Act of 1907, which repeals the Acts of 1883 and 1888, provides that the repeal shall not affect any convention or Order in Council having effect under any enactment so repealed,

but any such convention or Order in Council in force at the commencement of the Act shall continue in force, and may be repealed, altered or amended, as if it had been made under that Act.

⁴ March 20th, 1883.

⁵ Germany adhered to it in 1903; Austria-Hungary in 1909.

⁶ See post, p. 820.

indications of origin; the other, signed by Belgium, Brazil, France, Italy, the Netherlands, Portugal, Spain, Switzerland, and Tunis, but not by Great Britain, established a system for the international registration of trade marks.¹ The principles of this system are admirably explained by M. Frey-Godet, Secretary to the International Bureau at Berne, in a paper read by him before the London Congress of the International Association for the Protection of Industrial Property, in 1898.² "The proprietor of the trade mark makes an application for international registration to the Government of his native country, which then forwards his request to the International Office at Berne. The latter registers the trade mark, and notifies this registration to all the States which have become parties to the Arrangement of Madrid, and afterwards publishes a description of the trade mark, with all the data in connection with it, in a publication entitled *Les Marques Internationales*, which forms an appendix to *La Propriété Industrielle*, the official organ of the Office.

"The registration of the trade mark at the International Office produces absolutely the same effect as if the trade mark had been registered on the same day in all the contract States. . . . The trade marks judged inadmissible must be refused at latest during the year following the notification by which the Berne Office has made known the registration of the trade mark to the contract States. When a State refuses legal protection to a trade mark registered internationally, the proprietor enjoys the same means of appeal as if he had made the application to the national registration department of the State concerned.

"The effect of international registration lasts for twenty years; but it can only be invoked so long as the trade mark remains protected in the country of origin. Nevertheless, if a trade mark has been temporarily deprived of protection in that country owing to delay in renewing the application, it is sufficient to make a fresh application in order again to set in operation the international protection which had remained in abeyance. This is, then, only an expansion of the protection which the trade mark enjoys in the country of origin. Consequently every modification relating to the property of an international trade mark (annulment, erasure, renunciation, transfer, &c.) must be notified by the national Government to the International Office, which

¹ The text of this arrangement will be found in the Appendix, p. 821. tation of Ind. Prop., Vol. II. (1898), p. 102.

² Trans. Inter. Assoc. for the Pro-

makes a memorandum of this and forwards the information to the various contract States.

“Whoever wishes to effect the international registration of a trade mark must pay a fee of 100 francs, which goes to the International Office, and a national fee, which goes to the country of origin. Each country fixes at its pleasure the amount of this fee, which is supposed to be an equivalent for the labour furnished by the Government of the country on the occasion of the international registration of the trade mark to which it refers. France, for instance, imposes a fee of 25 francs; Switzerland a fee of 5 francs only, whilst Belgium exacts none at all.

“The international and national fees together are always inferior in amount to the total of national fees which it would be necessary to discharge in the different contract countries in order to obtain in each of them the national registration of the trade mark (165 francs). But the amount of the official fee is insignificant in comparison with the expenses which would be entailed by translations, authentications, agent’s fees, &c., if the application for registration of a trade mark were contemplated in each of the States adhering to the arrangement.”

Obstacles to
Great
Britain’s
accession.

The objection of Great Britain to accede to this arrangement is based on several grounds with which M. Frey-Godet dealt in succession. It does not appear that the point has ever been taken on behalf of this country that international registration, by diminishing the number of national applications for registration of foreign trade marks, would at the same time reduce the registration fees collected by the British Government. But if such an argument were advanced, M. Frey-Godet’s answer was twofold. In the first place, Great Britain would not grudge the expenditure of a few thousand francs in order to be assured of a valuable advantage to her commerce. In the second place, it is by no means certain that the fee collected by Great Britain on international applications effected by British subjects, added to that derived from the surplus receipts of the service of registration, would not make up for the diminution in the number of ordinary registrations. A second objection, and one which has greater weight, may be put in this way: British trade mark law is based on a registration effected by a national government. To a system of this kind it is impossible to assimilate one of registration carried out in a foreign country. M. Frey-Godet’s answer was that our internal legislation by which copyright is only

granted to literary works if they have been entered at Stationers' Hall,¹ does not apply to works produced in the countries forming part of the Literary and Artistic Union. It may be noted in passing, that Article V. of the Madrid Arrangement preserves the right of the contracting States to reject any trade mark presented for registration under the international scheme to which it could object if an application were made for its registration in the ordinary course. The Patent Office would, therefore, be free to examine trade marks for which international registration was desired, and to reject those which were inadmissible on the ground of internal legislation. Our internal legislation, however, gives rise to several difficulties of its own. Under sec. 15 of the Act of 1905 an applicant may be required to make a disclaimer for the purpose of defining his rights under the registration. This difficulty, however, is now less than it was under sec. 64, sub-sec. (2) of the Act of 1883, which required every applicant in his application for registration to indicate the essential elements of his trade mark, and to disclaim what is non-essential. Disclaimers are now the exception and not the rule. Again, sec. 8 of the Act of 1905² provides that "a trade mark must be registered in respect of particular goods or classes of goods"; and in this country trade marks must be published in the official journal of the Patent Office. How are these provisions to be severally adjusted to the system of international registration? As regards disclaimers, M. Frey-Godet's suggestion was that the applicant might be required expressly to disclaim the non-essential part of his trade mark before embarking on a law suit. A similar procedure is, no doubt, in force in this country in regard to patents. But this solution of the problem does not deal with the inconvenience that would be caused to applicants for national (or even international) registration by the uncertainty as to what were the essential parts of marks already on the Register of Trade Marks.³ The difficulty as to publication might be met, as M. Frey-Godet points out, by the annexation to the national publication of a trade mark either of the publication of the Berne Office or, preferably, of an authenticated translation of it.

The text of the International Convention of Paris to which, as

The International Convention.

¹ Registration of copyright is abolished under the Copyright Act, 1911.

² Corresponding to sec. 65 of the Act of 1883.

³ The uncertainty exists to some extent as to trade marks registered under the Act of 1905.

and British possessions to which the above sections have been made applicable by Orders in Council, are set out in the Appendix.¹

The Convention and the accession thereto of this country may be referred to by the Court as a matter of history, in order to enable it to understand under what circumstances the sections of the Act were passed; ² but the terms of the Convention cannot be employed as a guide to interpret the sections,³ for a treaty with a foreign State binds the subjects of the Crown only in so far as it has been embodied in legislation passed into law in the ordinary way.⁴

Foreign
trade mark
may be
refused regis-
tration.

The provisions of the section, in fact, do not carry out the international agreements constituted by the Convention, for, by Art. VI.⁵ of the Convention, it is agreed that "every trade mark duly registered in the country of origin shall be admitted for registration, and protected in the forms originally registered in all other countries of the Union";⁶ and by clause 4 of the final protocol, it is explained that this article "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 the State, provided that on this point it comply with the legislation of the country of origin, and that it had been properly registered in the same country of origin"; but it was, nevertheless, decided under the Act of 1883 that, in order to be qualified for registration, a mark tendered under sec. 103, just as any other mark sought to be registered, must fall within the descriptions of sec. 64 of that Act. So that the words *Syrup of Figs*,⁷ and the words *Carter's Little Liver Pills*,² were refused

¹ Pages 813 and 811. The Convention was revised at Brussels in 1900, and (subject to ratification before April 1st, 1913) at Washington in 1911. The revised Convention has now been ratified by several countries, see Appendix, p. 829.

² *Carter Medicine Co.'s Tm.*, [1892] 3 Ch. 472; 9 R. P. C. 401, North, J.

³ *Californian Fig Syrup Co.'s Tm.*, 40 C. D. 620; 6 R. P. C. 126 (1888), Stirling, J.

⁴ See last case, and *Walker v. Baird*, [1892] A. C. 491.

⁵ Article VI., as revised at Washington in 1911, subject to ratification, contains some limitations by providing

that certain classes of marks may be refused or cancelled. Although the practical result is that the Convention and the English law now closely approximate, still the position remains as stated above in the text. See a paper, entitled "Protection of Marks: telle quelle (in the form originally registered)," by the Editor of this edition, International Association for the Protection of Industrial Property, London Congress, 1912, Vol. XVI. Part I., p. 259.

⁶ *I.e.*, the union of the contracting States for the protection of industrial property.

⁷ See note (3).

registration as trade marks, although registration of them respectively had been duly applied for and actually obtained in the United States, one of the States in which sec. 103 had been applied. No alteration in this respect is made by the Act of 1905, although that Act enlarges the classes of registrable trade marks.

The effect of the decisions just referred to is to reduce the operation of the Convention, in regard to trade marks¹ in this country, to very narrow limits. As between applicants for the registration of new marks, or marks acquired as trade marks since the application for protection in a foreign State within the Union, the applicant in the foreign State is to have priority, provided that he makes his application in this country within four months from the date of the foreign application on which he relies. And this priority is not affected by the success or failure of the foreign application.

The proviso that use of the trade mark in this country during the period of four months shall not invalidate the registration, is surplusage, if it is directed to use by the applicant himself, as it seems intended to be, for the publication or use of a mark by the applicant before registration in no case prejudices a right to registration. The proviso might have some useful meaning and operation, if it were construed to prevent an opponent, who had first used the trade mark in question in this country after the application in a foreign State by the applicant for registration, from relying on his use of the mark, or the title acquired by him in consequence of that use, as an objection to the registration of the applicant.² But so long as the Convention is not embodied in legislation, as already stated, it can have no operation upon the right to registration at all. It might, however, it is submitted, properly affect the Registrar's discretion.

Publication
of foreign
trade mark.

The last clause of sub-sec. (3), providing that "any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act," does not give an independent or new right of registration under the Act,³ and it seems to bear no other construction than that suggested on behalf of the Comptroller in *The Carter Medicine Co. case*,³

¹ Another part of the convention, relating to false marking and false trade description and the seizure on importation of falsely marked goods, has been carried into effect by the Merchandise Marks Act, see p. 892, below.

² The first user might acquire a right under the proviso to sec. 41, see above, p. 869.

³ *Californian Fig Syrup Co.'s Tm.*, and *Carter Medicine Co.'s Tm.*, supra. In *Vidal's Patent*, 15 R. P. C. 721 (1898),

namely, that "may be registered" is to be read as "may be the subject of application for registration," although this construction reduces it also to surplusage.

The application of the sections to any foreign State can, under no circumstances, afford any answer to a motion under sec. 35 to remove from the Register a mark which was originally registered without sufficient cause.¹

Sir R. Webster, A.-G., said:—"I am clearly of opinion that, when a person claims under those articles, he cannot claim greater privileges than a national applicant, and that he is liable to the

same restrictions as a subject or citizen of the country in which he is making the application."

¹ *Vignier's Tm.*, 6 R. P. O. 490 (1889), Kay, J. (*Monobrut Champagne*).

CHAPTER XXI.

MISCELLANEOUS MATTERS.

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False Representation as to Registration of Trade Mark.

By sec. 67 of the Trade Marks Act, 1905 :—

“(1.) Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction¹ to a fine not exceeding five pounds.

Penalty on falsely representing a trade mark as registered.

“(2.) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word ‘registered,’ or any words expressing or implying that registration has been obtained for the trade mark.”²

The offences here dealt with are applications of false trade descriptions,³ but the liability to punishment under the M. M. A. would afford no answer to a prosecution under the above section.⁴

An infringement of the section is not necessarily a bar to an application for the registration of the trade mark which has been wrongly described as registered.⁵ The use of the word “Registered” has been held to indicate registration in the United Kingdom.⁶

¹ As to the Isle of Man, see sec. 70; and as to Scotland, sec. 72.

² This corresponds to and substantially re-enacts, so far as relates to trade marks, sec. 105 of the Patents, &c. Act, 1883.

³ See M. M. A. 1887, s. 3 (a), Appendix, p. 888.

⁴ M. M. A. s. 19 (1), Appendix, p. 893.

⁵ *James' Tm.*, 83 C. D. 392; 3 R. P. C.

340 (1886), C. A.; “registered shape”; and *Altman's Application*, 21 R. P. C. 753 (1904), Kekewich, J., and *Lyle and Kinahan's Application*, 24 R. P. C. 37 and 249 (1907), Kekewich, J., and C. A., in both of which cases the use of the word “registered” before registration was proved to have been by a *bona fide* mistake; see also above, pp. 77, 483, 484.

⁶ *Wright, Crossley & Co. v. William Dobbin & Co.*, 15 R. P. C. 21 (1898), in

False Representation as to Patent or Design.

By sub-sec. (2) of sec. 89 of the Patents and Designs Act, 1907, it is an offence for any person falsely to represent that any article sold by him is a patented article, or falsely to describe any design applied to any article sold by him as registered; and by sub-sec. (3), if any person sells an article having stamped, engraved, or impressed thereon, or otherwise applied thereto, the word "patent," "patented," or "registered," or any other word expressing or implying that the article is patented or that the design applied thereto is registered, he shall be deemed for the purposes of the section to represent that the article is a patented article or that the design applied thereto is a registered design.¹ The introduction in sub-sec. (2) of the word "falsely" probably prevents the sub-section applying to a case in which no patent has ever existed but the word "patent" has become part of the trade name of the goods and has been used by the manufacturer in his description of them.² It also saves the use of such ordinary names of commerce as "patent leather" and "patent medicine."³ It is submitted that a limitation must be placed upon the literal meaning of the enactment which will exclude these cases from the section.⁴

Falsification of the Register of Trade Marks.

Falsification
of entries in
Register.

By sec. 66 of the above-mentioned Act of 1905:—

"If any person makes or causes to be made a false entry in the 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

Ireland. *MacSymons' Stores, Ltd. v. Shuttleworth*, 15 R. P. C. 740 (1898), in England. The use of the words "Trade Mark," in relation to an unregistered trade mark, is not necessarily an offence under the section: *Sen Sen Co. v. Britten*, [1899] 1 Ch. 692; 16 R. P. C. 137.

¹ These provisions replace sec. 105 of the Act of 1883, which section was not qualified by the word "falsely."

² *Edelsten v. Vick*, 11 Hare, 78 (1858), Wood, V.-C. (*Taylor & Co.'s Patent Solid-headed Pins*); see further, Chap.

XV., p. 476; *Gridley v. Swinborne*, 52 J. P. 739, 791; 5 T. L. R. 71 (1888), Div. Court, *Swinborne's Patent Refined Isinglass*, held not to be a false trade description.

³ See above, p. 476.

⁴ Application for a patent, or provisional protection, does not authorise the use of the word patent; but, it is submitted, the acceptance of the complete specification of a patent does. See *R. v. Townsend*, 13 R. P. C. 265 (1896). Cf. *Grueber's case*, Times, Nov. 22, 1894.

such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.¹

False Representation as to Royal Warrant.

By sec. 20 of the M. M. A. of 1887:—

“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,² to a penalty not exceeding £20.”

False representation as to Royal warrant.

Unauthorised Assumption of Royal Arms.

By sec. 90 of the Patents and Designs Act of 1907:—

“(1.) The grant of a patent under this Act shall not be deemed to authorise the patentee to use the Royal Arms or to place the Royal Arms on any patented article.

(2.) If any person, without the authority of His Majesty, uses in connection with any business, trade, calling, or profession, the Royal Arms (or arms so nearly resembling them as to be calculated to deceive) in such a manner as to be calculated to lead to the belief that he is duly authorised to use the Royal Arms, he shall be liable on conviction, under the Summary Jurisdiction Acts,³ to a fine not exceeding £20.

Unauthorised assumption of Royal Arms.

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing such arms to continue to use such trade mark.”

Sub-sec. (1) is new. Sub-sec. (2) corresponds to sec. 106 of the Patents, &c. Act, 1883, but it requires the authority to be that of His Majesty, omitting the former words “or of any of the Royal Family, or of any Government department.” Its provisions are now supplemented by those of sec. 68 of the Trade Marks Act, 1905, which were introduced into that Act at the suggestion of the Association of Royal Warrant Holders. The section is as follows:—

“If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the

Section 68.

¹ Replacing, as to the Trade Mark Register, sec. 93 of the Patents, &c. Act, 1883. As to the Registers of Patents and Designs, see now sec. 89 (1) of the Patents and Designs Act, 1907.

(sec. 21); and in the Dublin police district, the Courts of the justices under the Petty Sessions Act, 1851 (sec. 22).

² As to the Isle of Man, see sec. 96, and as to Scotland, see sec. 94 of the same Act.

³ In Scotland, in the Sheriff Court

Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling, or profession, any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family he may, at the suit of any person who is authorised to use such arms or such device, emblem, or title, or is authorised by the Lord Chamberlain to take proceedings in that behalf, be restrained by injunction or interdict from continuing to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark."

This section adds to the remedy by summary prosecution now provided by sec. 90 of the Patents and Designs Act, 1907, a civil remedy by injunction applicable not only to the misuse of the Royal Arms, but also to the use of any device, emblem, or title in such manner as to be calculated to lead to the belief that the person using the same is employed by, or supplies goods to, His Majesty, or a member of the Royal Family. The class of persons who may institute proceedings under the section without the authority of the Lord Chamberlain will, in some instances, *e.g.*, the use of the Royal Arms, be a rather wide one. It will be in the discretion of the Court to refuse relief if the plaintiff is not likely to be in any way damnified.¹

In an action brought under the section, it appeared that the defendants held a lease of, and carried on business on premises on the outside of which there was a representation of the Royal Arms, which had been there upwards of thirty-five years; their name and the nature of their business, namely, engineers, manufacturers, and contractors, appeared from announcements on the windows and front of the premises. It was held that the words "lead to the belief" in sec. 68 mean, lead to the belief generally amongst persons who may be affected by the sight of what they see, namely, the user of the Royal Arms, and not merely amongst customers or persons likely to become cus-

¹ An injunction was granted by consent under the section in *Royal Warrant Holders' Association v. Slade & Co., Ltd.*, 25 R. P. C. 245 (1908).

tomers, and that the defendants were using the Royal Arms in connection with their business, and in such manner as to lead to the belief that they had authority, and an injunction was granted.¹ In the same case it was held that the question could be put to a witness, What was the conclusion in his mind arising from the fact that the defendants exhibited the Royal Arms on their business premises? In another case under the section, in which the defendants after the commencement of the action offered to submit to an injunction, but contended that they should only be ordered to pay such costs as would have been incurred if an order had been taken in chambers, it was held that the plaintiffs were justified in moving for an injunction in order to get an order in open Court, and the defendants were ordered to pay the costs.²

With regard to the proviso, it may be noticed that, except in the case of marks used before August 13th, 1875, the Registrar is not to register (1) the Royal Arms or crests, or arms or crests so nearly resembling them as to lead to mistake, (2) representations of any member of the Royal Family, (3) representations of British Royal Crowns, (4) the British national flags, (5) the word Royal, (6) any other words, letters or devices calculated to lead persons to think that the applicant has Royal patronage or authorisation.³

In a prosecution under sec. 106 of the Patents, &c. Act, 1883, the defendant unsuccessfully contended that he was entitled to use the Royal Arms as he held a patent for an invention which he was using in his business, and the Patent Office was a Government department.⁴ A defence in another case that the defendants were contractors to Government departments, also failed.⁵

¹ *Royal Warrant Holders' Association v. Edward Deane & Beal, Ltd.*, [1912] 1 Ch. 10; 28 R. P. C. 721.

² *Royal Warrant Holders' Association v. E. J. Kitson, Ltd.*, 26 R. P. C. 157 (1909).

³ Rules 11 and 12, p. 721. An official notice has been given that in future the words "Imperial," "King's," "Queen's," or "Crown," may not appear on trade marks, the registration of which is applied for, and that the

use of the words in trading styles (other than the names of registered corporate bodies) will not be permitted in connection with applications for registration, unless the sanction of the Home Secretary has been obtained (T. M. J., No. 1665, Feb. 23rd, 1910).

⁴ *Webber & Co.'s case*, Times, February 2, 1897.

⁵ *Wood's case*, Times, May 14th, 1903.

Prohibition of the use of the Red Cross.

By the Geneva Convention Act, 1911,¹ the use of a red cross on a white ground and of the words "Red Cross" or "Geneva Cross" by any person is, subject to certain savings, prohibited for the purpose of trade or business or any other purpose whatsoever.

Cutlery Marks.

The Cutlers
Marks Act,
1819.

By the Act 59 Geo. 3, c. 7, it is forbidden to mark cutlery and the other goods mentioned in the Act with the figure of a hammer, unless the goods have been wrought or forged, or to place false marks of quality upon such goods, or to falsely mark them as London made; and the offences created by the Act extend to selling, or having in possession for the purposes of sale, such goods marked in breach of the Act. The material provisions of the Act² may be summarised as follows:—

Hammer
marks.

1. Where any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, of wrought steel, or of iron and steel, are made by means of the hammer, the maker may mark the figure of a hammer upon them before they are ground.

3. No one may mark such figure on any of the goods enumerated not so made, before the *bonâ fide* sale of the goods to the user, or have in his possession for the purpose of sale, or sell any such goods not so made, and being marked with such figure, under penalty of forfeiture of the goods and a fine of £5 for every dozen.

Quality
marks.

4. No one may mark on any of the goods enumerated, whether made with the hammer or cast in a mould, before the *bonâ fide* sale of the same to the user, "any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality thereof," or have in his possession for the purpose of sale, or sell any such goods so marked, under penalties as aforesaid.

London
made.

5. No one may mark on any of the goods enumerated whether made with the hammer or cast in a mould, before the *bonâ fide*

¹ 1 & 2 Geo. 5, c. 20. The Act is printed at full length in the Appendix, p. 898.

² Sec. 17 has been repealed by the Stat. Law Rev. Act, 1873, and sect. 2

by the Stat. Law Rev. Act, 1874, secs. 8-10 in part, and secs. 11-13 and 15 wholly, repealed by 47 & 48 Vict. c. 43, s. 4.

sale of the same to the user, the word or words *London* or *London made*, or any word or words having any similitude thereto, unless the goods were made in the City of London, or within twenty miles distance therefrom, or have in his possession, &c., or sell (as before) under a penalty of forfeiture and fine of £10 a dozen articles.

7. Any one having in his possession for the purposes of sale, or selling any of the goods aforesaid contrary to the Act, who shall, before information or complaint laid against him, prove satisfactorily by oath before one or more justice or justices that he purchased the goods with the marks thereon without knowing they were marked contrary to the Act, and shall discover to two or more justices the name of the person from whom he bought, so that the latter shall be prosecuted to conviction, shall not be liable to penalties himself,¹ but shall be entitled to two-thirds of the penalty recovered from his vendor, as any other informer. Innocent purchasers.

The Cutlers' Co. Act of 1814 contains a provision inflicting penalties upon any person who counterfeits or imitates assigned corporate marks; and by sec. 81 (13) of the Patents, &c. Act of 1883, this provision was extended to any mark entered in the Sheffield Register,² but the Trade Marks Act of 1905 contains no such provision, no doubt because it was considered that sufficient protection is now given by the Merchandise Marks Act, 1887. The section of the first-mentioned Act is as follows³:— Counterfeiting Sheffield corporate marks.

“If any member or members of the Cutlers' Company, or any other person or persons using, exercising, or carrying on any of such arts or trades as aforesaid within the said lordship or liberty, or six miles compass of the same, shall at any time after the passing of this Act strike, engrave, impress or use, or cause or procure to be stricken, engraved, impressed or used upon his or their goods, wares, or manufactures, any mark, device, stamp, or impression, with intent to counterfeit or imitate any mark or device assigned, or which may hereafter be assigned, by the said master, wardens or searchers and assistants of the said company, to be used by any other person, the person or persons so offending shall, for every such offence, forfeit and pay (in lieu of the penalty imposed by the said last recited Act)⁴ any sum not exceeding £20, one moiety whereof shall be paid to

¹ Cf. M. M. A. sec. 2 (2), “unless he proves,” p. 887.

² Above, p. 120.

³ 54 Geo. 3, c. 119, s. 5 (local).

⁴ The Cutlers' Co. Act of 1791, see above, p. 121.

the person whose mark shall have been so counterfeited or imitated, and the other moiety to the said master and wardens of the said company; and the provisions in the said last recited Act¹ contained for the recovery and application of the penalty thereby imposed shall be used, applied, and put in force for the recovery and application of the penalty hereby made payable, as fully and effectually as if the same provisions were in this Act severally and separately repeated and re-enacted.”

The sections of the Cutlers' Co. Act of 1791,¹ which are referred to and incorporated by the last-mentioned section, provide (sec. 26) that the penalties may be sued for by the company, or (sec. 27) recovered summarily before a justice or justices of the West Riding of York, or of the county of Derby, who shall have power to award costs, and to issue a distress warrant, or, if the goods of the offender are insufficient, to commit him to the House of Correction for one month to enforce payment of the penalty. Section 28 contains a form of conviction, and sec. 29 gives an appeal to quarter sessions.

A number of statutes of little general importance, requiring special marks to be placed upon particular classes of goods, are summarised in the Appendix, p. 899.

¹ 31 Geo. 3, c. 58 (local).

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APPENDIX I.

TRADE MARKS ACT, 1905.

[5 EDW. VII. CHAP. 15.]

TABLE SHOWING THE ARRANGEMENT OF SECTIONS WITH THE
CORRESPONDING SECTIONS OF THE ACT OF 1883, AS AMENDED
BY THE ACT OF 1888.

Section.	Corresponding Sections of Acts of 1883-8.
1. Short title	
2. Commencement of Act	
PART I.	
<i>Definitions.</i>	
8. Definitions	Now. The Court, 117 (1).
<i>Register of Trade Marks.</i>	
4. Register of trade marks	§ 78, § 82 (3), is not repealed by the Act of 1905. ¹
5. Trust not to be entered on register	§ 85.
6. Incorporation of existing register	§ 114 and cf. § 113; last para. new.
7. Inspection of and extract from register	§ 88.
<i>Registrable Trade Marks.</i>	
8. Trade mark must be for particular goods	§ 65.
9. Registrable trade marks	§ 64; last two paras. new.
10. Coloured trade marks	New, cf. § 67.
11. Restriction on registration	§§ 73, 86.
<i>Registration of Trade Marks.</i>	
12. Application for registration	§ 62, (5), new; (6), § 91 (a), (d).
13. Advertisement of application	§ 68.
14. Opposition to registration	§ 69, costs, new, cf. § 69 (5).
15. Disclaimers	§§ 64 (2), (8), 74 (2); end new.
16. Date of registration	§ 75.
17. Certificate of registration	New, cf. § 88.
18. Non-completion of registration	§ 63.

¹ Section 82 is repealed by the Patents and Designs Act, 1907, and is replaced by sec. 62 of that Act.

Identical Trade Marks.

Section.		Corresponding Sections of Acts of 1893-8.
19.	Identical marks	§ 72.
20.	Rival claims to identical marks	§ 71.
21.	Concurrent user	New, cf. § 72 (1).

Assignment.

22.	Assignment and transmission of trade marks	§ 70; end new.
23.	Apportionment of marks on dissolution of partnership	New.

Associated Trade Marks.

24.	Associated trade marks	New.
25.	Combined trade marks	New.
26.	Series of trade marks	§ 66.
27.	Assignment and user of associated trade marks	New § 66.

Renewal of Registration.

28.	Duration of registration	§ 79.
29.	Renewal of registration	§ 79.
30.	Procedure of expiry of period of registration	§ 79.
31.	Status of unrenewed trade mark	§ 79 (5).

Correction and Rectification of the Register.

32.	Correction of Register	§ 91 (b) (c); end new.
33.	Registration of assignments, &c.	§ 87, end new, cf. § 90.
34.	Alteration of registered trade mark	§ 92.
35.	Rectification of Register	§ 90, part new.
36.	Trade marks registered under previous Acts	New.
37.	Non-user of trade mark	New, cf. § 90.

Effect of Registration.

38.	Powers of registered proprietor	§ 87.
39.	Rights of proprietor of trade mark	§ 76; end new.
40.	Registration to be <i>prima facie</i> evidence of validity	§ 76.
41.	Registration to be conclusive after seven years	§ 76; proviso new.
42.	Unregistered trade mark	§ 77.
43.	Infringement	New.
44.	User of name, address, or description of goods	New, cf. § 64.
45.	"Passing-off" action	New.

Legal Proceedings.

46.	Certificate of validity	§ 77 (a).
47.	Registrar to have notice of proceeding for rectification	New, cf. old rule, 49.

Costs.

48.	Costs of proceedings before the Court	New.
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Evidence.

49.	Mode of giving evidence	New.
50.	Sealed copies to be evidence	§§ 84, 89.
51.	Certificate of Registrar to be evidence	§ 96.
52.	Certificate of Board of Trade to be evidence	§ 102a.

APPENDIX I.

PART II.

Powers and Duties of Registrar of Trade Marks.

Section.	Corresponding Sections of Acts of 1883-8.
53. Exercise of discretionary power by Registrar	§ 94.
54. Appeal from Registrar	New.
55. Recognition of agents	Old rule 9.
56. Registrar may take directions of law officers	§ 95.
57. Annual reports from Comptroller	§ 102.

Powers and Duties of the Board of Trade.

58. Proceedings before Board of Trade	§ 102a (1).
59. Appeals to Board of Trade	Cf. §§ 62 (5), 69 (4).
60. Power of Board of Trade to make rules	§ 101.

Fees.

61. Fees	§ 80.
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Special Trade Marks.

62. Standardisation, &c., trade marks	New.
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Sheffield Marks.

63. Sheffield marks	§ 81.
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Cotton Marks.

64. Cotton marks	New, cf. old rules, 8, 13.
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International and Colonial Arrangements.

65. International and Colonial arrangements	§§ 103, 104, not repealed by Act of 1905. ¹
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Offences.

66. Falsification of entries in Register	§ 93.
67. Penalty on falsely representing a trade mark as registered	§ 105.

Royal Arms.

68. Unauthorised assumption of Royal Arms	§ 106, not repealed by Act of 1905. ²
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Courts.

69. General saving for jurisdiction of courts	§ 111.
70. Isle of Man	§ 112.
71. Jurisdiction of Lancashire Palatine Court	§ 112 (a).
72. Offences in Scotland	§ 108.

Repeal; Savings.

73. Repeal and saving for rules, &c.	Cf. § 113, § 27, of 1888.
74. Application of 46 & 47 Vict. c. 57, ss. 82—84 SCHEDULE.	§§ 82—84. ³

¹ Sections 103 and 104 have since been repealed by the Patents and Designs Act, 1907; see now sec. 91 of that Act.

² Since repealed by the Patents and

Designs Act, 1907; see now sec. 90 of that Act.

³ Since repealed by the Patents and Designs Act, 1907; see now sec. 62—61 of that Act.

APPENDIX II.

TABLE SHOWING THE CORRESPONDING SECTIONS OF THE PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883, AS AMENDED BY THE ACT OF 1888, WITH THE TRADE MARKS ACT, 1905.

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Register of Trade Marks.

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80. Fees for registration, &c.	§ 61.
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81. Registration by Cutlers' Company of Sheffield marks	§ 63.
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113. Repeal and saving for past operation of repealed enactments, &c.	Cf. § 6. ⁵
114. Former Registers to be deemed continued	§ 6.
115. Saving for existing rules	Cf. § 73.

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117. General definitions	Cf. §§ 3, 4.
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¹ Sections 82 and 83 are now replaced by secs. 62 and 63 of the Patents and Designs Act, 1907.

² But now replaced by sec. 64 of the Patents and Designs Act, 1907.

³ Sections 103 and 104 have now been repealed by the Patents and Designs

Act, 1907, and are replaced by sec. 91 of that Act.

⁴ Section 106 has now been repealed by the Patents and Designs Act, 1907, and is replaced by sec. 90 of that Act.

⁵ And see Interpretation Act, 1889, sec. 38, post, p. 716.

APPENDIX III.

TRADE MARKS ACT, 1905.

[5 EDW. VII. CHAP. 15.]

ARRANGEMENT OF SECTIONS.

Section.

1. Short title.
2. Commencement of Act.

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Definitions.

3. Definitions.

Register of Trade Marks.

4. Register of trade marks.
5. Trust not to be entered on register.
6. Incorporation of existing register.
7. Inspection of and extract from register.

Registrable Trade Marks.

8. Trade mark must be for particular goods.
9. Registrable trade marks.
10. Coloured trade marks.
11. Restriction on registration.

Registration of Trade Marks.

12. Application for registration.
13. Advertisement of application.
14. Opposition to registration.
15. Disclaimers.
16. Date of registration.
17. Certificate of registration.
18. Non-completion of registration.

Identical Trade Marks.

19. Identical marks.
20. Rival claims to identical marks.
21. Concurrent user.

Assignment.

22. Assignment and transmission of trade marks.
23. Apportionment of marks on dissolution of partnership.

Associated Trade Marks.

24. Associated trade marks.
25. Combined trade marks.
26. Series of trade marks.
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Renewal of Registration.

Section.

- 28. Duration of registration.
- 29. Renewal of registration.
- 30. Procedure on expiry of period of registration.
- 31. Status of unrenewed trade mark.

Correction and Rectification of the Register.

- 32. Correction of register.
- 33. Registration of assignments, &c.
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- 35. Rectification of register.
- 36. Trade marks registered under previous Acts.
- 37. Non-user of trade mark.

Effect of Registration.

- 38. Powers of registered proprietor.
- 39. Rights of proprietor of trade mark.
- 40. Registration to be *prima facie* evidence of validity.
- 41. Registration to be conclusive after seven years.
- 42. Unregistered trade mark.
- 43. Infringement.
- 44. User of name, address, or description of goods.
- 45. "Passing-off" action.

Legal Proceedings.

- 46. Certificate of validity.
- 47. Registrar to have notice of proceeding for rectification.

Costs.

- 48. Costs of proceedings before the Court.

Evidence.

- 49. Mode of giving evidence.
- 50. Sealed copies to be evidence.
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Powers and Duties of Registrar of Trade Marks.

- 53. Exercise of discretionary power by Registrar.
- 54. Appeal from Registrar.
- 55. Recognition of agents.
- 56. Registrar may take directions of law officers.
- 57. Annual reports of Comptroller.

Powers and Duties of the Board of Trade.

- 58. Proceedings before Board of Trade.
- 59. Appeals to Board of Trade.
- 60. Power of Board of Trade to make rules.

Fees.

- 61. Fees.

Special Trade Marks.

- 62. Standardisation, &c., trade marks.

Sheffield Marks.

Section.
63. Sheffield Marks.

Cotton Marks.

64. Cotton Marks.

International and Colonial Arrangements.

65. International and Colonial arrangements.

Offences.

66. Falsification of entries in register.

67. Penalty on falsely representing a trade mark as registered.

Royal Arms.

68. Unauthorised assumption of Royal Arms.

Courts.

69. General saving for jurisdiction of Courts.

70. Isle of Man.

71. Jurisdiction of Lancashire Palatine Court.

72. Offences in Scotland.

Repeal; Savings.

73. Repeal and saving for rules, &c.

74. Application of 46 & 47 Vict. c. 57, ss. 82—84.

SCHEDULE.

An Act to consolidate and amend the Law relating to Trade Marks.

[11th August, 1905.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Trade Marks Act, 1905.

Short title.

2. This Act shall, save as otherwise expressly provided, come into operation on the first day of April one thousand nine hundred and six.

Commence-
ment of Act.

"Save as otherwise expressly provided." See sec. 64, sub-sec. (10). Repeals and savings, sec. 73. See also Interpretation Act, 1889, sec. 38, below, p. 718.

PART I.

Definitions.

3. In and for the purposes of this Act (unless the context otherwise requires):—

Definitions.

A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

Definition of a Trade Mark, Chap. II., p. 23.

Mark, p. 25.

Device, p. 206.

Brand, p. 211.

Heading, p. 213.

Label, p. 214.

Ticket, p. 220.

Name, p. 145.

Signature, p. 149.

Word marks, p. 151.

Letter, p. 220.

Numeral, p. 221.

A "trade mark" shall mean a mark used or proposed to be used upon or in connexion with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale :

Trade mark, p. 24.
Proposed to be used, p. 26.
In connection with goods, pp. 26 and 366.
Indication of origin, p. 86.
Certification, p. 58. See sec. 62.
Offered for sale in the market, p. 85.

A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Act :

"Registrable trade mark," p. 27. Sec. 9.
What marks may be registered as trade marks, Chap. VIII., p. 135.

"The register" shall mean the register of trade marks kept under the provisions of this Act :

The Register, Chap. III., p. 62.
Sheffield Register, p. 120.
Manchester Register, p. 129.
Entries to be made in the Register, sec. 4, pp. 62, 64.
Trusts not to be entered in the Register, sec. 5, p. 64.
Incorporation of existing Register, sec. 6, p. 62.
Inspection of Register, sec. 7, p. 66.
Registration of assignments, sec. 33, p. 393.
Rectification of the Register, Chap. XI., p. 309.

A "registered trade mark" shall mean a trade mark which is actually upon the register :

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by rules of court, and in other cases, prescribed by this Act or the Rules thereunder :

"Prescribed," p. 102, n. Rules of Court, *ibid.*
Rules under the Act, Trade Mark Rules, 1906 and 1912, Appendix, p. 719.

"The Court" shall mean (subject to the provisions for Scotland, Ireland, and the Isle of Man) His Majesty's High Court of Justice in England.

The Court, pp. 102 and 338.
Scotland, sec. 69 and sec. 72, p. 339.
Ireland, sec. 69, p. 339.
Lancashire Palatine Court, sec. 71, p. 134.
Isle of Man, sec. 70, p. 690.

Register of Trade Marks.

Register of
trade marks.

4. There shall be kept at the Patent Office for the purposes of this Act a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Comptroller-General of

Patents, Designs, and Trade Marks, who is in this Act referred to as the Registrar.

The Register, Chap. III., p. 62.

Assignments and devolution, Chap. XIII., p. 384. Sec. 33.

Disclaimers, Chap. IX., p. 296. Sec. 15, rule 34.

Conditions, secs. 12, 13, 14, pp. 82 and 106, and secs. 21 and 23, pp. 295 and 399.

Limitations, sec. 10, colour, p. 283; sec. 21, concurrent user, p. 295, and see above "Conditions."

As to the Sheffield Register, sec. 68, see Sheffield Marks, Chap. VI., p. 120.

As to the Manchester Register, sec. 64, see Cotton Marks, Chap. VII., p. 129.

Registration is as of the date of application, sec. 16, p. 88.

"Prescribed," date of registration, goods, trade, &c., of proprietor and such other particulars as the Registrar shall think necessary, Rule 64, pp. 64 and 728.

Removal from the Register and cause to be entered, Rule 74, p. 417.

Patent office, secs. 62 and 63 of the Patents and Designs Act, 1907.

The Registrar, p. 63. Acts under the Board of Trade, p. 63. Sec. 62 of the Patents and Designs Act, 1907.

5. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Trust not to be entered on register.

The registered proprietor can make a good title to a purchaser without notice, sec. 38, p. 397.

A purchaser with notice of an equitable title in a third person takes subject to his rights, p. 398.

As to notices in the nature of caveats, see *Viola v. Sharpe*, 22 R. P. C. 23 (1905), a patent case.

This section does not prevent the entry on the Register of conditions and limitations, which are recognised by the Act, see notes to sec. 4.

6. The register of trade marks existing at the date of the commencement of this Act, and all registers of trade marks kept under previous Acts, which are deemed part of the same book as such register, shall be incorporated with and form part of the register. Subject to the provisions of sections thirty-six and forty-one of this Act the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the statutes in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Act.

Incorporation of existing register.

"Original Date." A trade mark is registered as of the date of application, sec. 75 of the Act of 1883, as amended by sec. 17 of the Act of 1888. See also under this Act, sec. 16, pp. 88 and 362.

Sec. 36 gives a trade mark already on the Register the benefit of this Act without re-registration, p. 140.

Sec. 41 saves the original registration from attack on the ground of its invalidity after seven years from its date or from the passing of the Act, whichever shall last happen, and subject to certain exceptions, p. 368.

7. The register kept under this Act shall at all convenient times be open to the inspection of the public, subject 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 of and extract from Register.

Inspection, searches and indexes, pp. 66 and 67.

Hours of inspection, Rule 96. Searches, Rule 95. Form of request for official search, TM No. 28, p. 755.

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, 10s. See list of fees, p. 737.

Registrable Trade Marks.

Trade mark
must be for
particular
goods.

8. A trade mark must be registered in respect of particular goods or classes of goods.

Classification of goods, Chap. V., p. 112. List of classes, p. 761.

A trade mark is assignable only in connection with the goodwill of the business concerned in the goods for which it has been registered, sec. 22, p. 885.

Registration for part of a class, pp. 113 and 225.

Associated trade marks, secs. 24 to 27, p. 116.

Registrable
trade marks.

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

A registrable trade mark is one capable of registration under the provisions of the Act, sec. 3.

As to what marks may be registered as trade marks, see Chap. VIII., p. 135.

For comparison with repealed sections, see p. 139.

Essential particulars, p. 142.

(1) The name of a company, individual, or firm represented in a special or particular manner ;

Name marks, p. 145. Trade name, p. 539.

Name of imaginary person not included, p. 145.

Special or particular manner, p. 148.

(2) The signature of the applicant for registration or some predecessor in his business ;

Signature, p. 149.

(3) An invented word or invented words ;

Word marks, p. 151. Paragraph (3) not qualified by (4), p. 163.

Invented word, p. 162. List of decisions, pp. 169 and 170.

Under the Act of 1883, before amendment by the Act of 1888, a fancy word not in common use might be registered, as to these, see pp. 153 to 164.

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname ;

Page 171. List of decisions, pp. 174 and 175.

Descriptive words, pp. 39 and 157 *et seq.*, pp. 205 *et seq.*

Secondary meaning of word *prima facie* descriptive, pp. 39, 205, and 565.

Geographical names, p. 175. Decisions, p. 178.

Surname, pp. 178, 195.

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Board of Trade or the Court, be deemed a distinctive mark :

"Mark," sec. 3, pp. 25 and 179.

Distinctive, pp. 179 *et seq.* Loss of distinctiveness, p. 405.

Special applications under paragraph (5), pp. 88 and 179, Rules 35 to 41, pp. 724 and 725.

Instances of words allowed by the Court or Board of Trade under paragraph (5) below, p. 903.

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

the date of the application for registration shall be registrable as a trade mark under this Act.

Old marks, p. 222.

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

Special or distinctive, p. 222.

Used as a trade mark, p. 227, and Chap. II., p. 23.

Statutory declaration as to user, Rule 20, p. 722.

Additions or alterations not substantially affecting the identity of the trade mark, cf. sec. 26, sec. 27 and sec. 34.

Alteration of old registered mark, p. 354.

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

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

Distinctive, pp. 36 and 179.

As to descriptive marks, see generally, pp. 39, 157, 171, 205, and 565.

Colour, sec. 10.

10. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Coloured trade marks.

Colour, p. 233.

Limitations, pp. 82, 295.

11. It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

Restriction on Registration.

Deceptive marks, Chap. X., p. 297.

The prohibition is not limited to marks inherently deceptive, &c., p. 298.

Marks otherwise disentitled to protection, p. 308.

Registration of Trade Marks.

12. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

Application for registration.

Registration of trade marks, Chap. IV., p. 70.

Who may apply to register, pp. 72 and 722.

Application by firm, partnership or body corporate, p. 72.

Prescribed manner. Ordinary application, Rules 17 to 34, p. 722, Form TM No. 2, p. 742. Application under sec. 9 (5), Rules 35 to 41, p. 724. Form TM No. 5, p. 744. Application under sec. 62, Rules 42 to 46, p. 725, Form TM No. 6, p. 745. Application for a cotton mark, Rules 113 to 120, p. 734, Form Cotton No. 1, p. 756. Applications to Cutlers' Co., Rules 107 to 112, p. 733. Application to enter corporate mark on Sheffield Register, Form Sheffield No. 1, p. 755.

List of fees, p. 737; fees also marked on Forms.

Applications by agents, pp. 68 and 75.

(2) Subject to the provisions of this Act the Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications.

The Registrar's discretion, p. 76.

Applicant entitled to be heard before refusal, sec. 53, pp. 69, 83.

Conditions, amendments or modifications, p. 82.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Board of Trade or to the Court at the option of the applicant.

Request for statement of grounds of decision, Form TM No. 4, p. 743.

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal the Board of Trade or the Court, as the case may be, shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

Appeal from the Registrar, p. 100.

Appeal to the Court, p. 102.

Appeal from Registrar to Board of Trade, Rules 122 to 127, p. 735. Form TM No. 29, p. 759.

Conditions, amendments or modifications, pp. 82, 106.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

Appeal from the Registrar, p. 100.

Costs, p. 107.

(6) The Registrar or the Board of Trade or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

Amendments, pp. 92 and 106.

Advertise-
ment of
application.

13. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Advertisement, p. 87.

Rules 47 to 49, p. 725.

Date of registration, sec. 16, pp. 88 and 362.

Certificate of registration, sec. 17, p. 88.

14. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

Opposition to registration, p. 93.

Prescribed time, one month, Rule 51, p. 726. Enlargement of time, Rule 99, p. 732.

Summary of procedure on an opposed application, p. 97.

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

Notice of opposition, p. 96. Form TM No. 7, p. 745.

If registration is opposed on the ground of resemblance to registered marks, the numbers of such marks and of the journals in which they have been advertised are to be set out, Rule 52, p. 726.

Precedent of notice of opposition, p. 788.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

Counter-statement, p. 93. Form TM No. 8, p. 746. Precedent, p. 788.

"Prescribed time," one month from the date of receipt of the duplicate notice of opposition, Rule 53, p. 726.

The applicant should set out what facts, if any, alleged in the notice of opposition he admits, *ibid.*

Abandonment of application, p. 87.

(4) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

Evidence, p. 95. Rules 54 and 58, pp. 726, 727.

Hearing by Registrar, p. 95. Rule 59, p. 727.

Conditions, p. 82.

(5) The decision of the Registrar shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Board of Trade or the Court, as the case may be, shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

Appeal from the Registrar, p. 100.

Appeal to the Court, p. 102. "Prescribed manner," by motion within one month from the date of decision, Rule 121.

Appeal to the Board of Trade, p. 100. Rules 122 to 127, p. 735. Form TM No. 29, p. 759. Time, within one month from the date of decision, Rule 122, p. 735.

Reference by Board of Trade to Court, sec. 59, p. 100.

Directions by Board of Trade, p. 786. Rule 125, p. 736.

Notice of hearing of appeal by Board of Trade, Rule 126, p. 736.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the

opponent or the Registrar other than those stated by the opponent as herein-above provided except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

Prescribed manner, directions by Board of Trade, Rule 125, p. 736.
Costs, p. 107.

(9) In any appeal under this section, the tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

Modification of trade mark, p. 106, cf. sec. 12 (2) and (4). "Not substantially affecting the identity of such trade mark," cf. sec. 9, old marks, sec. 26, sec. 27 and sec. 34.

Advertisement, p. 87.

(10) The Registrar, or, in the case of an appeal to the Board of Trade, the Board of Trade, shall have power in proceedings under this section to award to any party such costs as they may consider reasonable, and to direct how and by what parties they are to be paid.

Costs before the Registrar, p. 107.

Costs on appeal to the Board of Trade, p. 110.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in the United Kingdom, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and in default of such security being duly given may treat the opposition or appeal as abandoned.

Security for costs, p. 111. Rule 61, p. 727.

Disclaimers.

15. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Board of Trade or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Disclaimers, Chap. IX., p. 236.

Effect of disclaimer, p. 244.

Essential particulars, p. 142.

Parts of a trade mark may be separately registered, see Associated Trade Marks, pp. 116 and 239, and sec. 25.

Matter common to the trade, p. 239.

The three mark rule, p. 240.

A disclaimer may be required in rectification proceedings under sec. 35 as a condition of the trade mark remaining on the register, p. 332.

The proviso renders obsolete the decision in *Rosenthal v. Reynolds*, [1892] 2 Ch. 301; 9 R. P. C. 189, which was to the contrary effect, see p. 244.

A disclaimer is not to be required, unless some special reason for it is made out, p. 238.

16. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Board of Trade otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purpose of this Act to be the date of registration.

Date of registration.

Where a trade mark has been accepted by error the Registrar may withdraw his acceptance subject to appeal, Rule 63, p. 727.

Date of registration, p. 88. Cf. as to marks registered under prior Acts, secs. 6 and 36, and see p. 140.

17. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand of the Registrar, and sealed with the seal of the Patent Office.

Certificate of registration.

Prescribed form, Rule 67, p. 728. Form O., No. 2, p. 747. No fee. As to other certificates, see secs. 50 and 51, and Rules 102 and 104, and table of forms, p. 740. There is a general right to have a certified copy of any entry in the register on payment of the prescribed fee, sec. 7.

18. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

Non-completion of registration.

Abandonment of application, p. 87. It is no bar to a fresh application, *Jackson v. Napper*, 95 C. D. 162; 4 R. P. C. 145 (1886), Stirling, J.

The ordinary length of notice is fourteen days, but the Registrar may give a further time where the applicant lives at a distance, Rule 62, p. 727.

Identical Trade Marks.

19. Except by order of the Court or in the case of trade marks in use before the thirteenth day of August one thousand eight hundred and seventy-five, no trade mark shall be registered in respect of any goods or description of goods, which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods or so nearly resembling such a trade mark as to be calculated to deceive.

Identical marks.

Duplicate marks, p. 246.

Mark resembling a registered mark, p. 260.

"Except, &c." See also secs. 20 and 21. Old marks, p. 222. Three mark rule, p. 249.

An application to the Court must be served on the Registrar and an office copy of an order under the section must be left at the Patent Office, rule 129, p. 736.

For procedure, see p. 250.

Belonging to a different proprietor, cf. sec. 24.

Same goods or description of goods, p. 253.

20. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have

Rival claims to identical marks.

been determined by the Court, or have been settled by agreement in a manner approved by him or (on appeal) by the Board of Trade.

Duplicate registration, pp. 250 and 294.
 Concurrent claims, p. 250.
 Same goods or description of goods, p. 253.
 "Determined by the Court," procedure, p. 250.
 "Settled by agreement," p. 250.

Concurrent user.

21. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

Duplicate registration, pp. 250 and 294.
 Concurrent user, p. 294.
 Same goods or description of goods, p. 250.
 Conditions and limitations, pp. 82, 294.
 As to rights of proprietors of duplicate marks, sec. 39, p. 363.

Assignment.

Assignment and transmission of trade marks.

22. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods.

Assignment and devolution, Chap. XIII., p. 384.
 Registration of assignments, &c., sec. 38. See notes to that section. Rules 76 to 81, pp. 729, 730.

A trade mark must be registered in respect of particular goods or classes of goods, sec. 8; and the exclusive right to the use of it conferred by registration is confined to the goods in respect of which it is registered, sec. 39, p. 365.

The registered proprietor has power to assign a trade mark and give receipts for any consideration, sec. 38, p. 394.

Determination of trade mark rights, Chap. XIV., p. 404.

Goodwill, pp. 401 and 409.

As to the proviso, see p. 392.

Apportionment of marks on dissolution of partnership.

23. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Act as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade.

Rights on dissolution of partnership, Chap. XIII., p. 393.
 Rules 87 to 89, p. 780. A note of the apportionment and the date of the decision is to be entered on the register.

Appeal to the Board of Trade, rules 122 to 127, p. 735.

The Board of Trade may refer an appeal to the Court, sec. 59, p. 684.

Associated trade marks, secs. 24 to 27.

Associated Trade Marks.

24. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal bearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks. Associated trade marks.

Associated trade marks, p. 116. They comprise (1) a set of marks associated under this section; (2) series of trade marks, sec. 26; and (3) a set of trade marks constituted by the registration of a trade mark and of one or more parts of it, sec. 25.

The section has nothing to do with the registration of identical marks belonging to the same proprietor, per Kekewich, J., in *Birmingham Small Arms Application*, [1907] 2 Ch. 396; 24 R. P. C. 563. Cf. secs. 19 and 20, as to marks belonging to different proprietors. This section was inserted to meet the difficulty caused by the decision in *Players & Sons' Application*, [1901] 1 Ch. 382; 18 R. P. C. 65.

The fact of association is to be noted on the register against each mark, rule 65, p. 728.

Associated trade marks are only assignable or transmissible as a whole, sec. 27.

25. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately, he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains. Combined trade marks.

See notes to sec. 24.

A trade mark, e.g. a label, often contains distinctive parts, which under this section may be registered subject to the condition of association. A part separately registered cannot be required to be disclaimed under sec. 15.

The proviso was inserted in view of sec. 37, enabling a trade mark to be removed from the register on the ground of non-user, see p. 326.

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

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

(b) statements of number, price, quality, or names of places; or

(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Series of trade marks, p. 118.

Application for a series of trade marks, rule 27, p. 723.

Fee, 1a, List of Fees, p. 787.

Advertisement of a series, rule 49, p. 726.

See also notes to sec. 24, as to associated trade marks generally.

Assignment and user of associated trade marks.

27. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the tribunal may if and so far as it shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent of such user.

Assignment of trade marks, Chap. XIII., p. 384.

Associated trade marks, p. 116. See notes to sec. 24.

Rules as to assignment, rules 76 to 81, p. 729.

As to the proviso, see sec. 37, non-user of trade mark.

"Not substantially affecting the identity," cf. sec. 9, old marks, secs. 14 (9), 26 and 34.

Renewal of Registration.

Duration of registration.

28. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

Renewal of registration, p. 415. Rules 68 to 75, pp. 728, 729.

And see notes to secs. 29 and 30.

Renewal of registration.

29. The Registrar shall on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

"Prescribed period," not less than two months nor more than three months before expiration, rule 68, p. 728.

Renewal is to be advertised in the Journal, rule 75, p. 729.

Procedure on expiry of period of registration.

30. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Removal of mark from the register, p. 414.

Renewal of registration, p. 415.

The rules provide for two notices by the Registrar and an advertisement in the Journal before removal, rules 70 to 74, pp. 728, 729. See also the summary of prescribed procedure, p. 374. The forms are there referred to.

What conditions may be required, p. 374.

The cause of removal is to be entered on the register, rule 74, p. 729.

Status of un-renewed trade mark.

31. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall nevertheless, for the purpose of any application for registration during 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 Registrar

that there had been no *bond fide* trade user of such trade mark during the two years immediately preceding such removal.

Under this section a trade mark, though removed from the register, may be a ground of refusal of registration for an identical or similar mark, see secs. 19 and 20, and p. 418.

"No *bond fide* trade user, &c." Cf. sec. 37.

Correction and Rectification of the Register.

32. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name,— Correction of register.

- (1) Correct any error in the name or address of the registered proprietor of a trade mark; or
- (2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or
- (3) Cancel the entry of a trade mark on the register; or
- (4) Strike out any goods or classes of goods from those for which a trade mark is registered; or
- (5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade.

Correction and cancellation of entries at the proprietor's request, p. 351.

As to changes of proprietorship, see sec. 33. As to alteration of a trade mark, see sec. 34.

"Goods or classes of goods," sec. 8.

Disclaimers, Chap. IX., p. 236.

Rules 82, and 90 to 92. Form for alteration of address, TM No. 20, p. 752. Form for entry of change of name, TM No. 23, p. 753. Form for cancellation of entry, TM No. 24, p. 753. Form of request to strike out particular goods, TM No. 25, p. 754. Form of request to enter a disclaimer or memorandum, TM No. 26, p. 754.

An appeal may be referred by the Board of Trade to the Court, sec. 59, p. 684.

33. Subject to the provisions of this Act where a person becomes entitled to a registered trade mark by assignment, transmission or other operation of law, the Registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark. Any decision of the Registrar under this section shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade. Registration of assignments, etc.

Assignment and devolution of trade marks, Chap. XIII., p. 384.

Registration of assignment, p. 398.

"Subject to the provisions of this Act," secs. 22 and 27.

As to the power of the registered proprietor to assign, and as to notice of equities, see notes to sec. 38.

As to changes of name and address, see sec. 32.

"Prescribed manner," rules 76 to 81, pp. 729, 730. Form of joint request by registered proprietor and assignee to register assignee, TM No. 16, p. 750. Declaration in support, TM No. 17. Request by subsequent proprietor only to register him, Form TM No. 18. A case is to accompany the request, rule 78, p. 729. Declaration in support, TM No. 19, p. 751.

34. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such Alteration of registered trade mark.

trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Board of Trade. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Alteration of registered trade mark, p. 353.

"Prescribed manner," rules 93 and 94, p. 731. Form TM No. 27, p. 754.

Advertisement. Cf. sec. 13.

The Board of Trade may refer an appeal to the Court, sec. 59.

Rectification
of Register.

35. Subject to the provisions of this Act—

- (1) The Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, make such order for making, expunging, or varying such entry, as it may think fit:
- (2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register:
- (3) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provision of this section:
- (4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Rectification of the Register, Chap. XI., p. 309.

As a defence, p. 455.

"Subject to the provisions of this Act," see especially secs. 40 and 41.

"The Court," p. 338.

"Person aggrieved," p. 313.

Costs, p. 348. Security for costs by a foreigner, p. 343.

Procedure, p. 338.

The Registrar must be served, rule 129, p. 736, and see sec. 47. An office copy of any order made must be left at the Office, Form TM 30, p. 760, rule 129.

Form of notice of motion, p. 791.

Trade marks
registered
under
previous
Acts.

36. No trade mark which is upon the register at the commencement of this Act and which under this Act is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Act to which he would not have been subject under the Acts then in force.

Page 141.

"Registrable trade mark," see sec. 3, p. 27.

The facts at the date of the decision are to be considered with reference to the law at that date, *Gestetner's Tm.*, [1907] 2 Ch. 478; [1908] 1 Ch. 513; 24 R. P. C. 545; 25 R. P. C. 156. See, however, the judgment of Parker, J., in *Philippart v. Whiteley, Ltd.*, [1908] 2 Ch. 274; 28 R. P. C. 565.

The trade mark, if upheld, retains its original date, sec. 6, p. 667.

Non-user of
trade mark.

37. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the

goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bonâ fide* intention to use the same in connection with such goods, and there has in fact been no *bonâ fide* user of the same in connection therewith, or on the ground that there has been no *bonâ fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

Removal on the ground of non-user, p. 326.

"Person aggrieved," p. 313.

Abandonment, p. 412.

User of trade marks associated with that in question may under some circumstances be accepted as equivalent to user of the trade mark, secs. 25 and 27.

Effect of Registration.

38. Subject to the provisions of this Act—

- (1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment: Powers of registered proprietor.
- (2) Any equities in respect of a 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. 384.

Registration of assignments, &c., sec. 33, p. 398.

"Subject to the provisions of this Act," sec. 22, trade marks are only assignable with goodwill, p. 384, and sec. 27, associated trade marks are not separately assignable, p. 119.

Equities, p. 398.

Notice of trusts is not to be entered on the register, p. 64.

39. Subject to the provisions of section forty-one of this Act and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered: Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof. Rights of proprietor of trade mark.

Effect of registration, Chap. XII., p. 359.

Registration, evidence of validity, *prima facie*, sec. 40, p. 367, and after seven years conclusive, sec. 41, p. 368.

Limitations and conditions, see secs. 10, 12, 14, 21, and the notes thereto.

Test of infringement where the registered trade mark is actually copied, p. 441. For deceptive resemblance, see pp. 260 *et seq.*, and pp. 444 *et seq.*

Concurrent registration, pp. 250 and 294.

Definition of rights by the Court, see secs. 20 and 21.

The exclusive right conferred by this section is subject to the savings contained in sec. 44, as to the *bonâ fide* use by a person of his own name or place of business and *bonâ fide* descriptions of goods.

Registration to be *prima facie* evidence of validity.

40. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Effect of registration, Chap. XII., p. 360.

See notes to secs. 39 and 41.

Sec. 35, Rectification, Chap. XI., p. 309.

Registration to be conclusive after even years.

41. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Act, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section eleven of this Act :

Provided that nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section twenty-one of this Act.

Registration conclusive evidence of validity, p. 368.

The first part of the section first came into operation on August 11th, 1912.

Fraud, p. 371. Sec. 11, p. 371.

As to the proviso, see concurrent user, pp. 294, 456, and concurrent registration, pp. 250, 294.

Unregistered trade mark.

42. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the thirteenth of August one thousand eight hundred and seventy-five, and has been refused registration under this Act. The Registrar may, on request, grant a certificate that such registration has been refused.

Registration as a condition precedent to an action for infringement, pp. 373, 386.

The prohibition does not affect actions for passing-off, sec. 45, p. 377. It applies to foreigners, p. 375.

August 13th, 1875, is the date of the commencement of the first Registration Act. Old marks, p. 222.

Form of request for certificate of refusal, TM No. 32, p. 760.

Infringement.

43. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

Infringement, Chap. XV., p. 419.

Evidence as to get-up, &c., p. 449.

User of name, address, or

44. No registration under this Act shall interfere with any *bonâ fide* use by a person of his own name or place of business or that of any of

his predecessors in business, or the use by any person of any *bonâ fide* description of the character or quality of his goods. description of goods.

Page 464.

Right to honest use of one's own name, pp. 464, 593.

Descriptive words, pp. 39, 205, 280, 563.

45. Nothing in this Act contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof. "Passing-off" action.

Passing-off, Chap. XVI., p. 527.

Non-registration not a bar to an action for passing-off, pp. 377, 531.

Cf. sec. 42.

Legal Proceedings.

46. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same. Certificate of validity.

Certificate of validity, pp. 346, 515. May be given in rectification proceedings, p. 346.

47. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding. Registrar to have notice of proceeding for rectification.

Notice of every application to the Court under the Act is to be served on the Registrar, rule 129, p. 736.

Rectification, Chap. XI., p. 309.

Alteration of trade marks, p. 353.

Evidence, p. 344.

In cases under secs. 23, 32, 33 or 34, the matter would come before the Registrar in the first instance. The words "the grounds of any decision" appear, however, not to be confined to the decision (if any) under appeal, but would include, *e.g.*, a decision when the mark was registered.

The Court may review any decision of the Registrar relating to the entry in question, sec. 54, p. 683.

Costs.

48. In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties. Costs of proceedings before the Court.

Costs in applications to register, p. 106.

Costs in rectification proceedings, p. 348.

The Registrar is entitled as a general rule to have his costs, p. 109.

Evidence.

Mode of giving evidence.

49. In any proceeding under this Act before the Board of Trade or the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which it shall think it right so to do, the tribunal may (with the consent of the parties) take evidence *vivâ voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *vivâ voce* the Board of Trade or the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an Official Referee of the Supreme Court.

Evidence in applications to register, pp. 95, 104.

As to the powers of an official referee to require the attendance of witnesses and to take evidence on oath, see Order XXXVI., r. 49, and the Arbitration Act, 1889.

As to the Registrar's power to dispense with evidence, see Rule 97, p. 732.

"On oath" and "affidavit," see Interpretation Act, 1889, sec. 3, p. 716.

Sealed copies to be evidence.

50. Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts in His Majesty's dominions, and in all proceedings without further proof or production of the originals.

Pages 67, 68. Cf. sec. 51.

The Register, sec. 4, p. 62. Inspection and extracts, sec. 7, p. 66.

Seal of the Patent Office, Patents and Designs Act, 1907, sec. 64, replacing sec. 84 of the Act of 1883.

Fees, see sec. 7.

Certificate of Registrar to be evidence.

51. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Act, or rules made thereunder, to make or do, shall be *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Pages 67, 68. Cf. sec. 50.

See also rule 102, and certificate of registration under sec. 17 (on registration), Form O., No. 2, p. 747.

Request for general certificate, Form TM No. 31, p. 760. Request for certificate of refusal to register, Form TM No. 32, p. 760. Request for certificate of registration for use in obtaining registration abroad, Form TM No. 33, p. 761. Request for certificate of registration to be used in legal proceedings, Form TM No. 34, p. 761. Request for certificate under sec. 64 (12) (deposit of cotton mark), Form Cotton No. 3, p. 757. Certificate under same Form, MB No. 1, p. 758. Request for certificate of Keeper of Cotton Marks of registration, Form Cotton No. 4, p. 758. General certificate of Keeper of Cotton Marks, Form MB No. 2, p. 759.

Fees marked on Forms, or see List of Fees, p. 737.

Certificate of Board of Trade to be evidence.

52. (1) 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.

(2) 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.

PART II.

Powers and Duties of Registrar of Trade Marks.

53. Where any discretionary or other power is given to the Registrar by this Act or rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Exercise of discretionary power by Registrar.

"Prescribed time," one month from the date when the matter has arisen, rules 83 to 86, p. 730.

54. Except where expressly given by the provisions of this Act or rules made thereunder there shall be no appeal from a decision of the Registrar otherwise than to the Board of Trade, but the Court, in dealing with any question of the rectification of the register (including all applications under the provisions of section thirty-five of this Act), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Appeal from Registrar.

As to appeal to the Court direct, see secs. 12, 14, 33, 63 (9) (Sheffield Marks), and 64 (5) (Cotton Marks).

The Board of Trade may refer an appeal to the Court, sec. 59.

Rectification of the Register, sec. 35, p. 309; and in appeals direct from the Registrar under sec. 33, p. 398; and in referred appeals under sec. 32 (p. 351) or sec. 34 (p. 353).

By rule 63 (p. 727) an appeal is given where registration is refused on the direction of the Board of Trade after acceptance.

55. Where by this Act any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this Act or in particular cases by special leave of the Board of Trade be done by or to an agent of such party duly authorised in the prescribed manner.

Recognition of agents.

Agents, p. 75.

Authorisation of agents, rule 2, p. 719.

As to agents generally, rule 10, p. 720. Form of authorisation, TM No. 1, p. 741.

56. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to His Majesty's Attorney-General or Solicitor-General for England for directions in the matter.

Registrar may take directions of law officers.

Pages 63, 83.

57. The Comptroller General of Patents, Designs, and Trade Marks shall in his yearly report on the execution by or under him of the Patents, Designs, and Trade Marks Act, 1883, and Acts amending the

Annual reports of Comptroller, 46 & 47 Vict. c. 57.

same, include a report respecting the execution by or under him of this Act as though it formed a part of or was included in such Acts.

The Comptroller, p. 63.

The official reports of Patents, Designs and Trade Marks Cases are published under sec. 46 of the Patents and Designs Act, 1907.

Powers and Duties of the Board of Trade.

Proceedings
before Board
of Trade.

58. 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 or any person authorised in that behalf by the President of the Board.

Appeals to
Board of
Trade.

59. Where under this Act an appeal is made to the Board of Trade, the Board of Trade may, if they think fit, refer any such appeal to the Court in lieu of hearing and deciding it themselves, but, unless the Board so refer the appeal, it shall be heard and decided by the Board, and the decision of the Board shall be final.

Rights of appeal to the Board of Trade are given by secs. 12, 14 (by consent), 20, 23, 32, 33 and 34. In some of these cases, there is an alternative appeal to the Court.

Power of
Board of
Trade to make
rules.

60. (1) Subject to the provisions of this Act the Board of Trade may from time to time make such rules, prescribe such forms, and generally do such things as they think expedient—

- (a) For regulating the practice under this Act :
- (b) For classifying goods for the purposes of registration of trade marks :
- (c) For making or requiring duplicates of trade marks and other documents :
- (d) For securing and regulating the publishing and selling or distributing in such manner as the Board of Trade think fit, of copies of trade marks and other documents :
- (e) Generally, for regulating the business of the office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar, or of the Board of Trade.

(2) Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Act.

(3) Before making any rules under this section the Board of Trade shall publish notice of their intention to make the rules and of the place where copies of the draft rules may be obtained in such manner as the Board consider most expedient, so as to enable persons affected to make representations to the Board before the rules are finally settled.

(4) Any rules made in pursuance of this section shall be forthwith advertised twice in the Trade Marks Journal, and 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.

(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.

The Rules of 1906, which came into force after March 31st, 1906, that is to say, with the commencement of the Act, are printed below, p. 718. There are also Rules of 1912 as to cotton marks, below, p. 766. Table of Fees, p. 787. Forms, pp. 740 *et seq.* Classification of goods, pp. 761 *et seq.*

"Prescribed" where it occurs in the Act, and except in relation to proceedings before the Court, means prescribed by this Act or the rules thereunder, sec. 3.

Fees.

61. There shall be paid in respect of applications and registration and other matters under this Act, such fees as may be, with the sanction of the Treasury, prescribed by the Board of Trade. Fees.

Table of Fees, p. 787.

Special Trade Marks.

62. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Board of Trade may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Board of Trade. Standardisation, &c., trade marks.

Standardisation Marks, pp. 91, 232.

Procedure, p. 91; rules 42 to 46, p. 725.

"Person" includes any body of persons corporate or incorporate. Interpretation Act, 1889, sec. 19, p. 716.

Sheffield Marks.

63. 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:— Sheffield marks.

- (1) The Cutlers' Company shall continue to keep at Sheffield the register of trade marks (in this Act called the Sheffield register) kept by them at the date of the commencement of this Act, and, save as otherwise provided by this Act, such register shall for all purposes form part of the register:
- (2) The Cutlers' Company shall, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods as defined in this section, 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 such register before the passing of this Act:

- (3) An application for registration of a trade mark used 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 Cutlors' Company:
- (4) Every application so made to the Cutlors' Company shall be notified to the Registrar in the prescribed manner, and, unless the Registrar within the prescribed time gives notice to the Cutlers' Company of any objection to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner:
- (5) If the Registrar gives notice of an objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may in the prescribed manner 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 Registrar, 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 Registrar on that day:
- (7) The provisions of this Act, and of any 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 (and notwithstanding anything in any Act relating to the Cutlers' Company), 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 rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company in the Sheffield register, for the Registrar, 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 Registrar by the Cutlers' Company:
- (8) When the Registrar 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 metal goods, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company:
- (9) 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 Court:
- (10) 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:
- (11) 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 Registrar.

Sheffield marks, Chap. VI., p. 120.

Procedure, p. 125; rules 107 to 112, pp. 788, 784.

"The Court" means in England the High Court of Justice, sec. 3.

"Person aggrieved," cf. sec. 35, and see p. 318.

Certificate of the Registrar, sec. 51.

Cotton Marks.

64. (1) The Manchester Branch of the Trade Marks Registry of the Patent Office (hereinafter called "the Manchester Branch") shall be continued according to its present constitution. A chief officer of the Manchester Branch shall be appointed who shall be styled "The Keeper of Cotton Marks," and shall act under the direction of the Registrar. The present keeper of the Manchester Branch shall be the first Keeper of Cotton Marks. Cotton marks.

(2) As regards cotton goods which have hitherto constituted classes 23, 24, and 25, under the classification of goods under the Patents, Designs, and Trade Marks Acts, 1883 to 1902, the Register of Trade Marks for all such goods, except such as may be prescribed, shall be called "the Manchester Register," and a duplicate thereof shall be kept at the Manchester Branch.

(3) All applications for registration of trade marks for such cotton goods in the said classes (hereinafter referred to as "cotton marks") shall be made to the Manchester Branch.

(4) Every application so made to the Manchester Branch shall be notified to the Registrar in the prescribed manner together with the report of the Keeper of Cotton Marks thereon, and unless the Registrar, after considering the report and hearing, if so required, the applicant, within the prescribed time gives notice to the Keeper of Cotton Marks of objection to the acceptance of the application, it shall be advertised by the Manchester Branch and shall be proceeded with in the prescribed manner.

(5) If the Registrar gives notice of objection as aforesaid the application shall not be proceeded with, but any person aggrieved may in the prescribed manner appeal to the Court or the Board of Trade, at the option of the applicant.

(6) Upon the registration of a trade mark in the Manchester Register the Keeper of Cotton Marks shall upon notice thereof from the Registrar thereupon enter the mark in the duplicate of the Manchester Register, and such registration shall bear date as of the day of application to the Manchester Branch, and shall have the same effect as if the application had been made to the Registrar on that day.

(7) When any mark is removed from or any cancellation or correction made in the Manchester Register notice thereof shall be given by the Registrar to the Keeper of Cotton Marks, who shall alter the duplicate register accordingly.

(8) For the purpose of all proceedings in relation to trade marks entered in the Manchester Register a certificate under the hand of the Keeper of Cotton Marks shall have the same effect as a certificate of the Registrar.

(9) In every application for registration of a cotton mark, if such mark has been used by the applicant or his predecessors in business prior to the date of application, the length of time of such user shall be stated on the application.

(10) As from the passing of this Act—

(a) In respect of cotton piece goods and cotton yarn no mark consisting of a word or words alone (whether invented or otherwise) shall be registered, and no word or words shall be deemed to be distinctive in respect of such goods :

- (b) In respect of cotton piece goods no mark consisting of a line heading alone shall be registered, and no line heading shall be deemed to be distinctive in respect of such goods :
- (c) No registration of a cotton mark shall give any exclusive right to the use of any word, letter, numeral, line heading, or any combination thereof.

39 & 40 Vict.
c. 33.

(11) The right of inspection of the Manchester Register shall extend to and include the right to inspect all applications whatever that have been since the passing of the Trade Marks Registration Act, 1875, and hereafter shall have been made to the Manchester Branch in respect of cotton goods in classes 23, 24, and 25, whether registered, refused, lapsed, expired, withdrawn, abandoned, cancelled, or pending.

(12) The Keeper of Cotton Marks shall, on request, and on production of a facsimile of the mark, and on payment of the prescribed fee, issue a certified copy of the application for registration of any cotton mark, setting forth in such certificate the length of time of user (if any) of such mark as stated on the application, and any other particulars he may deem necessary.

(13) As regards any rules or forms affecting cotton marks which are proposed by the Board of Trade to be made, the draft of the same shall be sent to the Keeper of Cotton Marks and also to the Manchester Chamber of Commerce. And the said Keeper, and also the said Chamber, shall, if they or either of them so request, be entitled to be heard by the Board of Trade upon such proposed rules before the same are carried into effect.

(14) The existing practice whereby the keeper of the Manchester Branch consults the Trade and Merchandise Marks Committee appointed by the Manchester Chamber of Commerce upon questions of novelty or difficulty arising on applications to register cotton marks shall be continued by the Keeper of Cotton Marks.

Cotton Marks, Chap. VII., p. 129.

Classes 23, 24 and 25, under the former classification included the same goods as the present Classes 23, 24 and 25, see p. 129; but Class 23 was differently subdivided, see p. 129.

Procedure, p. 131; Rules 113 to 120, p. 734.

"Person aggrieved," cf. sec. 35, and see p. 313.

"Passing of the Act," August 11th, 1905. The Act generally only came into force on April 1st, 1906.

"The Court" means in England the High Court of Justice, sec. 3, but as regards cotton marks, the Court of Chancery of the County Palatine of Lancaster has a co-ordinate jurisdiction, sec. 71.

Request for certificate under sub-sec. (12), Form Cotton No. 3, p. 757; certificate, Form MB No. 1, p. 758. Request for general certificate, Form Cotton No. 4, p. 758; certificate, Form MB No. 2, p. 759.

For the Trade Marks Rules, 1912, relating to the collection of refused cotton marks, and forms and fees thereunder, see below, p. 766.

International and Colonial Arrangements.

International
and Colonial
arrange-
ments.
48 & 49 Vict.
c. 69.

65. The provisions of section one hundred and three and one hundred and four of the Patents, Designs, and Trade Marks Act, 1883 (as amended by the Patents, Designs, and Trade Marks (Amendment) Act, 1885), relating to the registration of trade marks both as enacted in such Acts and as applied by any Order in Council made thereunder, shall be construed as applying to trade marks registrable under this Act.

Registration of foreign and colonial trade marks, Chap. XX., p. 640.

Secs. 103 and 104 of the Patents, &c., Act, 1883, and the amending section are repealed by the Patents and Designs Act, 1907, and replaced by sec. 91 of that Act, which so far as relates to trade marks is set out above, p. 641.

The International Conventions of 1883 (signed at Paris, March 20th, 1883, ratified June 6th, 1884) and 1891 (signed at Madrid, April 14th, 1891, ratified June 15th, 1892) are printed at pp. 813-821. The convention as revised at Washington in 1911, and the list of countries which have ratified it, are printed below, pp. 823-829. The list of foreign States and British Possessions to which sec. 91 is applicable is given at p. 811.

Definition of "British Possession," Patents and Designs Act, 1907, sec. 93.

Great Britain did not sign the arrangement relating to the International Registration of trade marks of 1891.

Offences.

66. If any person makes or causes to be made a false entry in the 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 misdemeanor.

Falsification of entries in register.

Page 649.

67. (1) Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

Penalty on falsely representing a trade mark as registered.

(2) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered," or any words expressing or implying that registration has been obtained for the trade mark.

Page 649. Cf. Rule 11, p. 721.

Royal Arms.

68. If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he may, at the suit of any person who is authorised to use such arms or such device, emblem, or title, or is authorised by the Lord Chamberlain to take proceedings in that behalf, be restrained by injunction or interdict from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

Unauthorised assumption of Royal Arms.

Pages 428 and 651.

Courts.

69. 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 trade marks; and with reference to any such

General saving for jurisdiction of Court.

proceedings in Scotland the term "the Court" shall mean the Court of Session; and with reference to any such proceedings in Ireland the term "the Court" shall mean the High Court of Justice in Ireland.

"The Court" is by sec. 8 defined to mean (subject to the provisions for Scotland, Ireland and the Isle of Man) the High Court of Justice in England.

As to rectification of the Register in or under proceedings in Scotland or Ireland, see p. 339.

Isle of Man.

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

- (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 trade mark competent to those Courts:
- (2) The punishment for a misdemeanor 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.

Pages 94, 338.

Jurisdiction of Lancashire Palatine Court.

71. 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 Branch, have the like jurisdiction under this Act as His 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 in 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.

"The Manchester Branch," Chap. VII., p. 129.

"Other proceeding" includes the special jurisdiction on rectification under sec. 35, and also jurisdiction upon appeals under sec. 64 (5).

Offences in Scotland.

72. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court.

Repeal; Savings.

Repeal and saving for rules, &c.

73. The enactments described in the schedule to this Act are repealed to the extent mentioned in the third column, but this repeal shall not affect any rule, table of fees, or classification of goods made under any enactment so repealed, but every such rule, table of fees, or classification of goods shall continue in force as if made under this Act until superseded by rules, tables of fees, or classification under this Act.

The repeal is of all parts of the Acts of 1883 and 1888, which related to trade marks, except secs. 103 and 104 (International and Colonial Arrangements) which are now repealed and are replaced by sec. 91 of the Patents and Designs Act, 1907, sec. 106 (penalty on unauthorised use of Royal Arms), repealed by sec. 90 of the

Patents and Designs Act, 1907 (see also sec. 68 of the Act of 1905), and secs. 82, 83 and 84, which related to the constitution and seal of the Patent Office, which are now replaced by secs. 62, 63 and 64 of the Patents and Designs Act, 1907.

The former rules of 1890, and the amending rules of 1897 and 1898, and the forms, table of fees, and classification of goods thereunder, were from March 31st, 1906, superseded by the Trade Mark Rules, 1906, with new forms, table of fees and classification; these are printed below, pp. 719 to 768.

The commencement of the Act, except where otherwise provided, was April 1st, 1906.

The general saving provisions of sec. 98 of the Interpretation Act, 1889, apply, see p. 718.

74. The provisions of sections eighty-two to eighty-four of the Patents, Designs, and Trade Marks Act, 1883, as amended by any subsequent enactment, shall continue to apply with respect to the administration at the Patent Office of the Law relating to the registration of trade marks, and shall accordingly be construed as if this Act formed part of that Act.

Application of 46 & 47 Vict. c. 57, ss. 82-84.

See notes to sec. 73.

SCHEDULE.

Section 73.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	Sections sixty-two to eighty-one, and, so far as they respectively relate to trade marks, sections eighty-five to ninety-nine, one hundred and one, one hundred and two, one hundred and five, one hundred and eight, and one hundred and eleven to one hundred and seventeen.
51 & 52 Vict. c. 50.	The Patents, Designs, and Trade Marks Act, 1888.	Sections eight to twenty, and, so far as they respectively relate to trade marks, sections twenty-one to twenty-six.

APPENDIX IV.

THE PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.¹

AS AMENDED BY THE ACT OF 1888.

ARRANGEMENT OF SECTIONS.

SECTION PART I.—PRELIMINARY.

1. *Short title.*
2. *Division of Act into parts.*
3. *Commencement of [the Acts].*

PART IV.—TRADE MARKS.

Registration of Trade Marks.

62. *Application for registration.*
63. *Limit of time for proceeding with application.*
64. *Conditions of registration of trade mark.*
65. *Connexion of trade mark with goods.*
66. *Registration of a series of marks.*
67. *Trade marks may be registered in any colour.*
68. *Advertisement of application.*
69. *Opposition to registration.*
70. *Assignment and transmission of trade mark.*
71. *Conflicting claims to registration.*
72. *Restrictions on registration.*
73. *Further restrictions on registration.*
74. *Saving for power to provide for entry on Register of common marks as additions to trade marks.*

Effect of Registration.

75. *Registration equivalent to public use.*
76. *Right of first proprietor to exclusive use of trade mark.*
77. *Restrictions on actions for infringement, and on defence to action in certain cases.*
- [77a. *Certificate as to exclusive use and costs thereon.*]

Register of Trade Marks.

78. *Register of trade marks.*
79. *Removal of trade mark after fourteen years, unless fee paid.*

Fees.

80. *Fees for registration, &c.*

Sheffield Marks.

81. *Registration by Cutlers' Company of Sheffield marks.*

¹ Now repealed by the Act of 1905, or, as to sections not so repealed, namely, sections 82 to 84, 103, 104, and 106, by the Patents and Designs Act, 1907. For tables of corresponding sections, see above, pp. 658 *et seq.*

PART V.—GENERAL.

SECTION Patent Office and Proceedings thereat.

- 82. *Patent Office.*
- 83. *Officers and clerks.*
- 84. *Seal of Patent Office.*
- 85. *Trust not to be entered in Registers.*
- 86. *Refusal to grant patent, &c. in certain cases.*
- 87. *Entry of assignments and transmissions in Registers.*
- 88. *Inspection of and extracts from Registers.*
- 89. *Sealed copies to be received in evidence.*
- 90. *Rectification of Registers by court.*
- 91. *Power for Comptroller to correct clerical errors.*
- 92. *Alteration of registered mark.*
- 93. *Falsification of entries in Registers.*
- 94. *Exercise of discretionary power by Comptroller.*
- 95. *Power of Comptroller to take directions of law officers.*
- 96. *Certificate of Comptroller to be evidence.*
- 97. *Applications and notices by post.*
- 98. *Provision as to days for leaving documents at office.*
- 99. *Declaration by infant, lunatic, &c.*
- 100. *Transmission of certified printed copies of specifications, &c.*
- 101. *Power for Board of Trade to make general rules for classifying goods and regulating business of patent office.*
- 102. *Annual reports of Comptroller.*
- [102a. *Proceedings of Board of Trade.*]

International and Colonial Arrangements.

- 103. *International arrangements for protection of inventions, designs, and trade marks.*
- 104. *Provision for colonies and India.*

Offences.

- 105. *Penalty on falsely representing articles to be patented.*
- 106. *Penalty on unauthorised assumption of Royal arms.*

Scotland ; Ireland ; &c.

- 107. *Saving for courts in Scotland.*
- 108. *Summary proceedings in Scotland.*
- 109. *Proceedings for revocation of patent in Scotland.*
- 110. *Reservation of remedies in Ireland.*
- 111. *General saving for jurisdiction of courts.*
- 112. *Isle of Man.*
- [112a. *Jurisdiction of Lancashire Palatine Court.*]

Repeal ; Transitional Provisions ; Savings.

- 113. *Repeal and saving for past operation of repealed enactments, &c.*
- 114. *Former Registers to be deemed continued.*
- 115. *Saving for existing rules.*
- 116. *Saving for prerogative.*

General Definitions.

- 117. *General definitions.*

The FIRST SCHEDULE.—Forms of application, &c.

The THIRD SCHEDULE.—Enactments repealed.

46 & 47 VICT. c. 75.

An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks.
[25th August, 1883.]

51 & 52 VICT. c. 50.

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

* * * The general text of the Act of 1883 is adhered to. The parts repealed by the Act of 1888 are printed in Roman type, and the additions in square brackets. The Amending Act and section are quoted in the margin. The whole Act is now repealed, see above, p. 692, n. (1); for tables of corresponding sections of the Act of 1905 and of the repealed Acts, see above, pp. 658 and 661.

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 :

PART I.—PRELIMINARY.

Short title. 1. *This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883.*

Division of Act into parts. 2. *This Act is divided into parts, as follows :—*

Part I.—PRELIMINARY.

II.—PATENTS.

III.—DESIGNS.

IV.—TRADE MARKS.

V.—GENERAL.

Commencement of Act. 3. *This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-three.*

Act, 1888, s. 28. [The Act of 1888 shall, except so far as is thereby otherwise specially provided, commence and come into operation on the first day of January one thousand eight hundred and eighty-nine.]

PART IV.—TRADE MARKS.

Registration of Trade Marks.

Application for registration. 62. (1.) *The Comptroller may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark.*

(2.) *The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to the Patent Office in the prescribed manner [such place and in such manner as may be prescribed].*

Act, 1888, s. 8. (3.) *The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or*

classes of goods in connexion with which the applicant desires the trade mark to be registered.

(4.) The Comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the Comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5.) 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.

[(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.]

Act, 1888, s. 8.

63. Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the application shall be deemed to be abandoned [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.]

Limit of time for proceeding with application.

Act, 1888, s. 9.

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

Conditions of registration of trademark.

Repealed.

Act, 1888, s. 10.

(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, ticket, or fancy word or words not in common use.

(2.) There may be added to any one or more of these particulars any letters, words, or figures, or combination of letters, words, or figures, or of any of them.

(3.) Provided that 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.

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

Conditions of registration of trademark.

Act, 1888, s. 10.

(a) A name of an individual or firm printed, impressed, or woven in some particular or 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.]

Connection of trade mark with goods.

Registration of a series of marks.

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

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.*

Trade marks may be registered in any colour.

Act, 1888, s. 11.

Advertisement of application.

Act, 1888, s. 12.

Opposition to registration.

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

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

Repealed.

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].*

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].*

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.*

(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.*

(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. Act, 1888, s. 13, sub-s. 4.

(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.

[(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.*]

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.* Assignment and transmission of trade mark.

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.* Conflicting claims to registration.

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.* Restrictions on registration.

(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.

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.

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 ;

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.]

(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.*

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.*]

Right of first proprietor to exclusive use of trade mark.

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.

Restrictions on actions for infringement, and on defence to action in certain cases.

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.

[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.

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.

Register of trade marks.

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.

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

(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.

(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.

(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.

(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.

Fees.

Fees for
registration,
&c.

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.*

Sheffield Marks.

Registration
by Cutlers'
Company of
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:*

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

(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 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.

[(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:—*

38 & 39 Vict.
c. 91.

(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:*

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

- (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 Registrar 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 :*
- (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 :*
- 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.*]

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.*

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

(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 authorised 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 impressions thereof shall be judicially noticed and admitted in evidence.*

Seal of patent office.

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.

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.

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.*

Entry of assignments and transmissions in Registers.

Act, 1888, s. 21.

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 such Register shall be given to any person requiring the same on payment of the prescribed fee.*

Inspection of and extracts from Registers.

Act, 1888, s. 22.

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.*

Sealed copies to be received in evidence.

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*

Rectification of Registers by Court.

Act, 1888, s. 23.

make such order with respect to the costs of the proceedings as the Court thinks fit.

(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.

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

Power for
Comptroller
to correct
clerical errors.

91. The Comptroller may, on request in writing accompanied by the prescribed fee,

(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

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

(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.

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.]

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.

(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.

(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.

Falsification
of entries in
register.

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.

Power of
Comptroller
to take
directions of
law officers.

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.

Certificate
of Comp-

96. A certificate purporting to be under the hand of the Comptroller 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 *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.

97. (1.) Any application, notice, or other document authorised 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.

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

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.

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.

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, amendments, 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:

troller to be evidence.

Applications and notices by post.

Provision as to days for leaving documents at office.

Declaration by infant, lunatic, &c.

Transmission of certified printed copies of specifications, &c.

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

- (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.

(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.

(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.

Annual
reports of
Comptroller.

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 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 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.]

International and Colonial Arrangements.

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.*

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

Act, 1885, s. 6.

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.

(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:*

(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:*

(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.

(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.

Penalty on falsely representing articles to be patented.

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 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.*

Penalty on unauthorised 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.*

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.*

Reservation of remedies in Ireland.

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.*

General saving for jurisdiction of Courts.

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.

(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 of 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 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.

Jurisdiction of Lancashire Palatine Court.

Act, 1888, s. 26.

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.

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

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

(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.

114. (1.) The Registers of patents and of proprietors kept under any

Former Registers to

be deemed continued.

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.

Saving for prerogative.

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

General Definitions.

General definitions.

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

“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.

SCHEDULES.

THE FIRST SCHEDULE.

FORMS OF APPLICATION, &c.

FORM F.

Section 62.

FORM OF APPLICATION FOR REGISTRATION OF TRADE MARK.

THE THIRD SCHEDULE.

Enactments repealed.

Section 113.

- 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.]

APPENDIX V.

THE TRADE MARKS REGISTRATION ACTS, 1875—77.

* * The whole of these Acts having long since been repealed, only the principal sections are printed in full, the nature of the remaining sections being shortly indicated.

THE TRADE MARKS REGISTRATION ACT, 1875.

38 & 39 VICT. c. 91.

An Act to establish a Register of Trade Marks.

[13th August, 1875.]

Registration
of trade
marks.

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.*

Character-
istics of
registered
trade mark.

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.*

Title of first
proprietor of
a trade mark.

3. *The registration of a person as first proprietor of a trade mark shall be prima 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
proprietor
claiming by
transmitted
proprietor-
ship.

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.*

5. [Rectification of Register and concurrent applications.]

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. [Establishment of registry and general rules.]

8. [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 marks") assigned or to be assigned by the master, wardens, searchers, and assistants of that company, be it enacted as follows:—

Provision as to Cutlers' Company and Sheffield corporate marks.

(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.*

Definitions.

10. *For the purposes of this Act—*

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.

[*Definition of " Prescribed " and " Court. "*]

Short title of Act.

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

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.

[*After reciting that it had been found impossible to complete the registration of existing trade marks within the time specified by the first section of the principal Act*] :—

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.

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.

Saving of marks and devices not capable of being 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.]

[*This Act extended the time for the registration of trade marks used in Textile Industries as defined in the Act to the first day of January one thousand eight hundred and seventy-eight, or such further time as Her Majesty might by Order in Council determine.*]

APPENDIX VI.

INTERPRETATION ACT, 1889, EXTRACTS FROM.

SEC. 1.—(1) In this Act and in every Act passed after the year 1850, whether before or after the commencement of this Act, unless the contrary intention appears,

(a) Words importing the masculine gender shall include females ;
and

(b) Words in the singular shall include the plural, and words in the plural shall include the singular.

SEC. 2.—(1) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act, the expression “person” shall, unless the contrary intention appears, include a body corporate.

SEC. 3.—In every Act passed after the year 1850, whether before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely,

The expression “month” shall mean calendar month ;

The expressions “oath” and “affidavit” shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression “swear” shall, in the like case, include affirm and declare.

SEC. 12.—(3) The expression “High Court,” when used with reference to England or Ireland, shall mean Her Majesty’s High Court of Justice in England or Ireland, as the case may be.

SEC. 14.—In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression “rules of court” when used in relation to any court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court, and as regards Scotland shall include Acts of adjournal and Acts of sederunt.

The power of the said authority to make rules of court as above defined shall include a power to make rules of court for the purpose of any Act passed after the commencement of this Act, and directing or authorising anything to be done by rules of court.

SEC. 19.—In this Act and in every Act passed after the commencement of this Act, the expression “person” shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.

SEC. 20.—In this Act and in every other Act, whether passed before

or after the commencement of this Act, expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Sec. 21.—In this Act or in every other Act, whether passed before or after the commencement of this Act, the expression “Statutory declaration” shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declaration Act, 1835.

Sec. 31.—Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Sec. 32.—(1) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or bye-laws.

Sec. 36.—(1) In this Act and in every Act passed either before or after the commencement of this Act, the expression “commencement,” when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2) Where an Act passed after the commencement of this Act or any order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws made, granted, or issued under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

Sec. 37.—Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

Sec. 38.—(1) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy, may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

APPENDIX VII.

TRADE MARKS RULES, 1906.¹

By virtue of the provisions of the Trade Marks Act, 1905, the Board of Trade do hereby make the following Rules:—

PRELIMINARY.

1. These Rules may be cited as the Trade Marks Rules, 1906, and shall come into operation from and immediately after the 31st day of March, 1906.

INTERPRETATION.

2. In the construction of these Rules any words herein used the meaning of which is defined by the said Act or the Interpretation Act, 1889,² shall have the meanings thereby assigned to them respectively. Interpreta-
tion.

“Agent” means an agent duly authorised to the satisfaction of the Registrar.

“Office” means Patent Office, Trade Marks Branch, 25, Southampton Buildings, London, W.C.

“Journal” means “Trade Marks Journal.”

FEEES.

3. The fees to be paid in pursuance of the said Act shall be the fees specified in the First Schedule to these Rules. Fees.

FORMS.

4. The forms herein referred to are the forms contained in the Second Schedule to these Rules, and such forms shall be used in all cases to which they are applicable, and shall be modified as directed by the Registrar to meet other cases. Forms.

CLASSIFICATION OF GOODS.

5. 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 Registrar.

¹ Statutory Rules and Orders, 1906, No. 233.

² A selection of extracts from this Act is printed above, p. 716.

DOCUMENTS.

Size, &c., of documents.

6. Subject to any other directions that may be given by the Registrar, all applications, notices, counter-statements, papers having representations affixed, or other documents required by the said Act or by these Rules to be left with or sent to the Registrar or to the Keeper of Cotton Marks or to the Cutlers' Company, shall be upon foolscap paper of a size of approximately 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.

Service of documents.

7. Any application, statement, notice, or other document authorised or required to be left, made, or given at the Office, or to or with the Registrar, or with or to any other person may be sent through the post by a prepaid or official-paid letter; any document so sent shall be deemed to have been delivered at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post. A letter addressed to a registered proprietor of a trade mark at his address as it appears on the register, or address for service, or to any applicant for or person opposing the registration of a trade mark at the address appearing in the application or notice of opposition or given for service as hereinafter provided shall be deemed to be sufficiently addressed.

Address.

8. Where any person is by the said Act or these Rules bound to furnish the Registrar with an address the following provisions shall apply :—

The address given shall in all cases be as full as possible, for the purpose of enabling any person easily to find the place of business of the person whose address is given.

When a person does not reside in a town with streets, the Registrar may require the address to include all indications which he thinks necessary for such purpose so far as it can be attained.

When an applicant resides in a town where there are streets, the address given shall include the name of the street, and the number in the street or name of premises, if any.

Address for service.

9. Every applicant for the registration of any trade mark, and every opponent to such registration, and every agent, who does not reside or carry on business in the United Kingdom, shall, if so required, give an address for service in the United Kingdom, and such address may be treated as the actual address of such applicant, opponent, or agent for all purposes connected with such application for registration or the opposition thereto.

The Registrar may require the proprietor of a registered trade mark who does not reside or carry on business within the United Kingdom to give an address for service within the United Kingdom, and such address may be treated as the actual address of the proprietor for all purposes connected with such trade mark.

AGENTS.

Agency.

10. An application for registration and an opposition to registration and all other communications between an applicant, an opponent and the Registrar, or the Board of Trade, and between the proprietor of a

registered trade mark and the Registrar, or the Board of Trade, or any other person, may be made by or through an agent.

Any such applicant, opponent, or proprietor may appoint an agent to represent him in the matter of the trade mark by signing and sending to the Registrar an authority in writing to that effect in the Form TM No. 1, or in such other form as the Registrar may deem sufficient. In case any proprietor of a registered trade mark shall appoint such an agent, service upon such agent of any document relating to such trade mark shall be deemed to be service upon the person so appointing him, and all communications directed to be made to such person in respect of such trade mark may be addressed to such agent.

The Registrar shall not be bound to recognise as such agent any person who has been convicted criminally or struck off the Roll of Solicitors, or whose name, by reason of his having been adjudged guilty of disgraceful professional conduct, has been erased from the Register of Patent Agents, kept under the provisions of the Patents, Designs, and Trade Marks Act, 1888,¹ relating to the registration of Patent Agents, and not since restored.

REGISTRABLE TRADE MARKS.

11. The Registrar may refuse to accept any application upon which the following appear:— Registrable trade marks

(a) The words "Patent," "Patented," or "By Royal Letters Patent," "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is forgery," or words to like effect.

(b) Representations of Their Majesties or of any member of the Royal Family.

12. Representations of the Royal Arms or Royal crests, or arms or crests so nearly resembling them so as to lead to mistake, or of British Royal crowns, or of the British national flags, or the word Royal or any other words, letters, or devices calculated to lead persons to think that the applicant has Royal patronage or authorisation, may not appear on trade marks the registration of which is applied for. Provided always that nothing contained in this rule shall preclude the Registrar from allowing the registration as an "old mark," that is as a mark which was used by the applicant or his predecessors in business before the 13th August, 1875, of any mark which was capable of being so registered before the Trade Marks Act, 1905, came into operation. Royal Arms.

13. Where representations of the arms of a foreign State or place appear on a mark the Registrar may call for such justification as he may deem necessary for their use. Arms of foreign State.

14. Where a representation of the arms or emblems of any city, borough, town, place, society, body corporate, or institution appears on a mark, the applicant shall, if so required, furnish the Registrar with a consent from such official as the Registrar may consider entitled to give consent to the use of such arms or emblems. Arms of city, &c.

15. Where the names or representations of living persons appear on a trade mark, the Registrar shall if he so require be furnished with consents from such persons before proceeding to register the mark. In the case of persons recently dead the Registrar may call for consents Representations of living person or persons recently dead.

¹ See now sec. 84 of the Patents and Designs Act, 1907.

from their legal representatives before proceeding with registration of a trade mark on which their names or representations appear.

Name or description of goods.

16. Where the name or a description of any goods appears on a trade mark the Registrar may refuse to register such mark in respect of any goods other than the goods so named or described.

Where the name or description of any goods appears on a trade mark which name or description in use varies the Registrar may permit the registration of the mark with the name or description upon it for goods other than those named or described, the applicant stating in his application that the name or description varies.

APPLICATION FOR REGISTRATION.

Application by firm.

17. If application for registration of a trade mark be made by a firm or partnership it may be signed in the name or for and on behalf of the firm or partnership by any one or more members thereof.

If the application be made by a body corporate it may be signed by a director or by the secretary or other principal officer of such body corporate.

Any application may be signed by an agent.

Address of application.

18. Where application is made for registration of a cotton mark the applicant shall address and send his application to the Keeper of Cotton Marks at the Manchester Branch, 48, Royal Exchange, Manchester. Other applications (except applications which under sec. 63 of the said Act should be made to the Cutlers' Company) shall be addressed and sent to the Registrar at the Office.

Acknowledgment of application.

19. On or after receipt of the application the Registrar shall furnish the applicant with an acknowledgment thereof.

Application for old mark.

20. 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 by whom it has been used in respect of the goods mentioned in the application. The Registrar may require a statutory declaration verifying such user with exhibits showing the mark as used.

Contents of form of application.

21. Every application for registration of a trade mark shall contain a representation of the mark affixed to it in the square which the Form TM No. 2 contains for that purpose.

Where the representation exceeds such square in size the representation shall be mounted upon linen, tracing cloth or other material that the Registrar may consider suitable. Part of the mounting shall be affixed in the space aforesaid and the rest may be folded over.

Additional representations.

22. There shall be sent with every application for registration of a trade mark four additional representations of such mark on the Form TM No. 3, exactly corresponding to that affixed to the application Form TM No. 2, and noted with all such particulars as may from time to time be required by the Registrar or by the Keeper of Cotton Marks. Such particulars shall, if required, be signed by the applicant or his agent.

Representations to be durable.

23. All representations of marks must be of a durable nature, but the applicant may in case of need supply in place of representations on the Form TM No. 3, half sheets of strong foolscap of the size aforesaid with the representations affixed thereon and noted as aforesaid.

24. Applications for the registration of the same mark in different classes shall be treated as separate and distinct applications, and in all cases where a trade mark is registered under the same official number for goods in more than one class, the registration shall henceforth for the purpose of fees and otherwise be deemed to have been made on separate and distinct applications in respect of the goods included in each class. Separate applications.

25. The Registrar, if dissatisfied with any representation of a mark, may at any time require another representation satisfactory to him to be substituted before proceeding with the application. Representations to be satisfactory.

26. 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 Registrar may think most convenient. Specimens of trade marks in exceptional cases.

The Registrar may also, in exceptional cases, deposit in the 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.

27. When application is made for the registration of a series of trade marks under sec. 26 of the said Act, a representation of each trade mark of the series shall be affixed, as aforesaid, to the application upon Form TM No. 2, and to each of the accompanying Forms TM No. 3. Series of trade marks.

28. When a trade mark contains a word or words in other than Roman characters, there shall be indorsed on the application in Form TM No. 2, and on each of the accompanying representations in Form TM No. 3, a sufficient transliteration and translation to the satisfaction of the Registrar of each of such words, and every such indorsement shall be signed by the applicant or his agent. Transliteration and translation

Where a trade mark contains a word or words in a language other than English, the Registrar may ask for an exact translation thereof, and if he so requires such translation shall be indorsed and signed as aforesaid.

PROCEDURE ON RECEIPT OF APPLICATION.

29. Subject to the provisions for special applications under paragraph 5 of sec. 9 of the said Act, upon receipt of an application for registration the Registrar shall cause a search to be made amongst the registered Marks and pending applications for the purpose of ascertaining whether there are on record any Marks for the same goods or description of goods identical with the Mark applied for or so nearly resembling it as to be calculated to deceive. Search.

30. If after such search and a consideration of the application the Registrar thinks there is no objection to the Mark being registered, he may accept it absolutely or subject to conditions, amendments, and modifications which he shall communicate to the applicant in writing. Acceptance.

31. If after such search and consideration of the application any objections appear, a statement of those objections shall be sent to the applicant in writing, and unless within one month the applicant applies for a hearing, he shall be deemed to have withdrawn his application. Objections.

32. If the Registrar accepts an application subject to any conditions, amendments, or modifications, and the applicant objects to such conditions, amendments, or modifications, he shall within one month from Hearings.

the date of the communication notifying such acceptance apply for a hearing, and if he does not do so he shall be deemed to have withdrawn his application. If the applicant does not object to such conditions, amendments, or modifications, he shall forthwith notify the Registrar in writing.

Decision of Registrar.

33. The decision of the Registrar at such hearing as aforesaid shall be communicated to the applicant in writing, and if he objects to such decision, he may within one month apply upon Form TM No. 4, requiring the Registrar to state in writing the grounds of his decision and the materials used by him in arriving at the same.

Upon receipt of such form the Registrar shall send to the applicant such statement as aforesaid in writing, and the date when such statement is sent shall be deemed to be the date of the Registrar's decision for the purpose of appeal.

Disclaimers.

34. The Registrar may call on an applicant to insert in his application such disclaimer as the Registrar may think fit, in order that the public generally may understand what the applicant's rights, if his mark is registered, will be.

SPECIAL APPLICATIONS UNDER PARAGRAPH 5 OF SEC. 9.

Special applications under sec. 9, paragraph 5. Search.

35. An application to register a name, signature, or word or words under paragraph 5 of sec. 9 of the said Act shall be made on the Form TM No. 5, and not otherwise.

36. Upon receipt of such an application the Registrar shall cause a search to be made amongst the registered marks and pending applications for the purpose of ascertaining whether there are on record any marks for the same goods or description of goods identical with the mark applied for or so nearly resembling it as to be calculated to deceive.

Result of search.

37. If after such search the Registrar thinks there are no such marks, he shall notify the applicant accordingly, but if after such search any such marks appear, he shall notify to the applicant the numbers of those marks and the journals (if any) in which they have been advertised.

Appeal by applicant.

38. Within one month from the receipt of such notification the applicant shall send to the Registrar in writing a case in duplicate stating at length the grounds upon which he relies in support of his application, and whether he desires to be heard by the Board of Trade or by the Court. If he fails to do so his application shall be deemed to be withdrawn. If he desires to be heard by the Board of Trade, he shall send with his case Form TM No. 10. If the Board think fit to refer the appeal to the Court, the Registrar may certify the spoilt fee on such form for allowance.

Upon receipt of such case the Registrar shall send the same to the Board of Trade for their information, together with a copy of all communications that have passed between the Registrar and the applicant.

Hearing.

39. Upon receipt of such case the Board of Trade shall if the applicant desires to be heard by them fix a day for such hearing at which the applicant and the Registrar may attend and be heard, and the Board shall make an order determining whether and subject to what conditions, amendments, or modifications, if any, the application is to be accepted, or may require the applicant to apply to the Court and limit a time for that purpose.

40. If the applicant desires to obtain an order of the Court he shall within one month from sending to the Registrar his case as aforesaid bring the matter before the Court by motion, and if he does not do so he shall be deemed to have withdrawn his application. Order of the Court.

41. If the application is accepted either by the Board of Trade or the Court it shall be advertised and proceedings thereafter shall be had in respect of it as if it had been accepted by the Registrar in the ordinary course. Advertisement, &c., of application.

SPECIAL TRADE MARKS UNDER SEC. 62.

42. Where an association or person desires to register a mark under sec. 62 of the said Act they shall apply to the Registrar in writing upon the Form TM No. 6. Application under sec. 62.

43. Such application shall be in duplicate and shall be accompanied by six copies of the mark applied for. Mode of application.

44. Upon the receipt of such application the Registrar shall as soon as may be notify the same to the Board of Trade together with his report upon the application, and shall at the same time send a copy of the application together with three copies of the mark applied for to the Board. The Registrar shall also send the applicants a copy of his report, and within one month from the receipt of such report the applicants shall send the Board in duplicate a case setting out the grounds upon which they rely in support of their application, and if they fail so to do their application shall be deemed to be abandoned. Report by Registrar.

45. Upon receipt of such case the Board may call for such evidence, if any, as they think fit and shall, if necessary, hear the applicants and the Registrar, and make an order determining whether and subject to what conditions, amendments, or modifications, if any, the application may be permitted to proceed. Hearing.

46. If such application is permitted to proceed the mark shall be advertised and the application shall be treated in all respects as if it were an ordinary application, and it shall be open to opposition in the same way and all such proceedings shall be had thereon as if it were an application under sec. 12 of the said Act. Advertisement, &c.

ADVERTISEMENT OF APPLICATION.

47. Every application when accepted shall be advertised by the Registrar in the Journal during such time and in such manner as the Registrar may direct. Advertisement of application.

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

48. 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 Registrar, or such other information or means of advertising the trade mark as may be required by the Registrar; and the Registrar, 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. Wood block or electrotype.

Advertisement of series.

49. When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in sec. 26 of the said Act, the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of any or each of the trade marks constituting the series ; or the Registrar 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 under sec. 14 (9).

50. Advertisements under sec. 14 (9) of the said Act shall *mutatis mutandis* be made in the same manner as advertisements relating to an application for registration.

OPPOSITION TO REGISTRATION.

Opposition.

51. Any person may within one month from the date of any advertisement in the Journal of an application for registration of a trade mark give notice in writing at the Office of opposition to the registration.

Notice of opposition.

52. Such notice shall be in Form TM No. 7, and shall contain a statement of the grounds upon which the opponent objects to the registration. If registration is opposed on the ground that the mark resembles marks already on the register, the numbers of such marks and the numbers of the Journals in which they have been advertised shall be set out. Such notice shall be accompanied by a duplicate which the Registrar will forthwith send to the applicant.

Counter statement.

53. Within one month from the receipt of such duplicate the applicant shall send to the Registrar a counter-statement (Form TM No. 8) in writing setting out the grounds on which he relies as supporting his application. The applicant shall also set out what facts, if any, alleged in the Notice of Opposition he admits. Such counter-statement shall be accompanied by a duplicate in writing.

Evidence in support of opposition.

54. Upon receipt of such counter-statement and duplicate the Registrar will forthwith send the duplicate to the opponent and within one month from the receipt of the duplicate the opponent shall leave at the Office such evidence by way of statutory declaration as he may desire to adduce in support of his opposition and shall deliver to the applicant copies thereof.

Evidence in support of application.

55. If an opponent leaves no evidence, he shall be deemed to have abandoned his opposition, but if he does, then within one month from the receipt of the copies of declarations the applicant shall leave at the Office such evidence by way of statutory declaration as he desires to adduce in support of his application and shall deliver to the opponent copies thereof.

Evidence in reply by opponent.

56. Within fourteen days from the receipt by the opponent of the copies of the applicant's declarations the opponent may leave at the Office evidence by statutory declaration in reply, and shall deliver to the applicant copies thereof. Such evidence shall be confined to matters strictly in reply.

Further evidence.

57. In any proceedings before the Registrar, he may at any time, if he thinks fit, give leave to either the applicant or the opponent to file any evidence upon such terms as to costs or otherwise as the Registrar may think fit.

58. Where there are exhibits to declarations filed in an opposition, copies or impressions of such exhibits shall be sent to the other party on his request, or, if such copies or impressions cannot conveniently be furnished, the originals shall be sent to the Office, so that they may be open to inspection. The original exhibits shall be produced at the hearing unless the Registrar otherwise directs. Exhibits.

59. Upon completion of the evidence the Registrar shall give notice to the parties of a date when he will hear the arguments in the case. Such appointment shall be for a date at least fourteen days after the date of the notice, unless the parties consent to a shorter notice. Within seven days from the receipt of such notice both parties shall file Form TM No. 9. - A party who receives such notice and who does not, within seven days from the receipt thereof, give notice on Form TM No. 9 that he intends to appear, may be treated as not desiring to be heard and the Registrar may act accordingly. Hearing.

60. Where in opposition proceedings any extension of time is granted to any party, the Registrar may thereafter, if he thinks fit, without giving the said party a hearing, grant any reasonable extension of time to the other party in which to take any subsequent step. Extension of time.

61. Where a party giving notice of opposition neither resides or carries on business in the United Kingdom, the Registrar may call upon him to give a security in such form as the Registrar may deem sufficient for the costs of the proceedings before the Registrar, for such amount as to the Registrar may seem fit, and at any stage in such opposition may require further security to be given at any time before giving his decision in the case. Security for costs.

NON-COMPLETION.

62. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar shall give notice to the applicant in writing in the Form O No. 1 of such non-completion, and if the applicant has an agent, shall send a duplicate of such notice to such agent. If after fourteen days from the date when such notice was sent the registration is not completed, the application shall be deemed to be abandoned, but the Registrar may with such notice, where the applicant lives at a distance, give a further time after such fourteen days for the completion of such application. Non-completion within 12 months.

REFUSAL AFTER ACCEPTANCE.

63. In pursuance of sec. 16 of the said Act the Board of Trade hereby direct that in cases where a mark has been accepted by error, the Registrar need not register the mark but may withdraw his acceptance and refuse to register, but any such refusal shall be deemed to be a refusal under sub-sec. 2 of sec. 12 of the said Act, and an applicant shall have thereafter the same right of being heard, and of appealing, as he would have had if the mark had been refused immediately upon its receipt. In any other case the Board, having regard to any special facts, will give special directions under sec. 16 of the said Act. Refusal after acceptance.

ENTRY ON THE REGISTER.

Entry on register.

64. As soon as may be after the expiration of one month from the date of the advertisement in the Journal of any application, the Registrar shall, subject to any opposition and the determination thereof, and subject to the provisions of Rule 63, and upon payment of the prescribed fee, on Form TM No. 11, enter the trade mark on the register. The entry of a trade mark on the register shall give the date of the registration, the goods in respect of which it is registered, and all particulars named in sec. 4 of the Act, together with particulars of the trade, business, profession, or occupation, if any, of the proprietor, and such other particulars as the Registrar may deem necessary.

Associated marks.

65. Where a mark is registered as associated with any other mark or marks the Registrar shall note upon the register in connection with such mark the numbers of the marks with which it is associated and shall also note upon the register in connection with each of the associated marks the number of the newly registered mark as being an associated mark with each of them.

Death of applicant before registration.

66. 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 Registrar, 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, on such ownership being proved to the satisfaction of the Registrar.

Certificate of registration.

67. Upon the registration of a trade mark the Registrar shall issue to the applicant a certificate in the Form O No. 2.

RENEWAL.

Renewal of registration.

68. At any time not less than two months and not more than three months before the expiration of the last registration of a trade mark any person may leave at the Office a fee for the renewal of the registration of the mark upon Form TM No. 12. Such person shall indorse upon such form his name and address, and before taking any further step the Registrar may require such person to furnish within five days an authority to pay such fee signed by the registered proprietor, and if such person does not furnish such authority, may return such fee and treat it as not received.

Notification of receipt of renewal fee.

69. When he does not require such authority, the Registrar shall upon receipt of such fee communicate with the registered proprietor at his registered address, stating that the fee has been received and that the registration will in due course be renewed.

Notice before removal of trade mark from register.

70. At a date not less than one month and not more than two months before the expiration of the last registration of a mark, if no fee upon the Form TM No. 12 has been received, the Registrar shall send to the registered proprietor at his registered address a notice in the Form O No. 3.

Second notice before

71. At a time not less than 14 days and not more than 28 days before the expiration of the last registration of a mark, the Registrar

shall, if no renewal fee has been received, send a notice to the registered proprietor at his registered address in the Form O No. 4.

removal of trade mark from register.

72. If at the date of the expiration of the last registration of a mark the renewal fee has not been paid, the Registrar shall advertise the fact forthwith in the Journal, and if within one month of such advertisement the renewal fee upon Form TM No. 13, together with an additional fee upon Form TM No. 14, is received, he may renew the registration without removing the mark from the register.

Advertisement of non-payment.

73. Where after one month from such advertisement such fees have not been paid, the Registrar may remove the mark from the register as of the date of the expiration of the last registration, but may upon payment of the renewal fee upon Form TM No. 13, together with the additional fee upon the Form TM No. 15, restore the mark to the register if satisfied that it is just so to do, and upon such conditions as he may think fit to impose.

Removal of trade mark from register.

74. Where a trade mark has been removed from the register the Registrar shall cause to be entered in the register a record of such removal and of the cause thereof.

Removal of mark from register.

75. Upon the renewal of a registration a notice to that effect shall be sent to the registered proprietor at his registered address and the renewal shall be advertised in the Journal.

Notice and advertisement of renewal.

ASSIGNMENT.

76. The Registrar may on request made jointly by a registered proprietor of a mark and the person to whom he has assigned such mark, together with the goodwill of the business concerned in the goods for which it has been registered, register the assignee as proprietor of the mark. Such application shall be in the Form TM No. 16. If the Registrar so require, the assignee shall furnish a declaration in Form TM No. 17.

Joint request for entry of assignment.

77. Where no such joint request is made, any person who has become entitled to a registered trade mark by assignment, transmission, or other operation of law, may leave a request at the Office for the entry of his name in the register as proprietor of such trade mark. The request shall be on the Form TM No. 18, and such request shall contain the name, address, and description of the person claiming to be entitled to the trade mark, hereinafter called the claimant.

Request for entry of assignment by subsequent proprietor.

78. Together with such request the claimant shall leave a case stating full particulars of the assignment, transmission, or other operation of law by virtue of which he claims to be entitled to be entered in the register as proprietor of the trade mark, 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 goods for which the trade mark has been registered.

Case accompanying request.

79. Such request shall in the case of an individual be made and signed by the claimant, and in the case of a firm or partnership by one or more members of such firm or partnership, and in the case of a body corporate shall be signed by a director or by the secretary or other principal officer of such body corporate.

Signature of request.

Statutory declaration in support of request.

80. Where the Registrar shall determine that the case sets out particulars such as entitle the claimant to be registered as proprietor of such trade mark, he shall call upon the claimant to furnish a statutory declaration (Form TM No. 19) verifying the several statements in the case and declaring that the particulars given comprise every material fact and document affecting the proprietorship of the trade mark claimed by such request.

Proof of title.

81. In any case, the Registrar may call on any person who desires to be registered as proprietor of a trade mark for such proof or additional proof of title and of the existence and ownership of such goodwill as aforesaid as the Registrar may require for his satisfaction.

ALTERATION OF ADDRESS.

Alteration of address in register.

82. Every registered proprietor of a trade mark who alters his address shall forthwith apply to the Registrar on the Form TM No. 20 to insert the new address on the register, and the Registrar shall alter the register accordingly.

DISCRETIONARY POWER.

Hearing.

83. Before exercising any discretionary power given to the Registrar by the said Act adversely to any person, the Registrar shall, if so required, hear the person who will be affected by the exercise of such power.

Application for hearing.

84. An application for a hearing shall be made within one month from the date when the matter on which the Registrar is called on to exercise discretionary power has arisen.

Notice of hearing.

85. Upon receiving such application the Registrar shall give the person applying ten days' notice of a time when he may be heard by himself or his agent.

Within five days from the date when such notice would be delivered in the ordinary course of post the person applying shall notify the Registrar whether or not he intends to be heard on the matter.

Notification of decision.

86. The decision of the Registrar in the exercise of any such discretionary power as aforesaid shall be notified to the person affected.

APPLICATIONS UNDER SEC. 23.

Application under sec. 23.

87. All applications to the Registrar under sec. 23 of the said Act shall be upon the Form TM No. 21. Such application shall be accompanied by a case setting out fully the facts relating to the marks which the Registrar is requested to permit an apportionment of.

Registrar to enquire and decide.

88. Upon receipt of such request and of such case the Registrar shall enquire into the facts and call for such evidence as he may deem necessary upon the subject of such application. Before giving his decision the Registrar shall, if necessary, give the parties an opportunity of attending before him at a hearing either by themselves or by their agents.

The decision of the Registrar shall be in writing.

Note in register.

89. Upon any apportionment of marks under this section the Registrar shall insert in the register a note in connection with each of the registered trade marks of the fact of such apportionment, and shall

in such note refer to the date of the decision under which such apportionment has taken place.

APPLICATIONS UNDER SEC. 32.

90. Applications under sec. 32 to the Registrar may be made by the registered proprietor, or by the trustee in bankruptcy of the registered proprietor, or where the registered proprietor is a company in liquidation by the liquidator, and in other cases by such person as the Registrar may decide to be entitled to act in the name of the registered proprietor. Application under sec. 32.

91. Where such application is made the Registrar may require such evidence by statutory declaration or otherwise as he may think fit as to the circumstances in which the application is made. Evidence.

92. Where application is made, on Form TM No. 26, to enter a disclaimer or memorandum relating to a trade mark, the Registrar, before deciding upon such application, shall advertise the application in the Journal for one month in order to enable any person desiring so to do to state any reasons in writing against the applicant being allowed to make such disclaimer or enter such memorandum. Advertisement of application.

APPLICATIONS UNDER SEC. 34.

93. Where a person desires to apply under sec. 34 to alter a trade mark he shall make his application in writing on Form TM No. 27, and shall furnish the Registrar with six copies of the mark as it will appear when altered. Alteration of trade mark.

94. Before proceeding with such application the Registrar may call on the applicant to furnish a block suitable to advertise in the Journal the fact that such application has been made, or, if he think fit, the Registrar, without calling for a block, may insert an advertisement describing the alteration proposed in words so that it can be understood by persons interested in the matter. Advertisement of alteration.

Where leave is granted the Registrar may, if he is not already in possession of a block showing the trade mark as altered, cause the applicant to furnish a block showing the trade mark as altered for advertisement in the Journal, and upon receipt of such block shall forthwith advertise the mark as altered in the Journal.

SEARCH.

95. The Registrar, if requested so to do in writing upon a Form TM No. 28, may cause a search to be made in any class to ascertain whether any marks are on record at the date of such search which may resemble any mark sent in duplicate to him by the person requesting such search and may cause that person to be informed of the result of such search. Searches.

HOURS OF INSPECTION.

96. The Office shall be open to the public every weekday, except Saturday, between the hours of ten and four, and on Saturday between the hours of ten and one, except on the days following:— Hours of inspection.

Christmas Day ; Good Friday ; the day observed as His Majesty's

birthday; the days observed as days of public fast or thanksgiving, or as holidays at the Bank of England; and days which may from time to time be notified by a placard posted in a conspicuous place at the office.

POWER TO DISPENSE WITH EVIDENCE.

Dispensing
with
evidence.

97. 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 Registrar, or at the Office, and it is shown to the satisfaction of the Registrar that from any reasonable cause such person is unable to do such act or thing, or to sign 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 Registrar, and upon the production of such other evidence, and subject to such terms as he may think fit, to dispense with any such act or thing, document, declaration, or evidence.

AMENDMENTS.

Amendment
of documents.

98. Any document or drawing or other representation of a trade mark may be amended, and any irregularity in procedure which in the opinion of the Registrar may be obviated without detriment to the interests of any person may be corrected, if the Registrar think fit, and on such terms as he may direct.

ENLARGEMENT OF TIME.

Enlargement
of time.

99. The time prescribed by these Rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Registrar, if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct, and such enlargement may be granted though the time has expired for doing such act or taking such proceeding.

Excluded
days.

100. Whenever the last day fixed by the said Act, or by these Rules, for leaving any document or paying any fee at the 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 to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.

Fees paid late
by persons
living at
distances
from Office.

101. Where a time for paying a fee is limited by these Rules and the person who is bound to pay such fee resides at such distance from the Office that he cannot reasonably be expected to pay the fee on the date limited by the Rule, the Registrar, if satisfied that the omission to pay the fee has not been from any want of diligence on the part of the person whose business it is to pay it, may accept the fee even though the date for paying the fee has passed, and treat it as if received on the correct date, provided always that the fee is actually paid with such promptitude as can be expected in the circumstances.

CERTIFICATES.

102. The Registrar, when required otherwise than under sec. 17 of the said Act to give a certificate as to any entry, matter, or thing which he is authorised by the said Act 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 so given shall have specified on the face thereof whether the same is to be used in legal proceedings, or for the purpose of obtaining registration abroad, or for purposes other than use in legal proceedings or obtaining registration abroad.

Certificates by Registrar.

103. Where a mark is registered without limitation of colour it shall be lawful for the Registrar to grant a certificate of its registration for the purpose of obtaining registration abroad either in the colour in which it appears upon the register or in any other colour or colours.

Marks registered without limitation of colour.

104. Where a certificate of registration is desired for use in obtaining registration abroad, the Registrar shall affix to the said certificate a copy of the mark, and shall state in such certificate such particulars concerning the registration of the mark as to him may seem fit, and may omit therefrom reference to any disclaimers appearing on the register.

Certificates for use in obtaining registration abroad.

DECLARATIONS.

105. The statutory declarations required by the said Act and these Rules, or used in any proceedings thereunder, shall be made and subscribed as follows :—

Manner in which, and person before whom, declaration is to be taken.

- (a) In the United Kingdom before any justice of the peace, or any commissioner or other officer authorised 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 His Majesty's dominions before any court, judge, justice of the peace, or any officer authorised by law to administer an oath there for the purpose of a legal proceeding ; and
- (c) If made out of His 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.

106. Any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal or signature of any person hereby authorised to take such declaration in testimony of such declaration having been made and subscribed before him, may be admitted by the Registrar 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.

CUTLERS' COMPANY.

107. All applications to the Cutlers' Company for registration of a trade mark, under sec. 63 of the said Act, shall be in duplicate, accompanied by the prescribed fees and representations. Requests to

Applications.

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

Notice to Registrar.

108. The Cutlers' Company shall, within seven days of the receipt by them of an application to register a trade mark, send the Registrar 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.

Objections by Registrar to acceptance.

109. The time within which the Registrar 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 Registrar of the notice from the said Company of the making of the application.

Advertisement of application.

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

Notification to Cutlers' Company of application.

111. The manner in which the Registrar shall notify to the Cutlers' Company an application and proceedings thereon made as mentioned in sub-sec. 8 of sec. 63 of the said Act shall be by sending to the Cutlers' Company a copy of the Journal containing the application of which notice is required to be given, with a note distinguishing such application.

Similarity of proceedings in London and Sheffield.

112. 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.

COTTON MARKS.

Application.

113. An application to the Manchester Branch for registration of a trade mark under sec. 64 of the said Act shall be in duplicate. The special Forms for cotton marks contained in the Second Schedule to these Rules shall be used. One of the Forms of application shall be stamped and the other unstamped.

One representation to be sent to Registrar.
Search.

114. The Keeper of Cotton Marks shall forthwith, on receipt of such application, send the Registrar one representation of the mark applied for.

115. *As soon as may be after receiving any application the Keeper of Cotton Marks shall make a search amongst the marks on the Manchester register, in the B List, and those which have been refused and those which are pending, and shall notify to the Registrar the application and the marks, if any, which he has found so nearly resembling the mark applied for as to be calculated to deceive, and together with such notification shall send a report upon the application.*¹

Hearings.

116. Upon considering such report, if the Registrar thinks it will be necessary to object to the acceptance of the application, he shall give notice to the applicant of a time when he can be heard, and within one month after hearing the applicant, may give notice to the Keeper of Cotton Marks of objection to the acceptance of the application, or that he has no objection, as the case may be. If no notice of objection,

¹ Repealed; see Trade Marks Rules, 1912, below, p. 766.

or if notice of no objection is received from the Registrar, the application shall be advertised in the Journal by the Manchester Branch.

If the applicant, being notified as aforesaid of a time for hearing, does not attend, his application shall be deemed to be refused.

117. If the mark is advertised by the Manchester Branch and is not opposed, the Keeper of Cotton Marks may call upon the applicant for the prescribed fee for the registration of such trade mark, and upon receipt thereof shall report to the Registrar, who shall forthwith, if he think fit, register the same. Registration.

118. Where under the said Act or these Rules an application has to be made to the Keeper of Cotton Marks, such application shall be made and such proceedings shall be had thereon as if in these Rules the expression "Manchester Branch, 48, Royal Exchange, Manchester," were substituted for the word "Office," and the expression "Keeper of Cotton Marks" were substituted for the word "Registrar." Procedure.

119. Where any document is by these Rules directed to be served upon the Registrar it shall, in respect of cotton marks, be served in duplicate upon the Keeper of Cotton Marks, who shall forthwith transmit one copy to the Registrar. Service of documents.

120. Where under Rule 95 a search has to be made by the Keeper of Cotton Marks, such search shall cover all marks of which there is a right of inspection under sec. 64 (11) of the said Act. Search under Rule 95.

APPEALS TO THE COURT.

121. When any person intends to appeal to the Court, such appeal shall be made by motion in the usual way, and no such appeal shall be entertained unless notice of motion be given within one month from the date of the decision appealed against or within such further time as the Registrar shall allow. Appeal to Court.

APPEALS TO BOARD OF TRADE.

122. When any person intends to appeal to the Board of Trade he shall, before doing so, apply to the Registrar for a hearing and obtain a decision from him upon the point raised. Within one month from the date of such decision he shall, if he is advised to appeal to the Board of Trade in any case in which an appeal is given by the said Act, leave at the Office a notice of such his intention, on Form TM No. 29. Appeal to Board of Trade.

Such notice shall be accompanied—

(1) In case the appeal concerns an application not yet advertised, by a copy of the form of application and six representations of the mark applied for and a copy of the grounds of the Registrar's decision.

(2) In case of an opposition by a copy of the decision of the Registrar, and if the appeal is by the applicant also by a copy of the form of application and six representations of the mark opposed.

(3) In other cases by a copy of the decision of the Registrar and a statement of the date of the hearing before him.

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

- Transmission of notice.** 124. A copy of the notice and all the accompanying documents shall also be forthwith sent by the appellant to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London; and where there has been an opposition before the Registrar to the opponent or applicant as the case may be.
- Directions by Board.** 125. The Board of Trade may thereupon give such directions (if any) as they may think fit with respect to parties and 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.** 126. 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 Registrar and to the appellant, and where there has been an opposition before the Registrar to the opponent or applicant as the case may be.
- No appeal unless notice duly given.** 127. 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 Registrar may allow, except by special leave of the Board of Trade.

WITHDRAWAL OF APPEALS.

- Withdrawal of appeal.** 128. Where under sec. 12 (5) or sec. 14 (8) of the said Act an appellant is entitled to withdraw his appeal, such withdrawal shall be effected by notice given to the Registrar and to the other parties, if any, to such appeal within seven days after the leave referred to in such sections has been obtained.

APPLICATIONS TO AND ORDERS OF THE COURT.

- Order of Court.** 129. Where an order has been made by the Court in any case under the said Act, the person in whose favour such order has been made, or such one of them, if more than one, as the Registrar may direct, shall forthwith leave at the Office an office copy of such order, together with Form TM No. 30 if required. The register may, if necessary, thereupon be rectified or altered by the Registrar.
- Every application to the Court under the said Act shall be served on the Registrar.
- Publication of order of Court.** 130. Whenever an order is made by the Court under the said Act, the Registrar may, if he thinks that such order should be made public, publish it in the Journal.

Dated this 24th day of March, 1906.

D. Lloyd-George,
President of the Board of Trade.

SCHEDULES.

First Schedule.

FEEs.

The following fees shall be paid in connection with applications, registrations, and other matters under the Act. Such fees must in all cases be paid before or at the time of the doing of the matter in respect of which they are to be paid:—

	—	Corresponding Form.
	£ s. d.	
1. On application not otherwise charged to register a trade mark for one or more articles included in one class	0 10 0	T.M. No. 2 or 5, Cotton No. 1
1a. On application not otherwise charged to register a series of trade marks for one or more articles included in one class	0 10 0	T.M. No. 2 or 5, Cotton No. 1
1b. On request to the Cutlers' Company to enter a mark on the Sheffield Register under section 63, sub-section (2)	5 0 0	Sheffield No. 1
1c. On application to the Board of Trade under section 62 for leave to register a mark for goods in one class	0 10 0	T.M. No. 6
1d. On application to the Board of Trade under section 62 for leave to register a mark for goods in more than one class— In respect of every class— Total fee in no case to exceed £10 for any number of classes.	0 10 0	T.M. No. 6
2. On an application to Registrar to state grounds of decision and materials used under section 12, sub-section 3	0 10 0	T.M. No. 4
3. On request to be heard by the Board of Trade on application to register a name, signature, word or words under section 9, paragraph (5)	1 0 0	T.M. No. 10
4. On notice of opposition for each application opposed, by opponent	1 0 0	T.M. No. 7
4a. On filing a counter-statement in answer to a notice of opposition, by the applicant for each application opposed	0 10 0	T.M. No. 8
4b. On the hearing of each opposition, by applicant and by opponent respectively	1 0 0	T.M. No. 9
5. For registration of a trade mark for one or more articles included in one class	1 0 0	T.M. No. 11
5a. For registration of a series of marks for one or more articles included in one class— For the first mark And for every other mark of the series	1 0 0 0 5 0	T.M. No. 11
5b. For registration under section 62 of a mark for goods in more than one class— In respect of every class Total fee in no case to exceed £20 for any number of classes.	1 0 0	T.M. No. 11

	—	Corresponding Form.
6. Upon each entry in the register of a mark of a note that the mark is associated with a newly registered mark	£ s. d. 0 1 0	—
7. On application to register a subsequent proprietor in cases of assignment or transmission of a single mark	1 0 0	T.M. No. 16 or 18
7a. On application to register a subsequent proprietor of more than one mark standing in the same name, the devolution of title being identical in each case— For the first mark	1 0 0	T.M. No. 16 or 18
And for every other mark	0 2 0	
8. On application to change the name of a proprietor of a single mark where there has been no alteration in the proprietorship	0 5 0	T.M. No. 23
8a. On application to change the name of a proprietor of more than one mark standing in the same name, the change being the same in each case— For the first mark	0 5 0	T.M. No. 23
And for every other mark	0 1 0	
9. For renewal of registration of a mark at expiration of last registration	1 0 0	T.M. No. 12 or 13
9a. For renewal of registration of a series of marks at the expiration of last registration— For the first mark of the series	1 0 0	T.M. No. 12 or 13
And for every other mark of the series	0 2 0	
9b. For renewal of a mark registered under section 62 for goods in more than one class— In respect of every class	1 0 0	T.M. No. 12 or 13
Total fee in no case to exceed £20 for any number of classes.		
10. Additional fee under Rule 72	0 10 0	T.M. No. 14
11. Additional fee under Rule 73	1 0 0	T.M. No. 15
12. For altering a single entry of the address of a registered proprietor... ..	0 5 0	T.M. No. 20
12a. For altering more than one entry of the address of a registered proprietor where the address in each case is the same and is altered in the same way— For the first entry	0 5 0	T.M. No. 20
And for every other entry	0 1 0	
13. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged	0 10 0	T.M. No. 30
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	T.M. No. 24 or 25
15. On request, not otherwise charged, under section 12 (6) or under section 32	0 5 0	T.M. No. 22 or 26
16. For a search under Rule 95	0 10 0	T.M. No. 28
17. For certificate of Registrar of registration to be used in legal proceedings	1 0 0	T.M. No. 34
18. For certificate of Registrar of the registration of a trade mark to be used for the purpose of obtaining registration abroad	0 5 0	T.M. No. 33

	—	Corresponding Form.
18a. For certificate of Registrar of the registration of a series of marks for the purpose of obtaining registration abroad	£ s. d. 0 10 0	T.M. No. 33
19. For certificate of Registrar other than certificate under section 17 or certificate of registration to be used in legal proceedings, or for the purpose of obtaining registration abroad	1 0 0	T.M. No. 31 or 32
20. For certificate of Keeper of Cotton Marks... ..	0 5 0	Cotton No. 3 or 4
21. On appeal from Registrar to Board of Trade in respect of each decision appealed against by appellant	1 0 0	T.M. No. 29
22. On an application to the Registrar under section 23	5 0 0	T.M. No. 21
23. On an application to the Registrar for leave to add to or alter a single mark	1 0 0	T.M. No. 27
23a. On an application to the Registrar for leave to add to or alter more than one mark of the same proprietor, the addition or alteration to be made in each case being the same—		
For the first mark	1 0 0	T.M. No. 27
And for every other mark	0 10 0	—
24. For inspecting register in connection with any particular trade mark, for every quarter of an hour	0 1 0	—
25. For making a search amongst the classified representations of trade marks, for every quarter of an hour	0 1 0	—
26. For office copy of documents, for every 100 words (but never less than 1s.)	0 0 4	—
27. For certifying office copies MS. or printed matter	0 10 0	—
28. 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	—

The fees to be paid on any proceeding at the Manchester Branch and at Sheffield (except as specially provided above) shall be the same as for the similar proceeding at the London office.

For the purpose of these fees (except as specially provided above) every mark of a series under section 66 of the Patents, Designs and Trade Marks Act, 1883, or section 26 of this Act, shall be deemed to be a mark separately registered.

Dated this 24th day of March, 1906.

(Sd.)

D. Lloyd-George,
President of the Board of Trade.

Approved

(Sd.) *J. Herbert Lewis,*
Cecil Norton,

Lords Commissioners
of His Majesty's Treasury.

Second Schedule.

FORMS.

Page. ¹	Corresponding Fee.
	No.
Authorisation (T.M. No. 1)	741 —
Application for registration of Trade Mark (T.M. No. 2) ...	742 1, 1a
Additional Representation of Trade Mark (T.M. No. 3) ...	743 —
Request for statement of grounds of decision under section 12 (3) (T.M. No. 4)	743 2
Application for registration of Trade Mark under section 9 (5) (T.M. No. 5)	744 1
Application for registration of Trade Mark under section 62 (T.M. No. 6)	745 1c or 1d
Opposition to application for registration (T.M. No. 7) ...	745 4
Counter-statement to opposition to application for registra- tion (T.M. No. 8)	746 4a
Application for hearing in cases of opposition (T.M. No. 9)	746 4b
Application for hearing by the Board of Trade under section 9 (5) (T.M. No. 10)	746 3
Notice of non-completion of registration (O. No. 1) ...	747 —
For registration of a Trade Mark (T.M. No. 11)	747 5, 5a, or 5b
Certificate of registration under section 17 (O. No. 2) ...	747 —
Renewal of registration (T.M. No. 12)	748 9, 9a, or 9b
First notice before removal of Mark from Register, under section 80 (O. No. 3)	748 —
Second notice before removal of Mark from Register, under section 80 (O. No. 4)	748 —
Renewal of registration after notice has been given by Registrar (T.M. No. 13)	749 9, 9a, or 9b
Additional fee to accompany renewal fee within one month after advertisement of non-payment of renewal fee (T.M. No. 14)	749 10
Restoration of Trade Mark where removed for non-pay- ment of fee (T.M. No. 15)	750 11
Request by registered proprietor and assignee to register assignee as subsequent proprietor (T.M. No. 16)	750 7, 7a
Declaration by assignee in support of request by registered proprietor and assignee to register assignee as sub- sequent proprietor (T.M. No. 17)	750 —
Request to enter name of subsequent proprietor (T.M. No. 18)	751 7, 7a
Declaration in support of request to enter name of sub- sequent proprietor (T.M. No. 19)	751 —
Application for alteration of address on Register (T.M. No. 20)	752 12, 12a
Application for apportionment of Trade Marks (T.M. No. 21)	752 22
Correction of clerical error or amendment of application (T.M. No. 22)	753 15
Request to enter change of name of registered proprietor (T.M. No. 23)	753 8, 8a

¹ The pages here inserted are those of this book, and not those actually inserted in the published Rules. The

indicating letters and numbers of the forms are not in the Table of Forms as issued by the Patent Office.

	Page.	Corresponding Fee.
Application to cancel entry on register (T.M. No. 24) ...	753	No. 14
Request to strike out goods from those for which a mark is registered (T.M. No. 25) ...	754	14
Request to enter disclaimer, &c. (T.M. No. 26) ...	754	15
Application to add to or alter a Trade mark (T.M. No. 27)	754	23 or 23a
Request for search under Rule 95 (T.M. No. 28) ...	755	16
Request to enter a mark on the Sheffield Register under section 63 (2) (Sheffield No. 1) ...	755	1b
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Request for certificate under section 64 (12) (Cotton No. 3)	757	20
Request for certificate of Keeper of Cotton Marks (Cotton No. 4) ...	758	20
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Appeal from Registrar to Board of Trade (T.M. No. 29) ...	759	21
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Request for certificate of refusal to register (T.M. No. 32)	760	19
Request for certificate of registration for use in obtaining registration abroad (T.M. No. 33) ...	761	18 or 18a
Request for certificate of registration for use in legal proceedings (T.M. No. 34) ...	761	17

TRADE MARKS ACT, 1905.

Form TM No. 1.

Form of Authorisation.

SIR,
I BEG to inform you that I have appointed (a) _____ of _____ to act as my agent for (b) _____.

I am, sir,
Your obedient Servant

(c) _____
Address

Dated the _____ day of _____ 19 _____.

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

- (1) Here insert name and address of agent.
- (b) Here state the particular purpose for which the agent is appointed.
- (c) To be signed by the person appointing the agent.

APPENDIX VII.

(TRADE MARKS.
10s.)

TRADE MARKS ACT, 1905.

Form TM No. 2.

Application for Registration of Trade Mark (other than Cotton Mark).

One representation to be fixed within this square, and four others to be sent on separate Forms TM No. 3.

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

Application is hereby made for Registration of the accompanying Trade Mark in Class _____, in respect of (a) _____ in the name of (b) _____ of [address and description] trading as _____ who claims to be the proprietor thereof (c). _____ do not claim the registration of this Trade Mark under the special provisions of paragraph 5 of sec. 9 of the Trade Marks Act, 1905, in regard to names, signatures, or words.

(Signed) _____.

Dated the _____ day of _____ 19 .

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

(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.

TRADE MARKS ACT, 1905.

Form TM No. 3.

Additional Representation of Trade Mark, to accompany Application for Registration (other than Cotton Mark).

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 hereto.

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

(TRADE MARKS.
10s.)

TRADE MARKS ACT, 1905.

Form TM No. 4.

Request for Statement of Grounds of Decision under Sec. 12 (3).

You are hereby requested under sub-sec. 3 of sec. 12 of the Trade Marks Act, 1905, and Rule 33 made thereunder to state in writing the grounds of your decision, dated the day of 19 , after the hearing on the day of 19 , and the materials used by you in arriving at such decision.

Signed ———.

Dated the day of 19 .

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

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

Form TM No. 5.

*Special Application for Registration of Trade Mark under Paragraph
5 of Sec. 9.*

One representation to be fixed within this square, and
four others to be sent on separate Forms TM No. 3.

Application is hereby made for Registration of the accompanying Trade Mark
in Class , in respect of (a) in the name of (b) of [*address
and description*] trading as who claims to be the proprietor thereof (c) and
desires an order of the Board of Trade or the Court directing Registration of the
same.

(Signed) _____.

Dated the ; day of , 19 .

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

(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.

(TRADE MARKS.
Fee 1s or 1d.)

TRADE MARKS ACT, 1905.

Form TM No. 6.

Special Application for Registration of Trade Mark under Sec. 62

(To be accompanied by an unstamped duplicate.)

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

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

Application is hereby made for Registration of the accompanying Trade Mark in Class _____, in respect of (a) _____ in the name of _____ of _____ [address and description] who desire the Board of Trade under sec. 62 of the said Act to permit the registration thereof.

Signed _____.

Dated _____ day of _____ 19 _____.

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

(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.

(TRADE MARKS.
£1.)

TRADE MARKS ACT, 1905.

Form TM No. 7.

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 _____, 19 _____, No. _____, page _____.

The grounds of opposition are as follows:—

(Signed) _____.

Dated the _____ day of _____, 19 _____.

Address for Service:—

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

(a) Here state full name and address.

APPENDIX VII.

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

Form TM No. 8.

Form of Counter-statement.

(To be accompanied by an unstamped duplicate.)

In the matter of an Opposition, No. , to Application No.
I the applicant for the above Trade Mark, hereby give notice that the
following are the grounds on which I rely as supporting my application:—
I admit the following allegations in the notice of Opposition:—

Dated this day of , 19 . (Signature) ———.

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

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

Form TM No. 9.

Form of Application for Hearing by the Registrar in Cases of Opposition.

SIR,
IN reply to your Notice dated the giving of (a) a date on which
you will hear the arguments in the case of Opposition No. to Application
No. , I beg to say that I intend to appear before you on the date you have
fixed, namely the day of 19 .

I am, Sir,
Your obedient Servant,

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

(a) Here insert address.

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

Form TM No. 10.

Application is hereby made to the Board of Trade to hear the matter of the
Application No. under Rule 38.

Dated this day of 19 . (a) ———.

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

(a) Signature.

Form O No. 1.

Notice of Non-Completion of Registration.

No. _____
 The Registrar has to call your attention to Sec. 18 of the Trade Marks Act, 1905, and to Rule 62 of the Trade Marks Rules made thereunder. The Section and the Rule are printed on the back hereof.

Your application numbered as above was made on the _____ day of _____ 19 ____ .
 Registration has not been completed by reason of your default. Unless it is completed within _____ days from this date the application will be treated as abandoned.

Dated this _____ day of _____ 19 ____ .

To

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

(TRADE MARKS. TRADE MARKS ACT, 1905.
 Fee 5 or 5a.)

Form TM No. 11.

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,
 (a) _____.

Dated the _____ day of _____ 19 ____ .

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

(a) Signature.

TRADE MARKS ACT, 1905.

Form O No. 2.

Certificate of Registration under Sec. 17.

To
 I hereby certify, pursuant to Rule 67 of the Rules under the above Act, that the Trade Mark in your Application No. _____ was duly advertised in the Trade Marks Journal and has been registered in your name in Class _____ , in respect of the goods specified by you.

Witness my hand this _____ day of _____ , 19 ____ .

(Seal of Patent Office.)

Registrar.

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

APPENDIX VII.

(TRADE MARKS. TRADE MARKS ACT, 1905.
Fee 9 or 9a.)

Form TM No. 12.

Renewal of Registration before Notice given.

I hereby leave the prescribed fee of for the renewal of the registration of
the Trade Mark No. , in Class .

Dated the day of , 19 .

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

N.B.—This Form must be indorsed with the name and address of the
person leaving the same.

TRADE MARKS ACT, 1905.

Form O No. 3.

*Notice before Removal of Trade Mark from the Register,
under Sec. 30.*

The Registrar hereby gives you notice that, in conformity with the provisions of
Sec. 30 of the above Act (printed at back hereof), your Trade Mark No. ,
registered in Class , will be removed from the Trade Marks Register, unless
the prescribed fee of (payable by Form TM No. 13) be received at this Office
before the day of 19 ., on which date the existing registration will
expire.

A stamped Form TM No. 13, for payment of the fee, may be obtained as directed
at the back of this Notice, *but cannot be obtained from this Office.*

Dated this day of 19 .

To

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

Cheques, Money Orders, or Cash cannot be accepted in payment of Fees.

TRADE MARKS ACT, 1905.

Form O No. 4.

SECOND NOTICE.

*Notice before Removal of Trade Mark from the Register,
under Sec. 30.*

The Registrar hereby gives you notice that, in conformity with the provisions of
Sec. 30 of the above Act (printed at back hereof), your Trade Mark No. ,
registered in Class , will be removed from the Trade Marks Register, unless
the prescribed fee of (payable by Form TM No. 13) be received at this Office
before the day of 19 , on which date the existing registration will
expire.

If the above fee be not paid *before* the date above named, the Trade Mark will,
after the end of one month from the date on which the omission to pay the fee has

been advertised in the Trade Marks Journal, be removed from the Trade Marks Register, unless an *additional* fee of 10s. (payable by Form TM No. 14) be remitted.

Stamped forms for payment of renewal fees may be obtained as directed at the back of this Notice, *but cannot be obtained from this Office.*

Dated this day of 19 .

To

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

Cheques, Money Orders, or Cash cannot be accepted in payment of fees.

(TRADE MARKS. TRADE MARKS ACT, 1905.
Fee 9 or 9a).

Form TM No. 13.

Renewal of Registration of Mark after Notice.

SIR,

IN pursuance of the notice received from you, I hereby transmit the prescribed fee of for Renewal of Registration of the Trade Mark No. , in Class .

Dated the day of 19 .

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

N.B.—This Form must be indorsed with the name and address of the person transmitting the same.

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

Form TM No. 14.

Additional Fee of 10s. to accompany Renewal Fee (Form TM No. 13), within One Month after Advertisement of Non-payment of Renewal Fee.

SIR,

IN pursuance of the notices issued by you, I hereby transmit the additional fee of 10s. (along with Form TM No. 13) for the Renewal of the Registration of the Trade Mark No. in Class .

Dated the day of 19 .

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

N.B.—This Form must be indorsed with the name and address of the person transmitting the same.

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

Form TM No. 15.

Restoration of Trade Mark where Removed for Non-payment of Fee.

[To accompany Form TM No. 13.]

SIR,

IN pursuance of the notices issued by you, I hereby transmit the additional fee of £1 (along with Form TM No. 13) for restoration to the Trade Marks Register of the Trade Mark No. in Class .

Dated the day of 19 .

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

N.B.—This Form must be indorsed with the name and address of the person transmitting the same.

(TRADE MARKS. TRADE MARKS ACT, 1905.
 Fee 7 or 7a.)

Form TM No. 16.

Joint Request by Registered Proprietor and Assignee to Register the Assignee as Subsequent Proprietor of a Trade Mark.

We, (a) of (b) , and (c) , of (d) , hereby request, under Rule 76, that the name of (e) , carrying on business as (f) , at (g) , may be entered in the Register of Trade Marks as proprietor of the Trade Mark No. in Class .

(h) ———.
 (i) ———.

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

- (a) Name of Registered Proprietor.
- (b) Address of Registered Proprietor.
- (c) Name of Assignee.
- (d) Address of Assignee.
- (e) Name of Assignee.
- (f) Trade or business of Assignee.
- (g) Address of Assignee.
- (h) Signature of Registered Proprietor.
- (i) Signature of Assignee.

TRADE MARKS ACT, 1905.

Form TM No. 17.

*Form of Declaration (only to be furnished when requested by Registrar)
 by Assignee in support of Form TM No. 16.*

I (a) of (b) do hereby solemnly and sincerely declare that the Trade Mark No. in Class has been assigned to me by (c) of (d) .

together with the goodwill of the business concerned in the goods for which it has been registered, and that I have accepted such Assignment.

(e) 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 19 . (f) _____
 Before me (g) _____
 (h) _____

- (a) Name of Assignee.
- (b) Address of Assignee.
- (c) Name of Assignor.
- (d) Address of Assignor.
- (e) This paragraph is not required when the declaration is made out of the United Kingdom.
- (f) Signature of Assignee.
- (g) Signature of Authority.
- (h) Title of Authority.

(TRADE MARKS. TRADE MARKS ACT, 1905.
 Fee 7 or 7a.)

Form TM No. 18.

Request to enter Name of Subsequent Proprietor of Trade Mark upon the Register.

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. Accompanying this Request is a statement of (e) case.

Dated this day of , 19 . (f) _____

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

- (a) Or We. Here insert name, address, and description.
- (b) My or our.
- (c) Or names.
- (d) I am or We are.
- (e) My or our.
- (f) Signature.

TRADE MARKS ACT, 1905.

Form TM No. 19.

Form of Declaration (only to be furnished when requested by Registrar) in Support of Statement of Case Accompanying Form TM No. 18.

I, of do hereby solemnly and sincerely declare that the particulars set out in the statement of case, exhibit marked and left by me in connection with my request to be registered as subsequent proprietor of the Trade Mark

APPENDIX VII.

No. , in Class , are true and comprise every material fact and document affecting the proprietorship of the said Trade Mark as above claimed.

(a) 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 19 . (b) _____
Before me, (c) _____.

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

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

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

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

(TRADE MARKS. TRADE MARKS ACT, 1905.
Fee 12 or 12a.)

Form TM No. 20.

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

In the matter of the Trade Mark No. registered in Class .
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 .
(a) _____

Dated this day of 19 .

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

(a) Signature of Proprietor.

(TRADE MARKS. TRADE MARKS ACT, 1905.
£5.)

Form TM No. 21.

Application to Permit an Apportionment of Trade Marks.

In the matter of the Registered Trade Marks Nos. .
We, being the parties interested within the meaning of Section 23 of the Trade
Marks Act, 1905, in certain marks of who has ceased to carry on business,
request you to permit an apportionment of those marks amongst the persons in
fact continuing the business. With this application we send a case in pursuance
of Rule 87.

Signed _____
Signed _____

Dated this day of 19 .

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

(TRADE MARKS. . . TRADE MARKS ACT, 1905.
5s.)

Form TM No. 22.

Form of Request for Correction of Clerical Error or for Permission to amend Application under Sec. 12 (6) or Sec. 32 (1).

SIR,
I HEREBY request that

(a) ———

Dated this day of 19 .
To the Registrar, Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

(a) Signature.

(TRADE MARKS. . . TRADE MARKS ACT, 1905.
Fee 8 or 8a.)

Form TM No. 23.

Request to Enter Change of Name of Registered Proprietor of Trade Mark upon the Register.

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.

There has been no change in the actual proprietorship of the said Trade Mark, but (e).

(f) ———.

Dated this day of 19 .

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

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

(b) My or Our.

(c) Or Names.

(d) I am or We are.

(e) Here state the circumstances under which the change of name took place.

(f) Signature.

(TRADE MARKS. . . TRADE MARKS ACT, 1905.
5s.)

Form TM No. 24.

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

Place of Business

Description

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

T.M.

APPENDIX VII.

the Register of Trade Marks of the Trade Mark No. in Class may be cancelled.

Dated this day of 19 .

(a) ———

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

(a) Signature.

(TRADE MARKS. TRADE MARKS ACT, 1905.
5s.)

Form TM No. 25.

Request to strike out Goods from those for which a Trade Mark is Registered.

I, of hereby request that you will strike out from the goods for which the Trade Mark No. is registered in Class .

Dated this day of 19 .

(a) ———

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

(a) Signature.

(TRADE MARKS. TRADE MARKS ACT, 1905.
5s.)

Form TM No. 26.

Request to Enter Disclaimer or Memorandum relating to a Trade Mark.

I, of , hereby request that you will enter in the Register in connection with Trade Mark No. in Class the following , namely—

Dated this day of 19 .

(a) ———

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

(a) Signature.

(TRADE MARKS. TRADE MARKS ACT, 1902.
Fee 23 or 23a.)

Form TM No. 27.

Application under Sec. 34 to Add to or Alter a Trade Mark.

In the matter of the Trade Mark No. in Class .
Application is hereby made on behalf of the registered proprietor of the Trade Mark numbered as above to alter it in the following particulars that is to say—

(Here fill in full particulars.)

Six copies of the mark as it will appear when so altered are filed herewith.

(Signed) ———

Dated this day of 19 .

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

(TRADE MARKS.
10s.)

TRADE MARKS ACT, 1905.

Form TM No. 28.

Request for Search under Rule 95.

You are hereby requested to search under Rule 95 in Class _____ to ascertain whether any Trade Marks are on record which resemble the Trade Mark sent herewith in duplicate each mounted on a half-sheet of foolscap.

(a) _____
(b) _____

Dated this _____ day of _____ 19 _____ .

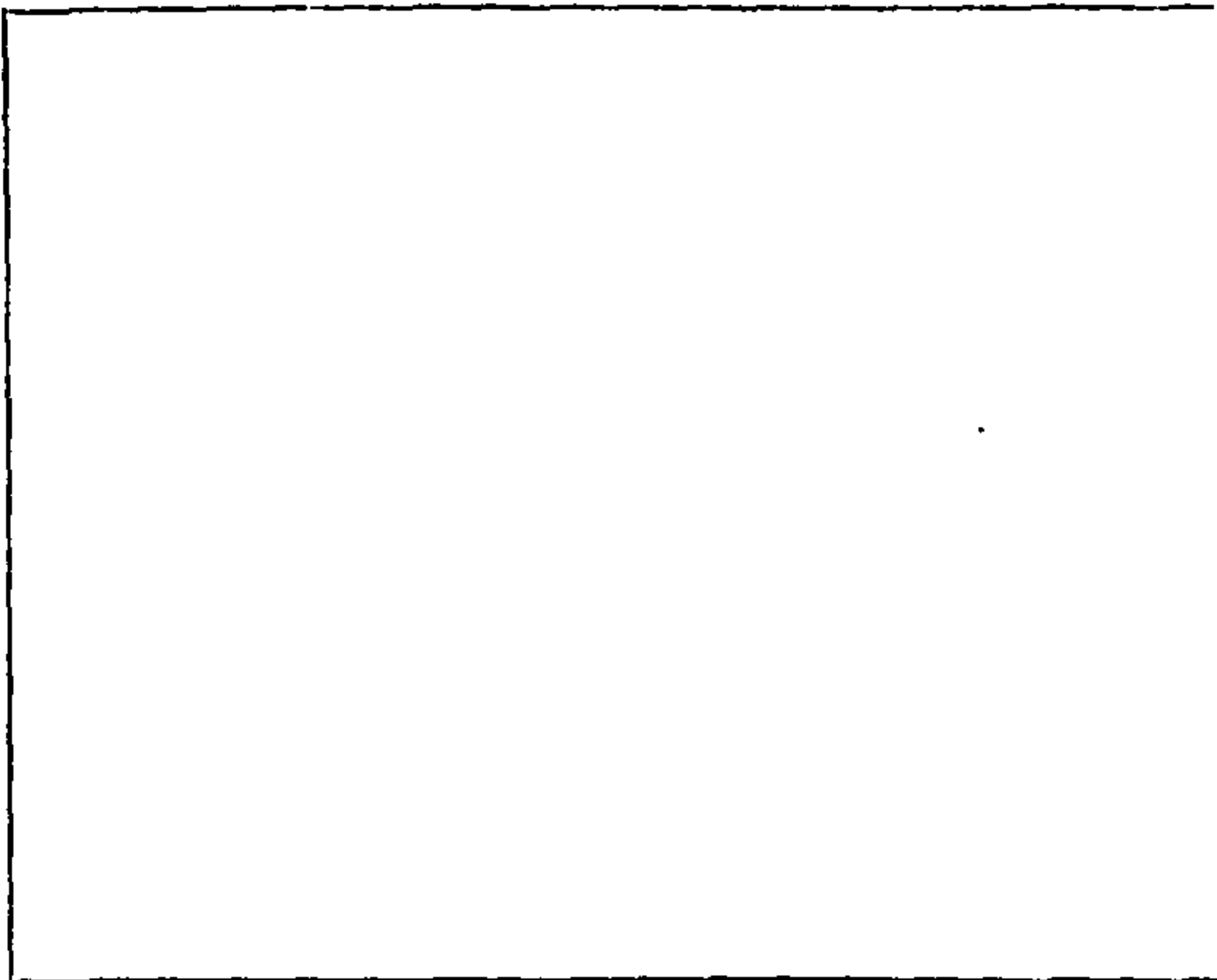
To the Registrar, Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane, London, W.C.

(a) Signature.
(b) Address.

(CORPORATE MARK. TRADE MARKS ACT, 1905.
£5.)

Form Sheffield No. 1.

Request to Enter a Mark under Sec. 63, Sub-sec. (2)



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

(Signed) _____.

Dated this _____ day of _____ 19 _____ .

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

APPENDIX VII.

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

Cotton No. 1.

Application for Registration of Trade Mark.

(See the annexed Extracts from the Trade Marks Act.)

(To be accompanied by an unstamped duplicate of this Form, and also by four Additional Representations on Form Cotton No. 2.

One representation to be fixed within the square.

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

Application is hereby made for Registration of the accompanying Trade Mark in Class (a) in respect of (b) in the Name of Address and description (c) Trading as who claim to be the Proprietor thereof.

No claim of exclusive right is made to any of the letterpress appearing on the said Trade Mark except in so far as it consists of the applicant's own name and address, or the foreign equivalent thereof.

The said Trade Mark has not hitherto been used by the Applicant upon or in connection with the above-mentioned goods, but is proposed to be so used [or (d)

The said Trade Mark has been used by the applicant [^{and}/_{or} by the predecessors in business of the applicant] upon or in connection with the above-mentioned goods since the 19].

(Signed) _____.

Dated the day of 19 .

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

(a) Insert the class.

(b) Insert "all goods included in this class" or, if it is not desired that the registration should cover the whole class, the description of the goods.

Only goods contained in one and the same class may be set out here. A separate Application Form is required for each separate class.

(c) If the applicant is outside the U.K. an address for service in the U.K. must be given before the application can be proceeded with.

(d) Strike out the alternative paragraph which does not apply to the case.

(COTTON MARKS.)

TRADE MARKS ACT, 1905.

Cotton No. 2.

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 on "Form Cotton No. 1."
 Any representation of a larger size than foolscap may be folded, but must then be mounted upon cloth and affixed hereto.

Class
 Description of Goods
 Length of User (if any)
 Name of Applicant
 Address
 Description

No claim of exclusive right is made to any of the letterpress appearing on the Mark except in so far as it consists of the applicant's own name and address or the foreign equivalent thereof.

Four of these Additional Representations of the Trade Mark must accompany each Form of Application.

(COTTON MARKS.
 STAMP 5s.)

TRADE MARKS ACT, 1905.

Cotton No. 3.

Request for Certificate under Sub-sec. (12) of Sec. 64.

SIR,
 You are hereby requested to issue a certified copy of the application numbered _____ and dated the _____ day of _____, 19____, for registration in Class _____ of the Cotton Mark of which a fac-simile is sent herewith, setting forth in such certificate the length of time of user (if any) of such Mark as stated on the application, and any other particulars you may deem necessary.

Dated this _____ day of _____, 19____.

(Signed) _____
 Address _____

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

APPENDIX VII.

(COTTON MARKS. TRADE MARKS ACT, 1905.
STAMP 5s.)

Cotton No. 4.

*Request for Certificate of Keeper of Cotton Marks as to a Trade Mark
entered in the Manchester Register.*

In the matter of the Trade Mark No. in Class .

SIR,

I HEREBY request you to furnish me with your Certificate of Registration of the Mark numbered as above for use (a).

Dated this day of 19 .

(Signed) ———.
Address ———.

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

(a) Here state the purpose for which the Certificate is required, i.e., whether for use in legal proceedings, or for obtaining registration abroad, or for what other purpose.

(COTTON MARKS.) TRADE MARKS ACT, 1905.

MB No. 1.

Certificate under Sub-sec. (12) of Sec. 64.

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

It is hereby certified by the Keeper of Cotton Marks, that a true copy of the application numbered and dated the day of 19 , for registration in Class of the Cotton Mark therein referred to is contained in the paper hereto annexed and that a fac-simile of the said Mark is attached thereto, and that the length of time of user of such Mark as stated on the application is (a) and that the said Mark is on deposit at this office.

WITNESS my hand this day of 19 .

(Seal of Patent Office.)

Keeper of Cotton Marks.

(a) Space for any other particulars the Keeper may deem necessary.

(COTTON MARKS.) TRADE MARKS ACT, 1905.

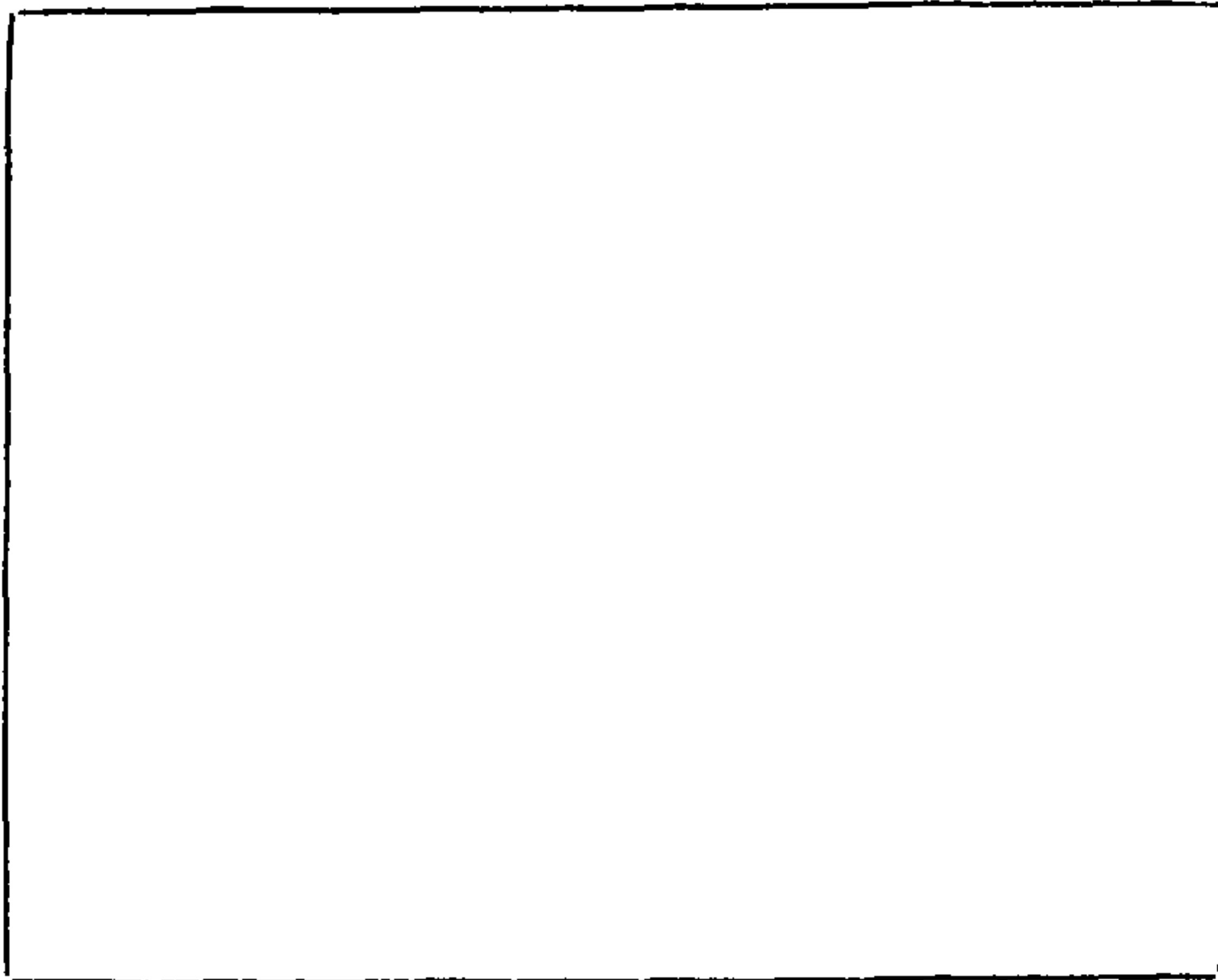
MB No. 2.

General Certificate.

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

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

REPRESENTATION OF TRADE MARK.



WITNESS my hand this day of 19 .
(Seal of Patent Office.)

Keeper of Cotton Marks.

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

Form TM No. 29.

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

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

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

Dated this day of 19 .

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

(a) Here insert full name and address of appellant.

(b) Here insert "the decision" or "that part of the decision" as the case
may be.

(c) Here insert the decision complained of.

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

Form TM No. 30.

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

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

SIR,

NOTICE is hereby given that by an Order of the Court made on the day
of 19 , it was directed that

An Office Copy of the Order of the Court is enclosed herewith.

Dated this day of 19 .

(a) ———

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

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

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

Form TM No. 31.

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

In the matter of the Trade Mark No. in Class .

SIR,

I, of , hereby request you to furnish me with your Certificate
that (a)

(b) ———.

Dated this day of 19 .

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

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

(b) Signature.

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

Form TM No. 32.

Request for Certificate of Refusal to Register a Trade Mark.

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

SIR,

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

(a) ———

Dated this day of 19 .

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

(a) Signature of applicant.

(TRADE MARKS.
Fee 18 or 18a.)

TRADE MARKS ACT, 1905.

Form TM No. 33.

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

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

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

(b) _____.

Dated this _____ day of _____, 19 _____.

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

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

(b) Signature.

(TRADE MARKS.
£1.)

TRADE MARKS ACT, 1905.

Form TM No. 34.

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

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

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

(a) _____

Dated this _____ day of _____, 19 _____.

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

(a) Signature.

Dated this 24th day of March, 1906.

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

THIRD SCHEDULE.

CLASSIFICATION OF GOODS.

Illustrations.

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

CLASS 1.

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

APPENDIX VII.

CLASSIFICATION OF GOODS—*continued.*

CLASS 2.

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

CLASS 3.

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

CLASS 4.

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

CLASS 5.

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

CLASS 6.

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

CLASS 7.

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

CLASS 8.

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

CLASS 9.

Musical instruments.

CLASS 10.

Horological instruments.

CLASS 11.

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

CLASS 12.

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

CLASSIFICATION OF GOODS—*continued.*

CLASS 13.

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

CLASS 14.

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

CLASS 15.

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

CLASS 16.

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

CLASS 17.

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

CLASS 18.

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

CLASS 19.

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

CLASS 20.

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

CLASS 21.

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

CLASS 22.

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

CLASS 23.

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

CLASS 24.

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

CLASS 25.

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

CLASSIFICATION OF GOODS—*continued.*

CLASS 26.

Linen and hemp yarn and thread.

CLASS 27.

Linen and hemp piece goods.

CLASS 28.

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

CLASS 29.

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

CLASS 30.

Silk, spun, thrown, or sewing.

CLASS 31.

Silk piece goods.

CLASS 32.

Other silk goods not included in Classes 30 and 31.

CLASS 33.

Yarns of wool, worsted, or hair.

CLASS 34.

Cloths and stuffs of wool, worsted, or hair.

CLASS 35.

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

CLASS 36.

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

CLASS 37.

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

CLASS 38.

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

CLASS 39.

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

CLASS 40.

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

CLASSIFICATION OF GOODS—*continued.*

CLASS 41.

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

CLASS 42.

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

CLASS 43.

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

CLASS 44.

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

CLASS 45.

Tobacco, whether manufactured or unmanufactured.

CLASS 46.

Seeds for agricultural and horticultural purposes.

CLASS 47.

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

CLASS 48.

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

CLASS 49.

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

CLASS 50.

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

Dated this 24th day of March, 1906.

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

TRADE MARKS RULES, 1912.¹

By virtue of the provisions of the Trade Marks Act, 1905, the Board of Trade do hereby make the following Rules:—

PRELIMINARY.

1. These Rules may be cited as the Trade Marks Rules, 1912, and shall come into operation from and immediately after the 31st day of December, 1912.

COTTON MARKS.

2. As soon as may be after receiving any application, the Keeper of Cotton Marks shall make a search amongst the marks on the Manchester register, in the B. List, those which have been refused upon applications made within fourteen years next before the date of the application under examination, and those refused upon applications of earlier date, which have been continued for quotation in the collection of refused marks under the provisions of Rule 3 of these Rules, and those which are pending, and shall notify to the Registrar the application, and the marks, if any, which he has found so nearly resembling the mark applied for as to be calculated to deceive, and together with such notification shall send a report upon the application.

3. After the 31st day of December, 1912, a mark shall not be continued in the collection of refused marks as a mark to be quoted by the Keeper for a period of more than fourteen years from the date of the application to register, unless the applicant or his successor in business shall, not later than the 31st day of December, 1912, or before the expiration, after the said 31st day of December, 1912, of the said period of fourteen years from the date of the application to register, as the case may be, pay the prescribed continuance fee; and a mark which has been continued for quotation in the said collection on payment of the prescribed continuance fee shall not be continued in the collection for quotation after the expiration of a period of fourteen years from the date when the prescribed continuance fee became payable, unless the said fee shall be again paid before the expiration of such period and so on for every succeeding period of fourteen years from the date when the last prescribed continuance fee became payable.

4. Before discontinuing for quotation a mark in the collection of refused marks, the Keeper of Cotton Marks shall, at a date not more than six months nor less than three months from the date on which the mark would be so discontinued, give notice that the mark will not be continued for quotation in the collection of refused marks unless the prescribed continuance fee shall be paid not later than the 31st day of December, 1912, or before the expiration of the periods of fourteen years mentioned in the last preceding Rule, whichever time shall be applicable.

¹ Dated February 20th, 1912. Statutory Rules and Orders, 1912, No. 282.

5. The notice mentioned in Rule 4 of these Rules shall be addressed to the applicant at the address given on the form of application. In case such notice is returned by the Postal Authorities, the Keeper of Cotton Marks may, so far as he can, but without being under any obligation to do so, discover the present address of the applicant if he be still in business, or of his successors in business, or of the existing owner of the refused mark, if any, with a view of bringing the notice to his or their attention.

6. The prescribed continuance fee shall be paid by transmitting to the Keeper of Cotton Marks, at the Manchester Branch, the Form, Cotton No. 5, in the Second Schedule hereto.

REPEAL.

7. Rule 115 of the Trade Marks' Rules, 1906, shall be and is hereby repealed as from the 31st day of December, 1912.

FEE.

8. To the fees specified in the First Schedule to the Trade Marks Rules, 1906, shall be added the fee specified in the First Schedule hereto.

Dated this 20th day of February, 1912.

Sydney Buxton,
President of the Board of Trade.

SCHEDULES.

First Schedule.

FEE.

For the continuance for quotation of a Cotton Mark in the Collection of Refused Marks.

For each mark in each class for each period of fourteen years	...	<i>s.</i>	<i>d.</i>
		10	0

Dated this 20th day of February, 1912.

Sydney Buxton,
President of the Board of Trade.

Approved

Percy H. Illingworth,
John W. Gulland,

Lords Commissioners
of His Majesty's Treasury.

APPENDIX VII.

Second Schedule.

TRADE MARKS ACT, 1905.

COTTON No. 5.
Stamp 10s.

COTTON MARKS.

Continuance for quotation of mark in Collection of Refused Marks.

SIR,

In pursuance of the notice received from you, I hereby transmit the prescribed fee for the continuance for quotation in the Collection of Refused Marks of the Mark No. in Class .

I am, Sir,

Your obedient servant,

Name

Address

Dated this day of 19 .

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

Dated this 20th day of February, 1912.

Sydney Buxton,
President of the Board of Trade.

APPENDIX VIII.

A.—OFFICIAL INSTRUCTIONS TO PERSONS WHO WISH TO REGISTER TRADE MARKS.

B.—OFFICIAL NOTICE AS TO COSTS IN OPPOSITIONS.

A.—INSTRUCTIONS TO PERSONS WHO WISH TO REGISTER TRADE MARKS.

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1.—GENERAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fees must be paid by means of the appropriate Stamped Forms, which can be obtained as directed in paragraph 5. Stamped Forms cannot be sent by post from the Patent Office.

5.—TRADE MARK FORMS AND FEES.

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

Number of Form.	Title of Form.	Fee
		£ s. d.
TM No. 1	Form of authorisation of Agent	—
TM No. 2	Application for registration of Trade Mark	0 10 0
TM No. 3	Additional Representation of Trade Mark	No Stamp.
Cotton No. 1	Application for registration of Cotton Mark	0 10 0
Cotton No. 2	Additional Representation of Cotton Mark	No Stamp.
TM No. 4	Request for statement of grounds of decision under section 12 (3)	0 10 0
TM No. 5	Application for registration of Special Trade Mark under section 9 (5)	0 10 0
TM No. 6	Application for registration of Special Trade Mark under section 62	0 10 0
TM No. 7	Notice of Opposition to application for registration	1 0 0
TM No. 8	Counter-statement to opposition to application for registration	0 10 0
TM No. 9	Application for hearing in cases of opposition	1 0 0
TM No. 10	Application to the Board of Trade for hearing under Rule 38	1 0 0
TM No. 11	Fee for Registration of a Trade Mark	1 0 0
TM No. 12	Renewal of Registration before notice has been given by Registrar	1 0 0
TM No. 13	Renewal of Registration after notice has been given by Registrar	1 0 0
TM No. 14	Additional fee to accompany renewal fee within one month after advertisement of non-payment of renewal fee... ..	0 10 0
TM No. 15	Restoration of Trade Mark where removed for non-payment of fee	1 0 0

APPENDIX VIII.

Number of Form.	Title of Form.	Fee.
*TM No. 16	Joint request by registered proprietor and assignee to register assignee as subsequent proprietor ...	£ s. d. 1 0 0
TM No. 17	Form of Declaration (only to be furnished when requested by Registrar) by assignee in support of Form TM No. 16	—
*TM No. 18	Request to enter name of subsequent proprietor upon Register	1 0 0
TM No. 19	Form of Declaration (only to be furnished when requested by Registrar) in support of Statement of Case accompanying Form TM No. 18... ..	—
*TM No. 20	Application for alteration of address of Register...	0 5 0
TM No. 21	Application to permit an apportionment of Trade Marks	5 0 0
TM No. 22	Request for correction of clerical error or amendment of application	0 5 0
*TM No. 23	Request to enter change of name of registered proprietor	0 5 0
TM No. 24	Application to cancel entry on Register	0 5 0
TM No. 25	Request to strike out goods from those for which a mark is registered... ..	0 5 0
TM No. 26	Request to enter disclaimer or memorandum	0 5 0
*TM No. 27	Application to add to or alter a Trade Mark	1 0 0
TM No. 28	Request for search under Rule 95	0 10 0
TM No. 29	Appeal from Registrar to Board of Trade	1 0 0
TM No. 30	Notice of Order of Court for alteration of Register	0 10 0
TM No. 31	Request for general certificate	1 0 0
TM No. 32	Request for certificate of refusal to register	1 0 0
TM No. 33	Request for Certificate of registration for use in obtaining registration abroad	0 5 0
TM No. 34	Request for Certificate of registration for use in legal proceedings	1 0 0
Cotton No. 3	Request for Keeper's Certificate under Section 64 (12)	0 5 0
Cotton No. 4	Request for Keeper's Certificate of Registration	0 5 0
Cotton No. 5	Continuance in Collection of refused marks	0 10 0
	For office copies every 100 words, but never less than one shilling	0 0 4
	For certifying office copies MS. or printed matter	0 10 0
	An additional stamp duty of one shilling is also charged under the Stamp Act upon certified copies of certain documents.	

The Stamped Forms can be obtained, *on personal attendance only*, at the Inland Revenue Office (Room No. 28), in the Patent Office, 25, Southampton Buildings, Chancery Lane, London, W.C., or, at a few days' notice, and upon pre-payment of the value of the stamp, at any Money Order Office in the United Kingdom.

If it should not be convenient to apply in either of the ways above specified, the stamped Forms can be ordered by post from the Controller of Stamps (Room No. 5), Inland Revenue Office, Somerset House, London, W.C. In this case a bankers' draft or a Money or Postal

* When this form refers to more than one Mark, there is in some cases a reduction of Fees in respect of each additional Mark (*see First Schedule to the Trade Marks Rules, 1906*).

Order payable to the Commissioners of Inland Revenue and crossed Bank of England, to cover the value of the stamp and the cost of transmitting the Form in a registered envelope by post must be forwarded to Somerset House with the application for the Form. Cheques will not be accepted.

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

The London Chief Office.

Lombard Street Branch Office, E.C.

Eastern District Office, 206, Whitechapel Road, E.

South-Eastern District Office, 239, Borough High Street, S.E.

Charing Cross Branch Office, W.C.

North-Western District Office, 28, Eversholt Street, Camden Town, N.W.

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

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

IN ENGLAND AND WALES.

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

IN SCOTLAND.

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

IN IRELAND.

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

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

An Application for the Registration of a Trade Mark, under Section 9. *see* paragraph 3, must be made on an Application Form (Form TM No. 2) bearing an impressed stamp of 10s. (*see* paragraph 5), but in

the case of a special application under the provisions of Section 9 (5) when an Order of the Board of Trade or the Court is necessary, Form TM No. 5 must be used.

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

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

For an Application to register a Trade Mark in any of the Cotton Classes special forms are required (*see* paragraph 19).

A *separate* Application Form is required for *each* class in cases where the same Trade Mark is claimed in more than one class of goods.

If the Mark be the property of a Firm or Partnership, the Form TM No. 2 should be signed by some one or more members of such Firm or Partnership, who should add, after his or their signature, "A Member of the Firm" or "Members of the Firm" (as the case may be); if a Body Corporate, by a Director or by the Secretary or other Principal Officer, who should add, after his signature and designation, "For the Company."

Applications may be made by Agents in the names of and on behalf of the owners of Trade Marks. The Agent must be duly authorised in writing, in the Form TM No. 1, by the owner or owners; the Authority to an Agent should be signed by the owner or owners; in the case of a Firm, Partnership, or Body Corporate, the Authority should be signed in the same manner as indicated in the paragraph next above.

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

When an Applicant, or his authorised Agent, for the Registration of a Trade Mark resides out of the United Kingdom at the time of making the Application, an Address for Service in the United Kingdom must be given in the application.

When the Mark consists of or includes words printed in other than Roman characters, there should be given upon the Forms a translation and a transliteration of such words, signed by the Applicant or his Agent.

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

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

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

7.—WORD MARKS.

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

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

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

8.—SEARCH.

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

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

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

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

9.—SERIES OF TRADE MARKS.

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

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

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

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

10.—OLD MARKS.

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

11.—PROCEDURE ON RECEIPT OF APPLICATION.

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

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

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

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

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

Each renewal is for 14 years.

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

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

14.—CLASSIFICATION OF GOODS.

A Guide to the Classification of Goods under the Trade Marks Rules can be obtained on application at The Patent Office, Trade Marks Branch, and should be asked for if the Applicant feels any difficulty in determining to which of the Classes set out in the Third Schedule to the Rules the goods for which he uses his Mark belong.

15.—ADVERTISEMENT IN THE TRADE MARKS JOURNAL.

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

A Block must be furnished for each Mark (even though the Mark consists only of a word or words) in each Class claimed, except in the case of the Cotton Classes, for which no Blocks are required, unless the Mark be claimed in Class 23 in respect of goods other than cotton yarn.

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

In the case of a "Series" of Trade Marks differing only in respect of the particulars mentioned in Section 26 of the Act, a Block must, if the Registrar so require, be furnished for each Mark in the series.

The Blocks 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 cannot be accepted. It is found in practice that Half-tone or Process Blocks do not, as a rule, yield impressions distinct enough for the purposes of this Journal, and a great number of such blocks have to be returned as unsuitable. It is generally found that the most suitable blocks are Line blocks (or Electrotypes or Stereotypes produced therefrom) or Wood blocks.

In the case of Word Marks the words on the Block should be in plain block type.

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

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

The Official Number given by the Registrar to a Mark should *not* be cut on the face of the Block, but should be *marked upon the side* in such a manner as to secure identification.

All Blocks should be sent to The Patent Office, Trade Marks Branch, together with the paper marked "Form R. Adv. 3," and with the representation of the Mark sent for the guidance of the Applicant in preparing the Block.

After the advertisement of a Trade Mark the Block supplied for such advertisement cannot in any case be returned to Applicants, even for temporary use.

16.—RESTRICTIONS ON REGISTRATION.

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

Applications for the registration of Trade Marks consisting of or embodying the emblem of a Red Cross, the words "Red Cross" or "Geneva Cross" will be refused.

Applications may be refused in cases where the following appear upon the Representations of Trade Marks forming part of an application :—

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

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

- (a) The Royal Arms or Royal Crests, or Arms or Crests so nearly resembling them as to lead to mistake.
- (b) British Royal Crowns.
- (c) British National Flags.
- (d) The Anchor devices shown on the Admiralty Seal and the Admiralty Flag and devices so similar as to lead to mistake.
- (e) The words "Royal," "Imperial," "King's," "Queen's," "Crown," or any other words, letters, or devices calculated to lead persons to think that the applicant has Royal patronage or authorisation. The use of the above words in trading styles (other than the names of registered corporate bodies) will not be permitted in connexion with applications for registration, unless it be shown that the sanction of the Secretary of State, Home Office, has been obtained.

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

Representations of the Arms of a Foreign State or Place.

Representations of the Flags of Foreign States.

In cases where the following appear on a Mark, the Registrar may require to be furnished with consents from such officials, persons, or their legal representatives as he may consider necessary :—

- (a) Representations of the Arms or Emblems of any City, Borough, Town, Place, Society, Body Corporate or Institution.
- (b) Names or Representations of Living Persons or Persons recently dead.

Where there appears on the face of a Trade Mark the name or a description of the goods to which the Mark is applied, the Registrar may refuse to register such Mark in respect of any goods other than

the goods so named or described. Where the name or description of any goods appears on a Trade Mark, which name or description in use varies, the applicant should state in his application that the name or description varies.

17.—OPPOSITION.

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

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

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

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

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

On the completion of the Evidence, a Hearing is appointed by the Registrar. Each party attending the Hearing must lodge the Hearing Fee Form (Form TM No. 9, with £1 stamp).

18.—CUTLERS' COMPANY.

By Section 63 of the Act, Application for the Registration of Trade Marks used on Metal Goods shall, if made by a person carrying on business in Hallamshire or within six miles thereof, be made to the Cutlers' Company of Sheffield. *See* Rules 107 to 112.

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

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

Requests to enter Old Corporate Marks on the Sheffield Register, under Section 63 (2), should be made on Form Sheffield No. 1.

Applications sent by post should be addressed—

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

19.—MANCHESTER BRANCH.

By Section 64 of the Act, Application for the Registration of Cotton Marks should be made to the Manchester Branch on Form Cotton

No. 1. (*See* paragraph 5.) Each Application should be accompanied by an unstamped duplicate of the Form, and also by four additional representations on Form Cotton No. 2.

These forms can be obtained at the Chief Post Office, Manchester, and as stated in paragraph 5.

Applications sent by post should be addressed :—

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

Searches can be made at the Manchester Branch on payment of 1s. for each quarter of an hour for Marks in the Cotton Classes.

20.—CERTIFICATES.

The Registrar's Certificate in relation to a Trade Mark is of four kinds, viz. :—

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

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

The Keeper of Cotton Marks is empowered to issue certain Certificates in respect of Cotton Marks. *See* Forms Cotton Nos. 3 and 4 (page 5).

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

21.—INSPECTION OF REGISTER AND COPIES OF ENTRIES.

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

Copies of any entry in the register can be supplied at the rate of 4d. for every 100 words, with a minimum charge of 1s.

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

The Request to be made by a subsequent Proprietor on application for the Registration in his name of a Registered Trade Mark must be

made on Form TM No. 16 or Form TM No. 18 (*see* paragraph 5), as the case may be. In the case of a Firm or Partnership, the Request may be made by one member of the Firm or Partnership. In the case of a Body Corporate, the Request should be made by a Director or by the Secretary or a Principal Officer of such Body Corporate.

If the Registrar considers it necessary, he may require a Declaration on Form TM No. 17 to be furnished in support of the request made on Form TM No. 16.

Form TM No. 16 should only be used when there has been a *direct assignment* from the registered proprietor of the Mark to the person applying to be registered as subsequent proprietor, and it must be signed by the registered proprietor and the assignee.

In any other circumstances Form TM No. 18 should be filed, accompanied by a Statement of Case. When the Registrar has determined that the Statement of Case is satisfactory, he will require a Declaration on Form TM No. 19 in support thereof.

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

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

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

(b.) *Agency.*—The Registrar cannot recommend any particular Agent for employment by Applicants. A List of Registered Patent Agents who, as a rule, also transact Trade Mark business, may be obtained from Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, London, E.C., or through any bookseller. Price (including postage) 1s. 1d.

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

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

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

(e.) *Patent Medicines.*—Communications with respect to the preparation and supply of Medicine Stamps appropriated to a particular medicine, or as to the liability to Stamp Duty of so-called "Patent Medicines," should be addressed to the Secretary of Excise, Custom House, Lower Thames Street, London, E.C.

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

24.—INTERNATIONAL AND COLONIAL ARRANGEMENTS.

An International Convention for the protection of Industrial Property exists between the following States:—

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

Copies of the Text of the Convention and of the Additional Act modifying the Convention,¹ may be purchased for 2*d.* and 1*d.*, respectively, from Wyman and Sons, Limited, Fetter Lane, London, E.C., or through any bookseller.

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

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

Ecuador.
 Greece.
 Honduras.
 Paraguay.
 Roumania.
 Uruguay.

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

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

Applications for the registration of Trade Marks in the Colonies and Foreign States must be made to the Government of the Colony or

¹ See below, p. 813.

² See also below, p. 811.

Foreign State in which protection is desired. A collection of Colonial and Foreign Trade Mark Laws and Rules may be seen in the Free Library of the Patent Office.

26.—SALE OF OFFICIAL PUBLICATIONS.

Copies of the Act and of the Rules can be purchased at the Sale Branch of the Patent Office. The price of the Act and Rules together is 8*d.*, postage, 2½*d.*; of the Act alone 3*d.*, postage, 1*d.*; and of the Rules alone, 5*d.*, postage, 1½*d.* Sums exceeding 5*d.* should be remitted by Postal Order or Post Office Order.

Copies of the *Trade Marks Journal* may also be obtained from the Sale Branch of the Patent Office.

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

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

27.—PATENT OFFICE LIBRARY.

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

B.—OFFICIAL NOTICE AS TO COSTS IN OPPOSITIONS.

TRADE MARK OPPOSITIONS.

Scale of Costs.

As a general rule, costs will be assessed, in cases of Opposition to the registration of Trade Marks, according to the following Scale:—

	£	s.	d.	£	s.	d.
1. For Notice of Opposition (including stamp fee £1)	3	3	0			
2. Perusing Notice of Opposition ...	0	10	0			
3. Counter Statement (including stamp fee 10 <i>s.</i>)	2	2	0			
4. Perusing Counter Statement ...	0	10	0			
5. Declarations, each (if relevant) ...	0	10	0 to 2	0	0	0
6. Perusing Declarations, each ...	0	5	0 to 0	10	0	0
7. Hearing, Stamp Fee	1	0	0			
8. Attendance of Agent or Solicitor at Hearing, when case is argued by Counsel	1	1	0			
9. Argument by Agent or Solicitor ...	2	2	0 to 5	5	0	0
10. Or reasonable Counsel's Fee, when case is argued by Counsel.						
11. Discretionary general expenses of conducting the case	1	1	0 to 25	0	0	0

To include correspondence, inspection of exhibits, preparation of brief, copies for brief, travelling, &c. This limit will only be increased if very special circumstances are shown.

On the determination of a case, any party who claims to be entitled to costs may make application therefor. Detailed bills of costs should not be sent in, but particulars of any special general expenses or of any special costs which it is claimed should be allowed in addition to this scale of costs may be forwarded to the Comptroller.

As a general rule, costs will follow the event, but costs will not be awarded against any party until he has had an opportunity of submitting to the Comptroller any considerations which he may wish to urge against an Order for Costs being made. A Hearing will only be appointed in connexion with the question of costs when it is specially applied for.

W. TEMPLE FRANKS,
*Comptroller-General of Patents, Designs and Trade
Marks, and Register of Trade Marks.*

June, 1912.

APPENDIX IX.

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

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1. APPLICATION FOR REGISTRATION. (Form TM No. 2, above, p. 742.²)

2. APPEAL FROM THE REGISTRAR TO THE BOARD OF TRADE.³ (Form TM No. 29, above, p. 759.)

3. ORDER OF BOARD OF TRADE ALLOWING APPEAL.

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

Dated this day of , 19 .

(Signed) _____,
An Assistant Secretary of the Board of Trade.

¹ See Chap. IV., p. 70.

² This is the ordinary form. The form for a special application under paragraph (5) of sec. 9 is TM No. 5, above, p. 744; under sec. 62 is TM No. 6, above, p. 745; for a cotton mark, Cotton No. 1, above, p. 756; to enter an old corporate mark on the Sheffield Register is Sheffield No. 1, above, p.

755.

³ The right of appeal is to the Court or to the Board of Trade, sec. 12 (8).

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

4. REFERENCE BY BOARD OF TRADE TO COURT.

Trade Marks Act, 1905.

In the matter of an application No. of for the registration of a Trade Mark under sec. 12 of the above-mentioned Act, and in the matter of a decision of the Registrar, dated the day of , 19 , and in the matter of an Appeal, dated the day of , 19 , to the Board of Trade from the above decision.

Reference of Appeal to the Court.

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

Dated this day of , 19 . (Signed) _____,
Secretary to the Board of Trade.

Directions on Reference of the above Appeal to the Court.

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

Dated this day of , 19 . (Signed) _____,
Secretary to the Board of Trade.

5. CASE IN SUPPORT OF A SPECIAL APPLICATION UNDER SEC. 9 (5).¹

In the matter of company's special application No. under para. 5 of sec. 9 of the Trade Marks Act, 1905.

Case in support of the Application.

We beg to submit the following case in support of our application to register the Trade Mark.

We desire to be heard by the Board of Trade and are filing Form TM No. 10 with this statement.

1. In 19 , we adopted the word " " as our Trade Mark in respect of [*here describe the goods for which the Trade Mark has been used*] and we have, since the said date, continuously used the said Trade Mark in respect of the said goods.

2. Since the year we have spent considerable sums in advertising the said goods under the said mark, the approximate sums spent in such advertising during the last years being as follows:—[*set out the sums so spent*].

3. Our trade in the said goods has been very considerable, and has been constantly increasing, and during the last years has been as follows: [*set out the amounts or values of goods sold for several years*]. All such goods sold by us since the year have borne our said Trade Mark in a prominent manner.

4. Our said Trade Mark, " ," has become thoroughly distinctive as denoting goods of our manufacture and sale and as distinguishing them from similar goods supplied by other traders. Our [*naming the goods*] are very often

¹ This is only intended to be a general course, require to be adapted to the form indicating the points which may circumstances of each case. require to be dealt with; it will, of

ordered or asked for by our customers and the public by the said Trade Mark,
“ ”

5. Our business, which is a manufacturing and wholesale one, extends mainly throughout [*state the principal districts*] but we have also customers in many towns in other districts, for example [*name some towns selected from different parts of England, Wales, Scotland, and Ireland*] and our said goods are sold under and known by the said Trade Mark, not only in the said districts and towns and in the neighbourhood of the said towns, but in many other parts.¹

6. The goods which we have sold under the said Trade Mark do not form the subject of a patent, and other firms are selling and making similar goods for the same purpose under other names; for example:²

7. We are prepared if called upon to produce evidence as to the distinctiveness of the mark.³

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

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

The Board of Trade having considered the above-named application, the case stating at length the grounds upon which the applicants rely and the Statutory Declarations of and having heard the applicants by their and the Registrar direct that the application be accepted and that the Registrar proceed with the said application.⁴

Dated this day of , 19 .

(Signed) _____,
Assistant Secretary to the Board of Trade.

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

[*Title.*]

Whereas the above-named applicants in pursuance of the provisions of sub-sec. 5 of sec. 9 of the Trade Marks Act, 1905, and Rule 35 of the Trade Marks Rules, 1906, have applied for the registration of the words in Class in respect of and have, in accordance with Rule 38 of the said Rules, sent to the Registrar in writing a case in duplicate stating at length the grounds upon which they rely in support of their application and that they desire to be heard by the Board of Trade.

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

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

Dated this day of 19 .

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

¹ This information may be left to be furnished by the statutory declarations, if that course seems preferable.

² This paragraph will only be inserted, if it is necessary to rebut any suggestion that the word applied for is the name of a patented article.

³ On receipt of the case the Board of Trade generally send a form of letter

to the applicants, asking to be furnished with evidence in duplicate as to the use and distinctive character of the word in question in connection with the goods of the applicants. As to the nature of the evidence to be furnished, see above, p. 90.

⁴ But see the order of the Court in the *Itala Case*, printed below, p. 809.

8. NOTICE OF OPPOSITION.

(Form TM No. 7, above, p. 745.)

(Grounds of opposition.)

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

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

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

(For other grounds of opposition, see pp. 76, 99; Chap. VIII., p. 135, "What marks may be registered as trade marks"; Chap. X., p. 246, "Restrictions on registration.")¹

9. COUNTER-STATEMENT.

(In answer to the Notice of Opposition, No. 8.)

(Form TM No. 8, above, p. 746.)

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

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

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

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

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

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

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

¹ See also *Kutnow's Tm.*, 10 R. P. C. 403. ² Rule 53, p. 726.

10. EVIDENCE IN SUPPORT OF THE APPLICATION OR OPPOSITION.¹

The formal parts of the declarations are as follows :

[*Heading as in the Counter-statement, p. 746.*]

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

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

Declared at _____ in the City of London, this _____ of 19____, before me,
(Signed) _____,
A commissioner for oaths.

11. APPLICATION FOR HEARING BY THE REGISTRAR.

(Form TM No. 9, above, p. 746.)

12. FORM OF APPEAL FROM THE REGISTRAR TO THE BOARD OF TRADE.²

(Form TM No. 29, above, p. 759.)

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

Trade Marks Act, 1905.

In the matter of an application No. _____ of _____ for the Registration of a Trade Mark and in the matter of an opposition thereto, No. _____ of _____ and in the matter of a decision of the Registrar dated the _____ day of _____ 19____, and in the matter of an appeal dated the _____ day of _____ 19____, to the Board of Trade from the above decision.

Reference of Appeal to the Court.

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

Dated this _____ day of _____, 19____.
(Signed) _____,
Secretary to the Board of Trade.

Directions on Reference of the above Appeal to the Court.

For the purpose of the above reference the Board of Trade, pursuant to Rule 125 of the Trade Marks Rules, 1906, hereby direct that the appellant make application by motion to the Chancery Division of the High Court of Justice to hear and determine the said Appeal, and that notice of such application be served upon the

¹ This is given by statutory declaration. Rules 53 to 58, p. 726. As to the Registrar's power to dispense with evidence, see Rule 97, p. 732.

² The right of appeal is to the Court or, with the consent of the parties to the Board of Trade, an appeal to the Court is by notice of motion, Rule 121 ; Form 14, below, p. 790, should be adapted. A

copy of the decision of the Registrar must accompany the notice of appeal to the Board of Trade, and if the appeal is by the applicant, also a copy of the form of application and six representations of the mark opposed, Rule 123, p. 735. A form of case on appeal to the Board of Trade will be found in the 3rd Edition, Appendix, p. 719.

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

Dated this day of , 19 .
 (Signed) _____,
 Secretary to the Board of Trade.

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

19 , No. .

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

[*Heading as in the Counter-statement above, p. 746.*]

TAKE NOTICE that the Court will be moved before the Honourable Mr. Justice at 10.30 in the forenoon on the of , 19 , or so soon thereafter as counsel can be heard, by counsel, on behalf of the above-mentioned applicants , that the appeal of the applicants from the decision of the Registrar of Trade Marks upon their above mentioned application (which has been referred by the Board of Trade to the Court) may be heard and determined: And for an order directing the Registrar of Trade Marks to proceed with the registration of the trade mark referred to in the said application.

Dated this of , 19 .
 (Signed) _____,
 Solicitors for the above-named

To the Registrar of Trade Marks,
 and
 To [*the opponents*].

¹ See, however, sec. 49, above, p. 682.

APPENDIX X.

NOTICE OF MOTION TO RECTIFY THE REGISTER.

19 , No. .

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

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

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

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

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

(Signed) ———.

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

¹ For other forms of rectification see above, p. 329. For forms of orders, see below, pp. 802, 803, 805, and Seton, 7th ed., vol. 3, p. 2339.

APPENDIX XI.

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

1. INDORSEMENT OF WRIT.

The plaintiff's claim is for—

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

2. STATEMENT OF CLAIM.

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

The plaintiff's registered trade mark.

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

Use of the trade mark.

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

Plaintiff's goods known as "dagger" hoes.

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

Get-up of the plaintiff's goods.

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

The infringing mark.

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.

¹ For the Forms given in the Appendix to the Rules of the Supreme Court, see p. 519. The first set of pleadings here given relate to an action for the infringement of a registered trade mark, and also for passing off goods by the use of a trade name and imitation of get-up.

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

² See a fuller form, p. 793, and other precedents, pp. 798 *et seq.*

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

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

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

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

The plaintiff claims—

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

Use of "dagger" by the defendant. Infringement of the registered trade mark. Imitation of get-up. Passing-off goods: profits.

3. DEFENCE.

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

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

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

Devices and word common to the trade.

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

Get-up used for a long

¹ See other forms of injunction, post, p. 798.

time by the defendant.

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.¹

("Common Law Trade Mark.")

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

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

Use of "camel hair," &c., by defendants.

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

Such use calculated to deceive.

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

5. DEFENCE.

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

Denial of plaintiffs' reputation.

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

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

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

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

² For forms of claim, see pp. 793 and 798 *et seq.*

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. Manner of user of "camel hair" by defendants.

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." Denial of other use.

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. Denial of probability of deception.

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.)

6. STATEMENT OF CLAIM.¹

Passing-off—Use of Special Scroll Device.

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

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

¹ *Weingarten v. Bayer*, 20 R. P. O. 289, 649; 22 R. P. O. 341. The form of the order made by the House of Lords will be found below, p. 808.

² See 20 R. P. O. 292.

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

The plaintiffs claimed—

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

7. DEFENCE.

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

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

¹ See 20 R. P. C. 293.

denies that he has printed "Erect Form Corsets" in the manner shown in the illustration¹ at the top of page 3 of the Statement of Claim without the letters "C. B." in large type before and after the said words or otherwise than as part of the descriptions aforesaid, or one of the same, the said illustration is incorrect and misleading. (9) The defendant does not admit that he first adopted or used the said words or manner of printing in connection with his said corsets in the month of October, 1901, or that the said ranges of corsets are or were the same as those previously called "Straight Fronted Corsets," or by any other name or names. Save as in paragraphs 8 and 9 hereof expressly admitted, he does not admit any of the several allegations contained in paragraph 5 of the Statement of Claim. (10) If it be the fact (which is denied) that the words "Erect Form" or the use of the said manner of printing are or were under any circumstances known to the trade or to purchasers as indicating or describing the goods of the plaintiffs, the defendant has always clearly, sufficiently, and effectively distinguished his goods in connection with which he has used the said words or manner of printing by the employment of his own initials "C. B." (11) The defendant's trade is old-established and very extensive, and his goods are well-known and in high repute, and are celebrated all over the United Kingdom and elsewhere. The said goods are marked "C. B." or the "Celebrated C. B.," and all goods bearing the said marks, or either of them, are known and recognised by the trade and purchasers as being of his manufacture. (12) Except that he knew that the plaintiffs were advertising their goods for sale as "W. B. Erect Form Corsets" and "American Erect Form Corsets" before he began to make "Erect Form Corsets," the defendant denies each and every allegation in paragraph 6 or 7 of the Statement of Claim respectively contained. (13) This action is brought by plaintiffs to endeavour to obtain a monopoly of the words "Erect Form" for corsets. The said manner of printing is of no importance to them or to the defendant. No request was made by or on behalf of the plaintiffs to the defendant before action that he should cease to employ it. The defendant has in fact ceased to print the words in question in the said manner, and, except for the purpose of using up his existing stock, he does not intend to resume the use of the said manner of printing.

¹ See 20 R. P. C. 293.

APPENDIX XII.

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

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1. MORISON v. MOAT,² 20 L. J. Ch. 529 (1851), Turner, V.-C.
Trade Secret.

Injunction
against use

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

¹ The forms are, in most instances, taken from the reports cited; in some cases they give only the substance of the orders actually drawn up. For fuller forms and the formal parts of

orders, see Seton, 7th ed., Vol. I. p. 613 *et seq.*

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

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

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

2. *FARINA v. SILVERLOCK*, 24 L. J. Ch. 692 (1855), Wood, V.-C.

Trade Mark.

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

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

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

Trade Mark and Passing-off.

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

Injunction against use of trade mark;

or of trade name of the plaintiff's goods.

4. *WOTHERSPOON v. CURBIE*, 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.

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

Injunction against use of trade mark.

¹ This is the proper form where the right to use is not absolutely barred. See No. 6, and *Reddaway v. Banham*,

[1896] A. C. 199; 19 R. P. C. 218. Cf. No. 21.

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

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

To restrain the defendants, Robert 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 (or so as to) represent or induce the belief that any of the said yarn was dyed by the plaintiffs; with an order for an account of profits and costs.

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

Trade Name and Passing-off.

Injunction against passing-off;

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

against imitation of marks and get-up.

Circulars and advertisement.

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

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

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

Company's Trade Name.

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

against advertising company with name like plaintiff's name;

or carrying on business under such name.

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

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

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

Trade Mark.

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

Undertaking as to damages.

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

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

Trade Mark and Passing-off.

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

Trade mark action dismissed.
Injunction against use of particular wrapper; against passing-off.
Account.
Payment of amount found due.
Costs.

Costs of account reserved.

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

Trade Mark and Trade Name.

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

Interim injunction against use of name for a particular business

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

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

and use of particular labels.

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.

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

Trade Marks.

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

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

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

Trade Mark and Passing-off.

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

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

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

Trade Name, Passing-off.

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

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

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

Order for Disclaimer.

Entry of disclaimer on the Register.

This Court doth order that the Register of Trade Marks be rectified by entering thereon a disclaimer of any right of Frederick Adolphus Burland to the exclusive use of the word "*Washerine*" in the Trade Mark, No. 77,935, and due notice of the said rectification is to be given to the Comptroller of Patents, Designs, and Trade Marks.

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

Trade Name and Passing-off.

Injunction against the use of a

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

¹ The injunction was made perpetual, and was upheld by the House of Lords, [1891] A. C. 217.

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

particular label.
Inquiry as to damages.
Costs.

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

Trade Mark and Passing-off.

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

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

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

Trade Mark Expunged.

This Court doth order that the Register of Trade Marks kept under the authority of the above-mentioned Act be rectified by expunging therefrom the above-mentioned trade mark, No. 87,030. And it is ordered that the said William Powell do pay to the said Birmingham Vinegar Brewery Co., Ltd., and to the Comptroller-General of Patents, Designs, and Trade Marks their costs of this application, to be taxed by the taxing master.

Removal of mark from Register.

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

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

Interlocutory Injunction. Trade Name of Goods.

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

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

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

Trade Name of Goods.

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

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

¹ Affirmed by the Court of Appeal, [1893] 2 Ch. 888 ; 10 R. P. C. 195 ; and by the House of Lords, [1894] A. C. 8 ; 11 R. P. C. 4.

² Affirmed on appeal, [1896] 2 Ch. 54 ; 13 R. P. C. 235, and by the House of Lords, [1897] A. C. 710 ; 14 R. P. C. 720.

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

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

Trade Name of Goods and Passing-off.

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

Exception.

Injunction against selling excepted goods under name without distinguishing;

and from referring to recipe.

Similar injunctions and exception as to another name;

and from referring to recipe without a particular statement.

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

apply to extend or vary the terms of the said injunctions, having regard to the result of any further proceedings in France relating to the said agreement dated the 9th of July, 1842.

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

Trade Marks Expunged.

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

Order expunging marks.

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

Trade Name of Goods.

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

Injunction to restrain use of word without clearly distinguishing.

24. KYNOCH & Co.'s TRADE MARK, 14 R. P. C. 905 (1897), Kekowich, J.

Order to proceed with Registration.

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

Order to proceed with registration.

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

Trade Name.

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

Injunction restraining liquidator from selling name.

¹ See 18 R. P. C. 97.

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

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

³ See note (2).

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

Potter, William Alfred Phillips, Arthur Joshua Eastmead, and Louis Marius Pinet, and Maison Pinet, Ltd., Frederick William Shepherd, and Walter Kelsey, be perpetually restrained from using the said name *Pinet*, or any such title or description as aforesaid, in such connection as aforesaid, and from doing any other act or thing conferring, or purporting to confer, either directly or indirectly, upon any other person or persons any right to use the said name or other such title or description as aforesaid, in such connection as aforesaid, and from selling or offering for sale any boots or shoes not of the plaintiff's manufacture under the name of "*Pinet's Special Boots and Shoes*," or "*Pinet's Boots and Shoes*."

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

Trade Name and Passing-off.

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

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

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

Trade Name and Passing-off.

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

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

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