

28. J. & J. CASH, LTD. v. CASE, 18 R. P. C. 220; 19 R. P. C. 186 (1902), C. A.<sup>1</sup>

*Trade Name.*

An injunction to restrain the defendant, *Joseph Cash*, from selling any frillings or woven names or initials not manufactured by the plaintiffs as "*Cash's Frillings*" or "*Cash's Woven Names*" or "*Initials*," and from carrying on the business of a manufacturer or seller of frillings or woven names or initials under the name of "*Joseph Cash & Co.*" while not in partnership with any other person, and from carrying on any such business either in the name of "*Cash*" or under any style in which the name "*Cash*" appears without taking reasonable precautions to clearly distinguish the business carried on and the frillings and woven names and initials manufactured or sold by the defendant from the business carried on and the frillings and woven names and initials manufactured by the plaintiffs, and from carrying on any such business under any name or in any manner so as to mislead or deceive the public into the belief that the business of the defendant, or the frillings or woven names or initials manufactured or sold by him, are the business of or goods manufactured by the plaintiffs, or that the defendant is carrying on the business formerly carried on at Coventry by Messrs. J. & J. Cash, the vendors to and predecessors in business of the plaintiffs; an injunction to restrain the defendant from making over his business in frillings or woven names or initials to, or acting as managing director of, any limited or other company formed to carry on business in frillings or woven names or initials, and having a name which is calculated or likely to mislead or deceive the public into the belief that the business, frillings, or woven names or initials of such company are the business, frillings, or woven names or initials of the plaintiffs, or that such company is carrying on the business formerly carried on at Coventry by the said Messrs. J. & J. Cash, and from otherwise assisting any such company to so mislead or deceive the public. (An injunction against soliciting was also granted with the costs of the action, and, the defendant alleging that an interlocutory injunction which had been granted was wider than that granted at the trial, he was to be at liberty to apply for an inquiry as to damages sustained by reason of the interim order.)<sup>2</sup>

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

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

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

*Trade Mark. Infringement by Stamping.*

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

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

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

*Trade Name. Injunction against Signatories of Memorandum of Association.*

"This Court doth order and adjudge that the defendants, the Panhard-Levassor Motor Co., Ltd.," and the seven other defendants, naming them, "their servants or agents, be perpetually restrained from using the names of Panhard and

Injunction restraining defendants from using certain names in connection with motor cars; and restraining certain defendants from

<sup>1</sup> The order made by Kekewich, J., restrained the defendant from carrying on business of a manufacturer or seller of frillings or woven names or initials under the name of Joseph Cash & Company, or under the name of

"Cash." For these words the Court of Appeal substituted the words in italics.

<sup>2</sup> There were special reasons for not granting the inquiry at the trial. See the report.



allowing defendant company to remain registered under its name.

Levassor, or either of them, or any title or description including those names, or either of them, or otherwise colourably resembling the name of the plaintiffs, in connection with the manufacture, use, or sale of or other dealing in, motor cars or parts thereof." And it was ordered that the seven defendants (other than the company), naming them, "do not allow the defendant company to remain registered under its present name, or any such title or description as aforesaid."

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

*Alteration of Trade Mark.*

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

"The applicants by their counsel undertaking to supply the Comptroller-General of Patents, Designs and Trade Marks<sup>1</sup> with a block of the mark as altered,<sup>2</sup> this Court doth order that the register of trade marks be rectified by altering the registration of the above-mentioned trade mark No. 3,411, in the following respects—that is to say, by adding the word 'Limited' after the name 'J. T. Davenport' where the same first appears on the said trade mark, and by substituting the words 'Manufacturers,' 'Chemists,' and 'Pharmacutists' for the words 'Manufacturer,' 'Chemist,' and 'Pharmaceutist,' respectively, and by substituting the address, 117, Union Street, London, S.E., England, for the address which now appears on the said trade mark, and by inserting the word 'Late' before the words 'Duke of Cambridge' and omitting the word 'Government' therefrom, so that the said trade mark as altered may be as shown by the exhibit marked A3, referred to in the said affidavit of Horace Davenport. And it is ordered, that due notice of this order may be given to the said Comptroller by serving a copy of this order upon the said Comptroller or by leaving the same with a clerk at the office of the said Comptroller, and at the same time producing a duplicate of this order duly passed and entered."<sup>3</sup>

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

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

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

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

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

*Infringement of Trade Mark. Certificate of Validity.*

Certificate of validity of trade mark having come into question.

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

Damages and costs.

Injunction

It is this day adjudged that the plaintiffs recover from the defendants one shilling damages and costs on the High Court scale to be taxed, and it is further ordered and adjudged that the defendants, their servants and agents, be and are

<sup>1</sup> Now called the Registrar of Trade Marks.

<sup>2</sup> See now Rule 94, p. 731.

<sup>3</sup> See now Rule 129, p. 736.

<sup>4</sup> Query, whether the certificate

should not state that the question of validity was decided in favour of the proprietor of the trade mark, sec. 46, above, p. 681.

hereby restrained from infringing the registered trade marks of the plaintiffs, No. 258,116 in Class 42, and No. 258,117 in Class 50, consisting of or comprising the letters "M.A.J.O."

restraining infringement of trade marks.

34. WARWICK TYRE CO., LTD. v. NEW MOTOR AND GENERAL RUBBER CO., LTD.,  
27 R. P. C. 171 (1910), Neville, J.

*Injunction against use of Trade Name of Goods. Delivery up.*

Injunction restraining the defendants, their directors and servants and agents, "from selling or offering for sale motor tyres as 'Warwick' tyres or using the word 'Warwick' in connection with the sale or offering for sale of motor tyres in such a way as to lead to the belief that the defendants' motor tyres are motor tyres of the plaintiff company. And it is ordered that the defendants do deliver up to the plaintiffs all advertisements and tyres in their possession or power which are in contravention of this injunction, or delete therefrom any statement which offends against this injunction."

Injunction restraining defendants from selling motor tyres as "Warwick Tyres."

Order for delivery up or deletion.

35. APPLICATION BY THE ITALA FABBRICA DI AUTOMOBILI, 27 R. P. C. 497 (1910),  
Parker, J.

*Order of the Court under Section 9, Paragraph 5.*

"This Court doth declare, that, for the purpose of the application to the Registrar of Trade Marks, the mark applied for by the said application is to be deemed a distinctive one within section 9, sub-section 5, of the Trade Marks Act, 1905. And this Court doth order that the Registrar of Trade Marks do accept the application No. 298,862 by the Itala Fabbrica di Automobili to register a trade mark and proceed with the same accordingly. And it is ordered that the Itala Automobiles, Ltd., do pay to the Registrar of Trade Marks and to the Itala Fabbrica di Automobili their costs of this motion to be taxed by the Taxing Master."

Order declaring that a word mark is to be deemed a distinctive mark;

and that the Registrar accept the application and proceed with the same.

36. CARS v. BLAND LIGHT SYNDICATE, LTD., 28 R. P. C. 33 (1911), Warrington, J.

*Injunction against Trade Libel.*

An injunction to restrain the defendant company, its directors, servants, and agents, "from making or publishing statements or communications to customers of the plaintiff, purchasers or others, calculated to prevent, prejudice, or damage, or from in any manner interfering with, the sale by the plaintiff of gas burners or any other articles and goods manufactured, imported, sold, or dealt in by the plaintiff."

Injunction against publication of statements calculated to damage the sale of the plaintiff's goods.

37. LLOYD'S v. LLOYD'S (SOUTHAMPTON), LTD., 29 R. P. C. 439 (1912), C. A.

*Interlocutory Injunction to restrain the use of Trade Name.*

An injunction to restrain the defendants "from carrying on business under the name of 'Lloyd's (Southampton), Ltd.,' or any other name calculated to induce the belief that the defendants' business is the business of, or an agency, branch, or department of the business of the plaintiffs Lloyd's."

Injunction against use of name calculated to lead to the belief that the defendants' business was a branch of the plaintiffs' business.

38. LIQUID VENEER CO., LTD. v. SCOTT, 29 R. P. C. 639 (1912), Swinfen-Eady, J.

*Interlocutory Injunction against Divulging or Using Secret Process.*

An injunction to restrain the defendants and their respective servants and agents until the trial of the action or further order—(1) From publishing or divulging to any person a secret process for the manufacture of a polish or liquid veneer in breach of their former contract of employment with and the confidence reposed in them by the plaintiffs, and from using any secret or confidential

Injunction to restrain the defendants from



divulging a secret process; and from manufacturing in accordance with the secret process; and selling goods as and for the plaintiffs' goods; and from representing that the plaintiffs had ceased to sell such goods and had gone out of business.

information or list of the plaintiffs' customers acquired or made by them in the course of such employment, or acting in any other way in breach of their former contract of employment with and of the confidence reposed in them by the plaintiffs; (2) from manufacturing a polish called "Elve" or any other substance in accordance with the plaintiffs' secret process or in any way making use of the plaintiffs' secret process or any other information or list acquired or made by the defendants, John Thomas Scott, Cecil Douglas Clack, and Barnett Barnett, while in the employ of the plaintiffs, and from selling or otherwise dealing in the said polish called "Elve" or any other polish manufactured in accordance with the plaintiffs' process or any variation thereof; and (3) from selling or dealing in any polish not of the manufacture or merchandise of the plaintiffs as and for the plaintiffs, or in bottles, boxes, or wrappers which are a colourable imitation of the plaintiffs', and from representing in any way that the plaintiffs have ceased to sell their liquid veneer, and have gone or are intending to go out of business.

## APPENDIX XIII.

### ORDERS IN COUNCIL APPLYING THE PROVISIONS AS TO INTERNATIONAL AND COLONIAL ARRANGEMENTS, FOREIGN STATES AND BRITISH POSSESSIONS.<sup>1</sup>

#### COLONIAL ARRANGEMENTS.

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

#### INTERNATIONAL ARRANGEMENTS.<sup>3</sup>

Foreign State.	Date of Order in Council.	Statutory Rules and Orders.
Austria Hungary... ..	17 May, 1909 ... ..	No. 585 of 1909.
Belgium ... ..	26 June, 1884 ... ..	Vol. 5, p. 142.
Brazil ... ..	26 June, 1884 ... ..	Vol. 5, p. 142.
Cuba ... ..	12 Jan., 1905 ... ..	1905, p. 270, No. 10.
Denmark (including the Faroe Islands) } ... ..	20 Nov., 1894 ... ..	1894, p. 56, No. 542.
Dominican Republic ... ..	21 Oct., 1890 ... ..	1890, p. 887.
*Ecuador... ..	16 May, 1893 ... ..	1893, p. 65.
France (with Algeria and Colonies) } ... ..	26 June, 1884 ... ..	Vol. 5, p. 142.
Germany ... ..	9 Oct., 1903 ... ..	1903, p. 1170, No. 867.
*Greece ... ..	15 Oct., 1894 ... ..	1894, p. 57, No. 234.
*Honduras ... ..	26 Sept., 1901 ... ..	1901, p. 320, No. 799.
Italy ... ..	26 June, 1884 ... ..	Vol. 5, p. 142.
Japan ... ..	7 Oct., 1899 ... ..	1899, p. 964, No. 759.
Mexico ... ..	28 May, 1889 ... ..	Vol. 5, p. 146.
Netherlands ... ..	26 June, 1884 ... ..	Vol. 5, p. 142.
Netherlands (East Indian Colonies) } ... ..	17 Nov., 1888 ... ..	Vol. 5, p. 145.
Netherlands (Curaçao and Surinam) } ... ..	17 May, 1890 ... ..	1890, p. 886.
Norway ... ..	See Sweden.	
*Paraguay ... ..	24 Sept., 1886 ... ..	Vol. 5, p. 144.

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

<sup>2</sup> Consequent on the Order in Council applying the section to the Commonwealth of Australia, the Orders in Council relating to Queensland and Western Australia were revoked on

March 26th, 1907, and that relating to Tasmania on August 12th, 1907.

<sup>3</sup> As to Guatemala, Salvador, and Ecuador, see p. 819. Those countries &c., marked \* (including Ecuador) are not parties to the International Convention, but similar arrangements exist between them and Great Britain for the mutual protection of trade marks.

INTERNATIONAL ARRANGEMENTS <sup>1</sup>—*continued.*

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

## PLACES UNDER BRITISH JURISDICTION.

Penalties on British subjects committing offences against the Patents, &c. Acts, 1883 to 1888.<sup>2</sup>

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

<sup>1</sup> See note (3), previous page.

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

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

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

patents, &c.

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



## APPENDIX XIV.

### THE INTERNATIONAL CONVENTION.<sup>1</sup>

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

*Signed at Paris, March 20th, 1883.*

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

(Translation.)

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

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

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

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

<sup>1</sup> Further articles were agreed upon at the Conference at Rome in 1886 (see Parliamentary Paper, C.—4837), but were never ratified. The articles printed below, p. 820, were agreed upon at the Conference at Madrid in 1889, and they were duly ratified by Great Britain, Spain, France, Switzerland, and Tunis. The articles printed below, p. 821, were not ratified by Great Britain. Amendments of the Convention were made by the Brussels Act of December 14th, 1900. These are italicised or are referred to in the notes. Serbia and

the Dominican Republic have not ratified the Brussels Act. The Convention was revised at Washington in 1911, subject to ratification not later than April 1st, 1913. Considerable amendments were made. The Convention as so revised is printed below, p. 823, with the names of the countries which have ratified it.

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

trade mark." (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i., 1897, p. 186.) It was impossible to compel these countries to alter the basis of their legislation. Hence Art. IV. gave persons interested the necessary time to register their marks in all the States of the Union before another could anticipate them. See note to Art. IV.

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

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

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

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

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

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

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

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

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

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

Forfeiture for importation is unknown to English law.

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

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

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



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

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

See also note to Art. 4 of the Final Protocol, post, p. 817. This article has undergone considerable alteration at Washington, see p. 824.

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

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

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

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

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

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

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

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

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

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

See note to Art. IX.

**ART. XB.** *Persons resorting to the countries referred to in the convention*

*(Arts. II. and III.) shall enjoy in all States of the Union, the protection accorded to natives against dishonest competition.*

ART. XI. The high contracting parties agree to grant *in conformity with the legislation of each country* temporary protection to patentable inventions, to industrial designs or models, and trade marks, for articles exhibited at official or officially recognised international exhibitions *held in the territory of one of them.*

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

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

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

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

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

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

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

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

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

ART. XVII. The execution of the reciprocal engagements contained in the present Convention is subordinated, in so far as necessary, to the observance of the formalities and rules established by the constitutional laws of those of the high contracting parties who are bound



to procure the application of the same, which they engage to do with as little delay as possible.

ART. XVIII. The present Convention shall come into operation one month after the exchange of ratifications, and shall remain in force for an unlimited time, till the expiry of one year from the date of its denunciation. This denunciation shall be addressed to the Government commissioned to receive adhesions. It shall only affect the denouncing State, the Convention remaining in operation as regards the other contracting parties.

[Here follows the Signatures.]

### Final Protocol.

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

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

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

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

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

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

<sup>1</sup> Article 3B relates to compulsory working of patents.

<sup>2</sup> The expressions "in regard to the signs composing it" and "only to the form of the mark" were, no doubt, used because special attention was directed to name marks, which at that time were not considered as marks in a certain number of States. At present the majority of States do recognise names

as marks, but with all kinds of restrictions which tend to destroy the effect of the concession. (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i. (1897), p. 144.)

<sup>3</sup> The object of clause 4 has been suggested to be to protect word marks in countries where the local law did not admit them. (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i. (1897), p. 141.) On the other hand, the view has been put

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

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

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

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

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

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

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

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

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

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

forward (*ib.*) that, under the last paragraph of this clause, States may refuse, as "contrary to public order," marks which, whilst apparently mere fancy

names, consist of a new name of the product, or words descriptive of it, and those which are more or less likely to lead to mistakes. (*Sed quære?*)



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

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

The Director of the International Office will be present at the meetings of the Conferences, and will take part in the discussions but without the privilege of voting.

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

The official language of the International Office will be French.

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

[*Here follow the signatures.*]

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*Accessions and Withdrawals.<sup>1</sup>*

Austria Hungary acceded January 1, 1909.<sup>2</sup>

Australia acceded August 5, 1907.

Ceylon acceded April 12, 1905.

Cuba acceded September 22, 1904.

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

Dominican Republic acceded December 8, 1884.

Ecuador acceded December 21, 1883, but withdrew February 27, 1886.<sup>1</sup>

Germany acceded May 1, 1903.

Greece, declaration October 15, 1894.

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

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

New Zealand acceded September 7, 1891.

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

Sweden acceded June 18, 1885.

Trinidad and Tobago acceded May 14, 1908.

United States acceded May 30, 1887.

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<sup>1</sup> See the list printed at p. 811, where the list of British Possessions to which the Convention is now applicable will also be found.  
<sup>2</sup> See the law of December 29th, 1908.

ARRANGEMENT BETWEEN GREAT BRITAIN, SPAIN, FRANCE, SWITZERLAND, PORTUGAL, AND TUNIS, FOR THE PREVENTION OF FALSE INDICATIONS OF ORIGIN OF GOODS.<sup>1</sup>

*Signed at Madrid, April 14, 1891.*

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

*Revised at Washington, 1911.*

(Translation.)

*The undersigned Plenipotentiaries of the States hereinafter enumerated, In view of Article XV. of the International Convention of the 20th March, 1883, for the protection of industrial property,*

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

[The undersigned duly authorised by their respective governments have drawn up in common accord the following text, which shall be substituted for the arrangement signed at Madrid on April 14, 1891, that is to say:—]

ART. I. All goods bearing a false indication of origin, in which one of the Contracting States [countries], or a place situated therein, shall be directly or indirectly indicated as being the country or place of origin, shall be seized on importation into any of the said States [countries].

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

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

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

ART. II. The seizure shall take place at the request either of the proper Government Department [or of any competent authority, such for example, as the customs administration], or of an interested party, whether individual or society, in conformity with the domestic law of each State [country].

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

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

ART. IV. The tribunals of each country will decide what appellations, on account of their generic character, do not fall within the provisions of the present arrangement, regional appellations concerning

<sup>1</sup> The Arrangement is printed as revised at Washington in 1911, subject to ratification; the words struck out on such revision being shown in italics and the words inserted being within brackets. Portugal did not ratify the original Arrangement, but has ratified

the Arrangement as revised, which has also been ratified by the other above-mentioned countries. Great Britain has under Article V. notified the accession of New Zealand to the revised Arrangement.



the origin of products of the vine being, however, not comprised in the reserve provided for by the present article.

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

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

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

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

[ART. VI. The present arrangement shall be ratified and the ratifications shall be deposited at Washington not later than April 1, 1913.

It shall come into force one month after the expiration of this period and shall have the same force and duration as the general Convention.]

## ARRANGEMENT RELATING TO THE INTERNATIONAL REGISTRATION OF TRADE MARKS.<sup>1</sup>

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

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

ART. III. The International Office shall immediately register marks applied for, in accordance with Article I. It shall notify such registration to the contracting States. The marks registered shall be

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

land, and Tunis. It applies also to the respective colonies of the Contracting States mentioned as forming part of the General Union of 1883. Great Britain did not sign, see above, p. 813.

published in a supplement to the journal of the International Office, by means of a drawing or a description in the French language provided by the applicant.

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

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

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

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

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

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

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

ART. VIII. The administration of the country of origin shall fix at its pleasure, and shall raise for its own profit, a fee which it may demand from the owner of the mark for which international registration is applied for.

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

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

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

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

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



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

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

*Final Protocol.*

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

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

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THE INTERNATIONAL CONVENTION AS REVISED  
AT WASHINGTON, 1911.<sup>1</sup>

ART. I. The Contracting Countries constitute themselves into a Union for the protection of Industrial Property.

ART. II. The subjects or citizens of each of the Contracting Countries shall, in all the other countries of the Union, as regards patents, utility models, industrial designs or models, trade marks and trade names, indications of origin, and the suppression of unfair competition, enjoy the advantages that their respective laws now grant or may hereafter grant to their own subjects or citizens. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the conditions and formalities imposed on native subjects or citizens. No obligation as to the possession of a domicile or establishment in the country where protection is claimed shall be imposed on those who enjoy the benefits of the Union.

ART. III. Subjects or citizens of countries not forming part of the Union, who are domiciled or have real and effective industrial or commercial establishments in the territory of any of the countries of the

<sup>1</sup> The list of contracting countries which have ratified the revised Convention will be found below on p. 829.

Union shall be assimilated to the subjects or citizens of the Contracting Countries.

ART. IV.—(a.) Any person who has duly applied for a patent, the registration of a utility model, industrial design or model, or trade mark in one of the Contracting Countries, or his legal representative or assignee, shall enjoy for the purposes of registration in other countries, and reserving the rights of third parties, a right of priority during the periods hereinafter stated.

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

(c.) The above-mentioned periods of priority shall be twelve months for patents and utility models, and four months for industrial designs and models and trade marks.

(d.) Any person desiring to take advantage of the priority of a previous application must make a declaration giving particulars as to the date of such application and the country in which it was made. Each country will determine for itself the latest date at which such declaration must be made. The particulars referred to shall be stated in the publications issued by the competent authority and in particular in the patents issued, and the specifications relating thereto. The Contracting Countries may require any person making a declaration of priority to produce a copy of the application (with the specification, drawings, &c.) previously made, certified as correct by the authority by whom it was received. Such copies shall not require any legal authentication. They may also require that the declaration shall be accompanied by a certificate from the proper authority showing the date of the application, and also by a translation. No other formalities may be required for the declaration of priority at the time of application. Each of the Contracting Countries shall decide for itself what consequences shall follow the omission of the formalities prescribed by the present Article, but such consequences shall in no case be more serious than the loss of the right of priority.

(e.) At later stages further proof in support of the application may be required.

ART. IV. (*bis*) relates only to patents.

ART. V. relates only to patents.

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

Nevertheless, the following marks may be refused or cancelled:—

(1.) Those which are of such a nature as to prejudice rights acquired by third parties in the country in which protection is applied for.

(2.) Those which have no distinctive character, or which consist exclusively of signs or indications which serve in trade to designate the kind, quality, quantity, destination, value, place of origin or date of production, or which have become customary in the current language, or in the *bonâ fide* and unquestioned usages of the trade of the country in which protection is sought.



In arriving at a decision as to the distinctiveness of the character of a mark, all the circumstances of the case must be taken into account, and in particular the length of time that such a mark has been in use.

(3.) Those which are contrary to morality or public order.

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

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

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

ART. VII. (*bis*). The Contracting Countries undertake to allow the registration of and to protect trade marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment.

Nevertheless, each country shall be the sole judge of the particular conditions on which an association may be allowed to obtain protection for its marks.

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

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

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

Seizure shall be effected equally in the country where the mark or name was illegally applied, or in the country to which the article bearing it may have been imported.

The seizure shall take place at the request either of the proper Government Department or of any other competent authority, or of any interested party whether individual or society, in conformity with the domestic law of each country.

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

If the law of any country does not admit either of seizure upon importation, of prohibition of importation, or of seizure within the country, these measures shall be replaced by the remedies assured in such case to natives by the law of such country.

ART. X. The stipulations of the preceding Article shall be applicable to every production which may falsely bear as indication of origin the name of a specified locality, when such indication shall be joined to a trade name of a fictitious character or used with intent to defraud.

Any producer, manufacturer, or trader engaged in the production, manufacture, or trade of such goods, and established either in the locality falsely designated as the place of origin, or in the district where the locality is situated, is to be deemed a party concerned.

ART. X (*bis*). All the Contracting Countries undertake to assure to those who enjoy the benefits of the Convention effective protection against unfair trade competition.

ART. XI. The Contracting Countries shall, in conformity with the legislation of each country, accord temporary protection to patentable inventions, to utility models and to industrial designs or models, as well as to trade marks, in respect of products which shall be exhibited at official or officially recognised international exhibitions held in the territory of one of them.

ART. XII. Each of the Contracting Countries agrees to establish a special Government Department for industrial property and a central office for the communication to the public of patents, utility models, industrial designs or models and trade marks.

This Department shall, as far as possible, publish an official periodical paper.

ART. XIII.—The International Office, established at Berne under the name "Bureau International pour la Protection de la Propriété industrielle," is placed under the high authority of the Government of the Swiss Confederation, which is to regulate its organisation and supervise its working.

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

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

The International Office shall at all times hold itself at the service of members of the Union, in order to supply them with any special information they may need on questions relating to the international system of Industrial Property. It will furnish an annual report on its working which shall be communicated to all the members of the Union.

The official language of the International Office will be French.

The expenses of the International Office will be borne by the Contracting Countries in common. In no case may they exceed the sum of 60,000 francs per annum.

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

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



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

Each of the Contracting Countries shall designate at the time of its adherence the class in which it wishes to be placed.

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

ART. XIV. The present Convention shall be submitted to periodical revisions with a view to the introduction of amendments calculated to improve the system of the Union.

For this purpose, Conferences shall be held successively, in one of the Contracting Countries, between the delegates of the said countries.

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

The Director of the International Office will be present at the meetings of the Conferences and will take part in the discussions but without the privilege of voting.

ART. XV. It is agreed that the Contracting Countries respectively reserve to themselves the right to make separately as between themselves, special arrangements for the protection of Industrial Property in so far as such arrangements do not contravene the provisions of the present Convention.

ART. XVI. Countries which are not parties to the present Convention shall be allowed to accede to it upon their request.

The accession shall be notified through the diplomatic channel to the Government of the Swiss Confederation, and by the latter to all the other countries.

It shall entail, as a matter of right, accession to all the clauses, as well as admission to all the advantages stipulated in the present Convention, and shall take effect one month after the dispatch of the notification by the Government of the Swiss Confederation to the other countries of the Union, unless a subsequent date has been indicated by the acceding country.

ART. XVI. (*bis*). The Contracting Countries have the right of acceding to the present Convention at any time on behalf of their Colonies, Possessions, Dependencies and Protectorates or of any of them.

For this purpose they may either make a general declaration including all their Colonies, Possessions, Dependencies and Protectorates in the accession, or may expressly name those included or may confine themselves to indicating those which are excluded therefrom.

This declaration shall be notified in writing to the Government of the Swiss Confederation and by the latter to all the other countries.

Under the same conditions the Contracting Countries may denounce the Convention on behalf of their Colonies, Possessions, Dependencies and Protectorates, or of any of them.

ART. XVII. The execution of the reciprocal engagements contained in the present Convention is subordinated, in so far as necessary, to

the observance of the formalities and rules established by the Constitutional laws of those of the Contracting Countries, who are bound to procure the application of the same, which they engage to do with as little delay as possible.

ART. XVII. (*bis*). The Convention shall remain in force for an unlimited time, till the expiry of one year from the date of its denunciation.

This denunciation shall be addressed to the Government of the Swiss Confederation. It shall only affect the denouncing Country, the Convention remaining in operation as regards the other Contracting Countries.

ART. XVIII. The present Act shall be ratified and the ratifications deposited at Washington not later than April 1, 1913. It shall come into force, as between the countries which ratify it, one month after the expiration of that period.

This Act, with its Final Protocol, shall replace as regards relations between the countries who ratify it: the Convention of Paris of March 20, 1883, the Final Protocol annexed to that Act; the Protocol of Madrid of April 15, 1891, regarding the endowment of the International Office and the Additional Act of Brussels of December 14, 1900. The above-mentioned Acts shall, however, remain in force as regards relations with countries which have not ratified the present Act.

ART. XIX. The present Act shall be signed in a single copy, which shall be deposited in the archives of the Government of the United States. A copy, certified as correct, shall be forwarded by the latter to each of the Governments of the Union.

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### FINAL PROTOCOL.

On proceeding to the signature of the Act concluded this day, the undersigned Plenipotentiaries have agreed as follows:—

#### To ARTICLE I.

The words "Industrial Property" are to be taken in their broadest sense: they extend to all productions of the agricultural industries (wines, corn, fruits, cattle, &c.) and of the mining industries (minerals, mineral waters, &c.).

#### To ARTICLE II.

(a.) Under the word "patents" are comprised the various kinds of industrial patents recognised by the legislation of each of the Contracting Countries, such as importation patents, improvement patents, &c., whether for processes or for products.

(b.) It is understood that the provision of Article II. which exempts the subjects or citizens of the Union Countries from the obligation as to the possession of a domicile and establishment is of the nature of an interpretation, and is consequently to apply to all rights resulting from the Convention of March 20, 1883, before the present Act comes into operation.



(c.) It is understood that the provision of Article II. does not affect the legislation of each of the Contracting Countries, as regards the procedure to be followed before the Tribunals and the competence of those Tribunals, as well as provisions as to the election of domicile or appointment of an authorised agent which may be laid down in laws as to patents, utility models, trade marks, &c.

#### TO ARTICLE IV.

It is understood that when an industrial design or model is registered in a country in virtue of a right of priority based on the registration of a utility model, the period of priority shall not exceed that fixed by Article IV. for industrial designs and models.

#### TO ARTICLE VI.

It is understood that the provision of the first paragraph of Article VI. does not exclude the right of requiring from the person registering the mark a certificate proving due registration in the country of origin, issued by the competent authority.

It is understood that the use of public armorial bearings, insignia or decorations, unless authorised by the competent authorities, or the use of official hall marks or signs indicating an official warranty which may be adopted by a Union Country may be regarded as contrary to public order in the sense of No. 3 of Article VI.

Marks containing a reproduction of public armorial bearings, decorations or insignia, with the authorisation of the competent authorities shall not, however, be considered as contrary to public order.

It is understood that a mark cannot be considered as contrary to public order solely on the ground that it does not conform to some provision of the Trade Marks Laws, unless such provision itself relates to public order.

The present Final Protocol which shall be ratified at the same time as the Act concluded on this day shall be considered as forming an integral part of and shall have the same force, validity, and duration as the said Act.<sup>1</sup>

<sup>1</sup> The following countries have ratified the revised Convention and the Final Protocol, namely, Great Britain, Germany, Italy, Japan, Netherlands, San Domingo, Austria and Hungary, Spain, United States of America, Franco (for self and Tunis), Mexico,

Norway, Portugal, and Switzerland. Great Britain has under Article XVI. (bis) notified the Swiss Federal Government of the accession to the revised Convention of New Zealand and the Colonies of Ceylon and Trinidad and Tobago.

## APPENDIX XV.

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### TREATY WITH THE UNITED STATES.

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

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

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

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

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

DERBY.

EDWARD PIERREPONT.



## APPENDIX XVI.

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### THE UNITED STATES TRADE MARKS ACT, 1905.<sup>1</sup>

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

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

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

<sup>1</sup> This Act has been amended by Acts of 1906, 1907, and 1913; see below, p. 833.

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

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

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

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

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

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

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



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

5.<sup>1</sup> That no mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade mark on account of the nature of such mark unless such mark—

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

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States or any simulation thereof, or of any State or municipality or of any foreign nation, or of any design or picture that has been or may hereafter be adopted by any fraternal society as its emblem, or of any name, distinguishing mark, character, emblem, colors, flag, or banner adopted by any institution, organisation, club, or society which was incorporated in any State in the United States prior to the date of the adoption and use by the applicant; *Provided, That said name, distinguishing mark, character, emblem, colors, flag, or banner was adopted and publicly used by said institution, organisation, club, or society prior to the date of adoption and use by the applicant: Provided, That trade marks which are identical with a registered or known trade mark owned and in use by another and appropriated to merchandise of the same descriptive properties, or which so nearly resemble a registered or known trade mark owned and in use by another and appropriated to merchandise of the same descriptive properties as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers shall not be registered: Provided, That no mark which consists merely in the name of an individual, firm, corporation, or association, not written, printed, impressed, or woven in some particular or distinctive manner, or in association with a portrait of the individual, or merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, or merely a geographical name or term, shall be registered under the terms of this act: Provided further, That no portrait of a living individual may be registered as a trade mark except by the consent of such individual, evidenced by an instrument in writing: And provided further, That nothing herein shall prevent the registration of any mark used by the applicant or his predecessors, or by those from whom title to the mark is derived, in commerce with foreign nations or among the several States or with Indian tribes which was in actual and exclusive use as a trade mark of the applicant, or his predecessors from whom he derived title, for ten years next preceding February twentieth, nineteen hundred and five: Provided further, That nothing herein shall prevent the registration of a trade mark otherwise registrable because of its being the name of the applicant or a portion thereof.*

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

<sup>1</sup> This section is printed as amended by the Act of 1913, the additions to the original section being shown in italics. The Act of 1907 introduced the words:

"Or of any design or picture that has been or may hereafter be adopted by any fraternal society as its emblem."

<sup>2</sup> Sec. 6 is slightly amended by the

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

Whenever application is made for the registration of a trade mark which is substantially identical with a trade mark appropriated to goods of the same descriptive properties, for which a certificate of registration has been previously issued to another, or for registration of which another has previously made application, or which so nearly resembles such trade mark, or a known trade mark owned and used by another, as, in the opinion of the Commissioner, to be likely to be mistaken therefor by the public, he may declare that an interference exists as to such trade mark, and in every case of interference or opposition to registration he shall direct the examiner in charge of interferences to determine the question of the right of registration to such trade mark, and of the sufficiency of the objections to registration, in such manner and upon such notice to those interested as the Commissioner may by rule prescribe.

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

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

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

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

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

12. That a certificate of registration shall remain in force for twenty years, except that in the case of trade marks previously registered in a foreign country such certificates shall cease to be in force on the day on which the trade mark ceases to be protected in such foreign country, and shall in no case remain in force more than twenty years, unless renewed. Certificates of registration may be, from time to time, renewed for like periods on payment of the renewal fees required by

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



this Act, upon request of the registrant, his legal representatives, or transferees of record in the Patent Office, and such request may be made at any time not more than six months prior to the expiration of the period for which the certificates of registration were issued or renewed. Certificates of registration in force at the date at which this Act takes effect shall remain in force for the period for which they were issued, but shall be renewable on the same conditions and for the same period as certificates issued under the provisions of this Act, and when so renewed shall have the same force and effect as certificates issued under this Act.

13. [This section provides for rectification of the Register by the cancellation of a registered trade mark. The trade mark may be cancelled if the registrant was not entitled to the use of the mark at the date of his application for registration, or on the ground of non-user, or abandonment. An application may be made by any person who shall deem himself injured by the registration.]

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

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

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

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

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

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

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

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

16. That the registration of a trade mark under the provisions of this Act shall be *primâ facie* evidence of ownership. Any person who shall, without the consent of the owner thereof, reproduce, counterfeit, copy, or colourably imitate any such trade mark and affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration, or to labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registration, and shall use, or shall have used, such reproduction, counterfeit, copy, or colourable imitation in commerce among the several States, or with a foreign nation, or with the Indian tribes, shall be liable for an action for damages therefor at the suit of the owner thereof; and whenever in any such action a verdict is rendered for the plaintiff, the Court may enter judgment therein for

any sum above the amount found by the verdict as the actual damages according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs.

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

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

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

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

21. That no action or suit shall be maintained under the provisions of this Act in any case when the trade mark is used in unlawful business, or upon any article injurious in itself, or which mark has been used with the design of deceiving the public in the purchase of merchandise, or has been abandoned, or upon any certificate of registration fraudulently obtained.

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

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

24. [This section deals with pending applications.]

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

26. [Power to make rules and regulations.]

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



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

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

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

## APPENDIX XVII.

### THE COMMONWEALTH OF AUSTRALIA.

#### THE TRADE MARKS ACT, 1905—1912.

NOTE.—The Trade Marks Act, 1905, is here printed as amended by the Trade Marks Act, 1912 (No. 19 of 1912). The parts repealed are printed in italics and the additions made by the Act of 1912 are printed within square brackets.

#### TRADE MARKS ACT, 1905 (No. 20 of 1905).<sup>1</sup>

*An Act Relating to Trade Marks.*

[Assented to 21st December, 1905.]

#### [TRADE MARKS ACT, 1912 (No. 19 of 1912).

*An Act to Amend the Trade Marks Act, 1905.*

[Assented to 6th November, 1912.]

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

#### PART I.—INTRODUCTORY.

Short title.  
Act, 1912,  
s. 1.

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

[(1) This Act may be cited as the Trade Marks Act, 1912.

(2) The Trade Marks Act, 1905, as amended by section four of the Patents Trade Marks and Designs Act, 1910, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Trade Marks Act, 1905—1912.]

Commence-  
ment.

2. This Act shall commence on a day to be fixed by proclamation not less than four months after the passing of this Act.

Parts.

3. This Act is divided as follows :—

Part I.—Introductory.

Part II.—Administration.

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

Division 2.—The Transfer or the Administration of the State Trade Marks Acts.

Part III.—Registrable Trade Marks.

<sup>1</sup> The Regulations in force are Statutory Rules No. 122 of 1906, and No. 90 of 1907.



Part IV.—Registration of Trade Marks.

Division 1.—General.

Division 2.—Applications.

Division 3.—Opposition.

Division 4.—Registration and Effect of Registration.

Division 5.—Renewal of Registration.

Part V.—Assignment of Trade Marks.

Part VI.—The Register of Trade Marks.

Part VII.—Workers' Trade Marks.

Part VIII.—The Commonwealth Trade Mark.

Part IX.—Protection of Trade Marks.

Part X.—Miscellaneous.

4. In this Act, except where otherwise clearly intended—

Definitions.

“The Court” means the High Court or the Supreme Court of the State in which the Trade Marks Office is situate or a Justice thereof.

“The Law Officer,” means the Attorney-General or Crown Solicitor of the Commonwealth.

“Person” includes a body corporate and a firm and any association of persons bodies corporate or firms.

“The Register” means the Register of Trade Marks under this Act.

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

“The Registrar” means the Registrar of Trade Marks.

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

“This Act” includes all regulations made thereunder.

[“Mark” includes a device, brand, heading, label, ticket, mark, signature, word, letter, numeral, or any combination thereof: Act, 1912, s. 3.]

“Trade Mark” means 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 the trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale:

“Registrable Trade Mark” means a trade mark which is capable of registration under the provisions of this Act:

“Prescribed” means, in relation to proceedings before the Court, prescribed by Rules of Court, and in other cases, prescribed by this Act or the regulations under this Act.]

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

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

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

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

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

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

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

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

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

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

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

whichever first happens.

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

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

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

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

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

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

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

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

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

Unregistered trade marks in use in States.

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

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

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



had an application for its registration been made before the commencement of this Act.

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

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

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

[9a. (1.) On and after a date to be fixed by proclamation, this Act shall apply to the territory of Papua as if that territory were a part of the Commonwealth. Act, 1912, s. 4.

(2.) For the purposes of this section—

(a) any reference in this Act to a State shall be deemed to include a reference to the territory of Papua, and

(c) any reference in this Act to a State Trade Marks Act shall be deemed to include a reference to the Act or law of that territory relating to the registration of trade marks.]

## PART II.—ADMINISTRATION.

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

10. *The Minister for Trade and Customs or other the Minister for the time being administering the Department of Trade and Customs shall be charged with the execution of this Act.* Repealed, Act No. 19, 1910, s. 4.

[10. This Act shall be administered by the Attorney-General or such other Minister as the Governor-General directs.]

11. (1.) There shall be a Registrar of Trade Marks. Registrar. *Ib.* s. 10.

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

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

12. For the purposes of this Act an office shall be established which shall be called the Trade Marks Office, and a sub-office shall be established in every State other than the State in which the Trade Marks Office is established. Trade Marks Office. *Ib.* s. 12.

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

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

Transfer of administration.

Effect of transfer of administration.

*Ib.* ss. 18 and 19.

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

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

**PART III.—REGISTRABLE TRADE MARKS.**

Of what trade marks may consist.

Repealed, Act, 1912, s. 6.

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

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

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

Registrable trade marks. Act, 1912, s. 5.

[16. (1.) A registrable trade mark must contain or consist of at least one of the following essential particulars:—

- (a) The name of a company, individual, or firm represented in a special or particular manner;
- (b) The signature of the applicant for registration or some predecessor in his business;
- (c) An invented word or invented words;



(d) 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;

(e) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (a), (b), (c), and (d), shall not, except by order of the Registrar, Law Officer, or Court, be deemed a distinctive mark;

(2.) 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 Registrar, Law Officer, or Court 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.]

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

(a) *Any letters, words, or figures; or*

(b) *Any combination of letters, words, or figures, or of any of them.*

Repealed,  
Act, 1912,  
s. 6.

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

(a) *the words "Trade Mark," "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is Forgery" or words to the like effect; or*

(b) *a representation of the King, the Queen, or any member of the Royal Family, or of the Royal Crown.*

Repealed,  
Act, 1912,  
s. 7.

[18. Subject to the Regulations, the Registrar may refuse to register any trade mark which contains any of the following words or matters:—

(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; or

(b) the word "Royal" or any word of similar import, if the use of the word in the trade mark might lead people to think that the applicant had Royal or Government patronage, or authorisation; or

(c) any representation of the King, the Queen, or any member of the Royal Family; or

(d) any representation of the Royal Arms, or Royal Crests, or arms or crests so nearly resembling them as to be likely to lead to mistake, or of the Royal Crowns, or of the British National Flags; or

(e) any representation of the arms, flag, or seal of the Commonwealth or of any State; or

(f) any representation of the arms of any foreign State or country; or

(g) any representation of the arms or emblems of any city or town in the Commonwealth, or of any Commonwealth or State, public authority or public institution.]

Act, 1912,  
s. 7.  
Restriction  
on use of  
certain works  
in trade  
marks.

Repealed,  
Act, 1912,  
s. 7.

19. *A registrable trade mark must not contain—*

- (a) *the word "Royal" or any word, letter, or device, indicating Royal or Government patronage; or*
- (b) *a representation of the Royal Arms, or of the national flag of the United Kingdom, or of the flag of the Commonwealth, or of the national arms of the United Kingdom, or of the arms or seal of the Commonwealth or any State; or*
- (c) *a representation of any living person without his written consent.*

Repealed,  
Act, 1912,  
s. 7.

Cf. 5 Edw.  
VII. c. 15,  
s. 9.

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

Coloured  
trade marks.

Cf. 5 Edw.  
VII. c. 15,  
s. 10.

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

Standardisa-  
tion, &c.,  
trade marks.  
Cf. *ib.* s. 62.

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

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

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

#### PART IV.—REGISTRATION OF TRADE MARK.

##### DIVISION 1.—*General.*

Trade mark  
must be for  
particular  
goods.

Cf. *ib.* s. 8.

Disclaimers.

Cf. *ib.* s. 15.

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

24. (1.) *If a trade mark—*

- (a) *contains parts not separately registered by the proprietor as trade marks, or*
- (b) *contains matter common to the trade or otherwise of a non-distinctive character,*

*the Registrar or the Law Officer or the Court, in deciding whether the trade mark shall be entered or shall remain upon the Register, may in his or its discretion require, as a condition of its being upon the Register, that the proprietor shall disclaim any right to the exclusive*



use of any of those parts, or of that matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they think needful for the purpose of defining his rights under the registration.

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

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

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

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

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

[27. 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 been determined by the Court, or have been settled by agreement in a manner approved by him or (on appeal) by the Law Officer or the Court.]

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

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

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

What matters deemed common to trade.

Identical marks.

Amended by Act, 1912, s. 10.

Names, &c., of living persons.

Repealed, Act, 1912, s. 11.

Rival claims to identical marks.

Act, 1912, s. 11.

Concurrent user.

Cf. *ib.* s. 21.

Amended by Act, 1912, s. 12.

Associated trade marks.

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

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

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

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

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

Series of  
trade marks.  
Repealed,  
Act, 1912,  
s. 13.

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

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

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

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

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

[31. 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. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.]

#### DIVISION 2.—Applications.

Who may  
apply for  
registration.  
Cf. *ib.* s. 62.  
Form of  
application.

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

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

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

(b) state what are the essential particulars of his trade mark and

Amended by  
Act, 1912,  
s. 14.



*disclaim any right to the exclusive use of the matter added to the essential particulars of his trade mark; and*

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

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

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

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

Lodging of application.

(2.) Such application shall be forthwith referred by the Registrar to an examiner, who shall ascertain and report whether the trade mark is a registrable trade mark, and whether it is identical with a trade mark already on the Register under this Act or any State Trade Marks Act in respect of the like goods or class of goods, or so nearly resembles the latter trade mark as to be likely to deceive, and whether the trade mark or any matter therein is common to the trade.

Cf. *Patents Act, 1903*, ss. 33 & 36.

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

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

Appeal.

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

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

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

Appeal to Court.

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

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

Direct appeal by consent from Registrar to Court.

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

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

Advertisement.

Limit of time for proceeding with application.

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

### DIVISION 3.—*Opposition.*

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

Notice of opposition.

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

Address for service.

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

Notice to applicant.

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

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

Counter-statement by applicant.

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

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

Failure to lodge counter-statement.

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

Amended by Act, 1912, s. 16.

(3.) The Registrar shall send a duplicate of the counter-statement to the opponent.

Service of counter-statement.

42. (1.) The Registrar shall fix a day for the hearing of the application, and shall give notice thereof to the applicant and to the opponent.

Day of hearing.

(2.) On the day so fixed, or on any other day to which the hearing is adjourned, the Registrar shall hear the applicant and the opponent, and shall decide whether the application is to be refused or whether it is to be granted either with or without any modifications or conditions.

Hearing.

Appeal to Law Officer.

43. (1.) Any party aggrieved by the decision of the Registrar may in the time and in the manner prescribed appeal to the Law Officer.

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

(2.) The Law Officer shall hear the applicant and the opponent, and may determine whether the application ought to be refused or ought to be granted with or without any modifications or conditions.

Appeal to Court.

44. (1.) Any party aggrieved by the decision of the Law Officer may in the time and in the manner prescribed appeal to the Court.

(2.) The Court shall hear the applicant and the opponent, and determine whether the application ought to be refused or ought to be granted with or without any modifications or conditions.

Direct appeal from Registrar to Court.

45. If either party so desires and gives written notice thereof the appeal shall be taken direct from the Registrar to the Court without any appeal to the Law Officer.

Security for costs.

46. If a person giving notice of opposition or appeal does not reside in Australia, the Registrar Law Officer or the Court may order him to give security for costs, and if the order is not complied with the opposition or appeal shall be deemed to be abandoned.

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

Date of Registration.

47. When an application for registration has been accepted and has not been opposed and the time for notice of opposition has expired, or has been opposed and has been granted, the Registrar [unless otherwise prescribed by the regulations] shall register the trade mark as on the date of the lodging of the application, which date shall be deemed to be the date of the registration, and shall issue to the applicant a certificate of registration of the trade mark in the prescribed form.

Cf. 5 Edw. VII. c. 15, s. 16.

Amended by Act, 1912, s. 17.



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

Duration of Registration.  
*Ib.* s. 28.

49. (1.) Subject to this Act the person for the time being entered in the register as proprietor of a trade mark shall [subject to any rights appearing from the register to be vested in any other person] have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

Rights of registered proprietor.  
Cf. *ib.* s. 39.

(2.) No entry of any name shall affect the right of any owner of the same name to use it or its foreign equivalent.

Amended by Act, 1912, s. 18.

(3.) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

50. The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark upon the goods in respect to which it is registered and of the validity of the registration.

Repealed, Act, 1912, s. 19.

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

Repealed, Act, 1912, s. 19.

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

[50. Subject to the provisions of section fifty-one A 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 Registrar, the Law Officer or 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.

Act, 1912, s. 19.

5 Edw. VII. c. 15, s. 39.

[51. In all legal proceedings relating to a registered trade mark (including applications under section seventy-one 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.]

Registration to be *prima facie* evidence of validity.

Act, 1912, s. 19.

5 Edw. VII. c. 15, s. 40.

[51A. In all legal proceedings relating to a registered trade mark (including applications under section seventy-one of this Act) the original registration of such trade mark shall after the expiration of seven years from the date of the original registration be taken to be valid in all respects unless the original registration was obtained by

Registration to be conclusive after seven years.



Act, 1912,  
s. 19.  
5 Edw. VII.  
c. 15, s. 41.

fraud, or unless the trade mark offends against the provisions of section one hundred and fourteen 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 sections eight, nine, or twenty-eight of this Act.]

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

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

Infringe-  
ment.

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

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

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

User of name,  
address, or  
description of  
goods.

[53A. 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.

Act, 1912,  
s. 20, 5 Edw.  
VII. c. 15, s.  
44.

[53B. 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.

#### DIVISION 5.—*Renewal of Registration.*

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

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

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

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



56. Where a trade mark has been removed from the register for non-payment of the prescribed fee the Registrar may within three months from such removal if satisfied that it is just so to do restore such trade mark to the register on payment of the prescribed additional fee for renewal.

Restoration of trade mark removed for non-payment of renewal fee.

57. Where a trade mark has been removed from the register for non-payment of the fee for renewal, it shall, nevertheless, for the purpose of any application for registration during one year next after the date of the removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bankruptcy or liquidation of the proprietor of the trade mark, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark.

Cf. 3 Edw. VII. c. 15, s. 30.

Status of unrenewed trade mark.

Cf. *ib.* s. 31.

#### PART V.—ASSIGNMENT OF TRADE MARKS.

58. A trade mark when registered may be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or class of goods in respect of which it has been registered and shall be determinable with that goodwill.

Assignment and transmission of trade marks.

46 & 47 Vict. c. 57, s. 70.

59. In any case where by reason of dissolution of partnership or other cause a person ceases to carry on business, and the goodwill of the person does not pass to one successor but is divided, the Court [Registrar] may (subject to the provisions of this Act as to associated trade marks and series of trade marks), on the application of any of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications as *it* [he] thinks necessary in the public interest.

Apportionment of marks on dissolution of partnership.

Cf. 5 Edw. VII. c. 15, s. 23.

Amended Act, 1912, s. 21.

[2. An appeal shall lie to the Law Officers or, by leave of the Law Officer, to the Court from any decision of the Registrar under this section.]

60. Associated trade marks may be assigned or transmitted only as a whole.

Assignment of associated trade marks.

Cf. *ib.* s. 27.

#### PART VI.—THE REGISTER OF TRADE MARKS.

61. There shall be kept at the Trade Marks Office a Register of Trade Marks wherein shall be entered particulars of—

Register of trade marks.

(a) all registered trade marks, with the names and addresses of their proprietors, together with the date of registration and expiry thereof;

Cf. *ib.* s. 4.

(b) notifications of assignments and transmissions, and disclaimers; and

Notification of assignments and transmissions.

(c) any other matters relating to registered trade marks which are prescribed.

62. Where a trade mark has been lawfully assigned or transmitted, a notification of the assignment or transmission, in the form and authenticated in the manner prescribed, may be given to the Registrar, who shall thereupon register the assignment.

Trusts not to be noticed.  
Cf. 5 Edw. VII. c. 15, s. 5.

Inspection of register.

*Ib.* s. 7.

Certified copies to be supplied.

*Ib.* s. 7.

Certified copies evidence.

Cf. 46 & 47 Vict. c. 57, s. 89.

False entries in register.

*Ib.* s. 93.

Correction of register.

Cf. *ib.* s. 91.  
Cf. 5 Edw. VII. c. 15, s. 32.

Amended by Act, 1912, s. 22.

Registration of assignments, &c.

Cf. 46 & 47 Vict. c. 57, s. 87.

Alteration in registered trade mark.

Repealed Act, 1912, s. 22.

Alteration of

63. No notice of any trust, expressed implied or constructive, shall be entered in the register, or be received by the Registrar.

64. The register shall be open to the inspection of the public at all convenient times, on payment of the prescribed fee.

65. Certified copies of entries in the register shall be given to any person applying for them on payment of the prescribed fee.

66. Documents purporting to be copies of or extracts from the register, and to be certified by the Registrar and sealed with the seal of the Trade Marks Office, shall be admitted in evidence in all Federal and State Courts without further proof or production of the originals.

67. No person shall wilfully—

(a) Make any false entry in the register ; or

(b) Make any writing falsely purporting to be a copy of an entry in the register ; or

(c) Produce or tender in evidence any writing falsely purporting to be a copy of an entry in the register.

Penalty : Three years' imprisonment.

68. (1.) The Registrar may, on request made in the prescribed manner by the registered proprietor of a trade mark [or by some person entitled by law to act in his name], amend or alter the register by—

(a) correcting any error in the name or address of the registered proprietor of the trade mark ; or

(b) altering the name or address of the registered proprietor who has changed his name or address ; or

(c) cancelling the registration of the trade mark ; or

(d) striking out any goods or classes of goods from those in respect of which the trade mark is registered ; or

(e) entering a disclaimer or memorandum relating to the trade mark which does not in any way extend the rights given by the registration of the trade mark.

(2.) Where the register has been amended or altered under this section the Registrar may—

(a) cancel the certificate of registration of the trade mark, and issue a new certificate of registration ; or

(b) make such amendments or alterations in the certificate of registration of the trade mark as are rendered necessary by the amendment or alteration of the register.

69. Subject to the provisions of this Act, where a person becomes entitled to a registered trade mark by assignment, transmission, or otherwise, the Registrar shall on request, and on proof of title to his satisfaction, cause the name and address of the person to be entered on the register as proprietor of the trade mark.

70. *The registered proprietor of a trade mark may apply to the Court for leave to add to or alter the trade mark in any manner not substantially affecting its identity, and the Court may refuse or grant the leave on such terms as it thinks fit. If leave be granted, the Registrar shall, on service of the order of leave, cause the register to be altered in accordance with the order, and shall, in the prescribed manner, advertise the trade mark as altered.*

[70 (1.) The registered proprietor of any trade mark may apply in



the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting its identity, and the Registrar may refuse the leave or may grant it on such terms as he thinks fit, but any refusal or conditional permission shall be subject to appeal to the law officer.

(2) If leave to add to or alter the trade mark is granted, the trade mark as altered shall be advertised in the prescribed manner.]

71. (1.) Subject to this Act, the Court, on the application of any person aggrieved or of the Registrar, may order the rectification of the register by—

- (a) the making of any entry wrongly omitted to be made in the register; or
- (b) the expunging of any entry wrongly made in or remaining on the register; or
- (c) the insertion in the register of any exception or limitation affecting the registration of a trade mark which in the opinion of the Court ought to be inserted; or
- (d) the correction of any error or defect in the register.

(2.) The Registrar shall only make application to the Court under this section in cases where he thinks the application necessary or desirable in the public interest.

(3.) Notice of every application to the Court pursuant to this section (other than an application by the Registrar) shall be given to the Registrar, who may be heard thereon.

72.—(1) The Court may, on the application of any person aggrieved, if it is shown that there has been no *bonâ fide* user of a trade mark for a consecutive period of three years since the date of the last registration thereof, order its removal from the register, unless it was at the date of the application in *bonâ fide* use and had been so for a period of six months immediately prior to the date of the application.

(2.) For the purpose of this section *bonâ fide* user or use means user or use of a trade mark in respect of the goods in respect of which it is registered for the purposes of trade by the proprietor of the trade mark or a predecessor in title.

73. The Registrar, upon being served with any order of the Court for the rectification of the register or for the removal of the registration of a trade mark from the register by the party seeking to enforce it, shall cause the rectification or removal to be made accordingly.

registered trade mark.

Act, 1912, s. 23.  
5 Edw. VII. c. 15, s. 34.

Rectification of register by Court.

Cf. 46 & 47 Vict. c. 57, s. 90.

51 & 52 Vict. c. 50, s. 23.  
Cf. 5 Edw. VII. c. 15, s. 35.

Removal of trade mark from register if no *bonâ fide* user.

Cf. 5 Edw. VII. c. 15, s. 37.

Registrar to carry out orders for rectification.

PART VII.—WORKERS' TRADE MARKS.

[Repealed by Act of 1912, Section 24.]

PART VIII.—THE COMMONWEALTH TRADE MARK.

78. (1.) This part shall apply to all goods included in or specified by a resolution passed by both Houses of the Parliament that in their opinion the conditions as to the remuneration of labour in connection with their manufacture are fair and reasonable.

Application of Part.

(2.) A resolution shall be deemed to have been passed at the commencement of this Act by both Houses of the Parliament that the

conditions as to the remuneration of labour are fair and reasonable in respect of goods which are manufactured in any part of the Commonwealth under conditions as to the remuneration of labour prescribed, required, or provided in relation to the goods, by an industrial award or order, or an industrial agreement, under an industrial law.

(3.) In this Part "an industrial law" means any Act or State Act existing at the commencement of this Act and providing for conciliation or arbitration or both conciliation and arbitration, or the determination of the remuneration of labour in connection with industrial matters or the manufacture of goods, or any statutory modification amendment or re-enactment thereof respectively, or any Act or State Act passed after the commencement of this Act and declared by resolution of both Houses of the Parliament to be an industrial law within the meaning of this Part; and "industrial award or order" includes any determination of any Special Board or Court under an industrial law.

(4.) A resolution passed or deemed to have been passed as aforesaid may be by both Houses of the Parliament revoked in whole or in part, and thereupon this Part shall to the extent of the revocation cease to apply.

Registration of Commonwealth trade mark.

79. (1.) The Minister may cause to be designed and registered a trade mark (in this Part called the Commonwealth Trade Mark), consisting of a distinctive device or label bearing the words "Australian Labour Conditions."

(2.) The Commonwealth trade mark shall not contain the name of or indicate any State.

(3.) Parts III., IV., V., and VI. of this Act shall not apply in relation to the Commonwealth trade mark.

Effect of registration of Commonwealth trade mark.

80. (1.) Upon the registration of the Commonwealth trade mark, the Minister shall be deemed to be the proprietor thereof, and shall be entitled to prevent the unauthorised application of the Commonwealth trade mark.

(2.) The rights of the proprietor of the Commonwealth trade mark shall be deemed to be infringed by the unauthorised application to goods of a mark identical or substantially identical with the Commonwealth trade mark, or so nearly resembling it as to be likely to deceive.

(3.) The Minister may sue to prevent infringement of the Commonwealth trade mark.

Unauthorised application of Commonwealth trade mark.

81. The application of the Commonwealth trade mark to goods shall be deemed to be unauthorised unless—

(a) it is applied by or by direction of the first proprietor of the goods, and is so applied by the authority of the Minister; and

(b) it is applied to goods to which this part applies; and

(c) the first proprietor of the goods has personally manufactured them, or has paid for the labour other than his own in connection with their manufacture at least the minimum amount prescribed, required, or provided to be paid to persons actually making the goods by an industrial award or order, or an industrial agreement under an industrial law.

Authority of Minister.

82. (1.) The authority of the Minister to any person to apply the Commonwealth trade mark may be given either generally or in respect



of specific goods, and shall be given if in his opinion the trade mark will not be applied except as authorised by this Part.

(2.) The Minister may revoke his authority in whole or in part if in his opinion a person to whom it has been given has applied or is likely to apply the trade mark in a manner unauthorised by this Part.

83. (1.) No person shall wilfully infringe the rights of the Minister as proprietor of the Commonwealth trade mark.

Penalty for infringing Commonwealth trade mark.

Penalty : Fifty pounds.

(2.) No person shall knowingly sell or expose for sale, or have in his possession for sale or for any purpose of trade or manufacture, any goods to which any mark is applied in infringement of the rights of the Minister as proprietor of the Commonwealth trade mark.

Penalty : Fifty pounds.

84. No person shall knowingly import into Australia any goods, not manufactured or produced in Australia, to which there is applied—

Prohibition of importation of goods to which Commonwealth trade mark applied.

(a) the Commonwealth trade mark, or

(b) a mark substantially identical with the Commonwealth trade mark, or

(c) a mark so nearly resembling the Commonwealth trade mark as to be likely to deceive.

Penalty : One hundred pounds in addition to any liability to forfeiture provided by law.

85. The Commonwealth trade mark may, on the application of the Minister, be removed from the register in the manner prescribed.

Removal from register of Commonwealth trade mark.

PART IX.—PROTECTION OF TRADE MARKS.

86. Whoever—

(a) forges a registered trade mark ; or

(b) falsely applies a registered trade mark to any goods ; or

(c) makes any die, block, machine, or instrument for the purpose of forging or of being used for forging a registered trade mark ; or

(d) disposes of or has in his possession any die, block, machine, or instrument for the purpose of forging or of being used for forging a registered trade mark,

Forgery or false application of trade marks.

Cf. 50 & 51 Vict. c. 28, s. 2 (1).

shall, unless he proves that he acted without intent to defraud, be guilty of an indictable offence, and liable to imprisonment for any term not exceeding three years.

87. Whoever sells or exposes for sale, or has in his possession for sale or for any purpose of trade or manufacture, any goods to which any forgery of a registered trade mark is applied or to which any registered trade mark is falsely applied, shall be guilty of an offence against this Act, unless he proves—

Selling, &c., goods with false marks.

*Ib.* s. 2 (2).

(a) that he acted without intent to defraud ; or

(b) that the goods were manufactured in or imported into Australia and the trade mark was applied to them before the commencement of this Act, and were held by him *bonâ fide* and without intent to defraud.

Penalty : One hundred pounds.

[87A. Where any person is convicted of any offence against section

Act, 1912, s. 25.

eighty-six or section eighty-seven of this Act he shall be liable in addition to the punishment provided by those sections to forfeit to the King every chattel, article, instrument, or thing by means of or in relation to which the offence was committed.]

Search  
warrant.

Act, 1912,  
s. 25.

50 & 51 Vict.  
c. 28, s. 12.

[87B. (1.) Where, upon information of an offence against section eighty-six or section eighty-seven of this Act, a Justice of the Peace has issued a summons requiring the defendant to appear to answer the charge, or a warrant for the arrest of the defendant, and either the said Justice on or after issuing the summons or warrant, or any other Justice of the Peace, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence was committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such Justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

(2.) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing the forfeiture of the goods or things, and a court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at the time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3.) Any goods or things forfeited under this section may be destroyed or otherwise disposed of in such manner as the Court of Summary Jurisdiction by which the same are forfeited directs, and the Court may, out of any proceeds which may be realised by the disposition of the goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he has innocently sustained in dealing with the goods.]

Importing  
goods with  
false marks.

88. Whoever imports into Australia any goods to which any forgery of a registered trade mark is applied or to which a registered trade mark is falsely applied shall, unless he proves that he did not knowingly import the goods in contravention of this Act, be guilty of an offence against this Act.

Penalty : One hundred pounds.

Aiding and  
abetting  
offences.

*Ib.* s. 11.

89. Whoever aids, abets, counsels, or procures, or is in any way knowingly directly or indirectly concerned in or privy to—

(a) the commission of any offence against this Act; or

(b) the commission of any Act outside Australia which if committed in Australia would be an offence against this Act,

shall be guilty of an offence against this Act.

Penalty : One hundred pounds.



90. (1.) The following goods are prohibited to be imported, and, if imported, may be seized as forfeited to the King :—

(a) all goods to which any forgery of a registered trade mark is applied, or to which any registered trade mark is falsely applied; and

(b) all goods manufactured at any place outside Australia and having applied to them any trade mark being the registered trade mark of any manufacturer, dealer or trader in Australia, unless the trade mark is accompanied by a definite indication of the country in which the goods were made or produced; [and]

[(c) All goods manufactured at any place outside Australia, and having applied to them any name purporting to be the name of any manufacturer, dealer or trader in Australia, unless the name is accompanied by a definite indication of the country in which the goods were made or produced.]

(2.) Subject to the regulations, the Comptroller-General [of Customs], or on appeal from him the Minister [for Trade and Customs], may, if in his opinion the contravention has not occurred either knowingly or negligently, permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the owner or importer upon security being given to the satisfaction of the Comptroller-General that the improper marks will be effectually removed from the goods [or that such additions will be made as will render unobjectionable any mark or name applied to the goods] or that the goods will be forthwith exported.

(3.) All imported goods liable to be seized under this section may be seized by any officer of Customs.

(4.) The provisions of the *Customs Act*, 1901, shall apply to the seizure and forfeiture of goods under this section to the same extent as if they were prohibited imports under that Act.

(5.) Before taking any action under this section or permitting any officer of Customs to act thereunder, the Collector of Customs for the State may require any person requesting any action on the part of the Customs to give security in accordance with the regulations, but the Collector of Customs may act under this section without any request.

[90A. (1.) Where any goods which are liable to forfeiture under the preceding section are imported into Australia, and the goods bear any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in Australia, and the Comptroller-General of Customs is, upon representations made to him, satisfied that the use of the name or trade mark is fraudulent, the proper officer of Customs may require the importer of the goods, or his agent, to produce any documents in his possession relating to the goods, and to furnish information as to the name and address of the person by whom the goods were consigned to Australia, and the name and address of the person to whom the goods were sent in Australia; and, if the importer, or his agent, fails within fourteen days to comply with any such requirement, he shall be guilty of an offence. Penalty: one hundred pounds.

(2.) Any information obtained from the importer of the goods or his agent under this section, or from any other source, may be

Prohibition of importation of fraudulently marked goods.

*Ib.* s. 16, Amended, Act, 1912, s. 26.

Act, 1912, s. 27. 1 & 2 Geo. V. c. 31, s. 1.

communicated by the Comptroller-General to any person whose name or trade mark is alleged to have been used or infringed.]

What deemed forgery of trade mark.

50 & 51 Vict. c. 28, s. 4.

91. A person shall be deemed to forge a registered trade mark who either—

- (a) without the assent of the proprietor of the trade mark or the authority of this Act, makes it or a mark so nearly resembling it as to be likely to deceive ; or
- (b) falsifies any registered trade mark, whether by alteration, addition, effacement, or otherwise.

When trade mark deemed applied.

*Ib.* s. 5 (2).

When trade mark deemed applied to goods.

*Ib.* s. 5 (1).

92. (1.) A trade mark shall be deemed to be applied to any thing if it is woven in, impressed on, worked into, or annexed or affixed to, the thing.

(2.) A trade mark shall be deemed to be applied to goods if—

- (a) it is applied to the goods themselves ; or
- (b) it is applied to any covering, label, reel, or thing in or with which the goods are sold or exposed or had in possession for any purpose of trade or manufacture ; or
- (c) it is used in any manner likely to lead to the belief that it refers to or describes or designates the goods.

(3.) "Covering" includes any stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper ; and "label" includes any band or ticket.

What deemed false application of a trade mark.

*Ib.* s. 5 (3).

Trade mark, how described in pleading.

50 & 51 Vict. c. 28, s. 9.

(4.) A trade mark shall be deemed to be falsely applied to goods if, without the assent of the proprietor of the trade mark or the authority of this Act, it or a mark so nearly resembling it as to be likely to deceive is applied to the goods.

93. In any indictment, information, pleading, or proceeding in relation to a registered trade mark, it shall not be necessary to set out a copy or facsimile of the trade mark or a description of it, but the trade mark may be referred to as a registered trade mark.

#### PART X.—MISCELLANEOUS.

Governor-General may make regulations.

*Patents Act*, 1903, s. 108.

Incidental powers of Court.

*Ib.* s. 111.

Powers of Registrar and Law Officer.

*Ib.* s. 14.

94. The Governor-General may make regulations, not inconsistent with this Act, prescribing the fees to be paid under this Act and all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Trade Marks Office.

95. In addition to any other powers conferred on it by this Act, the Court may in relation to any appeal or application under this Act—

- (a) refuse to make any order ;
- (b) order any issue of fact to be tried in such manner as it directs ;
- (c) order any party to deliver to the Court or to the Registrar the certificate of registration of any trade mark ; and
- (d) order any party to pay costs to any other party.

96. The Registrar and the Law Officer, respectively, may for the purposes of this Act—

- (a) summon witnesses ;
- (b) require the production of documents ; and
- (c) award costs against any party to any proceeding before him.



97. No person who has been summoned to appear as a witness before the Registrar or the Law Officer shall, without lawful excuse, and after tender of reasonable expenses, fail to appear in obedience to the summons.  
Penalty : Fifty pounds.  
Penalty for disobedience to summons.  
*Ib.* s. 15.
98. No person who appears before the Registrar or the Law Officer as a witness shall, without lawful excuse, refuse to be sworn or make an affirmation or to produce documents or to answer questions which he is lawfully required to answer.  
Penalty : Fifty pounds.  
Penalty for refusing to give evidence.  
*Ib.* s. 16.
99. Any sum awarded for costs by the Registrar or the Law Officer may, in default of payment, be recovered in any civil court of competent jurisdiction as a debt due by the person against whom the order is made to the person in whose favour the order is made.  
Recovery of costs.
100. (Repealed by Act of 1912, section 28, and the following substituted.) [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 the trade mark, the Court or a Judge thereof may certify the same, and if it or he 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 or a Judge thereof certifies that he ought not to have the same.]  
Certificate of validity.  
6 Edw. VII. c. 15, s. 46.
101. No person shall wilfully make any false statement or representation to deceive the Registrar or any officer in the execution of this Act, or to procure or influence the doing or omission of anything in relation to this Act or any matter thereunder.  
Penalty : Three years' imprisonment.  
False representation to Registrar or officer.  
*Patents Act*, 1903, s. 112.
102. The Registrar may at any time before registration of a trade mark permit the amendment of the application for the registration of the trade mark, and may at any time permit the amendment of any notice of opposition on such terms as to costs or otherwise as he thinks just.  
Power of amendment.
103. Where any discretionary power is by this Act given to the Registrar, he shall not exercise that power adversely to the applicant for registration of a trade mark [or the registered proprietor of the trade mark in question] without (if so required within the prescribed time by the applicant) giving the applicant [or registered proprietor] an opportunity of being heard personally or by his agent.  
Exercise of discretionary power.  
Amended, Act, 1912, s. 29.
104. Where any prescribed fee is payable in respect of any act or document the Registrar may refuse to permit or perform the act or to receive or issue the document as the case requires until the fee payable in respect thereof is paid.  
46 & 47 Vict. c. 57, s. 94.  
Fees to be paid in advance.
105. Where by this Act any time is specified within which any act or thing is to be done, the Registrar may, unless otherwise expressly provided, extend the time either before or after its expiration.  
Extension of time.
106. Any application, notice, or other document, authorised or required under this Act to be left, made, or given at the Trade Marks Office, or to the Registrar, or to any other person, may be sent by a prepaid letter through the post.  
Applications and notices by post.  
*Ib.* s. 97.
107. (1.) Any address for service stated in any application or notice of opposition shall for all purposes of the application or notice of  
Address for service.



opposition be deemed to be the address of the applicant or opponent, as the case requires, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them to the address for service of the applicant or opponent, as the case requires.

(2.) Any address for service may be changed by notice in writing to the Registrar.

Declaration  
by infant,  
lunatic, &c.  
Cf. 46 & 47  
Vict. c. 57,  
s. 99.

108. If any person is, by reason of infancy, lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or the regulations, then the guardian or committee (if any) of such incapable person, or if there be none any person appointed by any Federal or State Court or Justice thereof, possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of the incapable person or of any other person interested in the making of such declaration or doing such thing, may make the declaration or a declaration as nearly corresponding thereto as circumstances permit, and do the thing in the name and on behalf of the incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

Death of  
party to a  
proceeding.

109. If a person who is party to a proceeding under this Act dies pending the proceeding, the Registrar may on request made in the prescribed manner, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if he is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without such substitution.

Registrar  
may recog-  
nise agent.

110. Subject to the regulations the Registrar may permit any agent to do, on behalf of any other person, any act in connection with the registration of trade marks or any procedure relating thereto.

T.M. Rules  
(Eng.), s. 9.  
Certificate of  
Registrar  
evidence.

111. A certificate purporting to be under the hand of the Registrar and the seal of the Trade Marks Office as to any entry, matter, or thing which he is authorised by this Act to make or do shall be *prima facie* evidence of the entry having been made and of the contents thereof, and of the matter or thing having been done or left undone.

Penalty on  
falsely repre-  
senting a  
trade mark as  
registered.

112. (1.) *No person shall falsely represent that any trade mark, applied to any article sold by him, is registered.*

Cf. 46 & 47  
Vict. c. 57,  
s. 105.

*Penalty: Five pounds.*

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

Penalty on  
falsely repre-  
senting a  
trade mark  
as registered.  
Act, 1912,  
s. 30.

[112A. (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.

5 Edw. VII.  
c. 15, s. 67.

(2.) A person shall be deemed, for the purposes of this section, 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.]

Penalty on  
unauthorised

113. No person shall without the authority of the King, or of some member of the Royal Family, or of the Governor-General, or of the



Governor of a State, or of some Department of the Government of the Commonwealth or a State (proof whereof shall lie upon the person accused), assume or use in connection with any trade business calling or profession the Royal Arms [or the Arms of the Commonwealth], or arms *so nearly resembling them* [so nearly resembling the Royal Arms or the Arms of the Commonwealth] as to be likely to deceive, in such a manner as to be likely to lead other persons to believe that he is carrying on his trade business calling or profession by or under such authority.

assumption of Royal Arms. *Ib.* s. 106. Amended by Act, 1912, s. 31.

Penalty: Twenty pounds.

114. No scandalous design, and no mark the use of which would by reason of its being likely to deceive or otherwise be deemed disentitled to protection in a court of justice, or the use of which would be contrary to law or morality, shall be used or registered as a trade mark or part of a trade mark.

Scandalous and improper marks. Cf. 46 & 47 Vict. c. 57, s. 79.

115. (1.) If upon the request of the Governor-General the King is pleased to apply to the Commonwealth any law of the United Kingdom for carrying into effect any arrangement made with the Government of any foreign State for the mutual protection of trade marks, then any person who has applied for protection for any trade mark in the United Kingdom or the Isle of Man, or in any foreign State with which the arrangement has been made, shall be entitled to registration of his trade mark under this Act in priority to other applicants, and such registration shall have the same date as the date of the original application in the United Kingdom or the Isle of Man or such foreign State as the case may be:

International arrangements for protection of trade marks.

See 46 & 47 Vict. c. 57, s. 103.

*Patents Act*, 1903, s. 121.

Provided that such application shall be made within six months from such person applying for protection in the United Kingdom or the Isle of Man or the foreign State with which the arrangement is in force:

Provided also that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Commonwealth.

(2.) The use of the trade mark in the Commonwealth during the period aforesaid shall not invalidate its registration.

(3.) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Act.

(4.) The provisions of this section shall, in the case of foreign States, apply only to those foreign States with respect to which His Majesty, by Order in Council, has before or after the commencement of this Act declared the provisions of the aforesaid law to be applicable, and so long only in the case of each state as the order continues in force with respect to that State.

116. (1.) Where it is made to appear to the Governor-General that any British possession has made satisfactory provision for the protection in that possession of trade marks registered in the Commonwealth, the Governor-General may by order apply all or any of the provisions of the last preceding section with such variations or additions (if any) as to him seem fit to trade marks registered in that British possession.

Provision for intercolonial, &c., arrangements.

Cf. 46 & 47 Vict. c. 57, s. 104.

(2.) An order under this section shall, from a date to be mentioned therein, take effect as if its provisions were contained in this Act, but it shall be lawful for the Governor-General to revoke any such order.

*Patents Act*, 1903, s. 122.

## APPENDIX XVIII.

### FOREIGN AND COLONIAL TRADE MARK LAWS.<sup>1</sup>

#### 1. PRINCIPAL FOREIGN LAWS.

##### ARGENTINE REPUBLIC.

The Act in force is No. 3973 of 1900. There are Decrees of June 10th and July 30th, 1912.

##### AUSTRIA-HUNGARY.<sup>2</sup>

The law of December 7th, 1858, which for thirty-two years regulated the protection to property in trade marks in Austria-Hungary, gave way in 1890 to a new law, which was published in Vienna on January 6th, and in Buda-Pesth on April 6th of that year.

The law in question is the same for both halves of the Dual Monarchy, and came into force three months after the date of its publication in Austria and Hungary respectively.

This law, subject to certain modifications hereinafter mentioned, still regulates all questions as to trade marks in Austria-Hungary, and contains full particulars as to procedure, forms, and fees for registration.

Sec. 4, para. 32, of the law enacts that, with reference to the protection of marks, as also of names, firms, arms, or business descriptions of foreign establishments or undertakings, the conventions or treaties concluded with the respective foreign States are decisive.

The subjects of His Britannic Majesty, therefore, by virtue of Article VI. of the treaty concluded between Great Britain and Austria on December 5th, 1876, enjoy in Austria-Hungary the same protection as native subjects with regard to rights of ownership over trade marks, and other distinctive marks of goods, or their packages, as well as over patterns and designs for manufactures.

British subjects, however, in order that they may enjoy the benefit of protection, must obtain the registration of their trade marks both at Vienna and Buda-Pesth, and, to this end, must deposit four specimens

<sup>1</sup> The summary contained in the 2nd edition was prepared from the following Blue Books:—*Reports relative to Legislation in Foreign Countries*, 1879 (C. 2284, 2420); *Reports from Her Majesty's Representatives Abroad on Trade Marks Laws and Regulations*, 1900 (Cd. 104). In this edition the editors have endeavoured, with the use of the information to which they have access in the

Patent Office Library and elsewhere, to bring the summary accurately up to date, but they are conscious of the possibility of error in so large a field.

<sup>2</sup> A law as to Patents, Designs and Trade Marks, dated December 31st, 1907, has been enacted. Some recent modifications of the Law of 1890 have been made by a Law of March 17th, 1918.



of such marks in the Chambers of Commerce at each capital, whereas under the law of 1858 only two copies were required.

It should be further noted that under the old law it was only necessary for an applicant for registration to prove that his trade mark had been registered in the United Kingdom in order to effect its registration in Austria-Hungary. Now, however, the law enacts that the mere fact of a mark being registered abroad does not necessarily imply that it is qualified for registration by the Austrian and Hungarian authorities, foreigners being called upon to satisfy the same requirements for registration as any native of the Dual Monarchy.

By virtue of an enactment, dated July 30th, 1895, the following amendments and additions to the Law of 1890 were made. These modifications of the law are still in force:—

1. The stipulations of sec. 3, No. 2, of the Law of 1890, enacting that those marks of goods which consist only of words are excluded from registration, are restricted to those words which contain exclusively statements as to place, time, and manner of production, and as to quality, price, designation, quantity, and weight. Amendment.

2. (1) It is enacted, with reference to sec. 2 of the Law of 1890, that the sole right to a mark consisting of words is not restricted only to the deposited forms of a mark in words, but also extends to the use of those forms of execution by which the protected word or words are rendered in other characters, colours, or sizes, wholly or in part. Addition.

(2) It is enacted, with reference to sec. 21, sec. (e), of the Law of 1890, that a mark can be annulled when it is found that the same has a striking resemblance to a mark previously granted upon a similar class of goods, the Minister of Commerce to give his decision in the matter after he has heard the owner of the trade mark, and, if necessary, called in the evidence of experts.

(3) It is enacted, with reference to sec. 21 of the Law of 1890, that the actual user of a non-registered mark can bring an action for annulment against the owner, or his legal successor, of a registered mark, if, at the time of registration of the contested mark, or one strikingly similar, the said mark was known in commercial circles as the mark of his goods. Such an action for annulment shall be considered inadmissible when the mark in question has been registered with the consent of the plaintiff, or when the firm or other undertaking which has registered the mark has used the mark unregistered for the same period as the plaintiff, or even longer.

The complaint must be lodged with the Ministry of Commerce within two years of the registration of the mark, the annulment to come into force from the date of the filing of the action, where such action is successful.

The successful plaintiff is entitled to register the annulled mark in his own name as soon as the annulment has been declared valid.

This enactment is only applicable to those marks which have been registered since August 2nd, 1895.

(4) In those cases where a party is non-resident in Austria-Hungary, including Bosnia and Herzegovina, and has no settled abode, the said party will only be able to establish his claims under the Law of 1890, or the supplementary enactment of 1895, by nominating an attorney resident within the territory in question. The name of the said

attorney may, but need not necessarily, be entered in the register of marks. Where such name has not been entered, judgment may be given in any action brought for annulment of a mark without having the evidence of the non-resident owner.

(5) The Minister of Commerce has the right, according to his own free judgment, to determine in all disputes occurring subsequent to August 2nd, 1895, the proportion of the costs of the proceedings and of the legal representatives to be borne by the parties in question. Any legal decision concerning costs can be enforced by legal distraint.

(6) In those cases where marks have been annulled consequent upon a delay in the re-registration, or upon an action at the instance of the legitimate claimant, the same or strikingly similar marks for the same or a similar class of goods cannot be registered in favour of another or of the previous owner, or his legal successor, until two years after the legal annulment.

The foregoing supplementary enactment to the Law of 1890 came into force on February 2nd, 1896.<sup>1</sup>

From January 1st, 1908, the two States administer matters relating to trade marks separately and independently, but a reciprocity arrangement was made on February 10th, 1908; and see the Law of December 31st, 1907, Article XVII.

An Austrian Ordinance as to the registration of trade marks under the convention was made on July 12th, 1909. A Hungarian notice as to registration of trade marks by foreigners is dated January 27th, 1908.

#### BRAZIL.

All matters relating to the registration and protection of trade marks in Brazil are at present regulated by the Law of October 14th, 1887.<sup>2</sup>

In its main provisions this law is very similar to the decree of October 23rd, 1875, a French translation of which was published in Parliamentary Blue Book, "Commercial, No. 25, 1879." Contrary, however, to the British Act, while no prohibition appears of the importation of goods bearing the name or trade mark of a Brazilian dealer, an endeavour has been made (Law of December 16th, 1896), "with the view of protecting national industry, and in order to give greater publicity to its products, to prohibit, under penalty of a fine of from 1,000 to 5,000 milreis (about £30 to £150), the printing or importation of labels and marks of foreign products, or in a foreign language, to be affixed to Brazilian products, and to prohibit the sale of products of Brazilian origin to which such labels have been affixed."

As regards registration of trade marks, the following modifications appear in the Law of 1887:—

The manufacturer or his special delegate is required to present three facsimiles of a trade mark for registration, instead of two as formerly; after registration two of these are returned to him.

<sup>1</sup> See also the Ordinance of August 19th, 1903, respecting the renewal and transfer of foreign marks; and the Ordinance, concerning the deposit of marks, of December 15th, 1906, which came into force on January 1st, 1907; and note (<sup>2</sup>), p. 862.

<sup>2</sup> Now modified by Decree No. 1286 of September 24th, 1904. Regulations thereunder were issued on January 10th, 1905, and further Regulations in August, 1909.



An explanation or description of the trade mark must accompany the facsimile, with a declaration of the branch of trade or commerce for which the mark is destined.

The application and the print or sketch of the mark must be on thick paper 33 × 22 centims. in dimension, with a margin for binding. This paper must not be folded, nor must other parts be attached to it. Each sheet must be stamped, dated, and signed.

Within thirty days after the date of registration the applicant is required to publish in the official *Gazette* the certificate of registration, with an explanation of the distinguishing features of the mark.

Within sixty days from the same date he must also deposit a copy of the *Gazette* containing this publication at the office of the Commercial Tribunal of Rio.

Trade marks composed of arms, national or foreign medals, or emblems are prohibited; also a trading name to which the applicant is not entitled; also the partial or entire imitation of a mark already registered for goods of the same description.

As regards the system of official fees for registration of trade marks, it appears to be impossible to give precise information, as the system of registration fees in Brazil is so complicated and variable.

In the first place the power of attorney (*pouvoir*) and the certificate of registration of the country of origin must be taken to the stamp office to be stamped, the value of such stamp varying according to the dimensions of the paper and the number of sheets. The next step is to present these two documents at the Ministry of Foreign Affairs, where a fee of 550 reis (about 4½*d.* at present rate of exchange) has to be paid for each. These two documents must then be translated by a sworn translator on stamped paper; the price charged for these two translations is very variable. This done, a form of application, with a 300-reis stamp (about 2½*d.*) affixed, and a description in triplicate of the trade mark with a 900-reis stamp (about 7½*d.*) affixed, must be deposited at the Junta Commercial, together with a fee of 2 milreis (about 1*s.* 4*d.*).

The stamps required for the certificate of deposit amount to 6\$600 reis (about 3*s.* 11*d.*): the publication of the certificate of registration in the official *Gazette* costs 200 reis (about 1¾*d.*) per line.

Lastly, it is required to furnish a copy of the official *Gazette* (100 reis = about ¼*d.*), stamped with a 1\$200-reis stamp (about 9½*d.*), together with a stamped petition (100 reis = about ¼*d.*) accompanied by a fee of 2 milreis (about 1*s.* 4*d.*).

#### DENMARK.

The Danish Trade Mark Law of April 11th, 1890, replaced the old one of July 2nd, 1880. The reason for taking a new law was that Sweden and Norway were to get a uniform law (there was already a law in Sweden, but none in Norway), and the two countries invited Denmark to join and have similar rules as to protection and reciprocity. In Sweden and Norway there were a good many timber and iron firms, who used as marks single letters ("A," "B," "BB," "BC," &c.).

Such letter combinations could be registered by the owners within six months from the date of the coming into force of the law. After

the expiration of the six months they could not be registered (sec. 14, para. 7).

The following is a translation of Articles 4 and 7 :—

ART. 4.—A trade mark cannot be registered—

(1) When it consists exclusively of numbers, letters, or words, which do not possess such a distinctive form as to qualify them to be considered as figure marks ;

(2) When it contains without due warrant another name or another firm than that of the applicant, or the name of another person's (landed) estate ;

(3) When it contains public armorial bearings or signs ;

(4) When it contains statements which might give rise to offence.

ART. 7.—If a registered trade mark contains numbers, letters, or words, which do not possess so distinctive a form as to qualify them to rank as figure marks, or if it is composed entirely or in part of such signs or marks as are of common employment in certain branches of trade, other persons cannot be thereby prevented from making use of the same indications as their trade mark, or as a portion thereof.

On September 28th, 1894, Denmark joined the International Convention for the protection of trade marks of March 20th, 1883, and to which almost all civilised States have adhered.

On December 19th, 1898, an amendment was passed for the purpose of enabling traders to register words or figures, but the law prescribes that to make registration possible these words or figures should not contain any indication as to the origin, kind, use, quality, or price of the goods.

On March 29th, 1904, certain further amendments in the law of 1890 were made.

## FRANCE.

(Law of June 23rd, 1857.)

### *Part I.—The Ownership of Trade Marks.*

ART. I.—(Sec. 1.) Trade marks are optional. Nevertheless, decrees in the form of administration orders may, by way of exception, declare trade marks compulsory for certain specified articles.

The following are considered trade marks :—Names of a distinctive character, appellations, emblems, imprints, stamps, seals, vignettes, reliefs, letters, numbers, wrappers, and every other sign serving to distinguish the products of a manufacture or the articles of a trade.

ART. II. No person can assert his exclusive ownership of a trade mark, unless two copies of the pattern of the mark have been deposited (registered) at the Tribunal of Commerce of his domicile.<sup>1</sup>

ART. III. This deposit (registration) is effective for a period of fifteen years only. The ownership of the mark may, however, be secured for a further term of fifteen years by means of a fresh deposit (registration).

ART. IV. A fixed fee of one franc is charged for entering the minute of deposit of each mark, and making a copy thereof, exclusive of stamp and registration fees.

<sup>1</sup> This article has been amended by the Law of May 8rd, 1890 (see *infra*, p. 867).



*Part II.—Provisions Relating to Foreigners.*

ART. V. Foreigners who have industrial or commercial establishments in France enjoy the protection of the present law for the products thereof, provided they comply with the formalities herein prescribed.<sup>1</sup>

ART. VI.—(Sec. 1.) Foreigners and Frenchmen whose houses or places of manufacture are situate out of France also enjoy the protection of the present law for the products thereof, if, in the countries where such houses or factories are situate, diplomatic conventions have stipulated reciprocity for French trade marks.

Sec. 2. Foreign marks in this case shall be registered at the Tribunal of Commerce of the Department of the Seine.

The Law of June 23rd, 1857, is still in force, with the exception of Article II., which has been amended by the Law of May 3rd, 1890.

A Presidential Decree of February 27th, 1891, regulates the working of the provisions of the Law of 1857 in its amended form, and annuls the Imperial Decree of June 23rd, 1857.

Under Article II. thus modified the applicant for a trade mark must, in order to claim exclusive rights over that trade mark, deposit at the "Tribunal de Commerce" of his place of domicile, or, in the case of a foreigner, at the "Tribunal de Commerce du Département de la Seine": Procedure.

1. Copies in triplicate (instead of in duplicate, as heretofore) of his trade mark; and

2. The plate (or die) of that trade mark.

This plate must not exceed 12 centim. in length; it must be of metal, and of such a kind as is usually employed for printing purposes, 23 millim. in thickness, and must be inclosed in a solid wooden box.

It is returned to the interested party after the official publication of the trade mark in the "Bulletin Officiel de la Propriété Industrielle et Commerciale."

The delay between the time of application for the registration of a trade mark and its publication is usually about forty-five days.

A fee of 1 fr. is charged for each *procès-verbal* of deposit besides the stamp and registration fees, which amount together to about 8 fr. 38 c. (see annexed table):— Fees.

*(A.) Dépôt de la Marque de Fabrique et délivrance de l'Expédition.*

	Fr.	c.
1. Timbre de la minute du procès-verbal. (Décret du 18 Juin, 1880, Article XII., s. 3) ... ..	0	60
2. Enregistrement de la minute du procès-verbal ...	5	63
3. Rédaction du procès-verbal y compris le coût de l'expédition. (Décret du 27 Février, 1891, Article XII. Décret du 18 Juin, 1880, Articles VIII. et X.)	1	00
4. Mention sur le répertoire et remboursement du timbre. (Décret du 18 Juin, 1880, Articles X. et XII.) ...	0	35
5. Timbre de l'expédition ... ..	1	80

If more than one trade mark is deposited by the same person, an additional fee of 1 fr. is charged for each trade mark, the other stamp

<sup>1</sup> Compare Art. III. of the International Convention (p. 624).

and registration fees of 8 fr. 38 c. being sufficient to cover the registration of any number of trade marks.

The *procès-verbal* of deposit should be renewed every fifteen years.

Any person wishing to have an extract from the Trade Marks Register must pay a fee of 1 fr. for each trade mark, together with stamp and registration fees, amounting together to 4 fr. 8 c. or 4 fr. 68 c., as the case may be (see annexed table):—

(B.) *Délivrance du Certificat d'Identité de la Marque de Fabrique.*

	Fr.	c.
1. Timbre du certificat ... .. 60 c. ou	1	20
2. Enregistrement de la Minute ... ..	1	88
3. Délivrance du certificat. (Décret du 18 Juin, 1880, Article VIII., s. 8) ... ..	1	00
4. Mention sur le répertoire et remboursement du timbre. (Décret du 18 Juin, 1880, Articles X. et XII.) ...	0	35
5. Légalisation. (Décret du 18 Juin, 1880, Article X, s. 1) ... ..	0	25

A Presidential Decree of December 17th, 1892, relates to International Registration of Trade Marks.

GERMANY.

The 1874 law on trade marks and its defects.

The first uniform Law on trade marks for the Empire of Germany was that of November 30th, 1874, which, however, proved to be defective, and was replaced twenty years later by the present Law of May 12th, 1894 (supplemented by "regulations to carry the same into effect").

The present Law extended legal protection to trade marks which did not fall within the limits of the old Law. The 1874 Law had this peculiarity, that it was uniform in its application to all parts of the Empire, but each Federated State was allowed to retain its separate offices for the registration, cancellation, &c. of trade marks, and each Commercial Court in each Federated State still continued to have its separate register of trade marks, though all the registered marks were published in the *Imperial Gazette* (*Reichsanzeiger*), but without any central reference index.

The inconveniences occasioned by this state of things, which may be described as a want of centralisation, together with the non-examination of applications for trade marks, the exclusion of the registration of "word marks," and the fact that marks could only be protected by such traders or merchants as were inscribed on the official Commercial Registers ("Handelsregister") brought about changes that were urgently needed in the interests of the public.

The 1894 law on trade marks: position of foreigners.

The Trade Marks Law of 1894 is characterised by the fact that any person whatsoever can acquire protection for a trade mark, and that all foreigners in Germany are placed on an exactly equal footing with Germans in the eye of the law, so long as they have a domicile ("Niederlassung") within the Empire (*i.e.*, a place of business or a residence which involves the payment of German taxes). Failing this domicile in Germany, protection for a trade mark is made strictly dependent upon the reciprocity of trade mark rights in the country of



the foreign applicant; therefore, in order that a foreigner may obtain the benefit of the German Trade Mark Law, there must have been previously published in the *Imperial Gazette (Reichsanzeiger)* a notice stating that German trade marks are granted legal protection, in the country or State in which the foreign applicant's domicile is located, to the same extent as the national trade marks of that country. (Sec. 23 of Law.)

If that reciprocity is accorded, the nationality of the applicant is immaterial. Such notifications have been published for Austria-Hungary, Belgium, Brazil, Bulgaria, Denmark, France, Greece, the United Kingdom, Guatemala, Italy, Japan, Luxembourg, the Netherlands, Mexico, Roumania, Russia, Sweden and Norway, Switzerland, Servia, Venezuela, and the United States.

As such a notice has been published as regards the United Kingdom, the only other condition to be fulfilled by a British applicant (not having a domicile in Germany) for the registration of a foreign trade mark is that he produces proof that he has applied for and has secured protection for the mark in the United Kingdom by registration there (sec. 23 of Law). His application, however, for a similar registration in Germany does not follow as a matter of course. The German Trade Marks Office (a branch of the Patent Office) first examines his application to see if it conforms to the requirements of the 1894 Act in every particular; and registration in the German Empire may be refused on various grounds, such as the previous registration of the same mark by another applicant, or the too great similarity of the mark to some other mark already registered for a German or foreign trader.

The German Empire on March 21st, 1903, signified its adhesion to take effect from May 1st, 1903, to the "International Union for the Protection of Industrial Property," founded in 1883, including the addition protocol of Madrid of April 15th, 1883, and the additional Act of Brussels of December 14th, 1900. It has ratified the Revised Convention of Washington of June 2nd, 1911.

As in Germany non-registered marks can be used by anyone, notwithstanding the fact that such marks are the property of British firms or individuals in Great Britain and are there registered for them, it may happen that German or other firms or persons in the German Empire have already adopted certain British marks, in which case there is not much hope of redress for such British firms or persons as have neglected to register their marks in due time in Germany. Moreover, the previous use of a registered British mark for a lengthened period in the German Empire would not entitle the owner to any rights or priority in the matter of registration, as against a German or any foreigner who had already applied for its registration as his own trade mark. The actual date of the application for registration is determinative. No registration of such a British trade mark by a German or other foreigner would be cancelled in favour of the British owner, even if previous use and consequent material ownership of the said mark over a lengthened period in Germany were proved, save under exceptional circumstances (under the provisions of sec. 9 of Trade Marks Law). It is therefore most important that all British exporters of goods, going both to the German Empire and to all other important neutral markets abroad, should, if they have not already done so,

Germany is now a member of the "Union for the Protection of Industrial Property."

British trade marks may be appropriated by other persons if not registered in Germany.



effect immediately a proper registration of their trade marks. Otherwise they may suffer unnecessary injury all over the world, merely because they have not taken the trouble to effect a proper registration in Germany, as well as in the United Kingdom, for their trade marks.

Fees for registration and renewal.

The actual procedure to be followed in order to obtain registration of a British trade mark is to be found in the "Regulations for Applications for the Registration of Trade Marks."<sup>1</sup> The preliminary fee is £1 10s., of which £1 will be returned if the application for registration is not accepted. A further 10s. is payable for each application for the renewal of a mark on the expiration of the first ten years (sec. 2 of Law). There are no other fees or expenses whatever. In Germany there are forty-two classes of trade marks, and the initial fee of £1 10s. covers the registration of the mark for all these classes of goods if noted in the complete list of goods to which the mark is to be applied accompanying the application.

Conditions of the renewal of registration.

The registration of a trade mark expires *ipso facto* after ten years from the date of registration or from the date of renewal. It can also be cancelled if the registration ought to have been refused in the first instance. Notice of cancellation on account of failure to renew is given to the proprietor of the mark by the Trade Mark Branch of the Patent Office. If 10s. fine besides the renewal fee of 10s., or £1 altogether, be paid within one month of the delivery of the notice, then the renewal will be considered to have been properly made on the day of the expiration of the former registration (sec. 8 of Law). But, even after this time, the expired mark can nevertheless be again registered afresh by an entirely new application. In this case, however, the application has no priority whatever on account of its previous registration, and such re-registration may meantime have been barred by the fact that some other firm or person has registered the same mark or one nearly resembling it.

Testamentary and contract transfer of trade mark rights.

The rights in trade marks can be transferred to other persons by contract, or they can pass over by a testamentary enactment, but only together with the business to which the trade mark belongs. Such transfers are officially registered (sec. 7 of Law).

Grounds for cancellation of a mark.

Anyone can petition for the cancellation of a mark on the following grounds (sec. 9 of Law):—

1. If the mark has been entered in the Trade Marks Register in his name for the same or similar goods on the basis of a prior application, or in pursuance of the Trade Marks Act of November 30th, 1874.

2. If the business to which the mark belongs is no longer carried on by the registered proprietor.

3. If there are any circumstances that show that the mark used is misleading and is calculated to deceive.

These provisions are valuable where the British owner of a trade mark wishes to try to remove the registration and to prevent the use of his mark in Germany by some other person. It is only under the provisions of sec. 9 that he might possibly obtain redress.

Sec. 17 of the Law is important, and reads thus:—

"Foreign products which wrongfully bear the name and locality of a German firm, or which wrongfully bear a registered trade mark, on

Penalties for wrongfully using German trade marks.

<sup>1</sup> See the Ordinances of June 30th, 1894, and of November 28th, 1898.



entering Germany as imports or for transit through the country are liable to seizure and confiscation if the injured party files a petition to that effect and gives security. The seizure is effected by the Custom House authorities, and the confiscation is decided according to the Penal Code (sec. 459 of Code)."

Actions in the Courts in trade mark matters are provided for in sec. 21.

A most important provision is found in sec. 22; but the important rights conferred by it have not as yet been made use of by the Federal Council. It is as follows:—

"If German goods must bear a certain mark or sign on being imported into, or for transit through, a foreign country to show that they are of German origin, or if such goods are not so favourably treated at the Custom House in respect of trade marks as the goods of other countries, then the Federal Council is empowered to subject goods imported into Germany from such other countries, or for transit through Germany, to the same obligations, and to order that, in the case of violation of this regulation, the goods shall be seized and confiscated. The seizure is effected by the Custom House authorities, and the confiscation will be decided by the verdict of the Department of Administration (sec. 459 of the Regulations of the Criminal Law)."

Powers of Federal Council as to compelling imported goods to bear a mark showing their origin.

It is, therefore, to be noticed that the above regulation might be applied to British goods entering Germany whenever, in Great Britain, German goods imported there, or for transit merely, are obliged to bear a mark showing that they are of German origin, or whenever German imports do not, in the matter of trade marks, receive most-favoured-nation treatment at the British Custom House.

Liability of British imports to bear a mark showing their origin.

Any kind of sign can become a trade mark, either on the article itself or on its covering when packed, if it affords a clear and distinguishing mark. But by sec. 4 entry in the Register is to be refused for free marks as well as for trade marks<sup>1</sup>—

Definition of what may be registered as a trade mark.

- (1) Which are composed exclusively of numerals, letters, or of such words as contain statements in respect of the manner, time, and place of manufacture, or in respect of the price, quantities, or weights of the goods;
- (2) Which contain the coat of arms of a State or other royal insignia, or the coat of arms of a town or other community associations situated within the domain;
- (3) Which contain representations causing offence, or such statements as do not conform to the actual facts and establish a danger of deception.

The provisions of No. 2 are not applicable if the applicant is authorised to embody the coat of arms or royal insignia in the trade mark. Marks which have been annulled may be newly registered for the goods for which they have been registered or for similar goods in favour of another than the last owner only after the expiration of two years from the day of annulment.

In the registration of "word marks" it is important to state in the

<sup>1</sup> The section is given as modified by the new Law of March 31st, 1913, by which also provision has been made for the registration of association marks. The law is intended to give effect to the Revised Convention and comes into force at the same time as the Convention.

application whether protection is wanted only for it as a design or for its sound, or for both; for the Trade Marks Office, in its examination, investigates this point.

As to use of coats-of-arms.

The use of German or foreign State coats-of-arms, as well as of the arms of German municipalities or corporations, in order to unduly enhance the market value of goods, is forbidden under a penalty of a fine of £250, or by imprisonment not exceeding six months (sec. 16 of Law).

Definition of "free marks."

The Trade Mark Office in Berlin publishes a list of so-called "Free Marks" ("Freizeichen"). These consist of marks that are generally used by the public to indicate certain trades, such as crossed hammers for the coal trade, and an anchor for some marine trades, which cannot be acquired by anyone as a private trade mark. Additions are often made to this list, and applications for the registration of trade marks are refused if it is found that the mark applied for resembles too closely a listed "Free Mark."

German colonies and protectorates. Special agreements.

The German Trade Marks Law was also put into force for the German Colonies and Protectorates on October 1st, 1894.

Special agreements, dealing with trade marks, &c., exist with Austria-Hungary (December 6, 1891), with Italy (January 18, 1892), with Switzerland (April 13, 1892), and with Servia (August 21, 1892).

Trade mark relations between the United Kingdom and Germany.

The relations in trade mark matters between the United Kingdom and the German Empire were formerly governed by Art. VI. of the Treaty of Commerce of May 30th, 1865 (extended to the whole German Empire by the Declaration of April 14th, 1875), which expired on July 30th, 1898. Since that date our rights in Germany with regard to trade marks are regulated by the German law.

Protection of German trade marks in China.

The German Government has concluded agreements with several other countries including France in 1898, with Holland in 1899, with Belgium in 1901, with Great Britain and the United States in 1906, regarding the protection of German trade marks in China. Under these several agreements German Consular officers in China will take legal proceedings against any German subjects residing in China who may imitate French, Dutch, Belgian, British or United States trade marks registered in the German Empire. The representatives of the above-mentioned Governments in China are likewise bound to act similarly in the case of their subjects.

#### GREECE.

The Law in force is that enacted in 1893. According to this Law in order for a British subject to obtain registration of a trade mark, it must be on the Register in England. By a declaration of July 27th, 1894, between Great Britain and Greece, each declared that the subjects of the other should have the same rights as the subjects of their own States or subjects of the most-favoured nation.

#### GUATEMALA.

The Law is contained in decrees of 1897 and 1899. There is a convention with Great Britain, dated July 20th, 1898, each party placing subjects of the other on the same footing as their own subjects.



## ITALY.

No change has taken place in internal Italian legislation with regard to trade marks since the report presented to Parliament in 1879.

Legislative effect has, however, been given with regard to foreign trade marks to the requirements of the Paris Convention of 1883, and the similar requirements of the Italo-German Convention of 1892. These modifications in the existing Law only affect the period of delay conceded to the proprietors of foreign trade marks during which the priority of a trade mark registered abroad may be made valid in Italy. Special regulations issued in 1898 determine the formalities necessary to obtain the notification on the certificate of registration of the right of priority of a trade mark claimed under the above-mentioned Conventions.

Further, a Law of November 19th, 1894, puts in force the provisions of the Madrid Convention of 1891 for the international registration of trade marks, and affords protection in this country, without the fulfilment of the formalities required by the Law of Italy, to trade marks registered in the countries adhering to the Union, and fulfilling the conditions contemplated by that instrument.

A decree of 1905 relates to applications for trade marks by foreigners.

## JAPAN.

The present Japanese Law relating to trade marks is Law No. 25 of April 2nd, 1909. There are Rules of 1910, containing a classification of goods.

Trade marks rights arise out of registration (Article V.). Trade marks capable of registration must consist of characters, devices or marks, or combinations thereof, which have a distinctive character (Article I.). There are nine classes of marks which cannot be registered (Article II.), including national flags or other marks of a national character, and (5) marks which are identical with or similar to marks belonging to another person, and well known to the public or which are used on identical goods. Where protection is claimed for a mark under this heading, it is necessary to submit not only specimens of the mark, but also the date on which goods bearing the trade mark were first exported to Japan, annexing documents testifying thereto, the names or titles and addresses of the firm with whom business has been transacted in Japan, a table showing the amounts and value of goods sent yearly to Japan, commercial papers which prove the fact that the trade mark is well known in Japan (for example, orders for the goods, &c.), and any other matter which prove the fact that the trade mark is well known in Japan (*Board of Trade Journal*, June 30th, 1910). It is, however, safer to obtain registration. Where persons who have *bonâ fide* used identical or similar trade marks on identical goods prior to the 1st of July, 1899, apply for the registration of such marks, these marks may be registered. The duration of trade mark rights is twenty years, subject to renewal. But rights in a mark registered as a foreign registered mark cease with the lapse of the rights in the country of original registration (Article VII.). A foreigner who has not his domicile or his place of business within the

Empire, may not enjoy trade mark rights, or rights connected therewith, except where it is otherwise provided in treaties or in conventions, agreements, exchanges of notes, or other arrangements of a similar nature thereto (Article XXII.). Marks not used for three years or within one year of registration are liable to cancellation (Article IX.). The fee for registration or renewal is 20 yen, or for associated marks 10 yen, for each mark.

The reference in Article XXI. to Articles of the Japanese Patent Law is important, as it makes it obligatory, for instance, on persons not resident in Japan to appoint a duly qualified agent through whom the application for registration of a trade mark should be made.

#### MEXICO.

A new Law was passed and new Regulations made in the year 1903.

#### NETHERLANDS.

Since the publication by the Foreign Office in 1879 of "Reports relative to Legislation in Foreign Countries on the subject of Trade Marks" a completely new Law has been passed on the subject in the Netherlands, distinct from the draft bill which appeared in the above-mentioned Blue-Book.

The Law now in force on the subject for the Netherlands is dated September 30th, 1893, as amended by that of December 30th, 1904.

For the colonial possessions of the Netherlands three other Laws on trade marks formerly existed, all dated November 9th, 1893—*i.e.*, for the Netherlands East Indies in twenty-six articles, and for Surinam and Curaçao in twenty-five articles each. All three were practically identical, with the exception of that regulating trade marks in the Netherlands Indies, which had one additional article. These have, however, now been superseded by the Colonial Industrial Property Regulations, 1912.

The Trade Marks Law of September 30th, 1893, for the Netherlands came into force on December 1st, 1893, and it completely superseded the former law of May 25th, 1880, and the subsequent amendments of the Law of July 22nd, 1885. The Law of 1904 came into force on January 21st, 1905.

Trade Marks in the Netherlands are now entirely controlled by the Industrial Property Office at The Hague, which was established there on December 1st, 1893, from which date applications for the registration of trade marks had to be directed to that office instead of to the registrars of the local Courts as had previously been the case.

The Netherlands (including Dutch colonies) have joined the International Convention for the Protection of Industrial Property, concluded at Paris on March 20th, 1883, which was approved by the Law of April 23rd, 1884. Trade marks can, therefore, obtain in the Netherlands international registration (including Dutch colonies). There are thus two distinct forms of registration possible at The Hague Bureau:—

(a) Merely for the Netherlands.

(b) For international registration—*i.e.*, for Holland, France, Spain, Portugal, Switzerland, Belgium, Italy, Brazil, and Tunis, as well as for the colonies of the first four countries, and in Netherlands India, Surinam, and Curaçao.



The regulations to be followed to secure this international registration are to be found in part B of "The Regulations for Registration," issued by the Industrial Property Office at the Hague. Part A of those regulations contains the rules for registration in Holland only. An official note giving the formalities required for registration under the amended Law of 1904 was issued in 1905. The formalities for renewal of trade marks will be found in Regulations issued on January 3rd, 1908.

With regard to the course of procedure to be followed by owners of British trade marks to obtain protection for their marks, it is to be observed that no difference whatever is made between natives and foreigners in such applications; but the foreigner must choose a "domicile" in order to be able to follow the ordinary procedure for the registration of a trade mark. The Industrial Property Office at The Hague states that this merely means a "trade domicile," which is constituted by merely giving an address in Holland, such as a lawyer's address, or the name of an hotel at which the applicant for a trade mark might be residing. The actual steps to be taken by a British applicant, either for registration in Holland only or for international registration, are to be found in "The Regulations for Registration."

The previous registration of British trade marks in the United Kingdom is not required. In applications for international registration, sec. 3 of Article III. of "The Law on Trade Marks for the Netherlands" says:—

"The person who, within the period fixed by Article IV. of the International Convention of Paris has sent in a mark to the Office for Industrial Property, which, with due observance of Article VI. of the said Convention, he has deposited according to the regulations of one of the States that is a party to that Convention, shall be considered to have already made use of the mark in the Netherlands."

A similar provision is found in the Laws on trade marks for the Dutch colonies.

There is no limit of time within which persons who have used trade marks before registration in the Netherlands are obliged to register their trade marks in order to secure the benefit of the Dutch Laws on trade marks.

The steps to be taken by the owners of trade marks used in the Netherlands, to obtain redress in the event of infringement, are the following:—

(a) By a prosecution, founded upon Article 337 of the Penal Law. This is effected by denouncing (to the justice of the local Court of the place of the occurrence) the infringement.

(b) By means of a civil law suit, founded upon—

1. Article X. of the Dutch Law on Trade Marks. This is effected by petitioning the Court of Justice at The Hague to cancel the registration of a trade mark which is similar or nearly similar to a mark which has already been made use of by some other person for the same kind of merchandise.

2. Article 1,401 of the Dutch Civil Law, in order to obtain indemnification.

The consequence of neglect on the part of British subjects to observe the regulations as to trade marks entails possible adoption of those

marks by Dutchmen or by other foreigners. It is most advisable to register marks, which are then protected by the Office for Industrial Property, which will prevent similar or nearly similar marks from being registered.

#### NICARAGUA.

The Law of November 21st, 1907, regulates the registration of trade marks.

#### PERU.

Law of December 19th, 1892, as modified by that of December 31st, 1895. There are also later Decrees of July 9th, 1909, August 6th, 1909, September 10th, 1909, with classification, November 10th, 1911, July 12th, 1912, August 9th, 1912.

#### PORTUGAL.

The Law in force is that of December 15th, 1894. Regulations of March 16th, 1905.

#### RUSSIA.

The question of trade marks in Russia is regulated by the Law of February 26th (March 9th), 1896, and the following are its main provisions:—

Trade marks may be adopted and used by all persons engaged in trade and manufacturing industries; such adoption, however, is not compulsory.

No trade marks may be used with designs and inscriptions contrary to public morality, nor such as may fraudulently mislead and deceive a purchaser; also are prohibited trade marks showing medals, &c. of distinction on which the year of award is not indicated. Marks exhibiting such honorary awards may, moreover, be exhibited only on goods and articles of the class for which the award was made.

The exclusive use of a trade mark is secured by application to the Department of Trade and Manufactures, which, on approval of the mark, issues a certificate of registration.

Application for more than one trade mark can be made by a single applicant for distinguishing goods differing in kind and variety.

Exclusive right to a trade mark cannot be secured if it does not differ distinctly from one already registered in the name of another person for goods of a kindred nature.

The registration of trade marks may be effected, according to the desire of applicants, for terms ranging from one to ten years. On the expiration of the term of registration the same may be renewed for a further period.

A trade mark registered in any one colour and in one size may be used in other colours and sizes.

A trade mark is registered in the name of the first person applying for its registration.

The registration of a trade mark does not deprive any other person of the right during three years after such registration of contesting at law the validity of the same.

The transfer of a trade mark to another person or firm is allowed



under certain conditions, and subject to the sanction of the Department of Trade and Manufactures.

The exclusive right of using a particular trade mark ceases at the request of the person to whom such right was granted, or on the close of the manufacturing or other business in which it was used. It also lapses on the non-renewal of the registration or non-notification to the Department of Trade and Manufactures of the transfer of a business, &c., within six months of such transfer; moreover, the exclusive right of using a trade mark expires when a Court of law shall declare such right to be non-existent.

The fee payable to the Government for registering or renewing a trade mark is 3 roubles for the first year of duration of the certificate of registration, and 1 rouble for each succeeding year.

All applications for the registration of a trade mark must have affixed on each sheet of the same a Russian revenue stamp of the value of 80 copecks.

Fraudulent use and counterfeit of trade marks are punishable by imprisonment from four to eight months.

A dealer found in possession of goods bearing fraudulent trade marks is liable to the same punishment.

Persons selling or found in possession of goods bearing prohibited trade marks are liable to a fine not exceeding 100 roubles for the first offence, and for the second and succeeding offences in a sum not exceeding 200 roubles on each occasion.

A law for the protection of patent rights and trade marks has been recently approved by the two Legislative Chambers in Russia. The law provides that subjects of those foreign States which have concluded with Russia agreements respecting the mutual protection of industrial property on the principle of priority, who shall have applied in due form in one of these States for (a) *a certificate to a trade mark*, shall enjoy for a period of four months from the date of such application a preferential right to receive for such trade mark the certificate specified in Article 161, Section 4, of the industrial law. Persons who are not subjects of foreign States which have concluded with Russia agreements respecting the mutual protection of industrial property on the principle of priority shall enjoy the privileges specified above only if this is specially provided for in the agreements aforesaid. In this case the above specified privileges will be applicable within the limits and on the conditions laid down by these agreements.

#### SPAIN.

Law of May 16th, 1902. Royal Ordinances of July 30th, 1904, concerning International Trade Marks, of July 26th, 1905, and of November 13th, 1905, respecting trade marks in foreign languages.

#### SWEDEN.

With the exception of stamps set on iron goods, no legislation existed in Sweden until the year 1885 protecting trade marks, other than the very incomplete regulations which were to be found in the general Penal Law. The affixing of stamps on iron and steel goods has, on the other hand, been from time immemorial and continues to be obligatory in Sweden on the Sweden manufacturers. Up to the year 1885 the

control and registration of the iron stamps belonged to the Director-General of the Mining Department, now the Commercial Department of the Royal Board of Trade.

In the year 1877 a committee sat for the purpose of drawing up a bill regarding patents and protection for patterns and models as well as trade marks. The proposals made by this committee led, however, as far as concerned the protection of trade marks, to no result.

In the year 1881, however, committees met simultaneously in Sweden, Norway, and Denmark with the object, among others, of drawing up a bill concerning the protection of trade marks as nearly as possible in the same form for the three countries.

When these committees met together for united work in 1882, they laid on the table bills respecting the protection of trade marks which were in all essentials similar. After some slight amendments the Swedish bill was passed in the 1884 session of the Riksdag, and the Law on the protection of trade marks now in force was promulgated on July 5th of the same year and came into force on January 1st, 1885.

The provisions of this Law have since been modified, partly by a Law of March 5th, 1897, which provided protection to certain so-called "word marks," and partly by Decrees which were issued later.

The Decrees which are at present in force are (1) the Royal Proclamation of December 31st, 1895, relating to the character of the documents which are to be presented on the registration of trade marks; (2) the Royal Proclamation of June 25th, 1897, relating to a change in the wording of paragraph 2 of the above-mentioned Royal Proclamation; (3) the Royal Proclamation of November 18th, 1898, relating to the register of trade marks; and (4) a Law of June 26th, 1905, modifying one article of the Law of 1884 relating to illegal applications of names or marks.

Paragraph 3 of the Law on trade marks relates to the formalities required for registration and the costs attached thereto. It runs as follows:—

Anyone who wishes to have a trade mark registered shall hand into the registration authority, or send in a prepaid letter, a written application containing a clear description of the mark and a full statement of the name, business, and postal address of the applicant or firm, and also in cases where the right to the trade mark embraces only certain kinds of wares, a statement of those kinds. The application must be accompanied by (1) a drawing upon good stout paper of the mark, in triplicate, not more than 10 centims. long and 15 centims. broad; (2) two stamps such as are used in printing the mark (*clichés*), of the same size as the drawing; (3) a fee of 40 kroner for registration and publication.

There are no fixed forms of publication, but more detailed information as to what the application should contain will be found in the above-mentioned Royal Proclamation of June 25th, 1897.

Beyond the above-mentioned fee of 40 kroner, the applicant has nothing more to pay for registration. The protection of a registered trade mark ceases, however, when an application for its renewal is not made, the first time, within ten years of the day of registration, and subsequently, within ten years from the previous day of renewal. A person wishing to renew his registration must hand or send in (in the



way stated in paragraph 3 of the Law on trade marks) a written application to that effect, accompanied by one copy of such drawing as is there prescribed, and also a registration fee of 10 kroner.

To insure mutual protection of trade marks between Sweden and foreign States, the King has come to an understanding with certain States, and also, by an Act of Adhesion on behalf of Sweden on June 26th, 1885, has become a party to the Convention of the International Protection of Industrial Property, concluded at Paris on March 20th, 1883. His Majesty, by a Royal Proclamation of June 26th, 1885, in regard to States belonging to the Union founded through the above-mentioned convention, has also decreed, among other things, that protection of trade marks, according to the Law of July 5th, 1884, belongs to those persons who, in a foreign State forming one of the Union, carry on manufactures or trades, agricultural, mining, or other business; and also to those who are the subjects of such a State, or have a fixed residence there but carry on their business in another State.

Besides the documents which, as above stated, must accompany an application for registration, such applications from foreigners must also be accompanied by an attestation, consisting of an extract from the proper register of trade marks, that the applicant has fulfilled the conditions which in the foreign State are required in order to insure protection of the trade mark.

The Norwegian Law of May 26th, 1884, is believed to be similar to that of Sweden of July 5th, 1884.<sup>1</sup>

#### SWITZERLAND.

The Law of December 19th, 1879, respecting the registration and protection of trade marks, was superseded by that of September 26th, 1890.

Articles 1 and 3 are as follows:—

ART. 1.—“Sont considérés comme marques de fabrique et de commerce—

(1) Les raisons de commerce ;

(2) Les signes appliqués sur les produits ou marchandises industriels et agricoles ou sur leur emballage, à l'effet de les distinguer ou d'en constater la provenance.”

ART. 3.—“Les armoiries publiques et tous autres signes devant être considérés comme propriété d'un Etat ou propriété publique, qui figurent sur les marques des particuliers, ne peuvent être l'objet de la protection légale.

Il est interdit de faire figurer, sur une marque de fabrique, aucune indication de nature à porter atteinte aux bonnes mœurs.”

The formalities required by the latter for the registration of a trade mark are the following:—

An application must be made to the Bureau Fédéral de la Propriété Intellectuelle in French, German, or Italian, in the prescribed form, in duplicate, with a designation of the goods for which it is to be used.

Further, an exact production, in duplicate, of the trade mark, with

<sup>1</sup> See also Norwegian Law of May 31st, 1900, modifying the Law of May 26th, 1884.

the date of deposit, signed by the owner, or his representative, must be sent in, together with a stereotype of the same.

In the case of firms or individuals whose industry is carried on in Switzerland, an official attestation is required as regards their entry in the commercial register, or, in default of such entry, respecting the domicile of the depositor.

In the case of firms or individuals established in other countries which accord reciprocity of treatment, an official attestation certifying the registration of the trade mark in question in the country of origin is required.

The right of the depositor to any honorary distinctions mentioned on the trade mark must be duly established, and it must be shown that a power of attorney has been conferred on the representative who acts for the owner if the latter does not appear personally in the business.

All papers in connection with the application for registration must be in the same language, or a translation furnished at the same time.

The fee for registration is 20 fr. At the expiration of twenty years it is necessary to renew the registration within six months for a fresh term of twenty years, the registration fee being, as before, 20 fr.

A trade mark which is not made use of during three consecutive years is regarded as having lapsed.

In the case of refusal on the part of the Bureau Fédéral to register the trade mark, appeal can be made to the competent department; if the decision of the former is upheld, final appeal can be made to the Conseil Fédéral.

A registered trade mark can only be transferred with the industry the products of which it served to identify. Such transfer is subject to a fee of 20 fr., in addition to the same formalities as were required for the original registration, and is valid for a period of twenty years.

Any change or modification in the designation of the firm must be duly registered, the registration being gratuitous when such modification does not consist of a change of partners, or involve an alteration in the trade mark. If, on the other hand, the change or modification affects the trade mark, a tax of 10 fr. is levied, the publication of the trade mark, as modified, being necessary.

An extension of the use of a registered trade mark beyond the original limits specified at the time of registration involves formalities identical with those previously required, the fee for such extension being 20 fr., and a fresh period of twenty years commencing from that date.

A restriction, on the other hand, as regards its employment may be simply notified by letter, no tax attaching to such notification.

The cancelling of a registered trade mark can take place—

By a written renunciation of the same from the owner.

On the expiration of the period of twenty years for which protection was originally granted, if a renewal of the term has not been formally made.

By decision of the competent Federal Department: or, in virtue of a legal sentence justifying the demand for such a step.

The owners of trade marks applied to products at an exhibition from countries which have no convention with Switzerland on the subject can enjoy temporary protection for a period not exceeding two years, on the payment of a fee of 10 fr. for registration.



Their application must be accompanied by a stereotype of the trade mark.

#### THE UNITED STATES.

The Act of 1905 is, so far as material, printed above, pp. 831 *et seq.* It has been somewhat amended by an Act of May 4th, 1906, and an Act of March 2nd, 1907, and an Act of January 8th, 1913. Under the Act of 1906, a new classification was made to take effect on July 1st, 1906. Rules under the Act of 1905 took effect from April 1st, 1905, the date of the commencement of the Act. These were amended by rules of April 13th, 1905, of June 13th, 1906, and of July 19th, 1906.

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#### 2. LAWS OF THE BRITISH EMPIRE.

(Outside the United Kingdom.)

The Australian Trade Marks Act of 1905, as amended in 1912, is fully set out above.

It has not been thought necessary to increase the size of the book by a summary of the provisions of the trade marks laws of all the colonies and British possessions, as these follow very closely the lines of British legislation on the subject at the date of the local Acts, but the following information as to the dates of the various Acts, &c., may be useful.

Where a statute is stated to follow one of the British Acts, this is intended to mean in the main provisions, and especially as to essential particulars.

#### ASHANTI.

See Gold Coast Colony. The trade marks laws of that colony have been extended to Ashanti, Ordinance No. 2 of 1903, Ashanti, secs. 6 and 7.

#### AUSTRALIA.

The Acts of 1905 and 1912 are set out above, pp. 838 *et seq.*

The existing rules thereunder are those of 1906, Statutory Rules, No. 122, and No. 90 of 1907.

The Commonwealth adhered to the International Convention as from August 5th, 1907.

#### BAHAMAS.

The existing Law is contained in the Trade Marks Act, 1906, 5 and 6 Ed. 7, c. 6. It practically follows the British Act of 1905. There are rules of 1908.

#### BARBADOS.

Acts No. 2 of 1896 and No. 16 of 1897 provide for the registration of Trade Marks. See also Consolidated Act, 1912, No. 5.

#### BASUTOLAND.

The Cape of Good Hope Trade Marks Registration Act, 1887, was by Proclamation No. 2B of 1884, applied as nearly as the circumstances of the country will permit.

## APPENDIX XVIII.

## BECHUANALAND.

See Southern Rhodesia.

## BERMUDA.

The Act in force is the Patents, Designs and Trade Marks Act, 1902. It is as regards trade marks on the lines of the British Act of 1883, as amended by the Act of 1888. An amendment Act of 1904 makes some unimportant amendments. There are Rules of 1903 and 1904 and additional Rules.

## BRITISH CENTRAL AFRICA PROTECTORATE.

See Nyasaland.

## CANADA.

The Act in force is the Trade Mark and Design Act of 1906 (Revised Statutes of Canada, 1906, c. 71). The Rules in force are those of October 25th, 1907. There are also Timber Marking Acts, No. 72 of 1903, and No. 72 of 1908.

## CAPE OF GOOD HOPE.

The principal Act is the Trades Marks Registration Act, 1877. As regards "essential particulars," it followed the British Act of 1875. It has been amended by the Trade Marks Registration Amendment Acts of 1891 and 1895, which follow respectively the British Acts of 1883 and 1888. Some minor amendments were made by the Patents and Designs and Trade Marks Act of 1904. The Rules are those of March 1st, 1893, Government Notice No. 236, as amended by the Notice of March 9th, 1900, No. 213.

## CEYLON.

The Trade Marks Ordinance, No. 14 of 1888 follows the provisions of the British Act of 1875, and the amending Ordinance No. 4 of 1890 follows the British Act of 1888. An amending Ordinance No. 6 of 1904 relates to international and intercolonial arrangements. The Trade Marks and Designs Ordinance, No. 9 of 1906, establishes the office of a Registrar-General. An Ordinance, No. 15 of 1908, practically follows the British Act of 1905, as regards the registrations of words, line headings, etc., in respect of cotton marks. The Rules in force are those of June 1st, 1906.

## CYPRUS.

The Trade Mark Registration Act, 1910, No. VIII., follows the British Act of 1905. There are Trade Mark Rules of 1911.

## EAST AFRICA PROTECTORATE.

The Registration of Trade Marks Ordinance of 1912 (October 16th) follows the British Act of 1905. There are Rules of 1912.



## FIJI.

The Law is contained in the Trade Marks Registration Ordinance, 1886, and general Rules thereunder. The Ordinance follows the terms of the British Act of 1875.

## GAMBIA.

The Trade Marks (Registration) Ordinance, 1900, No. 6, follows to a great extent the British Act of 1888. There is an amending Ordinance, No. 6 of 1904. There are Rules of April 26th, 1901, and amending Rules of 1901, 1904, and January and July, 1906.

## GOLD COAST COLONY.

The Law in force is the Trade Marks Ordinance, 1899, No. 2 of 1900, which follows the British Act of 1888; there is also an Ordinance, No. 7 of 1902, relating to international and intercolonial arrangements and making some minor amendments. By an Ordinance, No. 17 of 1903, no trade mark is to be registered for imported cotton piece goods, silk piece goods or goods in the miscellaneous class, unless such trade mark is registered in the United Kingdom as the trade mark for such goods. The rules in force are those of 1902 as amended by those of 1905.

## HONG-KONG.

The Trade Marks Ordinance, No. 4 of 1909, follows the British Act of 1905, but does not contain the special provisions as to cotton marks. There are Rules of 1910, slightly amended in 1911.

## INDIA.

There is no registration law. A notice in the *Board of Trade Journal* of December 12th, 1907, states that according to the *Times of India* (Bombay) the Upper India Chamber of Commerce has decided to undertake the registration of trade marks. A further notice of February 27th, 1908, sets out the Rules. The system is practically one of deposit of trade marks.

## JAMAICA.

The Trade Marks Law, 1911 (No. 37) follows the British Act of 1905.

## LAGOS.

The Trade Marks Ordinance, 1901, follows the British Act of 1888.

## LEEWARD ISLES.

The original Act is No. 33 of 1887, but it is amended by an Act, No. 17 of 1890, which follows the British Act of 1888. There are Rules of 1895.

## MALTA.

The Patents, Designs and Trade Marks Ordinance, No. 11 of 1899, follows as regards trade marks the British Act of 1883. There is an amending Ordinance, No. 7 of 1907. There are regulations of 1902 and 1907.

## MAURITIUS.

There is a Trade Mark Ordinance, No. 18 of 1868, providing for registration of trade marks.

## NATAL.

The Act in force is that "To establish a Register of Trade Marks in Natal," No. 4 of 1885. It follows the British Act of 1883. The Rules, Regulations and Scale of Fees are those of 1885 (No. 456) as amended in 1898 (No. 704) and 1901 (No. 433).

## NEWFOUNDLAND.

The Law in force is No. 112 of the Consolidated Statutes. It follows the Act of 1888.

## NEW ZEALAND.

The Patents, Designs and Trade Marks Act, 1911 (No. 17), contains the statutory law following the British Act of 1905. The rules in force as to trade marks are the Regulations of May 21st, 1912.

## NYASALAND.

Under the British Central Africa Protectorate Ordinance, No. 9 of 1903, the Registrar of the Protectorate became Registrar of Trade Marks, and the law as in England for the time being was applied to the Protectorate.

## ORANGE RIVER COLONY.

The Law in force is Registration of Trade Marks, Chap. 113 in the Revised Laws of 1906, Amending Law No. 13 of 1893. It approximates closely to that of Cape Colony. There are Regulations undated.

## ST. HELENA.

The Law of England is in force, Ordinance No. 3 of 1895, sec. 23.

## SOUTHERN NIGERIA.

An Ordinance dated November 10th, 1910 (No. 18), consolidates the Law as to Trade Marks. It follows the British Act of 1905. It was slightly amended in 1912 (No. 2 of 1912).

## SOUTHERN RHODESIA.

By virtue of a Proclamation of June 10th, 1891, the Cape of Good Hope Registration Act (No. 22 of 1877) came into force in Mashonaland,



but its provisions have since been modified by Ordinance No. 5 of 1893 (extended by the Extension of Limits Ordinance No. 6 of 1894), and Regulations No. 59 of 1897, which have the effect of making the law as to what may be registered similar to that contained in the British Act of 1888. See also the rules contained in Government Notice, No. 60 of 1897.

#### STRAITS SETTLEMENTS.

Certificates showing registration of trade marks in England may be recorded at the Import and Export Branch of the Marine Department, Singapore, on payment of a fee of one dollar for each trade mark, Note of June, 1903.

#### TRANSVAAL.

The Trade Marks Registration Proclamation, 1902, which repealed the Law No. 6 of 1892, so far as inconsistent with it, follows the British Act of 1888. It has been slightly amended by an Ordinance of 1904. The rules in force are those of 1902, as amended in 1909 (Government Notice, No. 1099 of 1909).

#### TRINIDAD AND TOBAGO.

The Law in force is the Patents Designs and Trade Marks Ordinance, No. 76 in the Edition of Statutes, 1905, and the Amending Ordinances, Nos. 13 and 35 of 1905.

## APPENDIX XIX.

### THE MERCHANDISE MARKS ACTS, 1887 TO 1911.

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#### MERCHANDISE MARKS ACT, 1887.<sup>1</sup>

(50 & 51 Vict. c. 28.)

#### ARRANGEMENT OF SECTIONS.

Sec.

1. Short title.
2. Offences as to trade marks and trade descriptions.
3. Definitions.
4. Forging trade mark.
5. Applying marks and descriptions.
6. Exemption of certain persons employed in ordinary course of business.
7. Application of Act to watches.
8. Mark on watch case.
9. Trade mark, how described in pleading.
10. Rules as to evidence.
11. Punishment of accessories.
12. Search warrant.
13. Extension of 22 & 23 Vict. c. 17, to offences under this Act.
14. Costs of defence or prosecution.
15. Limitation of prosecution.
16. Prohibition on importation.
17. Implied warranty on sale of marked goods.
18. Provisions of Act as to false description not to apply in certain cases.
19. Savings.
20. False representation as to Royal Warrant.
21. Application of Act to Scotland.
22. Application of Act to Ireland.
23. Repeal of 25 & 26 Vict. c. 88.

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*An Act to consolidate and amend the Law relating to Fraudulent Marks on Merchandise.* [23rd August, 1887.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.  
Offences as to  
trade marks  
and trade  
descriptions.

1. This Act may be cited as the Merchandise Marks Act, 1887.
2. (1.) Every person who—
  - (a) forges any trade mark ; or
  - (b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive ; or

<sup>1</sup> See Kerly on Merchandise Marks, Orders and Regulations under the 3rd edition, which contains the general Act.



- (c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark ; or
- (d) applies any false trade description to goods ; or
- (e) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark ; or
- (f) causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

(2.) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

- (a) That having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description ; and
  - (b) That on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things ; or
  - (c) That otherwise he had acted innocently ;
- be guilty of an offence against this Act.

(3.) Every person guilty of an offence against this Act shall be liable—

- (i.) on conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine ; and
- (ii.) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds ; and
- (iii.) in any case, to forfeit to her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(4.) The Court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the Court thinks fit.

(5.) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

(6.) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts : Provided that a person charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

Definitions.  
46 & 47 Vict.  
c. 57.

3. (1.) For the purposes of this Act—

The expression “trade mark” means a trade mark registered in the register of trade marks kept under the Patents, Designs, and Trade Marks Act, 1883,<sup>1</sup> and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable :<sup>2</sup>

The expression “trade description” means any description, statement, or other indication, direct or indirect,

(a) as to the number, quantity, measure, gauge, or weight, of any goods, or

(b) as to the place or country in which any goods were made or produced, or

(c) as to the mode of manufacturing or producing any goods, or

(d) as to the material of which any goods are composed, or

(e) as to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act :

The expression “false trade description” means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act :

The expression “goods” means anything which is the subject of trade, manufacture, or merchandise :

The expressions “person,” “manufacturer, dealer, or trader,” and “proprietor” include any body of persons corporate or unincorporate :

The expression “name” includes any abbreviation of a name.

(2.) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3.) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the

<sup>1</sup> The reference must now be taken to be to the Trade Marks Act, 1905; see sec. 98 of the Interpretation Act,

1889, above, p. 718.

<sup>2</sup> See above, pp. 640 *et seq.*, and p. 811.



expression false name or initials means as applied to any goods, any name or initials of a person which—

- (a) are not a trade mark, or part of a trade mark, and
- (b) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description and not having authorised the use of such name or initials, and
- (c) are either those of a fictitious person or of some person not *bonâ fide* carrying on business in connection with such goods.

4. A person shall be deemed to forge a trade mark who either—

- (a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or
- (b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

Forging trade mark.

and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

5. (1.) A person shall be deemed to apply a trade mark or mark or trade description to goods who—

- (a) applies it to the goods themselves; or
- (b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or
- (c) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or
- (d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

Applying marks and descriptions.

(2.) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied, whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3.) A person shall be deemed to falsely apply to goods a trade mark, or mark, who, without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or

Exemption of certain persons employed in ordinary course of business.

causing any of the things in this section mentioned to be done, and proves—

- (a) That in the ordinary course of his business he is employed on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (b) That he took reasonable precautions against committing the offence charged; and
- (c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- (d) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied—

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

Application  
of Act to  
watches.

7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

Mark on  
watch case.

8. (1.) Every person who after the date fixed by Order in Council sends or brings a watch case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch case made in the United Kingdom), and in such a mode as may be from time to time directed by Order in Council.

(2.) The declaration may be made before an officer of an assay office, appointed in that behalf by the office (which officer is hereby authorised to administer such a declaration), or before a justice of the peace, or a commissioner having power to administer oaths in the Supreme Court of Judicature in England or Ireland, or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.

(3.) Every person who makes a false declaration for the purposes



of this section shall be liable, on conviction on indictment, to the penalties of perjury, and on summary conviction to a fine not exceeding twenty pounds for each offence.

9. In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Trade mark,  
how described  
in pleading.

10. In any prosecution for an offence against this Act,—

Rules as to  
evidence.

(1.) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.

(2.) In the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced.

11. Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act which, if committed in the United Kingdom, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanour had been there committed.

Punishment  
of accessories.

12. (1.) Where, upon information of an offence against this Act, a justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said justice on or after issuing the summons or warrant, or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

Search  
warrant.

(2.) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3.) Any goods or things forfeited under this section, or under any

other provision of this Act, may be destroyed or otherwise disposed of, in such manner as the Court by which the same are forfeited may direct, and the Court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Extension of  
22 & 23 Vict.  
c. 17, to  
offences  
under this  
Act.

13. The Act of the session of the twenty-second and twenty-third years of the reign of her present Majesty, chapter seventeen, intituled, "An Act to prevent vexatious indictments for certain misdemeanours," shall apply to any offence punishable on indictment under this Act, in like manner as if such offence were one of the offences specified in section one of that Act, but this section shall not apply to Scotland.

Costs of  
defence or  
prosecution.

14. On any prosecution under this Act the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

Limitation of  
prosecution.

15. No prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Prohibition  
on importa-  
tion.

16. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Act; be it therefore enacted as follows:

39 & 40 Vict.  
c. 36.

- (1.) All such goods, and also all goods of foreign manufacture, bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section forty-two of the Customs Consolidation Act, 1876.
- (2.) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.
- (3.) The Commissioners of Customs may from time to time make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.
- (4.) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United



Kingdom, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.

- (5.) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
- (6.) The Commissioners of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Commissioners of her Majesty's Treasury.
- (7.) The regulations may provide for the informant reimbursing the Commissioners of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.
- (8.) All regulations under this section shall be published in the "London Gazette" and in the "Board of Trade Journal."
- (9.) This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.
- (10.) Section two of the Revenue Act, 1883, shall be repealed as from a day fixed by regulations under this section, not being later than the first day of January one thousand eight hundred and eighty-eight, without prejudice to anything done or suffered thereunder.

46 & 47 Vict.  
c. 55.

17. On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Implied  
warranty on  
sale of  
marked  
goods.

18. Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Provisions of  
Act as to false  
description  
not to apply  
in certain  
cases.

19. (1.) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

Savings.

(2.) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.

(3.) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who *bonâ fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

False representation as to royal warrant.

20. Any person who falsely represents that any goods are made by a person holding a royal warrant, or for the service of her Majesty, or any of the Royal Family, or any government department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

Application of Act to Scotland.

21. In the application of this Act to Scotland the following modifications shall be made :—

The expression "Summary Jurisdiction Acts" means the Summary Procedure Act, 1864, and any Acts amending the same.

The expression "justice" means sheriff.

The expression "Court of Summary Jurisdiction" means the Sheriff Court, and all jurisdiction necessary for the purpose of this Act is hereby conferred on sheriffs.

Application of Act to Ireland.

22. In the application of this Act to Ireland, the following modifications shall be made :—

The expression "Summary Jurisdiction Acts" means, so far as respects the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace of such district, and as regards the rest of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

The expression "Court of Summary Jurisdiction" means justices acting under those Acts.

14 & 15 Vict. c. 93.

Repeal of 25 & 26 Vict. c. 88.

23. The Merchandise Marks Act, 1862, is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this Act; provided that this repeal shall not affect—

- (a) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor
  - (b) the institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Act; nor
  - (c) any right, privilege, liability, or obligation acquired, accrued, or incurred under any enactment hereby repealed.
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## MERCHANDISE MARKS ACT, 1891.

(54 VICT. c. 15.)

*An Act to amend the Merchandise Marks Act, 1887.*

[11th May, 1891.]

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

1. The customs entry relating to imported goods shall, for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

Customs entry to be trade description.  
50 & 51 Vict. c. 28.  
Official prosecutions.

2. (1.) The Board of Trade may, with the concurrence of the Lord Chancellor, make regulations providing that in cases appearing to the Board to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution of offences under the Merchandise Marks Act, 1887, shall be undertaken by the Board of Trade, and prescribing the conditions on which such prosecutions are to be so undertaken.<sup>1</sup> The expenses of prosecutions so undertaken shall be paid out of moneys provided by Parliament.

(2.) All regulations made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act, and shall be published under the authority of Her Majesty's Stationery Office.

(3.) Nothing in this Act shall affect the power of any person or authority to undertake prosecutions otherwise than under the said regulations.

3. This Act may be cited as the Merchandise Marks Act, 1891, and the Merchandise Marks Act, 1887, and this Act may be cited together as the Merchandise Marks Act, 1887 and 1891.

Short title.

<sup>1</sup> The Board of Trade has recently issued new Regulations under this Act.

## MERCHANDISE MARKS (PROSECUTION) ACT, 1894.

(57 & 58 VICT. c. 19.)

*An Act for enabling the Board of Agriculture to undertake Prosecutions in certain cases under the Merchandise Marks Act, 1887.*

[20th July, 1894.]

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

Power of Board of Agriculture to prosecute in certain cases.

54 & 55 Vict. c. 28.

Extent of Act.

Short title.

1. The powers exercisable by the Board of Trade under the Merchandise Marks Act, 1891, with respect to the prosecution of offences under the Merchandise Marks Act, 1887, may in cases which appear to the Board of Agriculture to relate to agricultural or horticultural produce be exercised by that Board, and in such cases the former Act shall apply as if the Board of Agriculture were referred to therein instead of the Board of Trade.

2. This Act shall not extend to Ireland.

3. This Act may be cited as the Merchandise Marks (Prosecutions) Act, 1894, and shall be read with the Merchandise Marks Acts, 1887 and 1891.

## MERCHANDISE MARKS ACT, 1909.

(9 EDWARD 7, c. 24.)

*An Act to enable the Department of Agriculture and Technical Instruction for Ireland to undertake Prosecutions in certain cases under the Merchandise Marks Act, 1887.*

[25th November, 1909.]

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:

Official prosecutions under 50 & 51 Vict. c. 28.

1.—(1.) The Department of Agriculture and Technical Instruction for Ireland (in this Act referred to as "the Department") may, with the concurrence of the Lord Chancellor of Ireland and of the Board of Trade, make regulations providing that, in cases which appear to the Department to relate to Irish agricultural produce, or to the produce of any other Irish rural industry, and to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution in Ireland of offences under the Merchandise Marks Act, 1887, shall be undertaken by the Department, and prescribing the conditions on which such prosecutions are to be so undertaken.

50 & 51 Vict. c. 28.

(2.) All regulations made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting within three weeks after the beginning of the next session of Parliament, and shall have effect as if enacted by this Act.

(3.) Nothing in this Act shall affect the power of any person or authority to undertake prosecutions otherwise than under the said regulations.

62 & 63 Vict. c. 50.

(4.) In this section the expression "rural industries" means the rural industries mentioned in subsection one of section thirty of the Agriculture and Technical Instruction (Ireland) Act, 1890.

(5.) The expenses of prosecutions undertaken by the Department in pursuance of this section shall be paid out of moneys provided by Parliament.

Extent and short title.

2. This Act shall apply to Ireland only, and may be cited as the Merchandise Marks (Ireland) Act, 1909.



MERCHANDISE MARKS ACT, 1911.

(1 & 2 GEORGE 5, C. 31.)

*An Act to amend Section Sixteen of the Merchandise Marks Act, 1887.*  
 [16th December, 1911.]

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. (1) Where any goods which, if sold, would be liable to forfeiture under the Merchandise Marks Act, 1887, are imported into the United Kingdom, and the goods bear any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, and the Commissioners of Customs and Excise are, upon representations made to them, satisfied that the use of the name or trade mark is fraudulent, the proper officer of Customs and Excise may require the importer of the goods, or his agent, to produce any documents in his possession relating to the goods, and to furnish information as to the name and address of the person by whom the goods were consigned to the United Kingdom and the name and address of the person to whom the goods were sent in the United Kingdom; and, if the importer or his agent fails within fourteen days to comply with any such requirement, he shall, for each offence, forfeit the sum of one hundred pounds.

Power to require information in respect of imported goods bearing fraudulent marks.

50 & 51 Vict. c. 28.

(2) Any information obtained from the importer of the goods or his agent under this section, or from any other source, may be communicated by the Commissioners to any person whose name or trade mark is alleged to have been used or infringed.

(3) This section shall have effect as if it were part of section sixteen of the Merchandise Marks Act, 1887.

2. This Act may be cited as the Merchandise Marks Act, 1911, and the Merchandise Marks Acts, 1887 to 1894, and this Act may be cited together as the Merchandise Marks Acts, 1887 to 1911.

Short title.

## APPENDIX XX.

### GENEVA CONVENTION ACT, 1911.

(1 & 2 GEORGE 5, c. 20.)

*An Act to make such amendments in the Law as are necessary to enable certain reserved provisions of the Second Geneva Convention to be carried into effect.* [18th August, 1911.]

WHEREAS His Majesty has ratified, with certain reservations, the Convention for the amelioration of the condition of the wounded and sick of armies in the field, drawn up in Geneva in the year one thousand nine hundred and six, and it is desirable in order that those reservations may be withdrawn, that such amendments should be made in the law as are in this Act contained :

Be it therefore 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 :

Prohibition  
of use of  
emblem of  
red cross on  
white  
ground, &c.

1.—(1) As from the commencement of this Act it shall not be lawful for any person to use for the purposes of his trade or business, or for any other purpose whatsoever, without the authority of the Army Council, the heraldic emblem of the red cross on a white ground formed by reversing the Federal colours of Switzerland, or the words "Red Cross" or "Geneva Cross," and, if any person acts in contravention of this provision, he shall be guilty of an offence against this Act, and shall be liable on summary conviction to a fine not exceeding ten pounds, and to forfeit any goods upon or in connection with which the emblem or words were used.

(2) Where a company or society is guilty of any such contravention, without prejudice to the liability of the company or society, every director, manager, secretary, and other officer of the company or society who is knowingly a party to the contravention shall be guilty of an offence against this Act and liable to the like penalty.

(3) Nothing in this section shall affect the right (if any) of the proprietor of a trade mark registered before the passing of this Act, and containing any such emblem or words, to continue to use such trade mark for a period of four years from the passing of this Act, and, if the period of the registration or of the renewal of registration of any such trade mark expires during those four years, the registration thereof may be renewed until the expiration of those four years, but without payment of any fee.

(4) Proceedings under this Act shall not in England or Ireland be instituted without the consent of the Attorney-General.

(5) This Act shall extend to His Majesty's possessions outside the United Kingdom, subject to such necessary adaptations as may be made by Order in Council.

Short title.

2. This Act may be cited as the Geneva Convention Act, 1911.



## APPENDIX XXI.

### STATUTES REQUIRING PARTICULAR CLASSES OF GOODS TO BE MARKED IN A SPECIFIED MANNER<sup>1</sup> IN ENGLAND.<sup>2</sup>

**ANCHORS AND CHAIN CABLES.]**—Manufacturer to place his name or initials and the number and weight of the anchor on every anchor (57 & 58 Vict. c. 60, s. 543); contract for sale of chain cable or anchor exceeding in weight 168 lbs. to imply a warranty of testing and stamping (62 & 63 Vict. c. 23, s. 2 (1)); no chain cable or anchor of greater weight than 168 lbs. to be sold unless tested and stamped according to the Anchor and Chain Cables Act, 1899 (62 & 63 Vict. c. 23, s. 1 (1)).

**BREAD.]**—Penalty for making or exposing for sale any bread made wholly or partially of peas, beans, potatoes (not including potato-yeast), or any sort of corn or grain other than wheat, unless it be marked with a Roman M. The Act applies only beyond ten miles from the Royal Exchange, London. 6 & 7 Will. 4, c. 37, s. 10. But the same provision is made for the excepted area by 3 Geo. 4, c. cvi.

**BUTTER.]**—Imitations of butter to be sold only as “margarine.” See “Margarine.”

**BUTTONS (metal).]**—Penalties for marking, ordering, or exposing for sale any words or marks denoting quality on metal buttons, or any words or marks on the undersides thereof, unless the buttons be silver-plated or gold-gilt; only the marks, gilt, plated, double or treble gilt to be marked; penalties for falsely marking buttons; Act not to extend to buttons of gold, silver, tin, pewter, lead, tin and lead, tinned iron, Bath metal, white metal, any of these metals inlaid with steel, or buttons plated on shells. 36 Geo. 3, c. 60.

**CARDS.]**—Playing cards (except toy cards) to be sold in stamped wrappers. 25 & 26 Vict. c. 22, ss. 1, 2, 28, 36; 27 & 28 Vict. c. 56, s. 6. So as to foreign cards. 16 & 17 Vict. c. 107, ss. 114—116; 39 & 40 Vict. c. 36, s. 286.

**CHAIN CABLES.]**—See “Anchors.”

**CHICORY AND COFFEE.**—Imitations of coffee and coffee mixtures not to

<sup>1</sup> A more detailed summary of all or most of these statutes will be found in Mr. Safford's “Law of Merchandise Marks,” Appendix D., and in Mr. Sebastian's “Trade Marks.” The editors are indebted to the former book for the suggestion of many of the classes of goods referred to, and to the Official Index to Statutes for reference to the statutes mentioned under the different heads. Statutes (as the Copyright Acts,

for example) which require marks to be put upon particular goods in order to secure some right or privilege (as copyright in designs, for instance) are not here included. They would naturally be sought for in works devoted to the law regarding the rights or privileges in question.

<sup>2</sup> The Scotch and Irish statutes are given by Mr. Safford.

be sold, except in packets containing one or more quarters of a pound, each packet bearing a label showing the amount of duty, and a label showing the constituents of the mixture. 45 & 46 Vict. c. 41, s. 6.

CLOCKS.]—Bearing marks implying manufacture in the United Kingdom not to be imported. 39 & 40 Vict. c. 36, s. 42.

CUTLERY.]—See above, p. 654, and Sheffield marks, p. 120.

GOLD.]—See "Plate."

GUNPOWDER.]—If sold in quantities greater than 1 lb., to be packed in closed packages and labelled "Gunpowder." 38 & 39 Vict. c. 17, s. 32.

HOPS.]—Bags to be marked with the name of the owner, the parish and county where they were grown, and the date, number, and weight; penalty for false marking. 54 Geo. 3, c. 123, s. 1; 29 & 30 Vict. c. 37, s. 2. Implied warranty that the marks are genuine. 29 & 30 Vict. c. 37, s. 18.

LINEN.]—Penalties for affixing counterfeit marks to linen. 17 Geo. 2, c. 30; 18 Geo. 2, c. 24. English linen for exportation to be marked with name and place of abode of the maker and of the exporter, the year and number and length. 18 Geo. 2, c. 24, s. 2. Irish hand-woven linen damask to be so marked in the selvidge, cambric or linen diaper goods woven in a hand loom in Ireland to be stamped "Irish hand-woven"; it is an offence to mark other goods so as to represent that they are woven in a hand loom in Ireland. Irish Handloom Weavers Act, 1909, 9 Edw. 7, c. 21.

MARGARINE.]—All imitations of butter to be sold, and marked, when exposed for sale, as "margarine." 50 & 51 Vict. c. 29, ss. 3—7. Penalties for dealing in, selling, or exposing for sale any margarine contrary to the Act. *Ibid.*, s. 7. Considerable amendments affecting butter, milk-blended butter, and margarine are made by the Butter and Margarine Act, 1907 (7 Edw. 7, c. 21). See also the Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51).

MEDALS (Exhibition).]—Penalties for false representations as to grants of medals or certificates of the Exhibitions of 1851 or 1852. 26 & 27 Vict. c. 119.

PLATE.<sup>1</sup>]—The rules regulating the marking and standards of fineness required and allowed in respect of gold and silver goods are contained in the statutes referred to below.<sup>2</sup> They require to be marked on the goods the first letters of the christian and surnames of the worker (12 Geo. 2, c. 26, s. 5), and the *assay mark* of the town where the goods were made, or (if they were not made in an assay town) marked (2 Hen. 6, c. 17, London; 12 & 13 Will. 3, c. 4, York,<sup>3</sup> Exeter, Bristol,<sup>4</sup> Chester, and Norwich; <sup>3</sup> 1 Anne, c. 3, Newcastle-on-Tyne; 13 Geo. 3, c. 52, Sheffield; 5 Geo. 4, c. lii. s. 1, *local*, Birmingham), the variable or date mark to show the year of marking (12 & 13 Will. 3, c. 4, s. 3; 12 Geo. 2, c. 26, s. 5). And, in addition, on gold wares of twenty-two or eighteen carats fineness, the *standard* and *quality* marks of a crown and 22 (7 & 8 Vict. c. 22, s. 15), or a crown and 18 (38 Geo. 3, c. 69,

<sup>1</sup> See "Encyclopædia Britannica," "Plate."

<sup>2</sup> These statutes are summarised by Mr. Sebastian, 5th ed., p. 734, and Mr. Safford, p. 204.

<sup>3</sup> The marks for these towns are now discontinued.

<sup>4</sup> Bristol never exercised its right to mark: Sebastian, 5th ed., p. 736.



s. 2) respectively; and on silver wares of 11 ozs. 10 dwts. and 11 ozs. 2 dwts. fineness, the standard marks of Britannia and a lion *passant* respectively (6 Geo. 1, c. 11, s. 41; 12 Geo. 2, c. 26), and a *duty* mark<sup>1</sup> of the king's head. (24 Geo. 3, sess. 2, c. 53, s. 5.)

Before 1854, gold wares were required to be of either twenty-two or eighteen carats fineness (38 Geo. 3, 69); but her Majesty was authorised, under an Act of that year (17 & 18 Vict. c. 96), by Order in Council, to allow any standard for gold plate not being less than one-third part of the whole in fine gold, and to approve any instrument for stamping or marking the wares, setting forth in figures the actual fineness thereof according to the standard declared. The new inferior standard gold wares were declared not to be liable to duty. Under this Act, the nine, twelve, and fifteen carat gold standards have been authorised.

Silver wares must all be of either the 11 ozs. 10 dwts. or 11 ozs. 2 dwts. of silver to the pound troy standard. (6 Geo. 1, c. 11.)

The following wares are exempted from marking:—chains, necklace beads, locketts, filigree work, shirt buckles or brooches, stamped medals, or spouts to china, stone, or earthenware teapots, or any of them, of any weight; tippings, swages, or mounts, or any of them, not exceeding 10 dwts. of silver each, except only necks and collars for castors, cruets, or glasses appertaining to any sort of stands or frames; silver goods not weighing 5 dwts., except necks, collars, and tops for castors, cruets, or glasses appertaining to any sort of stands or frames, buttons to be affixed or set on any wearing apparel, solid sleeve buttons, and solid studs, not having a bissiled edge soldered on, wrought seals, blank seals, bottle tickets, shoe clasps, patch boxes, salt spoons, salt shovels, salt ladles, tea-spoons, tea-strainers, caddy ladles, buckles (shirt buckles or brooches before mentioned excepted), and pieces to garnish cabinets, or knife cases, or tea-chests, or bridles, or stands, or frames. (30 Geo. 3, c. 31.) Gold wedding rings are to be marked as gold plate. (18 & 19 Vict. c. 60, s. 1.)

Imported foreign plate, except ornamental plate, made before 1800 (5 & 6 Vict. c. 56, s. 6), is to be marked as English plate (5 & 6 Vict. c. 47, s. 59), and under sec. 2 of 39 & 40 Vict. c. 35 had to be marked with the figure F. on an oval shield. That section is now repealed by the Hall-marking of Foreign Plate Act, 1904 (4 Edw. 7, c. 6) and by the last-mentioned Act foreign plate is to be marked in such manner as determined by Order in Council so as readily to distinguish whether the plate was wrought or made in England, Scotland, or Ireland, or was imported from foreign parts.

Penalties for counterfeiting assay marks and connected offences are provided by 7 & 8 Vict. c. 22.

The importation of clocks and watches, or any other article of metal impressed with any mark or stamp, representing or in imitation of any legal British assay mark or stamp, or purporting by any mark or appearance to be of the manufacture of the United Kingdom, is forbidden (39 & 40 Vict. c. 36, s. 42).

Watch cases of foreign manufacture brought for assay to any assay office in the United Kingdom are to be marked as directed by an Order in Council of November 28th, 1887, made under the Merchandise

<sup>1</sup> The duty on plate is now abolished: 53 Vict. c. 8, s. 10.

Marks Act, 1887, s. 8, that is to say, with the word "foreign," and a shield which is cross-shaped for gold and octagon-shaped for silver.

Gold and silver watch-cases, forming parts of finished watches imported into the United Kingdom from abroad are gold and silver plate within the meaning of the Customs Act, 1842: *Goldsmiths' Company v. Wyatt*, [1907] 1 K. B. 95. In 1907 an Act (7 Edw. 7, c. 8) was passed exempting existing stocks of such goods.

**PLATED GOODS.]**—Makers of plated goods in Sheffield, or within 100 miles thereof, are authorised to strike on their goods their surnames, or the names of their firm, with a mark (not being an imitation of an assay-mark) which is approved by the guardians of the assay office and registered (24 Geo. 3, sess. 2, c. 20, ss. 2 & 3).

**SILVER.]**—See "Plate."

**STORES (PUBLIC).]**—The marks enumerated below to denote that stores to which they are affixed are his Majesty's property; the marks not to be applied by unauthorised persons<sup>1</sup>; obliterating the marks with intent to conceal his Majesty's property in the stores is a felony; regimental necessaries, &c., issued to soldiers, militiamen, or volunteers are excepted from the Act (38 & 39 Vict. c. 25; 44 & 45 Vict. c. 58, s. 156).

Stores.	Marks.
Hempen cordage and wire rope ...	White, black, or coloured worsted threads laid up with the yarns and wire respectively.
Canvas, fearnought, hammocks, and seamen's bags.	A blue line in a serpentine form.
Bunting ... ..	A double tape in the warp.
Candles ... ..	Blue or red cotton threads in each wick, or wicks of red cotton.
Timber or metal. Any stores not before enumerated, whether similar to the above or not.	The name of her Majesty (Queen Victoria), her predecessors, her heirs or successors, or of any public department or any branch thereof, or the broad arrow, or a crown, or her Majesty's arms, whether such broad arrow, crown, or arms be alone or be in combination with any such name as aforesaid, or with any letters denoting any such name.

**TOBACCO.]**—Cavendish and negro-head tobacco to be delivered for home consumption in separate packets not exceeding 1 lb. or less than 1 oz. in weight, and wrapped in a wrapper and label approved by the Commissioners of Customs; not to be sold, or had in possession, except wrapped and labelled as aforesaid; penalties for forging labels (26 & 27 Vict. c. 7, ss. 3—8).

**WEIGHTS AND MEASURES.]**—To be marked with proper indicating marks: see the Weights and Measures Acts, 1878 to 1904, 41 & 42 Vict. c. 49; 52 & 53 Vict. c. 21; 4 Edw. 7, c. 28.

**YARN.]**—Penalty for reeling short lengths of yarn, 17 Geo. 3, c. 11 (ss. 17—19, 24, in part repealed by the S. L. Rev. Act, 1861; ss. 12, 22, repealed in part; ss. 20, 23, repealed by 47 & 48 Vict. c. 43, s. 4; and s. 24 by 56 & 57 Vict. c. 61, s. 2).

<sup>1</sup> See 28 & 29 Vict. c. 89, s. 45 (Greenwich Hospital Mark) and 38 & 39 Vict. c. 25, s. 17.



## APPENDIX XXII.

### SPECIAL APPLICATIONS UNDER SECTION 9, PARAGRAPH 5.

THE following is a list of some words which have been allowed by the Board of Trade or the Court to proceed to advertisement. It is not a complete list, and it does not follow that a word which is included in the list is on the Register; it may have been refused on an opposition, but no word is included in the list which is known to the editors to have been refused. The classes in which the goods for which the words were applied for are included, are also given. The list is in order of date of advertisement, and is brought down to about April, 1913.

#### APPLICATIONS UNDER SECTION 9, SUB-SECTION 5.

Mark	Class	Mark	Class
Black and White . . . . .	43	Hecla Soap, Cutlors' Co. . . . .	5, 6, 13, 19
Grosvenor . . . . .	39	Napier . . . . .	6, 13, 21, 22
Henry Clay . . . . .	45	Prize Crop . . . . .	45
Canadian Club . . . . .	43	Hibernia . . . . .	47
Pirle . . . . .	34	Novo . . . . .	5, 6, 12, 13
Bournville . . . . .	42	Wellcome . . . . .	3
Azure . . . . .	47	Albion . . . . .	22
Fruit Salt . . . . .	3	Benefit Brand . . . . .	38
Camp . . . . .	42	Van Houten . . . . .	42
Health Grit . . . . .	2	Shaveesi . . . . .	12
Bock . . . . .	45	Bonnefoi . . . . .	38
Paisley Flour . . . . .	42	Merlier . . . . .	38
Ovum . . . . .	42	Bass . . . . .	43
Fyffe . . . . .	42	" . . . . .	25
Blanco . . . . .	50	Highland Nectar . . . . .	43
Golden Shred . . . . .	42	Everetts . . . . .	50
Yorkshire Relish . . . . .	42	Wearwell . . . . .	13
Nectar . . . . .	42	Apollinaris . . . . .	44
Peter's . . . . .	42	De Reszke . . . . .	45
Tip Top Brand . . . . .	42	Angostura Bitters . . . . .	43
Cambus . . . . .	43	Unceda . . . . .	45
Westward Ho . . . . .	45	Perrier . . . . .	44
Valentine . . . . .	42	Wood Milne . . . . .	40
" . . . . .	3	Neave . . . . .	42
Norshore . . . . .	42	Neave's Food } . . . . .	
Throgmorton . . . . .	43	Homelight . . . . .	47
Abdulla . . . . .	45	Ilford . . . . .	1, 8, and 39
Fitu . . . . .	38	Colman's Mustard . . . . .	42
Iron-Ox . . . . .	3	Ideal . . . . .	42
New Hudson . . . . .	22	Phit-eesi . . . . .	38
Liberty . . . . .	31	Pear's Soap . . . . .	4, 7, and 48
Wearwell . . . . .	22	Pengeot . . . . .	22
Eltonbury . . . . .	39 and 41	Unific . . . . .	15
Drury . . . . .	"	Chef . . . . .	42
Purity . . . . .	42	Golden Vale . . . . .	42
Hudson's Soap . . . . .	47 and 48	Rolls Royco . . . . .	22

APPENDIX XXII.

Mark	Class	Mark	Class
Nestle's	42	Brampton	13 and 37
Angostura Bitters	3	Combined	38
Loyland	40	Peter's Ideal	42
Astorias	45	Shannon	39 and 41
The Cabinet	43	Nativelle	3
Waldorf	45	The Savory	45
Silkstone	47	Camel Hair	35
Highland Cream	43	Aerograph	6
Martell	43	Kurem	3
Smith	39	Rolls Royce	6
Liberty	14, 16, 27, 32	Besson	9
Eadie	13, 22	North Shore	42
Lyons	42	Blanco	various
Bromo Selzer	3	Evans Antiseptic Throat Pastilles	3
Rozotto	48	Perfecta	8
Voelker	50	Kutnow's	3
Littlemoor	43	Wolseley	7
Armorduct	13	Keating's Powder	2
Mellin	42	Greens	7
Mollin's Food	42	Slopskal	1
Partagas	45	Wood Milne Shoe Shines	50
Cling Surface	50	Footgloves	38
Stanley	8	Calverts	various
Newlyn Enamel	14	Holzapfel	1
Coleman's Blue	47	Beeston Humber	22
Coleman's Starch		Pink's	42
Richardson's	13	Cream of the Barley	43
Syndetikon	1	Johnnie Walker	43
Hall's Distemper	1	Salutaris	44
Ortoff	39	Silens Messor	7
Robertson	13	Williams	13
Nurse Harvey's	3	Wersler	50
Stickphast	39	Barlock	39
Adamant	16	Freedom	38
Wonderfurl Washer	47	Dominion	41
Fleet	22	Berkefeld	18
Gold Mohurs	45	Quickfit	13
Orient	42	Phillips	13
Farrows	42	Moirs	42
Lyles	42	Humber	22
Hoffmann	13	Sellwell	13
Easiphit	38	Sauech Romate Hermanos	43
Bromo Soda	3	Halton	42 (Toffee)
Ranelagh	45	Scott's Emulsion	3
Orient	42	Branston	6
Badminton	45	Hart	50
Hurlingham	45	Aristos	42
Rex	42	Notaras	45
Thomas, Bristol	47	Lydford	38
Buchanans	43	Ruskin Pottery	16
Paragon	13	Liberty	29, 34, 36
Cornhill	39	Grant's	42
Danvers	39	Mackintosh	42
Darnley	39	Stickphast	50
Suchard	42	Christys'	38
Bar Loop	13	Jersey	42
Rowntree	42	Buchanans	42
Palmetto	50	Patent Wax mark	47
Oswego	42	Patent Sperm "	47
Sapon	47	Patent Stearine mark	47
Hamiltons	50	Bishops	3
Hall's Wine	2 and 43	Chater Lea	13, 22
Cream Equivalent	42	Cook's	2, 47 and 48
Fitall	38	Vaux	48



Mark	Class	Mark	Class
Teofani . . . . .	45	Lambton Unscreened . . . . .	4
Reckitt . . . . .	47 and 50	Lambton Rough Small . . . . .	4
Tower . . . . .	42	Van Horn . . . . .	11
Symington . . . . .	42	Utility . . . . .	42
Protene . . . . .	42	Continental . . . . .	5, 6, 12 and 13
Rushmore . . . . .	13 and 18	Albion . . . . .	6
Horne Brothers . . . . .	38	Ripley's . . . . .	47, 50
Lawson Tait . . . . .	41	Clipper . . . . .	40
Force . . . . .	42	Croxley . . . . .	39
California Syrup of Figs . . . . .	3	Angier's Emulsion . . . . .	3
Argyll . . . . .	22	Badminton . . . . .	32, 35, 37
Dunlop . . . . .	40	La Bourboule . . . . .	44
Blount . . . . .	13	Lead Wool . . . . .	50
Watsons Whisky . . . . .	43	Atkinsons of Windermere . . . . .	42
Draweazy . . . . .	27	Gandy . . . . .	37 and 40
Cox's . . . . .	1	Talbot . . . . .	22
Joy of Home . . . . .	42	Angelo . . . . .	4
Austin . . . . .	22	Kala . . . . .	4
Bollinger . . . . .	43	Pratt's Deodorized Napth New York <sup>2</sup> . . . . .	47
Liberty Art Fabrics . . . . .	31	Pratt's Motor Spirit . . . . .	47
Lucas . . . . .	13	Pratt's Deodorized Benzine New York . . . . .	47
Kepler . . . . .	3 and 42	Horlick's Malted Milk . . . . .	42
Kerr's Original Detergent . . . . .	47	Warwick . . . . .	40
The Bommer Spring Hinge . . . . .	13	Irish Marks (sec. 62) . . . . .	42
Armour's . . . . .	42	Old Colony . . . . .	38
Guy's Tonic . . . . .	3	Carson's (Confectionery and Chocolate) . . . . .	42
Ros-cut . . . . .	38	Chelsea Table Jelly . . . . .	42
Camel Hair <sup>1</sup> . . . . .	35	Andrew's Liver Salt . . . . .	3
Coats . . . . .	23	Itala . . . . .	6
Guinness . . . . .	42 (Dried Grains)	Boron . . . . .	13, 22
Firefelt . . . . .	1	Lennards . . . . .	13, 37, 38, 40 and 50
Blackley Tape . . . . .	40	Player's Navy Cut . . . . .	45
Stenhouse . . . . .	43	Player's Weights . . . . .	45
Renold . . . . .	13	Sandorides . . . . .	45
Kleinert's . . . . .	40 and 38	Saxone . . . . .	38
Thompson's . . . . .	42	Pera . . . . .	45
Kopenhagen . . . . .	43	Pathé . . . . .	8
Shand Kydd . . . . .	41	Albion . . . . .	42
Farrah's Harrogate Toffee . . . . .	42	Lewis Anglo . . . . .	13
Neweys Imperial . . . . .	13 (Hooks)	Sapon . . . . .	2
Holzappel's . . . . .	1	Ariston . . . . .	45
Harris . . . . .	42	Ozonair . . . . .	8
Just-out . . . . .	50	Sparkling Dew . . . . .	43
Primus . . . . .	18	Thermogene . . . . .	3
Egal Buck . . . . .	38	Lovern . . . . .	18, 10
Durham Main . . . . .	4	Scotia . . . . .	16, 18
East Pelton . . . . .	4	Karlsbader Wasser . . . . .	44
Maracas . . . . .	42	Atlantic Serge . . . . .	34
Subcrit . . . . .	4	Neb-ka . . . . .	45
Lucas . . . . .	13	Triplex . . . . .	13
Duresco . . . . .	1	Rudge-Whitworth . . . . .	13, 18
Lydford . . . . .	31, 32 and 38	Kenfig . . . . .	5
Don . . . . .	40	Bournville . . . . .	42
Itala . . . . .	22	Poolova . . . . .	42
Panshine . . . . .	47 and 50	Khoosh Bitters . . . . .	43
Harris Tweed Mark (sec. 62) . . . . .	34	Devon Valley . . . . .	39
Finchale Wallsend . . . . .	4	Tonic Vigoroso Wine . . . . .	42
Lambton Gas . . . . .	4		
New Leversons Gas . . . . .	4		
Lambton West Hartley Steam . . . . .	4		
Lambton Wallsend Steam . . . . .	4		

<sup>1</sup> But note the claim, see Journal No. 1672.<sup>2</sup> Claim limited to combination only.

## APPENDIX XXIII.

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### NOTES OF AUSTRALIAN AND NEW ZEALAND DECISIONS, WITH PREFATORY STATEMENT OF STATUTES IN FORCE.<sup>1</sup>

#### PRESENT LEGISLATION.

##### (i.) *Commonwealth and States.*

UNTIL 1905 each State of the Commonwealth had its own statutory law as to trade marks and its own registry. Two Federal Statutes now apply over the whole of the Commonwealth—the Trade Marks Act, 1905, and the Trade Marks Act, 1912—and these Acts govern all new applications.<sup>2</sup> The Trade Marks Acts of the individual States are not repealed. They continue to apply to trade marks already registered so long as such registration remains in force (1905, sec. 6) or until at latest 1919 (sec. 7). Machinery is provided for the registration under the Federal Acts of marks already registered under a State Act and even of unregistered marks, provided they could have been registered under the law of a State, although in such case the mark does not contain the essential particulars required by the Federal Acts (1905, secs. 8, 9). A Federal Trade Marks Office was established by the Act of 1905, and the exclusive administration of the State Acts as well as of the Federal Acts was transferred to that office (sec. 14). Subject to rights and liabilities already acquired or incurred under the law of any State and subject to the particular Federal Statutes, the Common Law of England relating to trade marks is declared to apply throughout the Commonwealth (sec. 5).

As the owner of a trade mark—registered or even unregistered—is given rights of registration under the Federal Acts, provision had to be made for applications in respect of the same or nearly identical marks in use in different States. Conditions and limitations as to mode and place of user or otherwise may be imposed and a State may be excepted from the registration of a mark which is common to the trade in that State (1905, sec. 8); and similar conditions and limitations may be imposed in respect of new applications in cases of honest concurrent user or of special circumstances (1905, sec. 28). Thus, in one case, although A. had been registered under the New South Wales Act since 1886, the application of B. in respect of a similar mark was allowed on the ground of honest concurrent user for the whole of Australia, subject to special conditions, applicable only to New South Wales, as to mode of user—the colour of paper and the prefixing of

<sup>1</sup> These notes have been prepared by Mr. B. A. Levinson, of the firm of Bartlett and Gluckstein, a member of the Australian Bar.

<sup>2</sup> The Act of 1905, as amended by the Act of 1912, is printed in full above, p. 838.



A.'s name—so as to prevent confusion within New South Wales (*McKenzie & Co. v. Leslie*, 1909, 9 C. L. R. 247. See also *Bedggood & Co. v. Graham*, 1909, 7 C. L. R. 752, and *Lever Bros., Ltd. v. Abrams*, 1909, 8 C. L. R. 609).

As the State Acts remain in operation to a limited extent it is necessary to refer briefly to them. The legislation of New South Wales requires special consideration. The Trade Marks Act, 1900 (No. 19) (N.S.W.), is a Consolidating Act based on the Trade Marks Act, 1865. Any person desirous of registering a Trade Mark could give notice to the Registrar, and after advertisement a certificate of due registration was issued unless there was a previous registration or some other person proved to be entitled to the mark or it was so like some other mark that it might be mistaken for the same (sec. 6). No essential particulars were provided. The certificate is proof of the right of the person registered or his transferee "except in case of any suit<sup>1</sup> instituted to try the right of any person to have had such mark registered" (sec. 7). It appears to be the case that the effect of the certificate is to enable a registered owner to maintain an action for infringement but not to give the registered owner the exclusive right to use the mark. Another person could obtain a Common Law right in the mark by honest user, and his right would not be affected by a subsequent registration by another (see per Griffith, C.J., *McKenzie & Co. v. Leslie*, *supra*, and *Blogg v. Anderson*, 1900, 21 N. S. W. L. R. Eq. 238). Where the validity of the registration is in litigation between the parties, the certificate is only *prima facie* evidence of the correctness of the registration (*Hornsby v. Hudson*, 11 N. S. W. L. R. (Eq.) 148; *Walker v. Cargill*, 5 N. S. W. L. R. 243; *Blogg v. Anderson*, *supra*); otherwise it is conclusive (*Parsons v. Gillespie*, 1897, 19 N. S. W. L. R. Eq. 26).

The existing legislation of the other states of the Commonwealth follows in the main the British Patents Designs and Trade Marks Act, 1883, part iv., and the Trade Marks Act, 1888.<sup>2</sup>

The Federal Acts above referred to closely follow the British Acts of 1888 and 1905 (see *ante*, p. 838).

#### (ii.) *New Zealand.*

The Patents Designs and Trade Marks Act, 1911 (No. 17), follows as regards Trade Marks the British Act of 1905. The Rules in force are the Regulations of May 21st, 1912.

#### DEFINITION OF TRADE MARK.

**Trade Mark.**—The meaning of "trade mark" was the subject of elaborate judgments of the High Court in 1908. The Australian

<sup>1</sup> A suit or counterclaim, but not on demurrer, *Sutton v. Davis* (1907), 24 W. N. 87.

<sup>2</sup> *Victoria*: Trade Marks Act, 1890 (No. 2).

*Queensland*: Patents Designs and Trade Marks Act, 1884, Part IV., and the amending Acts of 1886 and 1888.

*South Australia*: Trade Marks Act, 1892.

*Tasmania*: Patent Designs and Trade Marks Act, 1893.

*Western Australia*: Designs and Trade Marks Acts, 1884 and 1886, and Patents Designs and Trade Marks Amendment Act, 1894.

Constitution<sup>1</sup> gives power to the Commonwealth Parliament to legislate with respect to trade marks. Purporting to exercise this power, the Federal Act of 1905 provided<sup>2</sup> for a "Worker's Trade Mark" which an Australian worker, or association of Australian workers, might adopt so as to indicate articles as being his or their own exclusive work. It was held that such a mark, however called, would not be a trade mark,<sup>3</sup> because

- (i.) it neither gave nor indicated any rights of property ;
- (ii.) its owner was not engaged in trade ;
- (iii.) its use was not appurtenant or incident to the dealing with goods in the course of trade ;
- (iv.) its owner had no independent dominion over the goods ; and
- (v.) it did not purport to distinguish the goods as having been dealt with by some particular person or persons engaged in trade.<sup>4</sup>

A "Commonwealth Trade Mark" is provided for by the Act of 1905 (Part VIII.) for application—subject to conditions—to indicate that the conditions of manufacture as to rates of wages have been fair and reasonable. It is submitted that such a mark is no more a trade mark than the "Worker's Trade Mark" so-called, and that Part VIII. is equally *ultra vires*.

#### REGISTRATION.

The Principle of *Eno v. Dunn* applies to Federal Act. *Lever Bros., Ltd. v. Abrams* (1909), 8 C. L. R. 609.

Only the proprietor can be registered in respect of a trade mark and "proprietor" means the person entitled by reason of exclusive user. *In re Hicks's Tm.* (1897), 22 V. L. R. 636.

Applications for registration under Federal Acts are all within s. 32; therefore the application is not to be refused because the mark is already registered under a State Act, and such registration shall be given as the applicant is entitled to, qualified it may be under secs. 8 and 9. *Salvitis Proprietary, Ltd. v. Registrar of Trade Marks* (1907), 4 C. L. R. 941.

Concurrent user—Special circumstances.—Sec. 28 of 1905: Where a mark is registered by A. in all the states except one, and the same mark is registered in that state by B., upon evidence of honest concurrent user in that state by A., his application for registration was granted limited to that state. *Bedggood & Co. v. Graham* (1909), 7 C. L. R. 752.

Concurrent user.—Although A. had been registered under the New South Wales Act, B. was also allowed to register the mark in respect of the whole of Australia, subject, as regards New South Wales, to special conditions as to user; viz. colour of paper and prefix of B.'s name, *McKenzie & Co. v. Leslie* (1909), 9 C. L. R. 247.

Concurrent user.—Motion for registration on ground of (sec. 28) cannot be entertained on application for rectification (sec. 71), the preliminary procedure of application not having been followed, *Hausman v. Regal Shoe Co.* (1912), 15 C. L. R. 529.

<sup>1</sup> Commonwealth of Australia Constitution Act, 1900, s. 51 (xvi.).

<sup>2</sup> Trade Marks Act, 1905, Part VII., repealed by Act of 1912.

<sup>3</sup> *Attorney-General for New South Wales v. Brewery Employees' Union of N. S. W.* (1908), 6 C. L. R. 469.

<sup>4</sup> Per Griffith, C.J., at 513.



Right to oppose on the ground that the mark is calculated to deceive is not confined to persons who can show that they will be injured by the deception, *In re Ferguson & Co.'s Tm.* (1903), 29 V. L. R. 331. See *In re Weingarten's Tm.* (1904), 29 V. L. R. 965.

**Opposition—Security for costs.**—The jurisdiction of Registrar, Law Officer and Court is limited to proceedings before the Registrar, Law Officer and Court respectively (sec. 46), and security will not be ordered on the ground of residence outside the state if within the Commonwealth (*semble*). *In re Australian Milk Ferment Proprietary, Ltd.'s Application* (1909), 8 C. L. R. 460.

**Costs, appeal as to.** The High Court will only entertain an appeal if a question of principle or misapprehension of facts be involved (sec. 95), *A. Ferguson & Co. v. Daniel Crawford & Co., Ltd.* (1910), 10 C. L. R. 207.

**Notice of Opposition.**—Amendments allowed after period of extension of time, *In re Ferguson & Co.'s Tm.*, 20 V. L. R. 331.

**Delay.**—Applicant's residence in England ground for liberal allowance of time, *In re Weingarten Bros. Tm.* (1904), V. L. R. 965.

#### ESSENTIAL PARTICULARS.

##### (a) Names, letters and signatures :

"The London and American Supply Stores" printed in particular manner registered, but the registered proprietor held not entitled to restrain others from using the same name honestly, as by purchase of goodwill from predecessor. *Ferne v. Wilson*, 26 V. L. R. 422.

"Empire Rolling Flour Mills, York," registered. *Robert Harper Propy., Ltd. v. Empire Milling Co.* (1904), 6 W. A. L. R. 164.

**Letters—"P. and O."**—commonly used to denote words may be "word calculated to deceive," within sec. 17 of 1905, *In re Ferguson & Co.'s Trade Mark* (1903), 29 V. L. R. 331.

Letters whose sound conveys a descriptive meaning—*e.g.* IXL, XLALL and XLNT—cannot be registered, *Wostenholm v. Woolhouse* (1888), 14 V. L. R. 963.

Letters "W. B." not registrable, alone or merely colourably combined with other matter, *In re Weingarten's Trade Mark* (1904), 29 V. L. R. 965. (See *Weingarten Bros. v. G. and R. Wills & Co.* (1906), S. A. L. R. 34.)

##### (b) Devices, marks, brands, labels :

Wrapper or pamphlet, forming cover to a bottle, and containing a dissertation on chemical properties, &c., cannot be registered, *Wolfe v. Lang & Co.* (1887), 13 V. L. R. 752.

Device, consisting of letters, words or figures only colourably combined with other matter, is not "distinctive." *In re Weingarten's Trade Mark* (1904), 29 V. L. R. 965.

Device. As to when letters, words or figures are "added matter," *ib.*

Label of which words "Five Medal" a distinctive feature; right to restrain use of those words, *Kitchen & Son, Ltd. v. Metz* (1909), 5 Tas. L. R. 95.

Label may be distinctive, though it contains word or representation referring to character or quality. "Sun Candles" and device, *Lever Bros., Ltd. v. G. Mowling & Son* (1909), V. L. R. 59; cf. *Helidon Spa Water Co. v. Campbell* (1909), 10 Q. L. J. 1.

**Label.**—Representation of three stars with words "Three Stars" held to be distinctive, notwithstanding prior use of "Starlight" and representation of stars. *Lever Bros., Ltd. v. G. Mowling & Son* (1908), 6 C. L. R. 136 (cf. *Lever Bros. v. Newton & Sons* (1907), 26 N. Z. L. R. 856).

**Label.**—Particular word not allowed to be registered as part of, *In re National Starch Co.'s Tm.* (1906), V. L. R. 238.

Device may be distinctive though parts of it are in common use. *Mitchell & Co. v. Joshua Bros.* (1891), 17 V. L. R. 736.

Symbol or word representing common English word; e.g. Sun. *Semble*, no right to monopolise. *Lever Bros. v. Newton & Sons* (1907), 26 N. Z. L. R. 856.

(c) *Word Marks.*

**Geographical name:**

"The London & American Supply Stores" is not, so as to preclude registration (*semble*). *Ferne v. Wilson* (1900), 26 V. L. R. 422.

"Helidon Spa Water," part of registered label—geographical name, *Helidon Spa Water Co., Ltd. v. Campbell* (1900), 10 Q. L. J. 1. (See *Helidon Spa Water Co., Ltd. v. Hamlyn Spa Water Co.* (1903), 29 V. L. R. 182.)

"Schiebam Schnapps." No exclusive right, *Wolfe v. Alsop* (1884), 10 V. L. R. Eq. 40; (1886) 12 V. L. R. 421, 887.

**Fancy Words, &c.:**

"Aromatic Schiedam Schnapps"—*publici juris*. *Wolfe v. Hart* (1878), 4 V. L. R. Eq. 125. (See *Wolfe v. Alsop*, *supra*.)

"Hop Bitters"—mere description, *Hop Bitters Manufacturing Co. v. Luke* (1884), 10 V. L. R. Eq. 234.

"Borax" Soap—held merely descriptive, *Lewis v. Klapproth* (1885), 11 V. L. R. 214; *Lewis v. Scott*, N. S. W., 4 W. N. 130.

"Maizena"—in common use, *Re Robert Harper & Co.'s and National Starch Co.'s Trade Marks* (1906), V. L. R. 238.

"French Coffee"—descriptive, *Sparks v. Harper & Co.* (1889), 3 Q. L. J. 158.

"*Matricaria*"—botanical term—held descriptive or deceptive, *Ashton & Parsons, Ltd. v. Gould* (1910), 6 Tas. L. R. 1.

"Five Medal"—held not descriptive words, *Kitchen & Son, Ltd. v. Metz* (1909), 5 Tas. L. R. 95.

"Kangaretta" "Angaretta" for leather boots, &c.—preceded by figure of Kangaroo like letter K. Read as "Kangaretta" held descriptive, *Staples v. Hannah* (1899), 17 N. Z. R. 500.

"Ovo" for egg preservation, *Fist v. Vickery & Son* (1911), 13 W. A. L. R. 200.

"Oxo"—registered for Extract of Meat, *In re Liebig's Extract of Meat Co.* (1904), 22 N. Z. L. R. 165.

"Bitumastic"—applied to asphaltic compounds. Quantity of invention is immaterial, *In re Wailes Dove & Co., Ltd.* (ib.).



“Fruit Salt”—neither descriptive nor generic, *Eno v. Hogg*, N. S. W. 1 W. N. 69, 166; 2 W. N. 48 (cf. *Eno v. Dunn*, 15 App. Cas. 252).

“Erect Form” corsets—descriptive. Words indicating effect of goods on the user cannot be registered, *Re Weingarten Bros.* (1903), 25 A. L. T. 146.

#### DISCLAIMER.

Added Matter.—When letters, words or figures are, or need disclaimer, *In re Weingarten's Tm.* (1904), V. L. R. 965.

Words contained, calculated to deceive but disclaimed; rectification ordered, *In re Birmingham Vinegar Brewery Co.* (Vic.), 20 A. L. T. 15.

#### RESTRICTIONS ON REGISTRATION.

Three Marks Rule: does not apply in New South Wales, *Blogg v. Anderson* (1900), 21 N. S. W. L. R. 238.

Same goods or description of goods, see *Lever Bros., Ltd. v. Abrams* (1909), 8 C. L. R. 609.

Soap and candles held not so associated—classes in the regulations not the sole guide, *Lever Bros., Ltd. v. G. Mowling & Son* (1909), V. L. R. 59.

Explosives, gunpowder, cartridge cases. *In re Webendorfer's Tm.* (1897), 23 V. L. R. 34.

#### Deceptive Marks:

Deception of public by taking advantage of reputation and advertisements of another's mark—Fraudulent purpose, *In re Renfrey's Tm.* (1897), 23 V. L. R. 44 (but see *Weingarten Bros. v. G. & R. Wills & Co.* (1906), S. A. L. R. 34. Reputation by advertisement alone does not give a trader a right which will be protected).

“Calculated to deceive” means “might not improbably deceive the average ordinary unwary purchaser,” *In re Tilley's Trade Mark* (1896), 22 V. L. R. 203; *John Lysaght, Ltd. v. Reid Bros. & Russell, Ltd.* (1907), V. L. R. 432.

Test is as to ordinary buyers, *Lever Bros. v. Newton & Sons* (1907), 26 N. Z. L. R. 856.

(See also *Burford & Sons, Ltd. v. Mowling & Son* (1908), 8 C. L. R. 212.)

Fair use considered. *In re Foster Brewing Co.'s Tm.*, 20 A. L. T. 183, and *In re National Starch Co.'s Tm.* (1906), V. L. R. 238.

General resemblance considered; two marks not juxtaposed, *In re Eno's Tm.* (1883), 9 V. L. R. 335.

“Cuticura” registered for soap. “Curato,” with devices similar to labels of Cuticura soap, deceptive. *In re Tilley's Tm., supra.*

Maltese Cross (red) with words “Red Cross” registered. Words “White Cross”—held to be calculated to deceive, *Ex parte Dutton*, 11 N. Z. L. R. 688.

“*Matricaria*” for medicine, being a botanical term, either

- deceptive or descriptive, *Ashton & Parsons, Ltd. v. Gould* (1910), 6 Tas. L. R. 1.
- Bulldog's head in circle, with name and "The Dog's Head Bottling," registered notwithstanding mark of bull's head and words "the Dog's Head's bottling," *Read Bros., Ltd. v. Cowie* (1911), 30 N. Z. L. R. 1157.
- "Likely to deceive." Principles of Comparison. See *sub* "Infringement," *infra*, p. 914.
- "Likely to deceive" (1905, s. 25 and 144) Sec. 25 applies as between a registered mark and an applicant for a new one; sec. 144 applies as between an applicant and the public, *Lever Bros., Ltd. v. Abrams* (1909), 8 C. L. R. 609.
- "Sunlight" for soap, &c. Design for polishing paste, &c., an essential particular whereof was the word "Sunlight," printed similarly to the name of Sunlight Soap, with a representation of a rising sun; held likely to deceive public into believing that the respondent's goods were the appellants' (*ib.*).
- "Likely to deceive" under sec. 114 refers to other marks used, as well as marks registered, *McKenzie & Co. v. Leslie* (1909), 9 C. L. R. 247.
- Deception of public by association of ideas. The Court will guard against similarity of sound, *Sunlight Soap* used with representation of rising sun. Subsequent applicant for wrapper with words "Rising Sun" held not calculated to deceive, *Lever Bros., Ltd. v. Newton & Sons* (1907), 26 N. Z. L. R. 856. (See also *Lever Bros., Ltd. v. G. Mowling & Son* (1908), 6 C. L. R. 136, *ante.*)
- "Sun candles" and representation of sun, held not calculated to deceive because of prior use of "Sunlight," &c., *Lever Bros., Ltd. v. G. Mowling & Son* (1909), V. L. R. 75.
- Deception on account of prior unregistered mark, *Ashton & Parsons, Ltd. v. Gould* (1909), 7 C. L. R. 598; *Harris v. Ogg* (1884), 5 N. S. W. Eq. 114; *In re Rowley & Pyne* (1883), 9 V. L. R. (L) 307.
- Words contained calculated to deceive though disclaimed; rectification ordered, *In re Birmingham Vinegar Co.*, 20 A. L. T. 15 (Vict.).
- Trade name of another person cannot be registered as part of a trade mark, *Ferne v. Wilson* (1900), 26 V. L. R. 422.
- Registration subject to conditions not permitted under Victorian Act, where resemblance to a registered mark is too close, on the ground that by reason of common user of essential portion conditions would not prevent likelihood of deception, *In re Brind*, 18 A. L. T. 183.

#### RECTIFICATION OF REGISTER.

- Persons aggrieved, who may apply. See "Registration. Right to Oppose" (p. 909). Unregistered owner—*In re Rowley & Pyne* (1883), 9 V. L. R. 307.
- Grounds in Notice of Motion, Court is not restricted to, *In re Remfry's Tm.* (1897), 23 V. L. R. 44.



Delay.—Lapse of time only increases the onus of proof, *Ashton & Parsons, Ltd. v. Gould* (1909), 7 C. L. R. 598. See *National Starch Co. v. Munn's Maizena Co.*, 15 N. S. W. L. R. Eq. 35.

Delay not considered where registration is for fraudulent purpose. *In re Tilley's Tm.* (1900), 26 V. L. R. 203.

Delay. No time limit for application under sec. 116 of New Zealand Act, *In re Hawkins* (1893), 11 N. Z. L. R. 688.

Delay—ground for refusal of injunction, *Chinn v. Thomas* (1879), 5 V. L. R. Eq. 188.

Words contained calculated to deceive: although disclaimed, rectification ordered, *In re Birmingham Brewery Co. (Vic.)*, 20 A. L. T. 15.

“Calculated to deceive”: “Likely to deceive”: *Vide sub.* “Restrictions on Registration” (p. 911) and “Infringement” (p. 914).

Concurrent user. *Vide sub.* “Registration” (p. 908).

#### EFFECT OF REGISTRATION.

Registration—even for five years—does not bar rightful owner's Common Law rights: *Heyde v. Wittkowski* (1884), 5 N. S. W. Eq. 74; *Harris v. Ogg*, *ib.* 114; *Bryant v. Heyde* (1886), 7 N. S. W. Eq. 72; *Wolfe v. Alsop* (1886), 12 V. L. R. 887; *Mitchell & Co. v. Joshua Bros.* (1891), 17 V. L. R. 736; *Blogg v. Anderson* (1900), 21 N. S. W. L. R. 238; *John Lysaght, Ltd. v. Reid Bros. & Russell, Ltd.* (1907), V. L. R. 432.

Five years' registration—in New Zealand—runs from registration under 1889 Act, and not from registration under prior Act, *Sanitas, Ltd. v. Ogle* (1896), 14 N. Z. L. R. 361.

Equivalent to act of public user: *In re Hick's Tm.* (1897), 22 V. L. R. 636 (*cf.* *Sanitas, Ltd. v. Ogle* (1896), 14 N. Z. L. R. 361).

Certificate. Effect of, under *New South Wales Act*, *vide supra* (p. 907).

“Used together or separately.” Registration of “Red Cross” and of representation—does not give right to use of three marks, the words, the cross and the combination, *In re Hawkins: Ex p. Dutton*, 11 N. Z. L. R. 688.

#### ASSIGNMENT AND DEVOLUTION.

Sale of business to T., but right to manufacture specific to C. Held that T. was entitled to use name in connection with similar specific, but must provide against confusion, *Chinn v. Thomas* (1879), 5 V. L. R. Eq. 188.

Sale of business, right of purchaser to trade marks, *Wilkinson v. Capper*, N. S. W. 13 W. N. 21.

Assignment not without goodwill, *Bell v. Culling* (1905), 24 N. Z. L. R. 501.

#### DETERMINATION OF TRADE MARK RIGHTS.

Delay. See *sub.* “Rectification,” *supra*.

Acquiescence, right lost by, in use by others, *Neva Stearine Co. v. Mowling* (1883), 9 V. L. R. Eq. 98.

Abandonment, mere non-user does not amount to, *Blogg v. Anderson*

(1900), 21 N. S. W. L. R. 238; *In re Foster Brewing Co., Ltd.* (Vic.), 20 A. L. T. 183; as where owing to bonâ fide uncertainty as to rights, *Ferne v. Wilson* (1900), 26 V. L. R. 422. Failure to give notices. Rule 28 under sec. 94 of 1905—implied abandonment—but discretion to extend time, *R. v. Registrar of Trade Marks* (1908), 5 C. L. R. 604.

#### ACTION FOR INFRINGEMENT.

Likelihood of deception (sec. 53 of 1905), consideration of whole of marks or designs upon goods, *Schweppes, Ltd. v. E. Rowlands Propy, Ltd.* (1910), 11 C. L. R. 347; but not in juxtaposition, *Ex. p. Dutton* (1893), N. Z. L. R. 688.

Actual deception need not be proved, *Kitchen & Son, Ltd. v. Metz* (1909), 5 Tas. L. R. 95; *Robert Harper Propy., Ltd. v. Empire Milling Co.* (1904), 6 W. A. R. 164.

But deception must be actual or probable, *Sanitas Co., Ltd. v. Ogle* (1896), 14 N. Z. L. R. 361; *Coote & Co. v. Gregg & Co.* (1892), 10 N. Z. L. R. 139. See also *sub.* "Restrictions on Registration," *supra* (pp. 911, 912).

Reshipment by consignee to consignor abroad—injunction, *Siegert v. Lawrence* (1884), 11 V. L. R. 47.

Common to the trade—use of parts only of mark which are—no infringement, *Mitchell & Co. v. Joshua Bros.* (1891), 17 V. L. R. 736; *Parsons v. Gillespie* (1897), 19 N. S. W. L. R. Eq. 26. So where the whole mark is the name of a drug, *Loasby's Wahoo Manufacturing Co. v. Dutton*, 16 N. Z. L. R. 182.

Name mark with decorations—use without those decorations may be infringement, *Ferne v. Wilson* (1900), 26 V. L. R. 422.

Damages, Measure of. Extent of interference with plaintiff's sales. Defendant's sales an indication, *Beecham v. Hanlon* (1894), 12 N. Z. L. R. 554.

#### Defences.

Deceptive trade. Collateral misrepresentation not in the mark itself: held not bar to relief, *Weingarten Bros. v. G. & R. Wills & Co.* (1906), S. A. L. R. 34.

False statements as to "sole inventor" and place and manner of manufacture—disentitle to injunction, *Wolfe v. Lang & Co.* (1887), 13 V. L. R. 752, and 14 V. L. R. 460.

False statements. See also *sub.* "Restrictions on Registrations," *supra*.

Non-use in connection with a business, *Sanitas Co., Ltd. v. Ogle* (1896), 14 N. Z. L. R. 361.

Delay. See *sub.* "Rectification of Register" (p. 914).

Acquiescence and Abandonment. See *sub.* "Determination of Trade Mark Rights" (p. 913).

Common Law rights—by way of Defence. See *sub.* "Effect of Registration" (*ib.*).

Costs given notwithstanding small sale and innocent infringement, *Potter Drug, &c. Corporation v. Malouf*, N. S. W. 17 W. N. 140; *Siegert v. Lawrence* (1884), 11 V. L. R. 47.



Plaintiff disentitled through misconduct, *Ingram & Sons v. India Rubber, &c. Co.* (1902), 29 V. L. R. 172.

Defendant successful, defendant to bear own costs, *Hop Bitters Manufacturing Co. v. Luke* (1884), 10 V. L. R. Eq. 234.

#### PASSING OFF.

Packages of particular shape, size and colour—may be used by another with adequate differentiation, *Burford & Sons, Ltd. v. Mowling & Son* (1908), 8 C. L. R. 212.

Duty to avoid possibility of mistake on part of second trader, *Helidon Spa Water Co.* (1903), 29 V. L. R. 182.

Addition of name. "G.'s Flaked Oatmeal" held sufficient distinction, *Parsons v. Gillespie* (1897), 19 N. S. W. L. R. Eq. 26.

Class of purchaser to be considered, *Burford & Sons, Ltd. v. Mowling & Son, supra*; *Sparks v. Harper & Co.* (1889), 3 Q. L. J. 158.

Substitution: article of inferior quality for one of superior, unauthorised; injunction, *Hennessy v. Hogan* (1869), 9 W. W. & B. Eq. 225; *Hennessy v. White, ib.* 216; *Kirker Greer & Co. v. Mayman* (1901), N. S. W. 1 S. R. 73; *Ingram & Sons v. India Rubber, &c. Co.* (1902), 29 V. L. R. 172.

Bottles. Embossed with plaintiff's name. Injunction against use by other, *Champion & Co. v. Smith* (1900), 21 N. S. W. L. R. Eq. 11, and *Thomson v. Phillips* (1896), 14 N. Z. L. R. 29.

Unless clear distinction, *Holbrook's, Ltd. v. Parry*, N. S. W. 18 W. N. 98.

Object of capturing trade may be immaterial; e.g. by imitation of packages, *Burford & Sons, Ltd. v. Mowling & Son, supra*; or of methods or devices, *Schweppes, Ltd. v. E. Rowlands Propy., Ltd.* (1910), 11 C. L. R. 347.

Resemblance of "Free Boot Company" and "Free Gift Syndicate" and similar coupons, etc., *Masters v. Cameron* (1904), Q. S. R. 137.

Resemblance of labels on bottles, *Hop Bitters Manufacturing Co. v. Wharton* (1884), 10 V. L. R. L. 377.

Resemblance of bottles, wrappers and labels. "Painkiller." Registration inoperative. Injunction, *Davis v. Wilckens*, N. Z. 4 J. R. N. S. 45.

Geographical name on wrappers. Injunction against similar use, *Canterbury Frozen Meat, &c. Co. v. Christchurch Meat Co.* (1889), 8 N. Z. L. R. 49.

Trap Orders. Attention should be called at once, so as to ensure recollection, *Weingarten Bros. v. G. & R. Wills & Co.* (1906), S. A. L. R. 34.

Evidence. Weight given to that of persons only who know the plaintiff's goods by distinguishing characteristics. Purpose to deceive, evidence of passing off, *Sparks v. Harper, supra*; *Fist v. Vickery & Son* (1911), 13 W. A. L. R. 200; *Davis v. Wilckens (supra)*.

Particulars of names and addresses of persons to whom passing off alleged, *National Starch Co. v. R. Harper & Co., Ltd.* (1906), V. L. R. 822.

**Deceptive trade.** Where plaintiff has agreed for sales to mislead public—loses right, *Kirker Greer & Co., Ltd. v. Mayman* (*supra*).  
**Misconduct of plaintiff punished by refusal of costs,** *Ingram & Sons v. India Rubber, &c. Co., Ltd.* (*supra*). See also sub. "Infringement," *supra*.

#### TRADE LIBEL, TRADE SECRET, AND TRADE NAME.

**Circulars claiming exclusive right to trade mark with threats.** No injunction where bonâ fide, *Sander v. United Horse Shoe, &c. Co.* (1891), 12 N. S. W. L. R. Eq. 224.

**Secret process.** Misrepresentation alleged. Cross-examination allowed as to process. *Sandner v. Curnow* (1905), V. L. R. 648.

**Property in trade names:** injunction though innocent deception, *Neva Stearine Co. v. Mowling* (1883), 9 V. L. R. Eq. 98; *Curtiss & Harvey v. Abrahams* (1890), 12 A. L. T. 86; *Same v. Messner* (1891), 13 A. L. T. 127.

**Long user of "Cobb & Co.":** defence that become *nomen generale* in Australia. Injunction. *Cassidy Young & Co. v. Campbell & Co.* (1893), 11 N. Z. L. R. 124.

**Own name, right to use, but with care not to deceive,** *Ohinn v. Thomas* (1879), 5 V. L. R. Eq. 188; *Ferne v. Wilson* (1900), 26 V. L. R. 422.

**Partner—dissolution—held not entitled to use firm name.** *In re Blogg & Grist's Tm.* (1885), 11 V. L. R. 630.

**Wrongful use of name—injuries to reputation—substantial damage without proof of special damage:** *Littlejohn v. Mulligan* (1885), N. Z. L. R. 3 S. C. 446; *Wilson v. Smith* (1902), N. S. W. 2 S. R. 174.

Though with insufficient addition, e.g. "prepared by T," *Bickford & Sons v. Provost* (1891), 24 S. A. L. R. 171; *Allan v. Walsh* (1900), A. L. R. (C. N.) 69.

**Play, name of.** "The Wrong Mr. Wright." Injunction. *Broadhurst v. Nicholls* (1903), N. S. W. 3 S. R. 147.

**Assignee in no better position than assignor,** *Pratten v. Peacock*, 20 N. S. W. L. R. Eq. 147.

**Company, name of.** "Free Boot Company" held entitled to restrain "Free Gift Syndicate." *Masters v. Cameron* (1904), Q. S. R. 137.

**Locality.** Distinctive. Misleading subscribers. Injunction unless other distinctive words added. *Mt. Balfour Copper Mines (No liability) v. Mt. Balfour Mines (No liability)* (1909), V. L. R. 542.

**Probability of substantial damage must be shown,** *Bendigo & Country Districts Trustees & Executors Co. v. Sandhurst and Northern District Trustees Executors & Agency Co.* (1909), 9 C. L. R. 474; *Robert Harper, Ltd. v. Empire Milling Co.* (1904), 6 W. A. R. 164.

**Establishment of business in New Zealand held necessary to action for imitation of name,** *Sanitas, Ltd. v. Ogle* (1896), 14 N. Z. L. R. 361.

**County Court (Victoria) has jurisdiction,** *Theiler v. Fitzgerald* (1900), 25 V. L. R. 517.

**Trade name of former employer, injunction against using,** *Walch v. Holmes* (1898), 4 A. L. R. (C. N.) 69.



OFFENCES.

**Selling, &c. "Intent to defraud"** (sec. 87 of 1905) defined. *Jones v. Geyde* (1909), 9 C. L. R. 262; evidence of, *Allan v. Walsh* (1900), 6 A. L. R. (C. N.) 69; *O'Connor v. Winsor* (1896), 18 A. L. T. 134.

**Corporation fined under sec. 13 of 1890 (Victoria)**, *Christie v. Foster Brewing Co., Ltd.* (1892), 18 V. L. R. 292.

**False description.** Beer made in Victoria—German words and indications that brewed in Germany, *ib.*: see also *O'Connell v. Fuggle*, 17 A. L. T. 287.

**"False name or initials"** (South Australian Act, s. 45). Words or letters as arbitrary symbols are not, *Weingarten Bros. v. G. & R. Wills* (1906), 5 S. A. L. R. 34.

**Regulations under Commerce (Trade Description) Act, 1905**, as to goods intended for export. Ultra vires. *Woodstock Central Dairy Co. v. Commonwealth* (1912), 15 C. L. R. 241.

**Falsely applying a trade mark.** Bottle with well-known marks, contents genuine substance mixed with water or soda-water. *Rattray v. Howells* (1895), 17 A. L. T. 129.

TABLE OF CASES.

	PAGE
<i>Allan v. Walsh</i> (1900), 6 A. L. R. (C. N.) 69 . . . . .	916, 917
<i>Ashton &amp; Parsons, Ltd. v. Gould</i> (1910), 6 Tas. L. R. 1 . . . . .	910, 912
— <i>v.</i> — (1909), 7 C. L. R. 598 . . . . .	912
<i>Attorney-General for New South Wales v. Brewery Employeers' Union of New South Wales</i> (1908), 6 C. L. R. 469 . . . . .	908
<i>Australian Milk Ferment Proprietary Ltd.'s Application</i> (1909), 8 C. L. R. 460 . . . . .	909
<i>BEDGOOD &amp; Co. v. Graham</i> (1909), 7 C. L. R. 752 . . . . .	909
<i>Beecham v. Hanlon</i> (1894), 12 N. Z. L. R. 554 . . . . .	914
<i>Bell v. Culling</i> (1905), 24 N. Z. L. R. 501 . . . . .	913
<i>Bendigo and Country Districts Trustees and Executors Co. v. Sandhurst and Northern Districts Trustees Executors and Agency Co.</i> (1909), 9 C. L. R. 464 . . . . .	916
<i>Bickford &amp; Sons v. Provost</i> (1891), 24 S. A. L. R. 171 . . . . .	916
<i>Birmingham Vinegar Brewery Co., In Re</i> , (Vic.) 20 A. L. T. 15 . . . . .	911, 912, 913
<i>Blogg v. Anderson</i> (1900), 21 N. S. W. L. R. 238 . . . . .	911, 913
— & <i>Grist's Tm.</i> (1885), 11 V. L. R. 630 . . . . .	916
<i>Brind, Re</i> , 18 A. L. T. 183 . . . . .	913
<i>Broadhurst v. Nicholls</i> (1903), N. S. W. 3 S. R. 147 . . . . .	916
<i>Bryant v. Heyde</i> (1886), 7 N. S. W. Eq. 72 . . . . .	913
<i>Burford &amp; Sons, Ltd. v. Mowling &amp; Son</i> (1908), 8 C. L. R. 212 . . . . .	911, 915
<i>CANTERBURY Frozen Meat, &amp;c., Co. v. Christchurch Meat Co.</i> (1889), 8 N. Z. L. R. 49 . . . . .	915
<i>Cassidy, Young &amp; Co. v. Campbell &amp; Co.</i> (1893), 11 N. Z. L. R. 124 . . . . .	916
<i>Champion &amp; Co. v. Smith</i> (1900), 21 N. S. W. L. R. Eq. 11 . . . . .	915
<i>Chinn v. Thomas</i> (1879), 5 V. L. R. Eq. 188 . . . . .	912, 913, 916
<i>Christie v. Foster Brewing Co., Ltd.</i> (1892), 18 V. L. R. 292 . . . . .	917
<i>Coote &amp; Co. v. Gregg &amp; Co.</i> (1892), 10 N. Z. L. R. 139 . . . . .	914
<i>Curtiss &amp; Harvey v. Abrahams</i> (1890), 12 A. L. T. 86 . . . . .	916
— <i>v. Messner</i> (1891), 13 A. L. T. 127 . . . . .	916
<i>DAVIS v. Wilckens</i> , N. Z. 4 L. R. N. S. 45 . . . . .	915
<i>Dutton, Ex parte</i> (1893), 11 N. Z. L. R. 688 . . . . .	912, 913, 914
<i>ENO v. Hogg</i> , N. S. W. 1 W. N. 69, 166; 2 W. N. 48 . . . . .	910
<i>Eno's Tm.</i> (1883), 9 V. L. R. 385 . . . . .	911
<i>FERGUSON &amp; Co.'s Tm.</i> (1903), 29 V. L. R. 331 . . . . .	909
<i>Ferguson &amp; Co. v. Daniel Crawford &amp; Co. Ltd.</i> (1910), 10 C. L. R. 207 . . . . .	909
<i>Ferne v. Wilson</i> (1900), 26 V. L. R. 429 . . . . .	909, 910, 912, 913, 914, 916
<i>Fist v. Vickery &amp; Son</i> (1911), 13 W. A. L. R. 200 . . . . .	910, 915
<i>Foster Brewing Co., Ltd., Re</i> , (Vic.) 20 A. L. T. 183 . . . . .	911, 913
<i>HANSMAN v. Regal Shoe Co.</i> (1912), 15 C. L. R. 529 . . . . .	908
<i>Harper (Robert) Propy., Ltd. v. Empire Milling Co.</i> (1904), 6 W. A. L. R. 164 . . . . .	909, 914, 916

	PAGE
Harper (Robert) & Co.'s and National Starch Co.'s Tms. (1906), V. L. R. 238 . . . . .	910
Harris v. Ogg (1884), 5 N. S. W. Eq. 114 . . . . .	912, 913
Hawkins, <i>Re</i> (1893), 11 N. Z. L. R. 688 . . . . .	912, 913, 914
Helidon Spa Water Co. v. Campbell (1909), 10 Q. L. J. 1 . . . . .	909, 910
— v. Hamlyn Spa Water Co. (1903), 29 V. L. R. 182 . . . . .	910, 915
Hennessy v. Hogan (1869), 9 W. W. & B. Eq. 225 . . . . .	915
— v. White, <i>ib.</i> 216 . . . . .	915
Heyde v. Willkowski (1884), 5 N. S. W. Eq. 74 . . . . .	913
Hicks's Tm. (1897), 22 V. L. R. 636 . . . . .	908
Holbrook's, Ltd. v. Parry, N. S. W. 18 W. N. 98 . . . . .	915
Hop Bitters Manufacturing Co. v. Luke (1884), 10 V. L. R. Eq. 284 . . . . .	910, 914
— v. Wharton (1884), 10 V. L. R. L. 377 . . . . .	915
INGRAM & Sons v. India Rubber, &c., Co. (1902), 29 V. L. R. 172 . . . . .	914, 915
JONES v. Geyde (1909), 9 C. L. R. 262 . . . . .	917
KIRKER Greer & Co. v. Mayman (1901), N. S. W. 1 S. R. 73 . . . . .	915
Kitchen & Son v. Metz (1909), 5 Tas. L. R. 95 . . . . .	909, 910, 914
LEVER Bros., Ltd. v. Abrams (1909), 8 C. L. R. 609 . . . . .	908, 911
— v. G. Mowling & Son (1909), V. L. R. 59 . . . . .	909, 911, 912
— v. — (1908), 6 C. L. R. 136 . . . . .	909, 912
— v. Newton & Son (1907), 26 N. Z. L. R. 856 . . . . .	910, 911, 912
Lewis v. Klapproth (1885), 11 V. L. R. 214 . . . . .	910
— v. Scott, N. S. W. 4 W. N. 130 . . . . .	910
Liebig's Extract of Meat Co., <i>Re</i> (1904), 22 N. Z. L. R. 165 . . . . .	910
Littlejohn v. Mulligan (1885), N. Z. L. R. 3 S. C. 446 . . . . .	916
Loasby's Wahoo Manufacturing Co. v. Dutton, 16 N. Z. L. R. 182 . . . . .	914
Lysaght (John), Ltd. v. Reid Bros. & Russell, Ltd. (1907), V. L. R. 432 . . . . .	911, 913
McKENZIE & Co. v. Leslie (1909), 9 C. L. R. 247 . . . . .	908, 912
Masters v. Cameron (1904), Q. S. R. 137 . . . . .	915, 916
Mitchell & Co. v. Joshua Bros. (1891), 17 V. L. R. 736 . . . . .	910, 913, 914
Mt. Balfour Copper Mines (No liability) v. Mt. Balfour Mines (No liability) (1909), V. L. R. 542 . . . . .	916
NATIONAL Starch Co. v. R. Harper & Co., Ltd. (1906), V. L. R. 822 . . . . .	915
— v. Mann's Maizena Co., 15 N. S. W. L. R. Eq. 35 . . . . .	912
— Co.'s Tm. (1906), V. L. R. 238 . . . . .	910, 911
Neva Stearine Co. v. Mowling (1883), 5 V. L. R. Eq. 98 . . . . .	913, 916
O'CONNELL v. Fuggle, 17 A. L. T. 287 . . . . .	917
O'Connor v. Winsor (1896), 18 A. L. T. 137 . . . . .	917
PARSONS v. Gillespie (1897), 19 N. S. W. L. R. Eq. 26 . . . . .	914, 915
Potter Drug, &c., Corpon. v. Maloup, N. S. W. 17 W. N. 140 . . . . .	914
Pratten v. Peacock, 20 N. S. W. L. R. Eq. 147 . . . . .	916
R. v. Registrar of Tms. (1908), 5 C. L. R. 604 . . . . .	913
Rattray v. Howells (1895), 17 A. L. T. 129 . . . . .	917
Read Bros., Ltd. v. Cowie (1911), 30 N. Z. L. R. 1157 . . . . .	912
Renfrey's Tm. (1897), 23 V. L. R. 44 . . . . .	911, 912
Rowley & Pyne, <i>Re</i> (1883), 9 V. L. R. (L.) 307 . . . . .	912
SALVITIS Propy., Ltd. v. Registrar of Tms. (1907), 4 C. L. R. 941 . . . . .	908
Sander v. United Horse Shoe, &c., Co. (1891), 12 N. S. W. L. R. Eq. 224 . . . . .	916
Sandner v. Curnow (1905), V. L. R. 648 . . . . .	916
Sanitas, Ltd. v. Ogle (1896), 14 N. Z. L. R. 361 . . . . .	913, 914, 916
Schweppes, Ltd. v. Rowlands Propy., Ltd. (1910), 11 C. L. R. 347 . . . . .	914, 915
Siegert v. Lawrence (1884), 11 V. L. R. 47 . . . . .	914
Sparks v. Harper & Co. (1889), 3 Q. L. J. 158 . . . . .	910, 915
Staples v. Hannah (1899), 17 N. Z. L. R. 500 . . . . .	910
THEILER v. Fitzgerald (1900), 25 V. L. R. 517 . . . . .	916
Thomson v. Phillips (1896), 14 N. Z. L. R. 29 . . . . .	915
Tilley's Tm. (1896), 22 V. L. R. 203 . . . . .	911, 912
WAILES, Dove & Co., Ltd. (1902), 22 N. Z. L. R. 165 . . . . .	910
Walch v. Holmes (1898), 4 A. L. R. (C. N.) 69 . . . . .	916
Webendorfer's Tm. (1897), 23 V. L. R. 34 . . . . .	911
Weingarten Bros. v. G. & R. Wills & Co. (1906), 5 S. A. L. R. 34 . . . . .	909, 911, 914, 915, 917
—, <i>Re</i> (1903), 25 A. L. T. 146 . . . . .	910
Weingarten's Tm. (1904), 29 V. L. R. 965 . . . . .	909, 911
Wilkinson v. Capper, N. S. W. 13 W. N. 21 . . . . .	913
Wilson v. Smith (1902), N. S. W. 2 S. R. 174 . . . . .	916
Wolfe v. Alsop (1884), 10 V. L. R. Eq. 40; (1886), 12 V. L. R. 421, 887 . . . . .	910, 913
— v. Hart (1878), 4 V. L. R. Eq. 125 . . . . .	910
— v. Lang & Co. (1887), 13 V. L. R. 752; 14 V. L. R. 460 . . . . .	909, 914
Woodstock Central Dairy Co. v. Commonwealth (1912), 15 C. L. R. 241 . . . . .	917
Wostenholm v. Woolhouse (1888), 14 V. L. R. 962 . . . . .	909



## INDEX.

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NOTE.—A collection of words and names of marks occurring in trade marks considered in the decided cases has been inserted in the Index, with the names of the cases in which they occur, in order to facilitate reference to cases of which the names have been forgotten.

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“A,” 206. See *Mitchell's Tm.*

ABANDONMENT OF APPLICATION TO REGISTER, 87.  
costs, 110.

ABANDONMENT OF TRADE-MARK, 406, 412, 470.  
by adoption of new mark, 413.  
mere disuse is not, 413.  
old corporate mark, by failure to register, 124.  
abandoned mark no obstacle to subsequent registration, 203.  
delay to pursue infringers may amount to, 470.  
mark removed from the Register, 414.  
by failure to renew, 414.  
And see *Use*.

“A. B. C.” TOBACCO, ETC., 238. See *Application of Albert Baker & Co. (1898), Ltd.*

“A. B. C.” STEEL. See *Andrew & Co., Ltd. v. Kuehnrich.*

ABROAD,  
use of old mark, 230.  
acts done, not infringement, 434.  
goods intended to be sent, 433, 492.  
certificate for obtaining registration abroad, 733, 761.  
See *Address and Security for Costs.*

“ABSORBINE.” See *Christy v. Tipper.*

ACCEPTANCE OF MARK,  
may be subject to conditions, 82, 255, 256.  
refusal after, 86, 673, 727.

ACCESSORIES, 563.

ACCOUNT OF PROFITS,  
in infringement action, 499—505.  
choice between, and damages, 501.  
where no substantial damage, 502.  
refused on account of delay, &c., 503.  
limited on account of misrepresentation, 504.  
form of order for, 504.  
where plaintiff not sole owner, 505.  
costs of taking, 504.  
discovery in aid, 522.

ACCOUNT OF SALES, undertaking to keep, 495.

## ACQUIESCENCE AS A DEFENCE, 466.

mere delay is not, 468.  
on application to rectify, 322.

ACQUISITION. See *Title*.

## ACTION,

rectification not to be by, 340.  
infringement, Chap. XV., 419. See *Infringement*.  
passing-off, Chap. XVI., 527. See *Passing off*.  
trade libel, Chap. XVIII., 622.  
unconscientious use of trade secret, Chap. XIX., 633.  
notice of, 424, 448.

## "ADAPTED TO DISTINGUISH,"

meaning of, 187.  
laudatory epithet is not, 185—188.

## ADDITION,

to infringing mark, inconspicuous, 453.  
use of registered mark with, 466.

## ADDITIONS,

former provisions as to dropped, 144, 217, 238.

## ADDRESS,

of Registrar, 63, 771.  
of applicant for registration, 86.  
where applicant is abroad, 86, 104.  
where opponent is abroad, 104.  
of Keeper of Cotton Marks, 130, n., 771, 780.  
of Cutlers' Company, Sheffield, 771, 779.  
imitation of trade address, 559.  
cypher addresses, 560, n., 586, n.  
unconscientious use of, 638.  
alteration of, on the Register, 730.  
form of application for, 752.

## ADULTERATION,

infringement by adulterating marked goods, 438.

## ADVERTISEMENT,

marks only used as, not trade marks, 31, 35, 56.  
of trade mark by Registrar after its acceptance, 87.  
resembling mark tendered for registration, 203.  
of alteration of trade mark, 353, 358.  
need to watch, of trade marks, 370.  
infringement by, 41, 439, 802.  
of renewal of mark, 417.  
of non-payment of renewal fee, 417.  
false advertisement by plaintiff, 473.  
of order or undertaking, 507, n.  
fraudulent representation by, 536.  
advertising trick, 587, n.  
imitation of, 608.  
pending action, may be contempt of Court, 628, 629.  
unconscientious use of book of, 636.  
advertisement of application to register, 725, 777.  
in the Trade Marks Journal, 777.  
injunction restraining, 800, 802.  
list of words allowed to proceed to, on applications under sect. 9 (5),  
903-905.

"AELLYTON." See *Ex p. Stephens*.

"AERATOR." See *Aerators, Ltd. v. Tollit*.

"AFFIDAVIT," meaning of, 716.



## AGENT,

- claim of principal's mark by, 58, 59, 317, 336.
- recognition of, 68.
- application for registration by, 75, 720, 721.
- registration in agent's name, 75, 336.
- action by sole, 397, 427.
- infringement by, 425, 432.
  - at instigation of plaintiffs, 432.
- false pretences of agency, 46, 454, 537.
  - discovery, 521.
- indemnity to, 500.
- breach of confidence by, 636.
- authorization of, 741, 774.

"AGENT FOR," 46, 454.

## AGREEMENT,

- to allow mark to remain on the Register, 322. See also *Note on Register*.
- to allow mark to be registered, 255. See also *Consent*.
- to condone infringement, 465.
- breach of, information obtained under, 635.
  - See *Sole Importer*.

"AINSWORTH'S THREAD," 512, n., 535.

"ALBION." See *Harrison's Tm.*

ALBUM, trade name of, 569, n.

ALIEN. See *Foreigner*.

"ALPHA." See *Hoemouller's Tm.*

"ALPINE EMBROIDERY," 154, 162.

## ALTERATION,

- registered mark in use, 271, 353, 466.
- of mark on Register, 335, 353—358.
  - form of application for, 754.
- conditions on, 332, 333.
- of name of company, 337, 358.
- of name of firm, 337.
- of address of proprietor, 351.
- instances of, 357.
- of mark in consequence of assignment, 399.
- entry, in consequence of assignment, 398.
  - And see *Rectification*.

## AMENDMENT,

- application, 92, 106.
- notice of opposition, 98.
- powers of Registrar to make, extended, 353, 354.
- of pleadings of trial to raise a case of "passing off," 531.
- allowed by the Registrar, 732.

AMERICAN AUTHORITIES, 209, n.

- law as to delay, 469, n.
- as to damages, 500, n.
- See also *United States*.

"AMERICAN SHOE Co." See *Randall, Ltd. v. Bradley & Son, Ltd.*

"ANATOLIA LIQUORICE," 54. See *McAndrew v. Bassett*.

ANCHOR MARKS, 200, n., 275.

ANCHORS, marks required to be put on, 899.

"ANCHOVIES," essence of, 593, n., 594, n. See *Burgess v. Burgess*.

"ANCROSS." See *Thewlis & Blakeley's Tm.*

"AND Co.," 454.

"ANGLO-AMERICAN SHOE Co." See *American Shoe Co.*, above.

"ANGOSTURA BITTERS." See *Siegert v. Findlater.*

ANIMAL marks on the Register, 199.  
index of, 67.

"APOLLINIS." See *Apollinaris Co. v. Herrfeldt.*

APOLOGY,

for infringement, publication, plaintiff is not entitled to, 507, n.  
not unlawful, 628.

APPEAL,

from the Registrar to the Board of Trade and the Court, 100—107,  
785, 786.

none except that given by the Act, 102.

to Court, to be by notice of motion, 102.

evidence on, 104, 105, 106.

disclaimers on 106.

costs on, to Court, 108.

to Board of Trade, 110.

time for, to Board of Trade, 100.

to Court, 102.

to the Court of Appeal, 107.

House of Lords, 102, n.

from the Cutlers' Company to the Court, 127.

to Board of Trade, procedure on, 100.

as to correction of Register, 853.

as to alteration of trade mark, 358.

as to apportionment, 392.

disclaimer on, 106, 296, 243.

from order under sec. 35..350.

in infringement action, 517.

costs, 513.

hearing advanced, 517.

against interim injunction barred by delay, 518.

in "passing-off" action, 613.

APPENDICES, contents of, 657.

"APPLE BRAND." See *Pomril, Ltd.'s Application.*

APPLICANT,

who may be, for registration, 72—76.

right to be heard, 83.

address of, 86.

death of, before registration, 88, 728.

must intend to use the mark, 140.

signature of, registrable as to trade mark, 149.

APPLICATION,

to register, Chap. IV., 71.

who may make, 72—76.

entry on Register of date of, 88.

equivalent to public use of mark, 360.

procedure on, 84—92.

amendment, 92, 106.

abandonment, 87, 107.

by agent, 75.

special under sec. 9 (5) .. 88.

Sheffield marks, Chap. VI., 120.

renewal of, 84.

cotton marks, Chap. VII., 129.



APPLICATION—*continued.*to register—*continued.*

form of, 84, 742.

of trade mark to goods, 32.

to rectify, Chap. XI., 309.

procedure on, 339.

evidence on, 344.

costs on, 348.

for re-registration after removal for non-payment of fees, 417.

## APPORTIONMENT

of trade marks, 392.

form of application, 752.

"AQUA-REPELA." See *Wilk's Application.*"AQUASCUTUM." } See *Aquascutum v. Cohen.*

"AQUATITE." }

AREA of user, 190.

and reputation of descriptive trade name, 567, 568.

## ARMS,

family, infringement by use of crest, 456, n.

royal, not registered, 721.

unauthorized assumption of, 429, 651.

foreign, restrictions on registration, 721.

of cities, restrictions on registration, 721.

"ARMY AND NAVY PAREGORIC TABLETS." See *Rowland v. Mitchell*

ARTIST'S NAME, warranty of, 618.

## ASSAY MARKS,

on watch cases, 901.

on plate, 900.

## ASSIGNMENT OF TRADE MARK,

of associated trade marks, 119.

Chap. XIII., 384.

registration of, 66, 398.

not necessary before action, 399, 429.

alteration of mark on, 399.

must be with goodwill, 384, 409, 542.

there must be a business to assign in United Kingdom, 389.

the English goodwill must be assigned, 390.

but not necessarily contemporaneous, 391.

comprising name of assignor, 386, 388.

where use of assignee deceptive, 388.

procedure for registration of, 400.

stamp on, 401.

form of application to register, 750.

## ASSOCIATED TRADE MARKS, 116—119, 328.

classes of, 116.

combined trade marks, 117.

series of trade marks, 118.

assignable only as a whole, 119.

ASSOCIATION, registration of standardization marks by, 91, 232.

"ATHENA." See *Lyndon's Tm.*

ATTACHMENT, 495.

AUSTRALIA, Trade Marks Act, 1905-1912, of, 838.

notes of decisions in, 906—917.

statement as to law, in, 906.

- AUSTRIA, law of, as to trade marks, 862.
- AUTHOR'S NAME, imitation of, 577.
- AUTHORITIES,  
     bearing on fact of infringement, 453.  
     American, 209, n.  
     And see *American*.
- AUTHORIZATIONS. See *Agent*.
- AVERAGE ENGLISHMAN TEST, 156, 159, 175, 177.
- "BADGER." See *Verity's Tm.*
- "B. A. S." See *Birmingham Small Arms Co., Ltd. v. Webb & Co.*
- "BAFFLE SAFES." See *Talbot v. Webley*.
- BAILEE, of infringing goods, 499.
- "BANK OF ENGLAND SEALING WAX." See *Hyde & Co.'s Tm.*
- BANKRUPTCY,  
     sale of trade marks on, 392, 464.  
     sale of trade name, 591.  
     application under sec. 32 by trustee in, 731.
- "BASS' BEER," 597, 608.
- "B. B. H." See *Hall v. Barrows*.
- "BEATRICE SHOES." See *Harris's Tm.*
- BEER, same description of goods as rum, 253.
- BELGRAVIA magazine case, 85. See *Maxwell v. Hogg*.
- "BEN LEDI WHISKY." See *Ainslie & Co.'s Tm.*
- "BERMALINE." See *Montgomerie & Co. v. Young*.
- "BIG TREE BRAND." See *Grierson & Co., Ltd. v. Birmingham Hotel Co., Ltd.*
- "BILE BEANS." See *Bile Beans Manufacturing Co., Ltd. v. Davidson*.
- "BIOSCOPE." See *Warwick Trading Co. v. Urban*.
- "BLACK DRINK." See *Day v. Riley & Whittaker*.
- "BLACK SWAN DISTILLERY," 560, n. See *Nicholson v. Buchanan*.
- "BLACKWELL'S PICKLES." See *Blackwell v. Crabb*.
- BLANKS IN LABELS, 219, 245.
- BLOCKS, for purpose of advertisement of mark, 725, 777.
- BOARD OF AGRICULTURE, prosecution by, under M. M. A., 1894..896.
- BOARD OF TRADE,  
     power to make rules, 63, 684.  
     power to prescribe forms, 684.  
     Registrar acts under, 63, 83.  
     may permit registration of standardization mark, 91, 232.  
     appeal from Registrar to, 100, 735, 736.  
     directions by, as to appeal, 101, 671.  
     reference of appeal to Court by, 101, 736.



**BOARD OF TRADE—continued.**

may sanction arrangement to register rival marks, 248, 250, 673, 674.  
 may direct Registrar not to register, 673 (sec. 16).  
 evidence as to proceedings before, 706.  
 prosecution by, under M. M. A. 1891..895.

"BOARDMAN'S." See *Lea's Application*.

BODEGA wine shops, 586, n.

"BÖKOL." See *Davis v. Stribolt*.

**BONÂ FIDE**

use by a person of his own name or place of business, 593—609, 680.  
 description of goods, 681.

**BOOK,**

imitation of title of, 577.  
 name of, how protected, 578.

**BOTTLES,**

use of marks on, 228.  
 using marked bottles, 438.

"BOVRIL," 155. See *Bovril Tm.*

**BOXES,**

use of marks on, 30, 228.  
 using marked boxes, 438.

"BRAIDED FIXED STARS." See *Palmer's Tm.*

**BRAND,**

mark includes, 25.  
 distinctive may be registered under sec. 9.. 180, 211.  
 on corks, 32, 213.

"BRAND'S ESSENCE OF BEEF," 545, n. See *Dence v. Mason*.

BRAZIL, law of, as to trade marks, 864.

"BRAZILIAN SILVER." See *Daniel & Arter v. Whitehouse*.

BREACH OF CONFIDENCE, Chap. XIX., 633.

BREAD, marks on, 899.

"BRITANNIA." See *Hodgson v. Sinclair*.

**BRITISH POSSESSION,**

assignment of right to use trade mark in, 385.  
 registration of trade marks of, Chap. XX., 640.  
 list of possessions to which sec. 91 of the Patents and Designs Act,  
 1907, applies, 811.

"BROOKS' SADDLES," 596, n. See *Brooks, Ltd. v. Norfolk Cycle Co.*

"BROWNIE." See *Kodak, Ltd. v. London Stereoscopic Co.*; also *Kodak, Ltd. v. Grenville*.

"BRYMBO." See *Batts' Tm. (No. 1)*.

"B. S. A." See "B. A. S.," above.

"BULL-DOG" CIGARS, 210, n. See *Elliott & Co. v. Hodgson*.

- "BULL'S-EYE" CAMERAS. See *European Blair Camera Co.'s Tm.*; also *Kodak, Ltd. v. London Stereoscopic Co.*
- "BURGOYNE," 465, n. See *Burgoyne v. Godfree.*
- "BURGUNDY," not a possible trade mark, 54.
- BUSINESS, defendant's represented as plaintiff's, 595. And see *Trade name.*
- BUTTER, marks on, 899.
- BUTTONS (metal), marks on, 899.
- "CALCULATED TO DECEIVE." See *Deception and Resemblance.*
- "CALEDONIA WATER," &c., 56, 569, n., 612, n. See *Grand Hotel Co. of Caledonia Springs, Ltd. v. Wilson.*
- "CALIFORNIA SYRUP OF FIGS." See *Californian Fig Syrup Co.'s Tm., California Fig Syrup Co. v. Taylor's Drug Stores,* and *California Fig Syrup Co.'s Application.*
- "CAMEL HAIR BELTING." See *Reddaway v. Banham*; also *Same v. Bentham, &c. Co.*; also *Same v. Ahlers*; *Same v. Frictionless Engine Packing Co.*; *Same v. Stevenson.*
- "CAMP COFFEE." See *Paterson & Sons v. Kit Coffee Co.*
- CANCELLATION  
of entries under sec. 92..851.  
form of application for, 753.
- "CAPSTAN" CLOSETS. See *Freeman Bros. v. Sharpe.*
- CARDS (playing), marks on, 899.
- "CARLSBAD SALTS," 302. See *Kutnow's Tm.*
- "CARNIVAL." See *Lloyd & Son's Tm.*
- CARPET stick, 579, n.
- "CARRIAGE BAZAAR," 559, n., 584 n. See *Boulnois v. Peake.*
- "CARVINO." See *Coleman & Co., Ltd. v. Stephen Smith & Co., Ltd.*
- CASE on appeal to the Board of Trade, 101.
- "CASH'S FRILLINGS," 600, 807. See *Cash v. Cash.*
- "CASTLE ALBUM." See *Schove v. Schmincke.*
- "CAT BRAND" and "CAT AND BARREL BRAND." See *Doord & Son v. Huddart.*
- "CAVITE." See *Compagnia Général de Tobacos v. Rehder.*
- "C. B." and "C. B. D." CORSETS. See *Bayer v. Connell Bros.*; also *Bayer v. Baird.*
- "CELLULAR" CLOTHING. See *Cellular Clothing Co. v. Maxton & Murray.*
- "CENTURY," 174. See *Printing Machinery Co.'s Application.*
- "CEBEGEN." See *British Drug Houses Trade Mark.*



**CERTIFICATE,**

- of the Registrar is evidence, 67, 524.
  - kinds of, 780.
  - purpose of, to be stated, 68, 783.
  - forms of request for, see *Table of Forms*, 771, 772.
- of refusal to register, 88, 875.
- of registration, 368.
- of Board of Trade is evidence, 682.
- of Master of the Cutler's Company, 127.
- of Keeper of Cotton Marks, 193.
- that title to the trade mark came in question, 346, 347, 515.
- of validity, 346.
  - can be given in rectification proceedings, 346, 347.
  - for obtaining registration abroad, 783, 761.
  - applications and forms, 771, 772.

**CHAIN CABLES**, marks on, 899.

"**CHARTREUSE**," 804. See *Grezier v. Autran*; also *Rey v. Lecouturier*, 390.

**CHICOBY**, marks on, 899, 900.

"**CHLORODYNE**." See *Browne v. Freeman*.

"**CHOP**" marks, 184, n.

**CIRCULARS,**

- use of infringing mark on, 438.
- fraudulent representation by, 537, 583.
- imitation of, 608.
- injunction restraining use of, 802.

**CIRCUMSTANCES** of the trade to be considered in comparing marks, 274, 449.

**CLAIM.** See *Conflicting Claims and Statement of Claim*.

**CLASS,**

- classification of goods, Chap. V., 112, 719.
  - guide to, 777.
- of goods to which trade mark extends, 33, 113, 436.
- cotton classes, 129.
- sec. 19 not limited by register classes, 252, 436, n.
- use for part of register class, 113, 255.
- infringement on goods within class for which the plaintiff's right exists, 435.
- inferior, of goods passed off as superior, 539.
- table of register classes, 761—765.

**CLERICAL ERROR,**

- correction of, in application, 72.
- in name or address of proprietor, 351.

**CLERK**, breach of confidence by, 636.

**CLOCKS**, importation of marked, 900.

"**CLUB SODA**," 477. See *Cochrane v. MacNish*.

"**COCK O' THE NORTH**" whisky. See *Currie's Application*, 269.

"**COCOSOLINE**." See *Fairbank Co. v. Cocos Manufacturing Co.*

**COFFEE**, marks on, 899, 900.

**COIN MARK**, 233, n.

"COKER CANVAS." See *Hayward's Tm.*

COLLATERAL MISREPRESENTATION, 472.

COLLIERY CASE, 575. See *Braham v. Beachim.*

COLMAN'S mustard, name not disclaimed, 147, n.

"COLONEL" } See *St. Mungo Manufacturing Co. v. Viper and Recovering*  
 "COLONIAL" } *Co.*

COLONIAL,  
 trade mark, Chap. XX., 20, 640.  
 colonies to which sec. 91 of the Patents and Designs Act, 1907, is  
 applied, 811.  
 law as to trade marks, 881—885.

COLOUR,  
 marks differing in colour may be registered in a series, 118.  
 as a distinctive element, 205, 219, 233, 234.  
 registration in colours, 233.  
     may be limited to specified, 233, 335.  
 bearing on deceptive resemblance, 234, 450.  
 restriction of use to one colour, 234.  
 as an element in infringement, 450.

COLOURABLE IMITATION, 444—454.  
 Lord Kyllachy as to, 444, n.

COMBINATION DEVICES, 208.  
 making a distinctive label, 216.  
 disclaimer, of part of, 430, n.

COMBINATION WORD, 159, 170, n.

COMBINED TRADE MARKS, 117.

"COMMERCIAL" CORKSCREWS. See *Hipkins v. Plant.*

COMMITTAL, 495.  
 delay in application for, 497.  
 for contempt by publication pending action, 628, 630.

COMMITTEE (Lord Herschell's),  
 reports may be referred to, on construction of Act of 1888..9, n.  
 recommendation as to consulting Board of Trade, 63, n.  
 citations from their report—  
     doubtful marks to be rejected, 9.  
     name marks derived from expired patent, 45.  
     Manchester branch office, 130, n.  
     registration of names with marks, 148.  
     combination device, 208.  
     descriptive devices, 209.  
     brands, 212.  
     registration of phrases and proverbs, 215.  
         word marks, 152.  
         foreign words, 158, n.  
     the comparison of marks, 263.  
     deceptive marks, 297.

COMMITTEE OF 1862..5.

COMMITTEE OF 1890 ON MERCHANDISE MARKS, 19.

COMMITTEE OF EXPERTS, 129, 130.



"COMMON OF THE ENGLISH LANGUAGE," Fry, L.J., 41 Ch. D. 455..  
801.

COMMON LAW TRADE MARK, 531, 581.

definition, 24.

not necessarily registerable, 189.

practically protected against infringement, 377.

See Chap. XVI., "Action for Passing-off," 527.

COMMON TO THE TRADE,

what marks are, 199-202.

marks, bearing of, on distinctiveness of new marks, 200.

part of mark, 208.

name of mark, not fancy word, 158.

words, in label, not to be disclaimed under the old Acts, 217, 218,  
242.

words, combination of, not fancy words, 159.

meaning of, in sec. 74, of the Act of 1883.. 240.

matter, may be ordered to be disclaimed, 242.

elements in contrasted marks not to be disregarded, 267, 269, 276,  
277.

name suggested by matter, 281.

special device of a kind, 282.

trade mark may become. See Chap. XIV., 401.

evidence of Register as to mark being, 526.

words, may be an element in "get-up," 575.

get-up, 578.

See also *Three Mark Rule*.

"COMMON USE," 160.

"COMPACTUM." See *Davis' Tms.*

COMPANY,

may apply for registration, 72.

name of, may be registered, 137, 145.

change of name of, 358.

using trade name not its registered name, 488.

sequestration against, 495.

trade name of, 546, 800, 805.

assignment of, 551.

decisions as to, 549-554.

purchasing trade name, 550, 554.

using name of promoter, 554, 555, 558, 598.

application by, 722.

application under sec. 32 by liquidator, 353, 731.

"person" includes body corporate, 716.

COMPANIES (CONSOLIDATION) ACT, 1908,

sec. 2.. 546.

sec. 63.. 488, 551.

offences against, no defence in infringement action, 487.

COMPARISON,

of marks under sec. 20.. 263-283.

in infringement actions, 448.

marks not to be compared side by side, 270.

of actions, for infringement and passing-off, 13, 421, 445, 529.

COMPOUND WORD, when an invented word, 165, 170, n.

COMPROMISE,

of application to rectify, 321.

publication of terms of, 627.

T. M.

59

**COMPTROLLER-GENERAL OF PATENTS, DESIGNS AND TRADE MARKS,**  
 Register under control of, 63, 666.  
 referred to in Act of 1905 as Registrar, 63, 667.  
 See *Registrar*.

**CONCURRENT RIGHT,**  
 registration of duplicate marks, 249, 321.  
 where goodwill divided, 392.  
 limitation of registration by, 431.  
 a defence in infringement action, 456.  
 a defence in passing-off actions, 588.  
 lost by non-user, 406, n., 456, n.  
 to part of mark, 457.  
 not more than three persons, 428, 456.  
 name used by defendant's customers, 534, n.  
 And see *Joint Trade Mark; Partnership; Name* (honest use of).

**CONCURRENT USER,** 294-297.

"**CONDI SANTAS.**" See *Sanitas Co. v. Condy*.

**CONDITIONS.** See *Registration*.

**CONDUCT** of applicant for rectification not material, 319.  
 See *Estoppel*.

**CONFIDENCE,** breach of, Chap. XIX., 633.

**CONFLICTING CLAIMS** to registration, 248.

**CONFUSION, PROBABLE,**  
 of marks, an objection to registration, 252, 253.  
 of names, may amount to passing-off, 584.  
 but may give no cause of action, 604.  
 See *Deception*.

**CONNECTION,**  
 with proprietor indicated by a trade mark, 58.  
 pretence of, with plaintiff's business, 536, 537.  
 of infringing mark with goods, 438.  
 with old business may be advertised, 536.  
 with goods in passing-off cases, 583.

**CONSENT,**  
 to registration of owners of other marks, 255, 257.  
 concurrent applications by, 251.  
 order in chambers by, 506, n.

**CONSIGNEE,**  
 trade mark of, 59.  
 registration in name of, 337.  
 action by sole consignee, 427.  
 holding infringing goods, 494.  
 must not export infringing goods, 506, n.

**CONSOLIDATED INSTRUCTIONS.** See *Merchandise Marks Act, 1887;*  
*Appendix, 886.*

**CONTEMPT OF COURT,**  
 breach of injunction, 495.  
 by publication of statement pending action, 628, 630.

**CONVENTION, International.** See *International Convention*.



**COPY,**

- of Register is evidence, 67, 524.
- of trade mark, when an infringement, 34, 441.
- of parts of mark, not necessarily infringement, 442.

**COPYRIGHT,**

- trade mark is not analogous to, 1, 30.
- device adopted as trade mark, 100, n.
- gives no trade mark rights, 463.
- no excuse for infringement, 463.

"COPYRIGHT" not registered, 305, 485.

CORKS, use of mark on, 32, 213.

"CORONA." See *Havana Cigar and Tobacco Factories, Ltd. v. Tiffin (1905), Ltd.*

**CORPORATE MARKS, Chap. VI., 120.**

- grant, assignment, 122.
- Register closed, 122.
- counterfeiting, 655.
- form of request to enter, 755.

**CORPORATION,**

- may apply for registration, 72.
- name of, is within sec. 9 (1) .. 145.
- application to register by, 722.

CORRECTION of the Register, 351. See *Alteration and Amendment.*  
form of request for, 754.

**COSTS,***application to register :*

- security for costs by opponent living abroad, 96, 111.
- before Registrar, 98, 107.
- on appeal to Court, 108, 109.
- on appeal to Board of Trade, 98, 110.
- on appeal to House of Lords, 109.
- on withdrawal of application, 110.
- of three counsel, 111, 517, n.
- of attendance of country Solicitor at trial, 111, n., 517, n.
- official notice as to costs in oppositions, 783.

*motion to rectify :*

- under sec. 35 .. 348.
- security for, by foreign respondent, 343.
- in action for infringement, 516.
- as between solicitor and client where validity previously certified, 515.

*action for infringement, 506—517.*

- no lien for, 498.
- against innocent infringer, 500, 506, 507.
- of motion for judgment, 506, n.
- in case of fraud, and after offer to submit, 506, n.
- against infant infringer, 509.
- in trivial cases, 509.
- successful plaintiff awarded, only on County Court scale, 509, n.
- refused to successful party, 509—514.
- higher scale, 514.
- as between solicitor and client, 515.
- of taking account of profits, 504, 801, 803.
- of appeal, 513.
- action for passing off, 618.
- order as to, and set-off of, 801.
- interest on costs repaid, 514.

"COTTOLENE." See *Fairbank Co. v. Cocos Butter Manufacturing Co.*

COTTON MARKS, Chap. VII., 129.  
 the repealed rules, 129.  
 application for registration, 181, 182.  
 Manchester office for, 181, 779.  
 rules relating to, 784, 766.  
 And see *Line Headings*.

"COTTON YARN," label for. See *Crompton's Tm.*

COUNTERCLAIM for rectification, 340, 455.

COUNTER-STATEMENT, 93, 95.  
 forms, 746.

COUNTRIES to which sec. 91 of the Patents and Designs Act, 1907, is applied, 811.

COUNTRY OF ORIGIN,  
 name of, when a trade mark, 53.  
     not a fancy word, 158, 159.  
     not an invented word, 170.  
     may be an old mark, 226.  
 mark registered in, 641.  
 in the International Convention, 813.

COUNTY COURT, no jurisdiction in trade mark infringement action, 422.

COURT,  
 reference of appeal to, by Board of Trade, 100, 101.  
     rival claims to, 103.  
 no appeal from Registrar to, unless expressly given by the Act, 103.  
 appeal direct to—  
     in application, 100, 102.  
     in opposition, 100.  
     in case of rival claims, 248, 250.  
     as to registration of assignment, 398.  
 meaning of, in Act of 1905. .102, 398.  
 may in rectification proceedings review decision of Registrar, 103, 617.  
 jurisdiction of Scotch or Irish, 399.  
 in Lancashire, 134, 398, 422, n.  
 to try action for infringement, 422.  
 payment into, 508, n.  
 And see *Jurisdiction*.

COVERING, use of trade mark on, 80.

"COW BRAND." See *Nitedals Taendstikfabrik v. Lehmann & Co., Ltd.*

CREST, infringement by use of, 456, n.  
 royal, not to be registered, 721.

CRIMINAL LAW OF FALSE MARKING, 6, 16.  
 offences committed abroad, 812.

CROSS-EXAMINATION, 522. And see *Secret*.

CROWN, registration of. See *König and Ebhardt's Tm.*  
 British royal, not to be registered, 721.

"CRYSTAL PALACE," 52. See *Brock & Co.'s Crystal Palace Fireworks, Ltd. v. Pain*.

CUSTOM for shippers to own trade marks, 426, n.



**CUSTOMERS,**

- list of, 507, n.
- names not to be disclosed before trial, 521, 522.
- to be disclosed on account or inquiry, 523.
- of former business, soliciting, 536, n., 590, 592.
- information supplied to, for sole use, 638.

See *Purchaser*.

**CUTLERS' COMPANY, 120.**

- marks, Chap. VI., 120.
- their rights preserved, 122, 123.
- opposition to registration by, 123, n.
- duties in regard to registration, 125.
- appeal from, 126.

**CUTLEBY,**

- marks, penalties for counterfeiting, 655.
- "London made," 654.

"CYCLOSTYLE," 48, 161. See *Gestelner's Tm.*

**CYPHER ADDRESS,**

- imitation of, 560, n., 586, n.
- unconscientious use of, 638.

"DAIRY MAID MILK," 277. See *Anglo-Swiss Condensed Milk Co. v. Metcalf*.

**DAMAGES,**

- no power to award, on motion to rectify, 312.
- undertaking as to, 494.
- in cases of contempt, 630.
- for infringement, 499.
- or profits, 501.
- special, need not be proved, 3, 4, 499.
- injury to reputation, of goods, 432.
- onus of showing substantial damage on plaintiff, 500.
- injury to reputation of plaintiff's goods, 501.
- reduction of plaintiff's prices, 501.
- as a rule six years only recoverable, 502.
- against innocent purchasers, &c., 502.
- where plaintiff not sole owner of mark, 505.
- costs of inquiry, 504.
- for passing-off, 586.
- for breach of warranty of trade mark, 620.
- in trade libel cases, 625.

DATE OF REGISTRAR'S DECISION for purposes of appeal, 97, n., 724.

**DATE OF REGISTRATION,**

- "common use" to be tested at, 159.
- is date of application, 362.
- of existing registered trade mark, to be retained, 363.
- variation of, 325, n., 336.
- sec. 16 refers to, 362.

"DAY & MARTIN." See *Croft v. Day* and *Clayton v. Day*.

"DAY & SONS' BLACK DRINK." See *Day v. Riley and Whittaker*.

DEALERS, infringement, though they are not deceived, 261.

**DEATH,**

- of applicant for registration, 88, 728.
- action for infringement does not abate, 428.
- action for trade libel does not abate, 632. See *Devolution*.

DECEIT, actions for, distinguished from "passing-off" actions, 593, n.

DECEPTION, PROBABILITY OF,  
 persons to be considered, 261.  
 evidence as to, 284, 287, 525.  
 evidence of actual deception, 287, 442, 446, 471, 584.  
     particulars as to, 345, 520.  
 by similar mark in another class, 297, 436, n.  
 intent to deceive, 4, 446, 592.  
     success of, will be easily inferred, 583.  
 in common law action, 447, n.  
 comparison of resembling marks, 263—297, 448—454.  
 the test of infringement, 444.  
 decided cases, how far authorities as to, 453.  
 in passing-off cases, 583.

DECEPTIVE MARKS,  
 word either descriptive or deceptive, 170.  
 not distinctive, 224.  
 not to be registered, 297—308.  
 by use of "trade mark," 303.  
 use by assignee, deceptive, 387.  
 removal of, 331, 332, 474.  
 are outlawed, 472.  
 American law as to, 473, n.  
     See also *Duplicate Marks* and *Resemblance calculated to deceive*.

DECEPTIVE REPRESENTATION as to origin of goods, 306, 307.

DECEPTIVE USE of mark, not presumed, 302, 489, n.  
 by assignee, 387.  
 form of injunction in case of open word, 610.

DECEPTIVE WORD will not be registered, 194.

DECLARATION,  
 evidence by, 95, 104, 733.  
 no longer to be verified by affidavit for use in Court, 104, 105.  
 statutory, defined by Interpretation Act, 1889..717.  
 forms of, 750, 751.  
 false, as to watch marks, 901, 902.

"DEERHEAD BRAND." See *Alaska Packers' Association v. Crooks*.

DEFENCES,  
 action for infringement, 419, 420, 454—488.  
     passing-off, 528, 587, 588, 593. See *Concurrent Right; Estoppel; Infringement* (what constitutes); *Rectification; Registration* (condition precedent to infringement action).  
 forms, 793, 794, 796.

DEFINITION,  
 of a trade mark, Chap. II., 23.  
 of a common law trade mark, 24.  
 statutory, of trade mark, 25.  
 of "mark" and "trade mark" in Merchandise Marks Act,  
     1862..27.  
     in Merchandise Marks Act,  
     1887..28.  
     judicial, 28 and 29.  
 in sec. 9 is merely restrictive, 142.

DELAY,  
 in application to rectify, 324.  
 in suing for infringement, 468.  
     may be explained, 470.  
     may cause determination of trade mark, 409, 414.



**DELAY—continued.**

- bearing on the evidence, 287, 288, 471.
- may amount to abandonment, 470.
- a bar to an injunction, 491, 493.
  - delivery up of marked articles, 498.
  - account of profits, 503, 504.
- in application to commit, 497.
- appeal against interim injunction barred by, 518.

**DELIVERY UP,**

- of marked goods, 498.
- of stamp, 498, n.
- plaintiff may lose his right to, by delay, 498.

"**DEMON RACQUETS**," 498. See *Slazenger v. Feltham*. (Also *Slazenger v. Pigott*.)

**DENMARK**, law of, as to trade marks, 865.

**DENTIST CASE**, 537. See *Mallam v. Davis*.

**DESCRIPTION**. See *Trade Description*.

- of trade-mark in pleadings, indictments, &c. See *Pleading*.
- "same description," 252.

**DESCRIPTIVE,**

- marks, not distinctive, 39, 56, 205, 224.
- devices, 209.
- words, not fancy words, 157.
  - descriptive or deceptive, 171. See *Words having no reference, &c.*
  - use of, in price list, 439.
- invented word may be, 163.
- word may be distinctive, 188.
- bona fide* description of character or quality of goods, 281.
- not "disentitled to protection," 308.
- name derived from trade mark, 280, 281.
- names, no monopoly in, 549.
- no monopoly in words merely descriptive, 562, *et seq.*
- accessories and personal name, 563, 564.
- trade name of goods, 565. See also *Common to the Trade and Secondary Distinctive Meaning*.

**DESIGN,**

- trade mark copyright design, 100, n. See *Device*.
- article made under registered, 53, 209.
- name of, 228, 322.
- use of "registered," after expiration of protection, 484, 485, n.
- imitation of design in get up, 579, 580.

**DESIGNER,**

- may register new mark, 140.
- for another has no claim to mark, 60.

"**DESTINACION**." See *Pinto v. Badman*.

**DESTRUCTION** of infringing goods, 6, 498.

**DETERMINATION,**

- by non-user, 115, 326.
- of trade mark rights, Chap. XIV., 404, 456.
- loss of distinctiveness, 405.
- separation from good will, 409.
- abandonment, 412.
- forfeiture of right to protection, 414.
- removal from Register, 414.
- of plaintiff's title, a defence in infringement action, 431.

**DEVICE,**

- in sec. 9..206—211.
- combination, 208.
- descriptive, 209.
- comprising pictures of goods, 210.
- representing name of goods, 211.
- of national character, 211.
- cases of contrasted devices, 288—291.
- resemblance of word and, 269.
- copyright design, 100, n.
- suggesting name of opponent's goods, 277, 302.
- unauthorized use of, implying employment by Royal Family, 651.

**DEVOLUTION,**

- of trade marks, Chap. XIII., 384.
- entry on Register, 66.
- of trade name, 542.
- of goodwill, 588.

"DIABOLO," 52, 171. See *Philippart v. Whiteley*.

"DIAMENE." See *Cassella & Co.'s Application*.

"DIAMOND CAST STEEL." See *Spencer's Tm.*

"DIAMOND DUST" (flour). See *Reid v. Thomson*.

"DIAMOND GUNPOWDER." See *Curtis and Harvey v. Pape*.

- DIFFERENCES** between trade marks,
- bearing of, on resemblance, 266, 451.
  - easily removed, 453.
  - inconspicuous, 453.
  - colourable, 584.

"DINDIGUL." See *Bewlay & Co., Ltd. v. Hughes*.

**DIRECTIONS.** See *Board of Trade*.

**DISCLAIMER, Chap. IX., 236.**

- entry on Register of, 64.
- on appeal to Court, 106, 236, 243.
- of part of a word, 167.
- of part of distinctive label, 217, 241, 242.
- need not be included in application but may be required by Registrar, 85, 106, 242, 243.
- of added matter under the Acts of 1883 and 1888..237.
- scheme of Act of 1905 as to, 238.
- when required, 238, 241.
- of parts of work not separately registered, 239.
- of common or non-distinctive matter, 239.
- of common addition, 241.
- effect of, 244, 282, 430, 574.
- offer, upon application to rectify, 316.
- entered under sec. 35..332.
- of part of old mark, 333.
- of part of combination, 430, n.

**DISCOVERY,**

- on application to rectify, 345.
- in infringement action, 521.
- provision in M. M. A., 1887, as to, 521, n.
- in aid of account, 522.
- See *Disclosure*.



- DISCRETION,**  
 to refuse registration, 76—84, 142.  
 Outlers' Company, none, as to old marks, 124.  
 of Court, to refuse to remove mark, 320, 327.  
 exercise of Registrar's, no bar to rectification, 328.
- "DISSENTED TO PROTECTION," 297, 308.
- DISSOLUTION.** See *Partnership*.
- DISTINCTIVE,**  
 trade mark or trade name must be, 36, 562.  
 meaning in sec. 9. .180—205.  
 word, is not necessarily "adapted to distinguish," 186—188.  
     may be descriptive, 188.  
 words, list of, allowed by court or Board of Trade, 903.  
 what marks to be distinguished, 199.  
 degree of distinctiveness required, 204.  
 mark, only to trade, 205, 564.  
 deceptive mark not, 224.  
 meaning under the Acts of 1883 and 1888. .180.  
 character, how lost, 405.
- DISTINCTIVENESS,**  
 loss of, 405—409.
- DOCUMENTS,** for use on application, size of, 720.  
 service of, 720.  
 amendment of, 732.
- "DOG HEAD BEER," 733. See *Read v. Richardson*.
- "DOG, TOWER, AND HARP LINEN." See *Speer's Tm.*
- "DOLLY BLUE." See *Edge v. Gallon*.
- "DOME BLACK LEAD." See *James' Tm.*
- "DOS LEONES." See *Hubbuck v. Brown*.
- DOUBTFUL** new marks to be rejected, 9, 78, 299.
- "DUCHESS OF DEVONSHIRE," 203. See *Louise v. Gainsborough*.
- DUPLICATE** marks not to be registered, 247—258.  
 interests of public to be considered, 251, 257.  
 See *Agreement and Consent*.
- EAR,** to be considered in reference to resemblance of marks, 152, 269.
- "EASTERN DYE WORKS." See *Chemische Fabrik Greishem Elektron, Application of*.
- "EBOLINE," 170. See *Salt's Application*.
- EDITION,** false statement as to number, 486.
- EDMUNDS, LEONARD,** evidence before Committee of 1862..6.
- EFFECT OF REGISTRATION,** Chap. XII., 359.
- "EIFFEL TOWER". LEMONADE. See *Clark v. Sharp*.
- "EL MUSJID." See *Cowie Bros. v. Herbert*.
- "ELECTRIC VELVETEEN," 154, 155. See *Leaf's Tm.*

- "ELECTROID ANTI-FOULING COMPOSITION." See *Hannay's Tm.*
- "ELECTROZONE." See *British Electrozone Co.'s Application.*
- ELEPHANT CASE. See *Johnston v. Orr-Ewing.*
- "ELISE (MADAME), 545, n. See *Chatteris v. Isaacson* and *Isaacson v. Thompson.*
- "EMOLLINE, EMOLLIO CREAM." See *Grossmith's Tm.*
- "EMOLLIOLORUM," 161. See *Talbot's Tm.*
- "EMU." See *Burgoyne's Tm.*
- ENGLISHMEN, "fancy word," addressed to, 155, 156, 159.  
"geographical name," addressed to, 159, 176, 177.
- "ENTERED AT STATIONERS' HALL," 305, 463, 485. See also *Stationers Hall and Copyright.*
- ENTRIES ON THE REGISTER, 64. See also *Note on Register.*
- "EQUAL TO," 454.
- ERASURE of infringing marks, 498.
- "ERECT FORM," 367, 501, n., 517, n. See *Weingerten v. Bayer & Co.*, and *Same v. Rosenthal.*
- ERRORS,  
correction of, 351.  
form of request for, 753.
- ESSENCE OF ANCHOVIES, 594, 595.
- ESSENTIAL PARTICULARS, 142.  
no statement of, required on ordinary application, 85.  
to be regarded in comparing marks, 273.  
of old mark, 354.  
change of, may be involved on alterations of trade mark under sec. 34..354.  
copying, an infringement, 442.  
clauses of sec. 64 (1) of the Act of 1888 alternative and independent, 10, 144.  
clauses of sec. 9 of Act of 1905, also distinct, 144.  
under Australian Acts, 909.  
See also *Name; Signature Marks; Device; Mark; Brand; Heading; Label; Ticket; Fancy Word; Invented Word; Word having no reference, &c.; and Old Marks.*
- ESTOPPEL,  
opponent, whether estopped in rectification, 103, 322.  
on application to rectify, 319, 320.  
defence in infringement action, 465.  
agreement to condone, 465.  
uncandid conduct, 465.  
alteration of mark in use is not, 466.  
acquiescence, 466.  
not mere delay, 468.  
deceptive marks or fraudulent trade, 472.  
misrepresentation, 472.  
false claim of patent, 476.  
"trade mark," 480.  
by omission of "limited," 487.  
See "*Registered.*"



ETCHINGS, publication of catalogue, 685.

"ETON CIGARETTES," 223. See *Wood v. Butler*.

"EUREKA," 89, 799. See *Ford v. Foster*.

"EVERYBODY'S MAGAZINE." See *Ridgway v. Amalgamated Press, Ltd.*

#### EVIDENCE,

certificates and copies of the Register, 67.

in opposition to registration, 95, 726.

on appeal to the Board of Trade, 104, 724.

on appeal to the Court, 104.

of use of old mark, 281.

probability of deception, 284, 287, 525.

actual deception, 287, 442, 446, 471, 584.

intent to deceive, 446,

    cumulative resemblances, 575, 582.

expert, 284, 525.

on application to rectify, 344.

of title, registration is, 363—373, 429.

registration is *prima facie*, of validity, 367.

of usages of the trade in infringement action, 444, 449.

on interlocutory application, 493.

in action for infringement, 524.

of repute necessary in passing off action, 540.

of secondary distinctive meaning, 571.

to construe libel, 628.

register books, 526.

proceedings before Board of Trade, 684.

power to dispense with, 732.

"EXACTLY TWELVE YARDS," 57.

"EXCELSIOR SPRING MATTRESS." See *Chorlton and Dugdale's Tm.*

"EXCELSIOR WHITE SOAP," 57. See *Braham v. Bustard*.

"EXCLUSIVE USE," 297.

    registration evidence of right to, under Act of 1883. .363.

    no right to, apart from goodwill, 440.

#### EXECUTORS,

    registered on death of applicant, 88, 723.

    can sue for infringement, 428.

        trade libel, 632.

    See *Devolution*.

EXHIBITION MEDAL, pretence of, 537, 587, n., 900.

#### EXPERT,

    committee of experts, 129, 130.

    evidence, 284, 525.

    as to usages of the trade, 444, 449.

EXPORTATION of infringing goods, 434, 507, n.

#### EXPORTER,

    trade mark of, 59, 425.

    may be a "person aggrieved," 316.

EXPUNGE, mark, discretion to refuse under sec. 90 of the Act of 1883. .  
    320, 321.

EXTENSION, probable, of business, 562.

EXTENT, of user, 190.

FACTORY, name of, 559.

FALSE CLAIM OF PATENT. See *Patent*.

FALSE CLAIM OF REGISTRATION. See *Misrepresentation* and "*Registered*."

FALSE MARKING, criminal law of, 6, 16.

FALSE NAME OR INITIALS. See *Name*.

FALSE representation as to Royal Warrant, 651, 894.  
 as to registration of trade mark, 649.  
 as to Patent or Design, 650.  
 of a business connection, 536.

FALSIFICATION of the Register, 65, 650.

"FAMILY SALVE," 213. See *Reinhardt v. Spalding*.

FAMILY USE, importation for, 434.

FANCY NAME, no right to use any, 605.

"FANCY WORD NOT IN COMMON USE," 153—162.  
 good trade mark before Registration Acts, 153, n., 565, n.  
 descriptive word not, 157.  
 whether word in foreign language is, 157.  
 secondary meaning does not make a, 158.  
 geographical word may be a, 158.  
 name of mythical person not, 159.  
 list of words in decided cases, 161, 162.

FEATURE, special, not taken, 268.

FEEES,  
 removal of mark for non-payment of, 414.  
 list of, 737.  
 payment of, 771.

FICTITIOUS PERSON, name of, 145.

FIGURE, in Act of 1883, held to mean "numeral," 222, n.

FILTER CASE, 57. See *Cheavin v. Walker*.

"FILTERED BLUE," 172, n. See *Edge's Tm*.

"FINAL JUDGMENT," 348, n.

"FINAL ORDER," order under sec. 35 is, 350.

FIRM. See *Partnership*.  
 name of. See *Name*.

FIVE YEARS' REGISTRATION under Act of 1883 conclusive evidence of  
 title, 323, 363.  
 See *Seven Years' Registration*.

"FIXED STARS." See *Palmer's Tm*.

"FLAG COFFEE." See *Payton & Co., Ltd. v. Snelling, Lampard & Co.*

"FLAGS," British national, not to be registered, 721.

"FLAKED OATMEAL," 571. See *Parsons v. Gillespie*.



FOOD AND DRUGS ACTS. See *Sale of Food and Drugs Act, 1875.*

FOREIGN

arms. See *Arms.*  
 words, 157.  
 user of old mark, not sufficient, 280.  
 trade marks, registration, Chap. XX., 20, 640.  
 trade mark must be qualified same as English, 646.  
 trade mark Laws, 862—881.  
 And see *Abroad; International Arrangements.*

FOREIGNER,

probability of deception of, 261.  
 may be a "person aggrieved," 317.  
 respondent to application to rectify, 342.  
 may be made liable for costs when appearing on motion to rectify, 342.  
 security for costs by, 343.  
 sec. 77 of the Act of 1883 applied to, 375.  
 service out of the jurisdiction, 423.  
 may sue for infringement, 20, 423.

"FORMALIN." See *Formalin Hygienic Co.'s Application.*

FORMS,

power of Board of Trade to prescribe, 684.  
 in the schedule to the Rules, 740.  
 on application to register and on appeal, 785.  
 notice of motion to rectify, 791.  
 pleadings in actions, 519, 520, 792.  
 orders in actions, 798.

"FORBEST (LONDON)," 307 See *Hill's Tm., and Thorneloe v. Hill.*

FRANCE, law of, as to trade marks, 866.

FRAUD,

proof of, not necessary in infringement action, 4, 14, 446, 490.  
 or passing-off action, 14, 381, 532, 595.  
 registration obtained by, 369, 371.  
 in case of, registrar may move to rectify, 311, 371.  
 continued use of mark after notice, is, 447, 533.  
 damages in case of concealed, 502.  
 instrument of, 504.  
 costs of, in infringement action, after offer to submit, 506, n.  
 unfounded charge, costs refused, 509, n., 512, 513.  
 new case of, at trial, 531.  
 not to be presumed, unless pleaded, 532.  
 inconspicuous additions are badges of, 453.  
 bearing on probability of deception, 533.  
 badges of fraud, 584, 607.  
 proximity of place of business may be a, 603.

FRAUDULENT,

registration by agent, 75.  
 use of mark tendered for registration, 231.  
 not presumed, 302, 489, n.  
 length of, by infringer, 407, n.  
 mark not to be registered, 231, 307.  
 conduct of applicant for rectification irrelevant, 319.  
 is outlawed, 472.  
 intent, success of assumed, 533.  
 trade, no action to protect, 486, 625.  
 adoption of trade name, 556, 557.  
 French Court will order what alteration defendant is to make in mark,  
 497, n., 612, n.

- "FRIEDRICHSHALL." See *Apollinaris Co.'s Tm.*
- "FRIGI-DOMO." See *Edgington's Tm.*
- "FROM," 454.
- "FRUIT SALT," 78, 298. See *Eno v. Stephens*; *Eno v. Dunn.*
- GAINSBOROUGH PICTURE, 203. See *Louise v. Gainsborough.*
- "GARNISHING," USE OF NAME, 604, 608.
- "G. B. D." PIPES, 289, 498, n. See *Maréchal and Ruchon v. M'Colgan.*
- "GEM." See *Arbens's Tm.*
- GENEVA CONVENTION ACT, 1911..305, 654.  
text of, 898.
- "GENEVA CROSS," use of for trade prohibited, 805, 654.
- GEOGRAPHICAL NAMES, 53, 152, 158, 175—178, 194, 575.  
may be fancy words, 158, 194.  
not equivalent in sec. 9 (4) to name of any place, 176.  
decisions as to, 178.  
adjectival form, 178.  
may be old marks, 53, 226.  
geographical limitation, may now be entered on Register, 64, 256.
- GERMANY,  
accession of, to International Convention, 819.  
law of, as to trade marks, 868.
- GET-UP, 18, 539, 578.  
difference of, in infringement, 449.  
imitation of, 578.  
common words in, 575.  
useful feature of, 580.  
new feature of, 581.  
common to the trade, 581.  
no monopoly in elements of, 579.  
prominent parts to be chiefly regarded, 582.
- "GLACIER," 471, 491. See *McCaw, Stevenson & Orr v. Lee Bros.*
- "GLENFIELD STARCH," 55, 799. See *Wotherspoon, v. Currie.*
- "GLEN THORNE." See *Thorne & Sons, Ltd. v. Pimms, Ltd.*
- GOLD (PLATE), marks on, 900.
- "GOLDEN FAN BRAND," 235. See *Dewhurst's Application.*
- "GOLDEN FLEECE," 252. See *Australian Wine Importers' Tm.*
- GOODS,  
property in, what is sufficient for purposes of Act of 1905..27, n.  
application of trade mark to, 32.  
to which trade mark right extends, 33, 112, 365, 485.  
trade mark indicates connection between trader and, 58.  
selector of, 58.  
classification of goods, Chap. V., 112.  
mark comprising reference to particular goods, 114, 805, 485, 722.  
series of marks for different, 116, 118.  
name of, in foreign language not a good trade mark, 157.



**GOODS—continued.**

- representation of, not a trade mark, 209, 210.
- same goods, or description of goods, 253.
- limitation of class of. See *Note on Register*.
- registration limited by use on, 365, 486.
- infringement must be in respect of spurious, 487.
- use by defendant of his registered mark on goods for which it is not registered, 458.
- delivery up of infringing, 498.
- described as similar to, or better than, plaintiff's, 535.
- difference in goods an element in passing-off cases, 585.
- malicious disparagement, 623.
- the register classes, 761.
- trade name of. See *Trade Name*.
- in transit. See *Transit*.
- certification of. See *Standardization Marks*.

**GOODWILL,**

- trade mark assignable only with, 384, 409, 542.
- trade marks generally pass under assignment of, 385.
- in United Kingdom necessary to assignment of trade mark, 389.
- English goodwill must pass with assignment of trade mark, 390.
- assignment with part of, 391.
- transfer of, and of trade mark need not be contemporaneous, 391.
- division of goodwill, 392, n.
- lease of, 394.
- separation from, 409.
- temporary separation from, 411.
- what constitutes, 402.
- plaintiff in infringement action must possess goodwill, 455.
- on bankruptcy, 392, 591.
- on dissolution of partnership, 392, 536, n., 588—592.
- valuation of, 590.
- purchaser takes the trade-name, 589.
- vendor may not solicit old customers, 590, 592.
- trade-name assignable only with, 556.

"GOUPIE GALLERY." See *Boussod, Valadon & Co. v. Marchant*.

"GRAMOPHONE," 52, 192. See *Gramophone Co.'s Application*.

"GRANOLITHIC STONE." See *Stuart v. Scottish Paving Co.*

"GRASS BLEACH." See *Reiss' Tm.*

GREAT MOGUL playing cards, 2.

"GRIFFITHS." See *Marshall v. Sidebotham*.

"GROSVENOR LIBRARY," 552. See *Hoby v. The Grosvenor Library Co., Ltd.*

"GUANO CASE." See *Native Guano Co. v. Savage Manure Co.*

GUIDE TO CLASSIFICATION OF GOODS, 113.

"GUINEA COAL," 609, n. See *Lee v. Haley*.

"GUINEA GOLD." See *Phillips v. Ogden*.

GUNPOWDER, marks on, 900.

"HABANA," 486. See *Newman v. Pinto; Hargreaves v. Freeman*.

"HABANA," fraudulent and non-fraudulent use of on cigars, 486.

- "HEMATOGEN." See *Hommel v. Gebrüder, Bauer & Co.*
- HALLAMSHIRE (Sheffield Marks), Chap. VI., 120.
- HALL MARKS, on plate, 900.
- HAMMER MARKS, 654.
- "HAND GRENADE FIRE EXTINGUISHER." See *Harden Star, &c. Co.'s Tm.*
- "HAPPY HOME SEEDS," 539 n. See *Wertheimer v. Stewart, Cooper & Co.*
- "HARNESSE COMPOSITION." See *Beddow v. Boyd.*
- "HARVEY'S SAUCE." See *Lasenby v. White.*
- "HAVANA." See *Habana.*
- HEADINGS,  
     in sec. 9.. 213.  
     in headings, 214, 276.
- "HEALTH." See *Thorne & Co. v. Sandow Ltd.*
- HEARING,  
     by Registrar, 83, 723.  
     appointment of time for, in opposition, 95.  
     of appeal, by Board of Trade, 101, 724.  
     form of application for, in cases of opposition, 746.
- "HERBALIN." See *Humphries v. Taylor's Drug Co.*
- "HEROGEN." See *British Drug Houses Tm.*
- HINDMARCH, evidence before Committee of 1862.. 6.
- "HOLBROOK'S WORCESTER SAUCE," 545. See *Birmingham Vinegar Brewery Co. v. Liverpool Vinegar Co.*
- HOLIDAYS, PUBLIC, last day for doing any act expiring on, 66, 731, 732.
- HOLLAND. See *Netherlands.*
- HOLLOWAY'S PILLS, 474, 596, n.
- "HOMEWASHER." See *Ralph's Tm.*
- "HOOP L IRON." See *Heaton's Tm.*
- HOPS, marks on, 900.
- "HORSE BLISTER." See *James v. James.*
- "HORSE SHOE." See *Kinnell v. Ballantine.*
- HOUSE, name of, when protected, 559.
- HOUSE OF LORDS, order remitted to Ch. Div., 102, n.
- "HOUSEHOLD WORDS." See *Bradbury v. Dickens.*
- "HOWQUA MIXTURE." See *Pidding v. How.*
- "HUBBUCK'S PATENT WHITE ZINC PAINT." See *Hubbuck v. Brown.*
- "HUB ENAMEL," 290. See *Munday v. Carey.*
- HUNGARY. See *Austria.*
- HUNTSMAN'S cherry brandy, 265, n.
- "HUNYÁDI JÁNOS." See *Apollinaris Co.'s Tm.*; and see *Saxlehner v. Apollinaris Co.*, 805.



IDEA OF MARK with regard to resemblance, 208, 209, 264, 449.

IDEM SONANS. See *Phonetic Equivalent*.

**IDENTICAL MARKS**

for the same goods, 247—258.

not to be registered for same goods without leave of Court, 247.

IGNORANT. See *Innocent*.

**ILLEGAL**

mark should be expunged, 318.

use of trade name by company, 487.

trade, interruption of, no ground for damages, 626.

IMAGINARY PERSON, name of, not a registerable trade mark under sec. 9 (1)..145

**IMITATION OF TRADE MARK,**

by copying, 441.

colourable, 444—454.

"imitations prosecuted," 304.

**IMPLIED WARRANTY**

under Merchandise Marks Act, 1887..615.

at common law, 617.

**IMPORTER,**

registration by, 73.

when proprietor 74.

action for infringement by sole, 426, 427.

**INDEMNITY**

to purchaser of marked goods, 500.

to manufacturer affixing mark for customer, 621.

INDEXES to the Register, 66 and 67.

INDIAN trade marks, 883.

INFANT infringer, costs against, 509.

**INFERIORITY,**

of infringing goods, 8, 36, n., 431, 534.

effect on damages, 432, 500, 501.

INFORMATION, confidential, obtained in employment, 536, n., 635.

**INFRINGEMENT,**

action for, Chap. XV., 419.

specialization of the action, 4.

in respect of what goods, 32 and 33, 435, 437, 633.

by advertisements, 41, 439, 802.

registration, a condition precedent, 65, 373, 376, 429.

defendant in, is "person aggrieved," 314.

distinction between, and passing-off cases, 377.

of unregistered trade mark, 379, 531.

comparison with action for passing-off, 13, 421, 445, 529.

definition of, 431.

what constitutes, 431—454.

single act of, 432, 509.

damages in case of, 502.

must be within the realm, 434.

need not be in plaintiff's market, 434.

connection with spurious goods, 438.

by use on showcards, circulars, &c., 438.

**INFRINGEMENT—continued.**

- by verbal use, 489, 440.
- by actual copy of plaintiff's mark, 441.
- by claim of registered trade mark, 442.
- by copying essential features, 442.
- by colourable imitation, 444.
- test of, 444.
- question for jury, 445.
- colour, as an element of, 450.
- displaying infringer's name, 450, 452.
- defences in action for, 454—488.
- by defendant introducing his own mark into a new market, 461.  
into a new trade, 462.
- relief granted in actions for, 488—506.
- costs in action for, 506—517.
- appeal in action for, 517.
- practice in action for, 519.
- evidence in, 524.
- on application to commit, 497.
- unintentional, 502, 506—508.
- warning against, unnecessary, 424.  
if *bona fide* and fair, not libellous, 623.

- INITIALS**, passing-off by use of, 281, n., 574, n.
- restraining use of, where wrongly used to indicate membership of a society, 544, n.
- And see *Letter*.

**INJUNCTION,**

- earliest reported case of, as to trade mark, 3 and 3.
- in infringement action, 488—497.
- form of, 490.
- refused because of acquiescence, 491.
- interim, 492.
- forms, 801, 802, 803.
- refused because of delay, 493.  
doubtful title, 492, n.
- limited to particular market, 434, 435, 462, n., 491, 612.
- enforcement, 495.
- against Scotch or Irish defendant, 423.
- choice of new mark, 496.
- against company and signatories of Memorandum of Association, 548.
- in passing-off action, 609.
- form of, in case of deceptive use of open word, 610, 611.
- form of, in trade mark case where plaintiffs had only a qualified right in word, 610, n.
- in trade libel cases, Chap. XVIII., 622.
- in trade secret cases, Chap. XIX., 633.
- precedents of, 798—810.
- to restrain unauthorized use of Royal arms, 428.

**INNOCENT**

- misrepresentation as to maker of goods, 535.
- infringer, 502, 506—509.
- sending goods abroad, 507, n.
- inception of infringement, 447, 532.

**INQUIRY,**

- as to damages, 499.
- proper form of, 500.
- costs of, 504.

**INSPECTION,**

- of the Register, 65, 731.
- in trade mark actions, 523.



- INSTRUCTIONS,**  
to persons who wish to register trade-marks, 769.  
authorities to agents, 741, 774.
- INTENTION TO DECEIVE.** See *Deception; Fraud and Fraudulent.*
- INTENTION TO USE.** See *Use.*
- INTEREST ON COSTS REPAID,** 514.
- INTERLOCUTORY INJUNCTION.** See *Injunction.*
- INTERNATIONAL,**  
arrangements, Chap. XX., 20, 640.  
Convention, 17, 642.  
text, 813, 820, 821, 823.  
list of countries and possessions affected, 811, 829.  
registration, 642.
- INTERROGATORIES,** in infringement action, 522.
- INTRODUCTION,**  
of new goods, 45, 572.  
of defendant's mark into plaintiff's market, 461.
- INVENTED WORD OR WORDS,** 162—170.  
earlier decisions as to, 10.  
decision in *Solio* case, 10, 144, 162.  
in Act of 1883, sub-sec. (d) not qualified by (e) .. 144, 163.  
standard of invention, 164.  
whether foreign word may be, 164.  
compound word, 165.  
mere mis-spelling not, 166, 167.  
trifling variation from ordinary word not, 166.  
practice under Act of 1888 as to, 167.  
publication not an objection to, 168.  
date of invention, 168.  
person registering need not be first user of, 168.  
list of decisions as to, 169, 170.
- INVENTOR,**  
proprietor of new mark, 72.  
of goods, name of, 43, 572.  
portrait of, 207.  
name used by, 39—58.  
applicant for invented word need not be, 168.
- INVOICE,** infringement by use of mark on, 440, n.
- IRISH,**  
party on appeal from Registrar, 104.  
respondent under sec. 35 .. 342.  
Courts, whether jurisdiction to rectify Register, 339.
- "ISINGLASS (PATENT)."** See *Gridley v. Swinbourne.*
- ISOLATED TRANSACTION,** 432, 509.
- ISLE OF MAN,** jurisdiction in, 102, n., 690.
- ITALY,** law of, as to trade marks, 872.
- "IVORY SOAP."** See *Goodwin v. Ivory Soap Co.*
- "IVY."** See *Williams', Ltd. v. Massey, Ltd.*
- "I X L."** See *Marshall v. Sidebotham,*

JAPAN, law of, as to trade marks, 873.

accession of, to International Convention, 819.

"J. B. D." PIPES, 289, 498, n. See *Maréchal and Ruchon v. M'Colgan*.

"J. J. & S." See *Jameson & Son, Ltd. v. Clarke*.

"JOCK SCOTT." See *Booth Distillery Co.'s Application*.

"JOHN BULL." See *Pain & Co., Ltd.'s Tms.*

"JOHN BULL BEER," 259, 320, 442, 803. See *Paine v. Daniels*.

JOINDER OF PARTIES, in infringement action, 425.

JOINT ADVENTURE,

trade mark under, 59.

rights of parties on cessation of, 59, 60.

JOINT TRADE MARK, 59, 435.

"JUBILEE." See *Towgood v. Pirie*.

JURISDICTION,

in Isle of Man, 102, n., 690.

in Lancashire, 134, 422, n.

to rectify the Register, Chap. XI., 309, 422.

Court, under Act of 1905.. 338.

Scotch and Irish Courts, 339.

in infringement action, 422.

of County Court, 422.

service out of, 342, 423.

none, in respect of infringements wholly abroad, 434.

offences committed abroad, 812.

JURY,

right to, 422.

questions for, in infringement action, 445.

questions to, in *Camel-hair Belting* case, 569, n.

"KARMAL," 451, n., 612, n. See *Reddaway v. Frictionless Engine Packing Co.*

"KEY BRAND GENEVA." See *Meous' Application*.

"K. M. S.," 49. See *Bozke Roberts & Co. v. Wayland*.

KODAK CASE, 253, 300, 486, n. 551, 562, n., 806. See *Eastman, &c. Co., Ltd. v. John Griffiths Cycle Corporation, Ltd.*

"KODAK." See *Kodak, Ltd. v. London Stereoscopic Co.*

"KOKOKO," 157, n., 158, n., 259. See *Jackson Co.'s Tm.*

"KÖPKE RORIZ." See *Van Zeller v. Mason, Cattley & Co.*

"KOPTICA." See *Harness' Tm.*

"KYNITE." See *Kynoch & Co.'s Tm.*

"L L WHISKEY." See *Kinahan v. Bolton*.

LABEL,

in sec. 9.. 214—220.

"mark" includes, 180.

must be distinctive, 142, 214, 215.

parts of, distinctive, need not be disclaimed, 217, 241.



- LABEL**—*continued*.  
 containing common words of another, 218.  
     blanks, 219.  
     colour, 219.  
 disclaimer of words in, under previous Acts, 217.  
 replacing worn out, 34, 633.
- “**LACTO-BACILLINE.**” See *Application of Societ  de Ferment*.
- LANCASHIRE**, jurisdiction of Palatine Court, 184, 422, n.
- “**LANCASHIRE.**” See *Reddaway & Co., Ltd. v. Irwell and Eastern Rubber Co., Ltd.*
- “**LANCO.**” See *Lancashire*, above.
- “**LATE,**” 536.
- “**LATE OF,**” 454, 536.
- LAW**, what is applicable to marks registered under repealed Acts, 140—142.
- LAW OFFICERS**, Registrar may apply for directions to, 63, 83.
- “**LAWFORD,**” 159, n., 162.
- LAWN TENNIS RACQUETS**, 498.
- “**LAWSON TAIT.**” See *Whitfield's Bedsteads, Ltd.'s Application*.
- LEASE** of goodwill, 394.
- LEATHER CLOTH CASE**, 56.
- LECTURES**, publication of, 636.
- LETTER**, 220.  
     distinctive, may be registered, 26.  
     “mark” includes, 180.  
     not a device, 206.  
     may be an old mark, 222.  
     See also *Initials*.
- LETTERS**,  
     addressed to plaintiff, opening, 537.  
     publication, restrained, 636.
- LIABILITY** cast by use of name by successor, 589.
- LIBEL (TRADE)**, Chap. XVIII., 622.
- LICENCE**,  
     to use a trade mark, 394, 467.  
     action by licensee, 397, 542.  
     effect of determination of, 412.  
     to infringe, 468.
- “**LICENSED VICTUALLERS' RELISH.**” See *Cotton v. Gillard*.
- LICENSEE**,  
     under Patent, registration by, 75.  
     user by of trade marks belonging to licensor, 395, 396.
- LIEBIG'S EXTRACT**, 43. See *Liebig's Extract of Meat Co. v. Anderson, v. Chemist's Co-operative Society*, and *v. Hanbury*.
- LIEN** on infringing goods, 498, 508.
- “**LIMIT.**” See *Smith's Application*.
- “**LIMETTA.**” See *Rose v. Evans*.

## LIMITATION,

- of registration by note on Register, 64, 235, 255, 258, 335.
- of registration by use of mark, 32, 33, 365, 436.
- of registration as regards colour, 233, 335.
- of injunction, 434, 435, 462, n., 491, 612.

LIMITATIONS, Statute of, 468.

"LIMITED" added to registered mark, 357.  
 addition of, to firm name, 607.  
 See *Company*.

LINE HEADINGS, 214, 276.

LINEN, marks on, 900.

LINOLEUM, 46, 440.

"LION MATCHES." See *Baschiera's Tm.*, 265, n.

"LION SOAP." *Hodgson & Simpson v. Kynoch, Ltd.* (see 450, n.).

LIQUORICE (ANATOLIA), 54. See *McAndrew v. Bassett*.

## LOCAL,

- repute of trade name, 555, n., 565.
- use of trade mark, 258.

LONDON CANDLES. See *Price's Patent Candle Co., Ltd. v. Ogston & Tennent, Ltd.*

"LONDON MADE" CUTLEBY, 654.

"LONDON MANURE CO." See *Purser v. Brain*.

"LONDON PICKLES." See *Hammond v. Malcolm Brunker & Co.*

"LONDON RELISH." See *Powell's Tm.*

"LONDONDERBY WALLSEND COAL," 471.

"LOS ALUMBRADORES." See *Van de Leeuw's Application*.

"LOUISE (MADAME)," 545, n. See *Isaacson v. Thompson (Madame Elise)*.

"LUX." See *Lever Bros., Ltd. v. Masbro' Equitable Pioneers Society, Ltd.*

"MACFARLANE" WHISKEY. See *Macmillan v. Ehrmann*.

M. AND O. CHAMPAGNE, 608.

M. M. A. See *Merchandise Marks Act*.

"MADE WITHOUT SUFFICIENT CAUSE," meaning of, 326.

MADRID CONVENTIONS, 642.

text, 820, 821.

And see *International Convention*.

## MAGAZINE,

- goodwill of, 577.
- trade name of, 35, 577.

"MAGAZINE OF FICTION." See *Stevens v. Cassell*.

"MAGNOLIA" METAL, 176. See *Magnolia Metal Co. v. Tandem Smelting Syndicate, Same v. Atlas Metal Co.*, and *Magnolia Metal Co.'s Tms.*

"MAIZENA," 406. See *National Starch, &c., Co. v. Munn's Patent Maizena Co.*



- "MAJO," 27, n., 808. See *Major Bros. v. Franklin*.
- "MALTESE CROSS" for rubber. See *Gutta Percha and Rubber Manufacturing Co. of Toronto's Application*.
- "MALTESE CROSS" for golf balls. See *Slazenger v. Spalding*.
- MANCHESTER BRANCH OFFICE, 63, 131.  
Register, 63.
- "MANOR TIN PLATES." *Thompson's Tm.*, 161.
- MANUFACTURE, description of mode of, not a trade name, 563.
- MANUFACTURER, implied warranty on purchase from, 617.
- "MARCELLA" CIGARS. See *Imperial Tobacco Co., Ltd. v. Purnell & Co.*
- "MARGARETTA, LA FLOR DE." See *Benedictus v. Sullivan*.
- MARGARINE, 900.
- MARK,  
definition of, Chap. II., 24.  
statutory definition of, 25.  
in sec. 9..179, 180.  
no general obligation to mark goods, 19.  
required for particular goods, 899—902.  
See *Trade Mark*.
- MARKET,  
use of trade mark in, 34.  
use in different, 258.  
limitation to particular, 258, 335.  
foreign, 261.  
mark deceptive in particular, 274.  
whether infringement must be in plaintiff's, 434.  
introduction of mark to new, 461.  
injunction limited to particular, 435, 462, n., 491, 612.
- "MASONIC PICKLE." See *Hayward Bros., Ltd v. Peakall*.
- "MAZAWATTEE." See *Densham's Tm.*
- MEASURE of damages in action for infringement, 500.
- MEDALS (EXHIBITION),  
false representation of grant, 537, 587, n., 900.  
claim to plaintiff's, 537, 587, n.
- "MELROSE HAIR RESTORER," 154. See *Van Duzer's Tm.*
- MERCHANDISE MARKS ACT, 1862..6, 17.  
definitions in, 27.  
repealed by M. M. A. 1887..18.  
injunction under, 489.
- MERCHANDISE MARKS ACT, 1887,  
summary, 18.  
unregistered trade marks and the, 382.  
warranty of trade mark under, 615.  
definition of trade mark in, 615.  
text, 886.
- MERCHANDISE MARKS ACT COMMITTEE OF 1890..19
- MERCHANDISE MARKS ACT, 1891,  
summary, 20.  
text, 895.

MERCHANDISE MARKS (PROSECUTION) ACT, 1894, text, 895, 896.

MERCHANDISE MARKS (IRELAND) ACT, 1909..20, 896.

MERCHANDISE MARKS ACT, 1911..20, 897.

METAL GOODS,  
defined, 127.  
marks for, in Hallamshire, 120, 121, 125.

"MEXICAN BALSAM." See *Perry v. Truefitt*.

MEXICO, law of, as to trade marks, 874.

MIDDLEMEN,  
deceptive mark may not deceive, 261.  
differences, removal by, 453.  
infringement leading to frauds by, 504.

"MIDLAND STAR." See *Star Cycle Co., Ltd. v. Frankenburgs*.

"MIESSE." See *Turner's Motor Manufacturing Co., Ltd. v. Miesse Petrol Car Syndicate, Ltd.*

"MILK MAID BRAND." See *Anglo-Swiss Co. v. Metcalf*, 278; also *Anglo-Swiss Condensed Milk Co. v. Pearks, Gunston & Tee, Ltd.*

"MILLENNIUM," 33, 254. See *Lake & Elliott's Application*.

MISREPRESENTATION,  
by wrong use of words "trade mark," 303.  
as to user of old mark, 325.  
as to origin of goods, 306.  
estoppel by reason of, 472—488.  
collateral, 472.  
whether defence to passing-off action, 472, n.  
in trade mark, 475.  
by use of trade mark, 480, 481.  
by false assertion of registration, 483.  
by false claim of patent, 476—478. See *Patent*.  
by misstatement as to maker, 486.  
subsequent to action, 487.  
abandoned before action, 487.  
costs refused by reason of, 512, 513.  
And see Chap. XVI., 527.

MIS-SPELLING. See *Phonetic Equivalent*.  
descriptive word, 174.

MISTAKE, registration in wrong name by, 75.

"MITCHIM." See *Rutter v. Smith*.

"MIXTURE" (tobacco). See *Hargreaves v. Freeman*.

"MODEL." See "*Pattern*."

"MOGUL PLAYING CARDS." See *Blanchard v. Hill*, 2.

"MONKEY BRAND." See *Lever Bros., Ltd. v. Masbro Equitable Pioneers Society, Ltd.*

"MONOBRUT." See *Vignier's Tm.*

"MONOPOLE." See *Richards v. Butcher*.



**MONOPOLY,**

- none in type of goods, 43.
- name of goods, 50.
- common parts of label, 217, 218.
- disclaimed matter, 244, 574.
- descriptive name, 280, 549.
- elements of got-up, 579.
- name or address of non-trader, 1, 538.
- trade secret, Chap. XIX., 633.
- attempt to secure under trade name, 283.
- name of place or personal name, 53 and 54, n.

"MONTSERRAT LIME JUICE," 492. See *Evans v. Smith*.

"MOOSE HEAD BRAND." See *Alaska Packers' Association v. Crooks*.

MORALITY, trade mark contrary to, 297.

MORISON'S UNIVERSAL MEDICINE, 635, 798, 799.

**MORTGAGEE**

- of trade mark cannot sue, 428.
- of infringing goods retains his charge, 498.
- added as defendant, 508.

"MOTHEB REDCAP." See *Hedley's Tms*.

**MOTION,**

- setting down, 102
  - procedure by, 102.
  - appeal to Court to be by, 102.
  - notice of motion on appeal from Comptroller, 102, 790.
  - on application to rectify, 340, 791.
- And see *Injunction* (interim).

"MOTORINE," 171. See *Compagnie Industrielle des Petroles' Application*.

"MOTRICINE." See *Motorine*.

"MULTIGRAPH." See *Kenrick and Jefferson, Ltd.'s Application*.

MUSTARD CASE. See *Farrow's Tm.*, 267; *Colman's Tm.*, 147, n.; and *Colman v. Farrow*.

**NAME,**

- no monopoly in, unless trade name or trade mark, 1, 538, 543, 586.
- not necessary that public should know name of owner of mark, 37, 599.
- right to honest use of one's own, 16, 464, 529, n., 593—609.
- descriptive, not a trade mark, 39—56.
- gramophone, 52.
- of pattern, 39.
- of goods made under expired patent, 45, 370, 572.
- of new article, 45, 572.
- of place of origin, 53.
- geographical names, 53, 152, 175—178, 575.
- surname, 137, 178.
- name marks, 145.
- sec. 9 (1). .145.
- of firm, 145.
- of imaginary person, 145.
- of living person, registration of, 145.
- in possessive case, 147.

NAME—*continued.*

- represented in special or particular manner, 148.
- of goods in foreign language not a fancy word, 157.
- of common mark not a fancy word, 158.
- of natural product not a fancy word, 159.
- of person, or mythical person, not a fancy word, 159.
- of article, not "distinctive," 192.
- proper, 195.
- derived from mark, bearing on resemblance, 277—283.
- of opponent's goods suggested by applicant's mark, 277, 299, 300.
- descriptive, 280.
- common to trade, 281.
- alteration of proprietor's, 336.
- in mark under sec. 34..353.
- assignment of trade mark comprising, 336, 338.
- derived from plaintiff's mark, an infringement, 450.
- infringement displaying infringer's, 450, 451.
- honest use of defendant's, no infringement, 464
- sale of premises bearing vendor's name built in, 537, n.
- of non-trader, 538.
- of repute may be trade name, 544.
- of repute, right to honest use of, 607.
- defendant omitting one of his Christian names, 607, n.
- of company, 546.
- of promoter, 556—558.
- cannot be sold in gross, 556.
- of business house or factory, 559.
- of private house, 560, 586.
- of newspaper, 541, 561, 578.
- trade name of business, 543—560.
- of goods, 488, 561—578. And see *Trade Name.*
- of author, 577.
- of book, &c., 578.
- liability by use of name, 588—590.
- of secret preparation, Chap. XIX., 50, 633.
- name marks in foreign countries, 817, n.
- See *Trade Name.*

"NAPTHA." See *Fels v. Christopher Thomas & Bros., Ltd.; Same v. Stephenson Bros., Ltd.; Same v. Hedley & Co., Ltd.*

NATIONAL DEVICES. See *Device.*

"NATIONAL SPERM." See *Re Price's Patent Candle Co.*

NATURAL PRODUCT,  
trade mark may be for, 27.

"NAVY MIXTURE." See *Player's Application.*

"NECTAR." See *Harrison's and Crosfield's Application.*

NEGLECT of owner of mark to assert his rights, 409, 414.  
And see *Piracy; Acquiescence; Abandonment.*

NEIGHBOURHOOD, setting up in the same, 608.

"NEOLA." See *Pianotist Co., Ltd.'s Application.*

"NEOSTYLE." See *Neostyle Manufacturing Co's. Tm.*

"NE PLUS ULTRA." See *Beard v. Turner.*

"NEPTUNE." See *Edwards v. Dennis.*

NETHERLANDS, law of, as to trade marks, 874.



- NEW MARKS,**  
 may be registered, 189, 361.  
 doubtful, to be rejected, 9, 299.  
 infringement of, incapable of registration, 374.  
 new trade for existing mark, 462.
- NEWSPAPER,**  
 name of, 541, 561, 578.  
 contempts in, 630.
- NEW ZEALAND,**  
 statement as to law in, 906.  
 notes of decisions in, 906-917.
- NIGHT CAP.** See *Hedley's Tms.*
- NONSUIT,** 518.
- NORWAY,** law of, as to trade marks, 879.
- NOTE ON REGISTER,** 64.  
 limiting class of goods, 115.  
 as to part of mark being common, 208.  
 limiting market. See *Market.*  
 as to colour, 235.  
 limiting use of mark, 255, 333.  
 entered under sec. 90 of the Act of 1883..335.  
 See *Agreement.*
- NOTICE,**  
 of trusts not to be entered on Register, 64, 394.  
 of Registrar, objection to register, 88.  
 two notices before removal of mark under sec. 30..416.  
 of action, unnecessary, 424, 447, 448.  
 of opposition, 94, 745, 788.  
 of appeal to Board of Trade, 101, 759.  
 of motion, on appeal from Registrar, 102, 790.  
     to rectify the Register, 339, 791.  
 of wish to be heard before Registrar, 83.  
 may be sent by post, 68, 720.  
 third party, 621.  
 of non-completion of registration, 747.
- "NOURISHING STOUT."** See *Ragget v. Findlater*, 57.
- NUMERAL,** 221.  
 distinctive, may be registered, 26.  
 mark includes, 180.
- OATH,** meaning of, 716.
- OBJECTION,**  
 new, by Registrar on appeal, 87.  
 to registration not contained in notice of opposition, 96.  
 what the Court can consider, 107.  
 common word not, to registration, 219.
- OFFENCES** committed abroad, 812.
- OFFER**  
 to modify mark applied for, 106.  
 of complete redress for infringement, 506-507.
- OFFICIAL PUBLICATIONS,** 725, 777, 783.
- "OLD-ESTABLISHED,"** 537.
- "OLD INNISHOWEN."** See *Watt v. O'Hanlon.*

**OLD MARK, 222—232.**

only to be registered for goods for which used, 118, 114, 255.  
 must be distinctive at the date of application, 222, 226.  
 certificate of refusal to register, 88, 375.  
 every, not within sec. 9.. 223.  
*prima facie* descriptive, 224.  
 list of decisions, 227.  
 used alone as a trade mark, 229.  
 bearing of colour on distinctiveness, 234.  
 three mark rule, 240, 249.  
 registered, although similar mark registered for five years, 250.  
 mis-statement as to length of user of, 325.  
 alteration of, on the Register, 354.  
 wrongly registered as such, 325.

“OLD WAVERLEY.” See *Mason v. Queen*.

OMISSION, by plaintiff, of part of his mark. See *Alteration*.

OMNIBUS CASE. See *Knott v. Morgan*, 575, 579, n.; and *London General Omnibus Co., Ltd. v. Lavell*, 285.

“ONLY GENUINE,” 624, n.

“OOMOO.” See *Burgoyne's Tm.*, 158.

**OPPOSITION TO REGISTRATION, 93—100, 726.**

notice of, 94, 726, 745.  
     modification of, on appeal, 106.  
     amendment of, 92, 98, 732.  
                                 Registrar can give leave for, 96.  
 grounds of, 96, 99.  
 withdrawal of, after appeal, 107.  
 costs on withdrawal of, after appeal, 110.  
 forms, 788.  
 official notice as to costs in, 783.

“OR OTHERWISE,” in sec. 11.. 308.

“ORB” footballs. See *Spalding v. Gamage*.

**ORDERS,**

to rectify the Register, 329—338.  
     is final order, 350.  
 in infringement action, 488—497.  
 passing off, by executing orders meant for another, 537.  
 notice of, to Registrar, 346.  
     form of, 760.  
 precedents of, in trade mark and analogous cases, 798—810.  
 Orders in Council applying sec. 91 of Patents and Designs Act, 1907..  
     811.  
 trap, 482, 483, n.

**ORIGIN,**

trade mark is indicative of, 27.  
 name of the place of, may acquire secondary meaning, 53, 158, 194.

ORIGIN OF GOODS, misrepresentation as to, 806.  
     See *Country of Origin*.

“ORIGINAL,” 58.

“OSMAN TOWEL.” See *Barlow v. Johnson*.

“OSOWOLO.” See *Orlwoola Tm.*

“OSWEGO.” See *National Starch Co. Ltd.'s Application*.

“OVAL BLUE.” See *Ripley v. Bandy*, 470, n., 579, n.



"OWL." See *Jackson Co.'s Tm.*

OWNER. See *Proprietor.*

OYSTERS ("native" and "Whitstable"), 576.

PACKING CASES, use of mark on, 81, 228.

"PAIN KILLER." See *Perry Davis v. Harbord*, 226.

"PALAIS ROYAL COFFEE." See *Payton & Co., Ltd. v. Titus Ward & Co., Ltd.*

PALATINE COURT, jurisdiction, 134, 422, n.

PALL MALL GUINEA COAL COMPANY, 609, n.

"PANORAM." See *Kodak, Ltd. v. London Stereoscopic Co.*

"PARAFFIN," 46, n.

"PARCHMENT BANK." See *Piris v. Goodall.*

PARIS CONVENTION. See *International Convention.*

"PAROZONE," 489. See *Parozone Co., Ltd. v. Gibson.*

#### PART

of Trade mark,  
     may be registered with whole as associated marks, 117.  
     common, 208, 236.  
     infringement of, 442.

of class,  
     use of trade mark for, 113, 255.  
     registration limited to, 113, 255, 333.

of word,  
     disclaimer of, 167.

PARTICULAR GOODS, required to be marked in specified manner, 899-902.

#### PARTICULARS,

    on application to rectify, 345.  
     in infringement action, 520.  
     See *Essential Particulars.*

PARTIES in infringement action, 425.

PARTNER, how far liable for infringement by firm, 425.

#### PARTNERSHIP,

    "Person" includes, 72.  
     agreement for concurrent registration on dissolution of, 248, 250.  
     mark of, registered in one partner's name, 336.  
     devolution of mark on dissolution, 386, 392, 463.  
     apportionment of marks on dissolution of, 393.  
     registration by several partners on dissolution of, 463.  
     late partner may advertise his former connection, 536, 592.  
     trade name on dissolution, 588.  
         comprising name of late partner, 386, 589.  
     fraudulent partnership imitating name of known firm, 464, 606.  
     application for registration by, 722.

#### PASSING-OFF,

    introductory summary as to, 13-16.  
     summary of principles of, by Kay, L.J., 614.  
     action for, Chap. XVI, 527.  
     definition of, 529.  
     defendant in, may be "person aggrieved," 316.  
     not affected by sec. 42.. 377, 531.  
     not affected by disclaimer, 236.

**PASSING-OFF—continued.**

- compared with infringement, 13, 14, 421, 445, 529.
- rules and practice of infringement action apply generally, 534, 613.
- no right of action for describing goods as similar to, or better than, plaintiff's, 535.
- a maker's goods for a superior class of his goods, 539.
- defences to, 587—609.
- And see *Trade Name ; Get-up ; Deception ; Resemblance Calculated to Deceive.*

**PATENT,**

- name of goods made under, 45, 46, 370.
- false representation as to, should be pleaded, 49, n., 476.
- registration by licensee under patent, 75.
- "Patent," "Patented," "By Royal Letters Patent," not to be registered, 304, 721.
- not to be struck out of old mark, 355, 478, n.
- misleading claim of patent right, 476—478, 513.
- list of cases, 478, 479.
- "Patent cups," an infringement, 442, n.
- false representation as to patent or design, 650.

"PATENT KITCHENER," 476, 478. See *Flavel v. Harrison.*

PATENT MEDICINES, 478, n.

**PATENT OFFICE,**

- Trade marks Branch, Chap. III., 62.
- Register transferred to, 8.
- seal of, 68.
- practice of, 81.
- as to invented words, 167.
- as to old marks, 222.

"PATENT PLUMBAGO CRUCIBLES," 476, 478. See *Morgan v. McAdam.*

"PATENT SOLID-HEADED PINS," 476, 479. See *Edelsten v. Vick.*

"PATENT THREAD." See *Marshall v. Ross*, 479.

PATENT WHITE ZINC PAINT, 478. See *Hubbuck v. Brown.*

PATENTS, DESIGNS AND TRADE MARKS ACT, 1883, as amended by the Act of 1888.. 626—645. (Now repealed.)

**PATTERN,**

- mark, not a trade mark, 39, 228.
- as qualifying use of a Tm., sec. 39.. 564.
- name of, not a trade name, 563.

"PENJ DEH," a possible fancy word, 159.

"PERFECTION," 185. See *Crosfield & Sons, Ltd.'s Application.*

PERIODICAL, name of, 578.

**PERSON,**

- includes body corporate and partnership, 72.
- imaginary, name of, not a registrable trade mark under sec. 9 (1).. 145.
- aggrieved, who is, 313—318.
- definition of, under Interpretation Act, 716.
- name of. See *Name.*

"PESSENDEDE," 206, n. See *Gout v. Aleploglu.*

**PHONETIC**

- equivalent, 152, 269.
- to ordinary word, not an invented word, 165.



**PHOTOGRAPH.**

- of inventor, may be a common mark, 207.
- may be distinctive device, 207.
- publication of, restrained, 636.

**PHRASES AND PROVERBS** as trade marks, 215.

"PIANOLA." See *Pianolist Co., Ltd.'s Application*.

"PICK." See *Briggs v. Dunn*.

**PICTURE,**

- of living person, not to be registered without consent, 208, 721.
- of the goods, not a trade mark, 209, 210.
- warranty of artist, 618.
- copy of, taken in breach of confidence, 636.

**PILL CASE** (*Clark v. Freeman*), 533.

"PINET'S" BOOTS, 805. See *Pinet et Cie. v. Maison Pinet; Same v. Maison Louis Pinet*.

**PIRACY** may make mark common, 407, 409, n. See *Infringement and Passing-off*.

"PIRIE'S PARCHMENT BANK." See *Pirie v. Goodall*, 147, 212.

"PIRLE," 170, 174. See *Ripley's Tm.*

**PLACE,**

- name of, as a trade mark or trade name, 53, 564.
- series of marks containing different names, 118.
- may be fancy word, 158.
- not invented word, 170.
- may be an old mark, 226.
- marks differing in respect of names of places may be registered in a series, 118.
- of origin, mark registered in, 641, 647.
- proximity of, of business, may be a badge of fraud, 608.
- of business, *bonâ fide* use of name of, 680.
- under British jurisdiction, 812.

**PLAINTIFF,**

- foreigner may be, 423.
- title of, 425, 429.

"PLASMON," "PLASMONADE," and "PLASMONOID," 598. See *International Plasmon, Ltd. v. Plasmonade, Ltd.*

**PLATE**, marks on, 900.

**PLATED GOODS**, marks on, 902.

**PLEADINGS,**

- in infringement action, 519.
- description of trade mark in, 520, 891.
- fraud must be clearly pleaded, 532.
- forms, 724. See *Precedents*.

"PLUMBAGO CRUCIBLES." See *Morgan v. McAdam*.

**PORTRAIT,**

- may be a distinctive device, 207.
- or may be a common mark, 207.

**POSSESSION,**

- of spuriously marked goods, 489.
- offence by, under M. M. A., 1887..887.

**POSSESSIVE CASE.** See *Name*.

- POST,**  
 notices and documents sent by, 68, 720.  
 goods sent from abroad by, 434, n.
- "POST OFFICE DIRECTORY."** See *Kelly v. Byles*, 569, n.
- PRACTICE,**  
 of the Patent Office, 81.  
   as to invented words, 167.  
   as to old marks, 223.  
 See *Procedure*.
- PRECEDENTS,**  
 application to register, opposition and appeal, 785.  
 application to rectify, 791.  
 pleadings in actions for infringement and passing-off, 519, 792.  
 orders in trade mark and analogous cases, 798.
- PREDECESSOR,** trade mark comprising name of, 149, 150, 386.
- "PRESCRIBED,"** meaning of, in Act of 1905. .76, n., 666.
- PRICE,**  
 list, use of mark in, 31, 204, 438.  
 series of marks containing different prices, 118.  
 reduction of, of plaintiff's goods, consequent on infringement, 501.
- "PRIMROSE SOAP,"** 432. See *Knight & Sons v. Crisp & Co.*
- "PRIMUS."** See *Hjorth & Co.'s Application*.
- "PRINCESS CHRISTIAN."** See *Carroll's Application*.
- PRINCIPLES** on which trade marks and trade names are protected,  
 James, L.J., 1, 543.  
 Abbot, C.J., 3.  
 Jessel, M.R., 13.  
 Lord Selborne, 14.  
 Lord Halsbury, 529, 530.  
 And see Chap. II., 24, and Chap. XVI., 527.
- PRINTING,**  
 labels, infringement by, 34, 438.  
   injunction, 799.  
 imitation of, 579.  
 may be forgery of a trade mark, 889.
- PRIOR USER,** rights of, preserved, 369.
- PRIZES.** See *Medals*.
- PROCEDURE,**  
 application to register, 84, 722.  
   opposition, 93, 726.  
   appeal, 100—107.  
   cotton mark, 131—134, 734.  
   Sheffield mark, 733.  
   special trade mark, 88, 724.  
   standardization mark, 91, 725.  
   to rectify under sec. 35.. 338—344.  
     under sec. 32.. 352, 353.  
 correction of register, 353, 731.  
 alteration of mark, 358, 731.  
 application for apportionment marks, 393, 730.  
 in infringement action, 519.  
 See *Practice*.
- PROCEEDINGS,** registration a condition precedent to, for infringement, 65,  
 373—377.



PRODUCER, trade mark of, registered by importer, 73.

PRODUCTION,  
of marked goods, 523.  
search warrant, 891.

PROFITS. See *Account of Profits*.

PROPER NAMES, 195.

PROPERTY,  
in trade mark or trade name, 2, 4, 533, 542, n., 544, n.  
in goods, sufficient for purposes of Act of 1905..27, n.

PROPRIETOR,  
name of, need not be known to the public, 37, 539.  
connection of, with goods, indicated by a trade mark, 58.  
of trade mark, 72, 888.  
entry on Register of name, &c., of, 64.  
can assign, 65.  
bound by acts of agent, 75, 720, 721.  
change of name of, 337.  
service on, of motion to rectify, 342.  
alteration of address of, 351.  
rights of, 363.  
equitable, 392.  
See *Sole Proprietor ; Joint Trade Mark*.

PROSECUTION,  
under the M. M. A., 1887..887, 892, 895, 896.  
limitation of, 892.

PROVERBS as trade marks, 215.

PUBLIC,  
interests to be considered in regard to duplicate marks, 251, 257,  
418.  
in regard to purity of register, 318, 320.  
plaintiff does not sue to protect, 465, n.

PUBLIC HOLIDAY, when last day for doing act at Patent Office, &c.,  
732.

PUBLICATION,  
of invented word not an objection, 168.  
trade name of, 578.  
of apology for infringement, 507, n., 628.  
of statement, pending action, 628.  
of confidential information, 636.  
of foreign trade mark, 647.

*PUBLICI JURIS*.  
when trade marks or trade names become, 40, 405, 573.  
test whether mark has become, 407.  
distinction between retail dealers and public, 408.

PUFFING ADVERTISEMENT, not a trade libel, 625.

PUNISHMENT OF OFFENCES under the M. M. A., 1887..887.

PURCHASER,  
ultimate, deceived, 3, 261, 448.  
of infringing goods without notice, 498, 502, 508.  
of good will, 397, 542, 588—592.

"PURITY OF THE REGISTER," 318, 320.

T.M.

"PURNELLA." See *Marcella*, above.

"QUAKER." See *Ellis & Co.'s Tm.*

QUALITY,

series of marks for different qualities, 118.  
 inferiority of, of infringing goods, 3, 36, n., 431, 534.  
 name descriptive of, 39, 564.  
 "vacuum," 564.  
 false trade descriptions as to, 887.  
 mark on cutlery, 654. See *Descriptive*.

QUESTIONS,

for the jury in infringement action, 445.  
 to jury in *Camel-hair Belling* case, 569, n.

QUIA TIMET ACTION, 433, 533.

"RADSTOCK COAL," 575. See *Braham v. Beacham*.

"RAINBOW," 333, n., 348, n. See *Hare's Tm.*

"READING BISCUITS," 606, n. See *Huntley & Palmer v. Reading Biscuit Co.*

"READING SAUCE," 53. See *Cocks v. Chandlers*.

RECTIFICATION,

of Register, Chap. XI., 309.  
 Registrar may apply for, in case of fraud, 311.  
 under sec. 35..311—346.  
   persons aggrieved, 313—318.  
   discretion of the Court, 320.  
   onus on applicant, 323.  
   Registrar's decision no bar to, 323.  
   delay in making application, 324.  
   "made without sufficient cause," 326, 331.  
   what orders may be made, 329.  
   new entries not made, 329.  
   reasons for removal, 330.  
   after seven years' registration, 364, 368, 369.  
   partial removal, 331.  
   limitation, 333.  
   variation of mark, 335.  
     date, 336.  
     name, 336.  
 procedure, 338.  
   jurisdiction of Scotch or Irish Courts, 339.  
   not by counterclaim, 340, 455.  
   Registrar to be served, 340.  
   in infringement action, 455.  
 evidence on, 544.  
 certificate of validity, 346.  
 costs, 348, 516.  
   solicitor and client may be given, where validity previously certified, 247.  
   particulars of grounds for, 344.  
   form of notice of motion for, 791.  
 under sec. 32..351.  
   See also *Alteration*.

"RED CAP." See *Hedley's Tms.*

"RED CROSS," emblem of, prohibited for purposes of trade, 305, 654.



"RED INDIAN." See *Carborundum Co.'s Application*.

"RED MEDAL POLISH," 289, 802. See *Wilkinson v. Griffith*.

"RED STAR GLASS," 235. See *Société de l'Etoile's Tm.*

"RED, WHITE AND BLUE," 234. See *Hanson's Tm.*

#### REFERENCE,

of appeal from Board of Trade to Court, 101, 103, 684.

of rival claims to mark to Court, 103, 248.

to character or quality of goods. See *Words having no reference, &c.*

on mark to particular goods, 114, 305, 435, 722.

#### REFUSAL TO REGISTER,

Registrar's discretion as to, 76—84, 142.

reasons for, 76.

certificate of, 88, 375.

form of request for, 760.

assignment, constituted assignee a "person aggrieved" under 1888 Act, 318.

now, see secs. 33 and 34. .353, 398, 399.

by direction of Board of Trade, 673.

#### REGISTER,

of Trade Marks, Chap. III., 62.

establishment of, 6.

object of, 6, 360, 374, n.

entries on, 64.

of disclaimers, 244.

on registration, 728.

of apportionment of trade marks, 393, 730.

of associated marks, 728.

note on, limiting registration, 64, 235, 255, 258, 335.

removal of mark from, 66. And see *Rectification*.

inspection and searches, 66, 731, 775, 780.

copies of, evidence, 67, 524.

books, when evidence, 526.

purity of, 318, 320.

falsification of, 65, 650. See *Rectification and Registration*.

#### REGISTERED,

design, article made under, 53, 485.

under the Acts as a Trade Mark, 60.

use of "registered" before registration, 78, n.

under previous Acts, 140.

"registered," not registered, 305, 485.

"registered at Stationers' Hall," 305, 442, 484, n.

"registered shape," 484.

"registered trade mark," when a misrepresentation, 484, n., 492, 493.  
may create an infringement, 442.

when the use of the word, is an offence, 649.

See *Design: Unregistered Trade Marks*.

#### REGISTRABLE TRADE MARKS, 137.

definition of, 141, 666.

#### REGISTRAR, 63.

his discretion to register, 76—84, 142.

acts under Board of Trade, 63, 84.

may consult the Law Officers, 63, 84.

to give certificates, 67, 88, 375.

to hear applicant, if required, 83.

amendments and enlargements of time by, 92, 98.

appeal from, 100—107.

REGISTRAR—*continued.*

- notice of appeal, 101.
- not ordered to pay costs, 108, 348.
- costs before, 107, 110.
- may refuse to register conflicting marks, 247.
- not to register identical marks, 247, 248, 250.
- may apply to rectify in case of fraud, 311.
- notice of rectification to, 340, 346.
- may appear or submit statement in application to alter or rectify register, 340.
- correction and cancellation of entries by, 351.
- to register change of proprietorship, 399.
- cause of removal of mark, 417.

REGISTRATION ACT, 1875..6, 712. See *Trade Marks Registration Act.*

REGISTRATION ACT, 1883..8, 692.

## REGISTRATION OF ASSIGNMENT, 398.

- not necessary before action, 376, 399, 429.
- procedure on, 400.

## REGISTRATION OF TRADE MARKS, 4.

- application to register, Chap. IV., 71.
- Sheffield mark, Chap. VI., 120.
- cotton marks, Chap. VII., 129.
- what may be registered, Chap. VIII., 135.
- which Act applicable, 140.
- restrictions on, Chap. X., 246.
- effect of, Chap. XII., 359.
- foreign and colonial marks, Chap. XX., 640.
- introduction of, and summary of Acts, 4—12.
- object of, 6, 7, 360.
- trade mark, rights acquired by, 61, 139, 360.
- discretion to refuse, 76—84.
- how effected, 88.
- subject to limitations, 64, 235, 255, 258, 393.
- subject to conditions, 82, 255.
- by consent, 255, 257. And see *Consent.*
- for part of class, 113, 255, 334.
- series of marks, 118.
- old marks, 222.
- in colours, 233.
- duplicate, or identical marks, 247.
- resembling registered marks, 248.
- numerous marks of the same kind, 275.
- deceptive marks, 297.
- rectification, 309.
- in the wrong name, 75, 336.
- cancellation of, at request of proprietor, 351.
- limited by actual use, 32, 365, 437.
- generally conclusive after seven years, 368.
- condition precedent to infringement action, 65, 373—377.
- not to acquisition of trade mark, 376.
- evidence of title, 363—373, 429.
- modified by disclaimer, 430. And see *Disclaimer.*
- expunging, where right determined, 415.
- period of, 415.
- renewal of, 415.
- proof of, 429, 525.
- of defendant's mark, 457, 458.
- false assertion of registration, 483, 649.
- allegation of, in pleadings, 520.
- forms, on application and appeal, 785.
- under Australian Acts, 908.

See *Unregistered Trade Marks, and Note on Register.*



**REMOVAL OF MARK FROM THE REGISTER,**

- under sec. 35, reasons for, 330.
- partial, 331.
- when abandoned or determined, 410, 415.
- formerly under rule 34 of Rules of 1876..410.
- because deceptive, 332.
- for non-payment of fees, 415.
- two notices prior to, 416.
- cause of removal to be registered, 417.
- status of mark removed for non-renewal, 415.
- for non-user, &c., 115, 326, 413.

**RENEWAL OF REGISTRATION, 415.**

- notice and advertisement of, 417.
- right to, 417.

“REPELLUS.” See *Wilk's Application*.

**REPORT,**

- of committees on trade marks and merchandise marks, 6, 9, 17, 19.
- of action, may be a trade libel, 627.
- contempt of Court, 628.
- annual, of Comptroller-General of Patents, Designs and Trade Marks, 683.

**REPRESENTATION,**

- of goods, not a trade mark, 209.
- that defendant's business is plaintiff's, 535, 591.
- that defendant is plaintiff's successor, 536, 591.
- in good faith, passing off by, 535.
- of Royal warrant, false, 651, 894.
- of trade mark on application to register, 722, 723, 734.
- on appeal to Board of Trade, 735.
- of member of Royal Family not to be registered, 721.
- of living, or recently dead, person, 208, 721.
- See *Misrepresentation*.

**REPUTATION,**

- of connection of trade mark or trade name with the proprietor, 34, 58, 540.
- evidence, 36, 540.
- not necessary public should know proprietor's name, 37, 539.
- of type of goods, no monopoly in, 43.
- injury to, of plaintiff's goods, in infringement action, 432, 501.
- area of, 567.

**REQUEST,**

- for entry of name of assignee of mark on Register, 400, 729.
- form of, 750.
- for statement of grounds of decision, 102, 743.
- for search, 731, 755.
- for general certificate, 760.
- for certificate of refusal to register, 760.
- for use in obtaining registration abroad, 761.
- for use in legal proceedings, 761.

RE-REGISTRATION, application for, 417.

RES JUDICATA, 103, 322.

**RESEMBLANCE CALCULATED TO DECEIVE,**

- Chap. X., 246.
- sec. 19..247.
- bearing of colour on, 234, 450.
- not sufficient for infringement, may prevent registration, 256.

**RESEMBLANCE CALCULATED TO DECEIVE—continued.**

- marks in different markets, 258.
- persons to be considered, 261.
- ear as well as eye to be considered, 269.
- alteration of mark as used from mark as registered to be considered, 271.
- rules of comparison, 263—283, 448—450.
- special feature not taken, 268.
- evidence in regard to, 283.
- examples, 288—294.
- the test of infringement, 444.
- importance of differences, 451—454.
- cumulative evidence of, 575, 582.
- in passing-off cases, 582.

See also *Deception ; Restrictions on Registration.*

**RESIDENT ABROAD,**

- applicant or opponent, address for service, 86, 104.
- notice to respondent, 104, 342.
- service out of the jurisdiction, 342, 423.
- respondent, or appellant, security for costs, 343.

**RESTORATION,**

- of mark removed from the Register, 417.
- form of application, 686.

**RESTRICTIONS ON REGISTRATION, Chap. X., 246.**

- in rules, 247, n., 721.
- conflicting claims, 250.
- identical marks, 247.
- three mark rule, 249.
- interests of public to be considered, 251, 257.
- restrictions not limited by register classes, 252.
- resemblance to registered mark, 256.
- deceptive marks, 297.
- unrenewed or removed mark obstacle to registration, 258, 418.
- under Australian Acts, 911.

**RETAILER,**

- deceptive mark may not deceive, 265.
- differences removable by, 453.
- infringement leading to frauds by, 504.

“REVERSI,” 155. See *Waterman v. Ayres.*

“RIBBON.” *Colgate & Co.'s Application.*

“RICHER CONCERTS,” 546. See *Franke v. Chappell.*

**RIGHT,**

- nature of trade mark right, 24—61.
- conferred by registration, 61, 360, 363.
  - limitation of, 65, 234, 235, n., 255, 258, 333, 364.
- acquired by use of mark, 24—60, 321, 375.
- limited by actual use, 365, 436.
- concurrent right to use of mark, 456.
  - name, 588.
- to trade under one's own name, 16, 593—609.

“RISCHON-LE-ZION” wines and spirits. See *Palestine Wine Co. v. Cohen & Co.*

“ROADSTER” BOOTS. See *Thompson v. Miller.*

“ROYAL” not to be registered, 77, n., 721.

“ROYAL,” 305, 356.



## ROYAL ARMS,

not to be registered, 77, n., 721.  
 unauthorized assumption of, 428, 651.

ROYAL CROWN. See *König and Ebhardt's Tm.*

ROYAL WARRANT, false representation as to, 651.

"ROYAL WORCESTER." See *Royal Worcester Corset Co.'s Application.*

"RUGBY CEMENT." See *Rugby Co. v. Rugby & Newbold Co.*, 439, 564, n.

## RULES,

power of Board of Trade to make, 63.  
 apply to Sheffield marks, 127, 733, 734.  
 as to cotton marks, 734.  
 to be advertised, 684.  
 to be laid before Parliament, 684.  
 See also *Trade Mark Rules*, 1906.

RUSSIA, law of, as to trade marks, 876.

"ST. RAPHAEL." See *Clement et Cie.'s Tm.*

## SALE,

of goods with trade mark attached, 95.  
 account of sales, 495.  
 discovery as to sales, 522.  
 of name, 556, 606.  
 warranty of mark or description on, 615.  
 offence by, under M. M. A., 1887..887.

SALE OF FOOD AND DRUGS ACTS, 616, n.

SALE OF GOODS ACT, 1893,  
 provisions as to breach of warranty, 618.

"SAME DESCRIPTION OF GOODS," 253.

"SANITANT," 292. See *Sanitas Co. v. Condy.*

"SATININE," 174. See *Meyerstein's Tm.*

SATURDAY, when last day for doing act at Patent Office, &c., 732.

SAVOLINE." See *next case.*

"SAVONOL." See *Field, Ltd. v. Wagel Syndicate.*

## SCIENTER,

when an element in passing-off action, 535.  
 infringer without notice, 502, 506—509.

## SCOTCH,

party on appeal from Registrar, 104.  
 respondent under section. 95..344.  
 Courts, whether jurisdiction to rectify Register, 939.

"SCOTCH JOCK." See *Booth Distillery Co.'s Application.*

SEAL OF PATENT OFFICE, 68.

## SEARCH

in the Register, 66, 731, 775.  
 warrant, 523, n., 891.

"SECCOTINE." See *McCaw, Stevenson & Orr, Ltd. v. Nichols & Co.*

**SECONDARY DISTINCTIVE MEANING,**

- makes descriptive word a trade mark, 89, 44, 565.
- difficulty of showing, 45, 56, 568, n.
- whether descriptive meaning must be lost, 567.
- whether must be "locally universal," 567, n.
- principles of law as to, stated, 565—567.
- will not support a new mark, 205.
- does not make word a "fancy word," 158, 205, n.
- will support an old mark, 224—227.
- of trade name, 565, 594, n.
- descriptive meaning no longer the true one, 567, 568.
- evidence of, 570.
- not acquired while no competition, 571.

**SECRET,**

- trade, Chap. XIX., 633.
- receipt, goods made according to, 50, 633.
- preparation, name of, 50, 633.
- injunction limited to continuance of, 437.
- disclosure of, 521.

"SECURINE." See *Seccotine*, above.

**SECURITY FOR COSTS**

- of opposition, where opponent abroad, 96, 111.
- of motion to rectify, by foreigner, 343.
- of appeal, 851.

**SELECTOR,** trade mark of, 58.

"SELF-WASHER," 579, 801. See *Lever v. Goodwin*.

"SELVYT." See *Jones v. Hallworth*, and *Jones v. Anglo-American Optical Co.*

**SEPARATION FROM GOODWILL,** 409. See *Goodwill*.

**SERIES OF MARKS,** 118.

**SERVANT,**

- designing trade mark has no claim to it, 60.
- registration by servant in his own name, 75.
- infringement by defendant's, 425, n., 432, n., 433, n.
- breach of confidence by, 636.
- must not solicit customers after he has left employment, 536, n.

**SERVICE,** address for, 86, 104.

**SERVICE OUT OF THE JURISDICTION,**

- application to rectify, 342.
- infringement action, 423.

**SET-OFF OF COSTS,** order for, 801.

**SEVEN YEARS' REGISTRATION,**

- effect of, 363, 364, 368, 369, 429, 430, 431, 455.
- extends to applications under sec. 35..323.

"SHAKSPERE." See *Becks and James' Tm.*

"SHAMROCK." See *Finlay v. Shamrock Co.*; *Shamrock & Co.'s Application*, and *McGlennon's Application*.

**SHAPE,** 210, 579.



- SHEFFIELD,**  
 marks, Chap. VI., 120.  
 Register, 63, 125.  
 marks, counterfeiting, 655.  
 form of request to enter corporate mark, 755.
- "SHIP BRAND SOAP." See *Price's Patent Candle Co., Ltd. v. Jeyes' Sanitary Compounds Co., Ltd.*
- SHOP,**  
 name over, 537.  
 name of, 559.
- "SHOBLAND" CYCLE SHOES, 569, n., 571. See *Gamage v. Randall.*
- SHOW CARDS,**  
 imitation of, 608.  
 use of infringing mark on, 438, 439, n.
- SIGNATURE MARKS,** 149.  
 "mark" includes, 25, 179.  
 must be of a personal name, 150.  
 of predecessor, 149.  
 infringement of, 150.  
 assignment and devolution of, 386.  
 special registration of distinctive, 88, 724.
- SILVER (plate), marks on,** 900.  
 "similar to," 535.
- "SILVERPAN." See *Faulder's Trade Mark.*
- SIMILARITY.** See *Resemblance calculated to Deceive.*  
 to another mark of applicant, 275.
- "SINGER" CASES, 40.
- SINGLE ACT OF INFRINGEMENT,** 432, 509.
- SIZE,**  
 of marks, 271.  
 of documents, for use on application, &c., 720.
- "SKIPPER." See *Angus Watson & Co.'s Application.*
- SLANDER OF TITLE** to trade mark, Chap. XVIII., 622.
- "SLIP-ON." See *Burberrys v. Cording & Co., Ltd.*
- SMALL LETTERS,** explanations in, 454.
- SOLE**  
 importer is not proprietor of marks, 73, 427.  
 licensee cannot sue, 397.  
 purchaser from proprietor cannot sue, 427.  
 proprietor, plaintiff need not be, 427.  
     account or inquiry where plaintiff not, 505.  
 concurrent right, 456, 588.
- SOLICITATION** of customers by vendor, 590.
- SOLICITOR** defendant to action for trade libel, 628.
- "SOLIO." See *Eastman Photographic Materials Co.'s Application*, 10, 162.
- "SOMATOSE," 170. See *Farbenfabriken., &c. Co.'s Application.*

- "SPANISH GRAPHITE." See *Wolff v. Nopitsch*.
- "SPARKLING LIME WINE." See *Packham v. Sturgess*,
- "SPECIAL OR DISTINCTIVE," 222.  
list of decisions, 227.
- "SPECIAL OR PARTICULAR MANNER," 148.
- SPECIAL DAMAGE,  
when necessary, 3, 499, 586.  
whether necessary for trade libel, 625.
- SPECIAL REGISTRATION,  
under paragraph 5 of sec. 9. .88, 724.  
costs, 109.  
form of application for, 744.  
See also *Standardisation Marks*.
- SPECIFIED MANNER,  
particular goods required to be marked in, 899-902.
- SPELLING. See *Phonetic Equivalent*.  
mis-spelling descriptive word, 174.
- "SPHINX." See *Lambert & Butler v. Goodbody*.
- "SPORTSMAN'S" CHERRY BRANDY, 265, n.
- STAMP, on assignment of trade mark and goodwill, 401.
- "STANCH," 260. See *Jelley's Application*.
- STANDARDISATION MARKS,  
under sec. 62. .91, 292.  
assignable only by permission of Board of Trade, 91, 293.  
special form of application for, 745.
- "STANDING BY," when a defence, 466-472.
- "STAR." See *Star Cycle Co., Ltd. v. Frankenburgs*.
- "STAR GLASS," 235. See *Société de l'Etoiles Tm*.
- "STAR TOBACCO MARK," 282. See *Dexter's Application and Wills' Tm*.
- "STATE ROOM." See *United Kingdom Tobacco Co.'s Application*.
- STATEMENT OF CLAIM, forms of, 792, 794, 795.
- STATIONERS' HALL, registered at, 100, n., 305, 463, 485.
- "STATION HOTEL," 559, n.
- STATUTES,  
text of Act of 1905. .663-691.  
of Act of 1883, as amended by Act of 1888. .692-711.  
of Registration Acts, 1875-1877. .712-715.  
of M. M. A., 1887, 1891, 1894, 1909 and 1911. .885-897.
- STATUTORY DECLARATION. See *Declaration*.
- STAY  
of execution or order to rectify, 350.  
of proceedings for infringement, 509.  
of new trial refused, 518.
- "STENT." See *Claudius Ash Son & Co. v. Invicta Manufacturing Co.*



- "STEWART ARC LAMPS." *Defries & Sons v. Electric and Ordnance Accessories Co., Ltd.*
- STICK, on which carpets rolled, 579, n.
- "ST. IVEL." See *next case*.
- "ST. IVES CHEESE." See *Applin & Barret v. Richards*.
- "STONE ALES," 321, 378, 802. See *Mosely v. Thompson*.
- STORES, public, marks on, 902.
- "STRATHMORE," 281, n. See *Blair v. Stock*.
- SUBMISSION,  
 offer of, after infringement, 506, 507.  
 stay of proceedings on, 509,  
 of rival claims, to the Court, 248, 250.
- SUBSEQUENT PROPRIETOR, registration of, 398, 729, 780.
- "SUBSTITUTION," 492.
- SUCCESSION,  
 trade marks pass to successors of original firm, 24, 384.  
 pretence of, to plaintiff's business, 536, 591.  
 registration of subsequent proprietor, 398, 729, 780.
- "SUCCESSORS TO," 454.
- SUMMARY OF REGISTRATION ACTS, 6—12.
- SUNDAY, when last day for doing any act at Patent Office, 732.
- "SUNLIGHT SOAP," 579, 801. See *Lever v. Goodwin* (also *Lever v. Bedingfield*).
- SURNAME, word in its ordinary signification, a, in sec. 9 (4) .. 137, 178.
- SURROUNDINGS OF MARKS, to be regarded, 274.
- "SWAN" device. See *Holbrooks, Ltd.'s Application*.
- "SWANBILL." See *Bourne's Tm.*
- SWEDEN, law of, as to trade marks, 877.  
 accession of, to International Convention, 819.
- "SWEET LIPS CACHOUS," 490, n. See *Kerford v. R. A. Cooper, Ltd.*
- "SWIFT'S SPECIFIC." See *Swift Specific Co.'s Tm.*
- SWITZERLAND, law of, as to trade marks, 879.
- SYMBOLS, as trade marks, 30.
- "SYKE'S PATENT," 3. See *Sykes v. Sykes*.
- "SYRUP OF FIGS," 646. See *Californian Fig Syrup Co.'s Tm.*, and *Californian Fig Syrup Co.'s Application*, 195.
- SYSTEM, 42, 563.
- "TABLOID," 156. See *Burroughs Wellcome & Co.'s Tms.* (see also *next case*).

"TABLONES." See *Capsuloid Co., Ltd.'s Application*.

"TACHTYPE." See *Linotype Co.'s Application* (No. 2).

"TÆNDSTIRKER," 266. See *Christiansen's Tm.*

"TALMEY," 487, n., 551, n., 606, n. See *Pearks, Gunston & Tee v. Thompson, Talmev & Co.*

"TAYLOR'S" PORT. See *Yeatman v. Homberger*.

TELEGRAPHIC CYPHER ADDRESS,  
imitation of, 560, n., 586, n.  
unconscientious use of, 688.

TEST CASE, costs, 108.

TESTIMONIALS, use of plaintiff's, 588, n.

"THE THUNDERER." See *Hudson's Application*.

"THORLEY'S CATTLE FOOD," 605, 800. See *Massam v. J. W. Thorley's Cattle Food Co., Ltd.*

THREATS,  
in mark may be deceptive, 304, 485.  
of infringement, necessary for injunction, 489.  
action, none in respect of trade mark, 622.  
evidence of *mala fides*, 627.

THREE CROWNS MIXTURE. See *Hargreaves v. Freeman*.

THREE MARK RULE, 240, 249.  
does not apply to new mark, 250.

TICKET, 220.

TIME,  
excluded days in computing, 68.  
enlargement, by Registrar, 92, 98, 732.  
summary of times on opposed application, 97.  
for appeal to Court of Appeal, 102, 350.  
Board of Trade, 100.  
expiring on public holiday, 732.  
for withdrawal of appeal in application to register, 736.

TITLE,  
proof of, before Registration Acts, 5.  
acquired by use of mark, Chap. II., 24—60, 321, 376.  
conferred by registration, 65, 360.  
concurrent right to mark or name, 321, 456, 588.  
of book or publication, 578.  
of plaintiff in infringement action, 425. See *Registration*.

TOBACCO,  
Marks on, 902. See *Habana and Mixture*.  
mark for cigars, 114.  
fraudulent use of "Habana," 486.

"TOD." See *Rotherham's Tm.*

TORT,  
infringement is, 425.  
continuing, 468.

"TOWER TEA," 214, 215. See *Great Tower Tea Co. v. Smith*.



TRADE, usages of, evidence as to, 444, 449.  
mark, distinctive only to, 205, 564.

TRADE DESCRIPTION,  
warranty of, Chap. XVII., 615.  
what it means in M. M. A., 1887, 888.

TRADE LIBEL, Chap. XVIII., 622.  
mere puff is not, 625.  
whether special damage must be proved, 625.  
evidence to construe, 628.  
survives to executors, 632.

#### TRADE MARK.

general sketch of the law, Chap. I., 1.  
early cases, 2.  
definition, Chap. II., 24, 25.  
is an indication of origin, 27.  
connection of, with goods, 32.  
use of, before registration not necessary, 26, 139, 362.  
of selector of goods, 58.

may still be acquired by use, 373, 376.  
assignment and devolution, Chap. XIII., 384.  
assignable only with goodwill, 384, 409, 542.

determination, Chap. XIV., 404, 456.

infringement of, Chap. XV., 419.

warranty, Chap. XVII., 615.

foreign and colonial, registration, Chap. XX., 640.

life of, depends on prompt vindication, 424, n.

special, under sec. 9 (5). See *Special Registration*.

associated trade marks, 116—119.

standardisation marks, 91, 232.

unregistered trade marks,

very numerous, 12.

practically protected, 12, 378.

are an objection to mark applied for, 202.

restricted to particular goods, 32.

implication and function of, 58.

joint, 59, 425.

intention to use, must be, 114, 115, 140, 331, 361, 410, 428.

essential particulars of, 142.

requirements for good, 150.

part common to the trade, 208.

"used as a trade mark," 227—232.

one trader may have several, 229.

comprising reference to particular goods, 114, 305, 435, 722

representation of goods, not, 209, 210.

status of, when registration not renewed, 415, 418.

originally wrongly registered, removal of, 319, 324.

may be removed if wrongly on the Register, 311, 326.

belonging to several proprietors, 427.

And see *Concurrent Right and Joint Trade Mark*.

misrepresentation in, 475.

description of, in pleadings, 520, 591.

"common law," 531, 581.

See *Unregistered Trade Marks*, above.

expunged, use of, 574.

definition of in M. M. A., 1887..888.

description of, in indictment, &c., 891.

misrepresentation as to registration of, 483.

referring to part of mark, deceptive, 303, 480.

when struck out of old mark, 355.

And see *Table of Contents*.

#### TRADE MARKS ACT, 1905,

object and policy of, 10, 11.

text of, 663—691.

**TRADE MARKS REGISTRATION ACT, 1875.**

- object of, 6.
- essential particulars under, 7, 138.
- words not registrable, except as old marks, 8, 151
- unused marks could be registered under, 361.

**TRADE MARK RULES,**

- 1906, text of, 719—765.
- 1912, text of, 766.

**TRADE NAME,**

- registration of, under sec. 9. .145.
- passing-off, Chap. XVI., 527.
- trade libel, Chap. XVIII., 622.
- trade secret, Chap. XIX., 633.
- and trade mark distinguished, 13, 14, 533.
- of business, 16, 543.
- assignment, 542.
- property in, 533, 542, n., 544, n.
- owned by several persons, 544.
- name of repute, 545.
- of company, 546, 547.
  - trade name of plaintiff's goods taken by, 551.
  - assignments of, 551.
  - descriptive merely, 549, 554, n.
  - not its registered name, 487, 551.
  - cases as to, 552—554.
- purchase by company of, 551, 555—556.
- of goods, 561—578. And see Chap. II., 30 *et seq.*
  - right to, restricted to particular goods, 561.
  - probable extension of plaintiff's business, 561, 562.
  - must be distinctive of plaintiff's goods, 562.
  - not descriptive merely, 563.
  - secondary meaning, 565.
  - new or patented article, 572.
  - becoming *publici juris*, 573.
  - disclaimed word, 574.
  - expunged word, 574.
  - geographical word, 575.
- on dissolution of partnership, and bankruptcy, 588—592.
- on sale of goodwill, 588—592.
- use on the proprietor's goods, 562, 583.
- concurrent right to use, 588—592.
- injunctions against imitations of, 798 *et seq.*
- to be protected, under Convention, without registration, 815.
- See *Name*.

**TRADE SECRET,**

- Chap. XIX., 633.
- order in *Morison v. Moat*, 798.

**TRANSFER,**

- of mark to other goods of owner, 33.
- of action to King's Bench Division, 422.

**TRANSIT, goods in, within M. M. A., 1887, s. 16..19.****TRANSLATED,**

- words, 152.
- foreign words in mark to be, 85, 723.

**TRANSLITERATION of non-Roman characters, 85, 723.****TRAP laid to induce infringement, 482, 483, n.****TRIAL. See *Court and Prosecution*.**



"TRILBY." See *Holt's Tm.*

"TRITICINE." See *next case.*

"TRITICUMINA." See *Meaby & Co. v. Triticine, Ltd.*

TRIVIAL CASES,  
of infringement, 432, 509.  
damages in, 502.  
neglect to sue in respect of, 470.

TRUE STATEMENTS not libellous, 628.  
may be deceptive, 569, n.

TRUSTS,  
not to be registered, 64, 394.  
whether notes limiting the registration may be registered, 64, 235, 256,  
335, n.

"TWO D. CASE," 432, n., 563. See *Leahy v. Glover.*

"TWO ELEPHANT CASE," 199, 265, 800. See *Johnston v. Orr-Ewing.*

TYPE, 563.

"TYPE." See *Pattern.*

"TYPOGRAPH." See *Linotype Co.'s Application.*

ULTIMATE PURCHASERS, likely to be deceived, 3, 261, 448, 504.

"UNCO GUID WHISKY," 245, n. See *Loftus' Tm.*

UNDERTAKING,  
entry of, on the Register, 64.  
limiting use of colour, 235.  
    to particular goods, 255, 333.  
    to particular market, 64, 258, 335.  
not to vary mark in use, 273.  
in lieu of injunction, involves cross-undertaking in damages, 494, n.  
as to damages, 494.  
    on motion to restrain contempt of Court, 630.  
to keep account, 495.  
plaintiff in infringement action not bound to accept, 506, n.

"UNEEDA." See *National Biscuit Co.'s Application.*

UNITED STATES, Law of,  
Trade Marks Act, 1905.. 831.  
treaty with, 830.

UNREGISTERED TRADE MARKS,  
very numerous, 12.  
practically protected, 12, 378.  
form an objection to mark applied for, 202.  
no action generally for infringement, 373.  
"common law trade mark," 531, 581.  
not trade marks within M. M. A., 1887.. 382.  
described as "trade mark," 484.  
"passing off" by use of, 531.

UNWARY PURCHASERS, 262, 448.

USAGE OF THE TRADE,  
evidence of, 444, 449.

## USE,

- as a trade mark, 24, 26, 227—232.
- in connection with goods, 26, 32.
- on the goods, 31, 35.
- no definite period necessary, 36, 541.
- before registration not necessary, 26, 139, 362.
- by opponent as an objection, 202, 296.
- applicant for registration must use or intend to use, 114, 140, 326, 331, 361, 410, 428.
- user of associated trade mark, 119.
- mark may be removed for non-user, 114, 326, 413.
- of old mark, as a trade mark, 227, 231.
- on bottles, cases, corks, &c., 30—32, 228.
- fraudulent, 231, 472.
  - length of, by infringer, 407, n.
- in United Kingdom, 74, 230, 258, n., 389, 541.
- extent of, 190.
- to be taken into consideration on application under sect. 9 (5)..191.
- evidence as to, 231.
- in different markets, 256, 295.
- resemblance in actual, 270, 271, 449.
- alteration of registered mark in, 271.
  - is lawful, 466.
- undertaking not to alter in, 273.
- right to exclusive, 65, 363.
- honest concurrent, of identical marks, 294.
- exclusive, disentitled to protection, 297.
- registration, equivalent to, 65, 361.
- continued registration not equivalent to continued use, 362.
- registration, evidence of right to exclusive, 363.
- by assignee, when deceptive, 387.
- limits the right conferred, 365, 436.
- mis-statement as to, of old mark, 325.
- abandonment of, Chap. XIV., 404.
- what constitutes infringement, 433, 438.
  - family use, 434.
- plaintiff must use, 437, 586, n.
- deceptive, not presumed, 302, 489, n.

USEFUL FEATURE of get up, 580.

“VACUUM CLEANER.” See *British Vacuum Cleaner Co. v. New Vacuum Cleaner Co.*

VALENTINE'S EXTRACT, 598, 806. See *Valentine Meat Juice Co. v. Valentine Extract Co.*

## VALIDITY,

- registration, *prima facie* evidence of, 367.
- registration generally conclusive of, after seven years, 368.
- See *Certificate of Validity*.

“VALTINE.” See *last case* and *Valentine Extract Co's Tm.*

“VALVOLEUM,” 219. See *Horsburg's Tm.*

“VALVOLINE,” 219. See *Leonard and Ellis' Tm.*

## VARIATION,

- of mark, statement in application as to, 722.
  - in actual use, 272, 466.
- undertaking against, 273.
- under sec. 35..335.



- VARIATION—*continued*.  
 in form of mark, 335.  
 of date of registration, 336.  
 of name of proprietor, 336.  
 not substantially affecting identity, 353, 357.
- "VASELINE." See *Chesebrough Manufacturing Co.'s Tms.*
- "VASOGEN." See *Chesebrough Manufacturing Co.'s Tm.*
- "VENDIBLE CHARACTER," mark must give, 32, 182.
- VENDOR OF BUSINESS may not solicit old customers, 590.
- VERBAL USE, infringement by, 439, 440.
- VEXATIOUS INDICTMENTS ACT, applies to offences under M. M. A., 1887..  
 892.
- "VEZET." See *Verschure and Zoon's Application.*
- "VINCALIS." See *Coleman v. Brown.*
- "W. & G." See *Du Cros' Application* and *Du Cros v. Gold.*
- "W. R. CORSETS." See *Rosenthal v. Reynolds.*
- "WARNER'S SAFE CURE." See *Warner v. Warner.*
- WARNING,  
 plaintiff not bound to give, 424, 428.  
*bona fide*, not actionable, 627.
- WARRANTY OF TRADE MARK, Chap. XVII., 615.  
 formerly under M. M. A., 1862..6.  
 under M. M. A., 1887..615.  
 implied, at common law, 617.  
 where goods described by a trade mark, 617.  
 of artist's name, 618.  
 breach of, 618.
- "WASHERINE," 200, 802. See *Burland v. Broxburn Oil Co.*
- WATCH CASES, marks on, 890.
- "WAVERLEY HOTEL," 559, n.
- WEIGHT,  
 plea that plaintiff gave false, 486.  
 trade description as to, 888.
- WEIGHTS AND MEASURES, marks indicating, 902.
- WHARFINGER holding infringing goods, 494, 499, 508.  
 lien of, 498.
- "WHITE VIENNESE BAND," 541, n., 545, n. See *Warm v. Webster and  
 Girling.*
- "WHITSTABLE NATIVE OYSTERS." See *Whitstable Oyster Fishery Co. v.  
 Hayling Fisheries, Ltd.*
- "WHITSTABLE OYSTERS" 576. See *Free Fishers v. Elliot, and Whitstable  
 Oyster Fisheries, Co. v. Hayling Fisheries, Ltd.*

"WINCARNIS." See *Coleman v. Brown* and *Coleman v. Stephen Smith & Co.*

WINES AND SPIRITS, same description of goods, 253.

"WINSER" INTERCEPTORS. See *Winser v. Armstrong*.

WITHDRAWAL

of acceptance of application, 86, 673, 727.  
of application, 86, 723, 724.

WITNESSES,

scientific, high scale of costs, 515.  
expert, 284, 525.

"WORCESTER CHINA." See *Worcester Royal Porcelain Co., Ltd. v. Locke*.

"WORCESTER SAUCE," 545. See *Birmingham Vinegar Co. v. Liverpool Co.*

WORD MARKS, 8, 151.

examples of old, 227.  
contrasted, 292—294.

WORDS,

translated, 152.  
descriptive, are not fancy, 157.  
part of, disclaimer of, 167.  
deceptive, will not be registered, 194.  
not a device, 206.  
"mark" includes, 180.  
with undistinctive matter, not a label, 214.  
as trade marks, 151.  
under the Convention, 817, n.  
taken from opponent's or plaintiff's mark, 277, 282, 443.  
cases of contrasted, 292—294.  
disentitled to protection, 297.  
list of, allowed to proceed to advertisement on applications under  
sect. 9 (5)..903-905.  
See *Word Marks*; *Fancy Words*; *Invented Words*; *Words having no  
reference to Quality or Character of Goods*; *Common Words*;  
*Geographical Names*; *Deceptive Marks*.

WORDS HAVING NO REFERENCE TO CHARACTER OR QUALITY OF GOODS,  
171—175.

earlier decisions as to, 10, 171.  
direct reference now necessary to disqualify, 171.  
test applied under Act of 1888..172.  
name of goods may be, 173.  
fanciful reference not material, 173.  
commendatory word is not, 173.  
mis-spelling of descriptive word is not, 174.  
lists of decisions as to under Act of 1888..174, 175.

WORKMAN. See *Servant*.

WORKS, alteration of name of, in marks, 355, 357.

"WORTH'S CORSETS," 143, n. See *Bradley's Tm.*

WRAPPER,

use of Trade mark on, 30, 438.  
included in covering in M. M. A., 1887..889.  
imitation of (get-up), 578—583.  
order in *Lever v. Goodwin*, 801.

"WRIGHT, CROSSLEY & Co." See *Wright, Crossley & Co.'s Tm.*



YARN, 902.

"YORKSHIRE RELISH." See *Powell's Tm.*, 814, 808, and *Powell v. Birmingham Vinegar Brewery Co.*

"YOST PADS," 498, n. See *Yost Typewriter Co., Ltd. v. Typewriter Exchange Co.*

"ZEPHYR PIPE," 162. See *Friedlander's Tm.*

THE END.