

the business, if such ownership be proved to the satisfaction of the comptroller.

32. Upon registering any trade mark the comptroller shall enter in the register the date on which the application for registration was received by the comptroller (which day shall be deemed to be the date of the registration) and such other particulars (a) as he may think necessary.

Entries to be made in register.

(a) It would appear that under this rule the comptroller would be at liberty to enter on the register limitations on the user of the mark registered, without requiring even an *ex parte* application to the Court, as in *In re Keep*, 32 W. R. 427.

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

Notice of registration.

34. Where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, a request for the entry of his name in the register as proprietor of the trade mark shall be addressed to the comptroller, and left at the Patent Office (a).

Request by subsequent proprietor.

(a) The request and accompanying declaration are to be made in Form K. See Instructions, par. 42.

375

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

Signature of request.

(a) See Rules 7, 8, *supra*.

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

Contents of request.

(a) See *Ex parte Lawrence Bros.*, 44 L. T. N. S. 98; *In re Farina* (4), *ib.*, 99; *In re Ward, Sturt & Sharp*, 50 L. J. Ch. 347.

Declaration to accompany request.

37. Every such request shall be accompanied by a statutory declaration (a) to be thereunder written, verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the trade mark as claimed by such request.

(a) See Form K.

Further proof of title if required.

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

Body corporate.

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

Definition of applicant.

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

(a) See § 71.

Comptroller may require statement from rival claimants.

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

Submission to Court of conflicting claims.

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

(a) See note to § 71.

Settlement of special case.

43. Where the special case is to be submitted to the parties it may be agreed to by them, or if they differ, may be settled by the comptroller on payment of the prescribed fees (a).

(a) For form of request to the comptroller to settle a special case, see Form T.

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

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

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

(a) For form of request, see Form N.

45. Where a trade mark has been removed from the register for non-payment of the prescribed fee or otherwise, under the provisions of section 79 of the said Act, the comptroller shall cause to be entered in the register a record of such removal and the cause thereof. **Removal of mark from register.**

46. If the registered proprietor of a trade mark send to the comptroller, together with the prescribed fee, notice of an alteration in his address, the comptroller shall alter the register accordingly (a). **Alteration of address in register.**

(a) See Form M.

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

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

#### INSPECTION OF REGISTER.

49. The Register of Trade Marks shall be open to the inspection of the public (a), on payment of the prescribed fee, on every weekday between the hours of ten and four, except on the days and at the times following:— **Hours of inspection.**

(a.) Christmas Day, Good Friday, the day observed as Her Majesty's birthday, days observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England; or

- (b.) Days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office;
- (c.) Times when the register is required for any purpose of official use.

(a) See § 88.

#### POWER TO DISPENSE WITH EVIDENCE.

**Dispensing with evidence.** 50. Where under these Rules any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the comptroller, or at the Patent Office, and it is shown to the satisfaction of the comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

#### AMENDMENTS.

**Amendment of documents.** 51. Any document or drawing or other representation of a trade mark for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure which in the opinion of the comptroller may be obviated without detriment to the interests of any person may be corrected, if the comptroller think fit, and on such terms as he may direct (a).

(a) As to the comptroller's power to correct clerical errors, see § 91. See Form Q.

#### ENLARGEMENT OF TIME.

**Comptroller may enlarge time.** 52. The time prescribed by these Rules for doing any act, or taking any proceeding thereunder, may be enlarged by the comptroller, if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct.

CUTLERS' COMPANY.

53. All applications to the Cutlers' Company (a) for registration of a trade mark, under section 81 of the said Act, shall be in duplicate, accompanied by the prescribed fees and representations. Sheffield applications in duplicate.

(a) See § 81 and the notes thereto; also the Cutlers' Company's Acts in Appendix C. See Instructions, par. 37, as to the mode in which applications are to be made to the Cutlers' Company, and see Form W. for form of appeal from the Company to the comptroller.

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

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

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

(3.) The manner in which the comptroller shall notify to the Cutlers' Company an application and proceedings thereon made as mentioned in sub-section 8 of section 81 of the said Act shall be by sending to the Cutlers' Company a copy of the official paper containing the application of which notice is required to be given, with a note distinguishing such application. Manner of notifying to Cutlers' Company application received by Comptroller.

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

CERTIFICATES.

57. The comptroller, when required for the purpose of any legal proceeding or other special purpose, to give a certificate as to any entry, matter, or thing which he is authorised by the said Act or any of these Rules to make or do, may, on receipt Certificate by Comptroller.

of a request in writing, and on payment of the prescribed fee, give such certificate, and shall specify on the face of it the legal proceeding or other purpose for which such certificate is granted (a).

(a) See § 96, and Instructions, para. 39—41.

#### DECLARATIONS.

Manner in which, and persons before whom, declaration is to be taken.

58. The statutory declarations (a) required by the said Act and these Rules, or used in any proceedings thereunder, shall be made and subscribed as follows:—

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

(a) Statutory declarations are necessary in the cases of a subsequent proprietor seeking registration (Rule 37 and Form K.), and of a registered proprietor seeking to have the whole or part of his registration cancelled (§ 91 and Form P.). As to declarations by infants and other persons under disability, see § 99.

Notice of seal of officer taking declaration to prove itself.

59. Any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal or signature of any person hereby authorised to take such declaration in testimony of such declaration having been made and subscribed before him, may be admitted by the comptroller without proof of the genuineness of any such seal or signature, or of the official character of such person or his authority to take such declaration.

#### REPEAL.

Previous rules repealed.

60. All general rules as to the registration of trade marks heretofore made by the Lord Chancellor under the Trade Marks Registration Act, 1875, and in force on the 31st day of December, 1883, shall be, and they are hereby repealed, as from that date, without prejudice, nevertheless, to any proceeding which may have been taken under such Rules.

J. CHAMBERLAIN,

President of the Board of Trade.

21st December, 1883.

## SCHEDULES.

## FIRST SCHEDULE.

## FEES.

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

## APPENDIX A.

FEES—*continued.*

	£	s.	d.
18. For certificate of registration to be used for the purpose of obtaining registration in foreign countries . . . . .	0	5	0
19. For copy of notification of registration . . . . .	0	2	0
20. Settling a special case by comptroller . . . . .	2	0	0
21. For inspecting register, for every quarter of an hour . . . . .	0	1	0
22. For making a search amongst the classified representations of trade marks, for every quarter of an hour . . . . .	0	1	0
23. For office copy of documents, for every 100 words (but never less than one shilling).	0	0	4
24. For certifying office copies, MS. or printed . . . . .	0	1	0
25. For certificate of comptroller under section 96 . . . . .	0	5	0
26. In cases where a trade mark requires a greater space than two inches of the depth of the page of the <i>Trade Marks Journal</i> , for each additional inch or part of an inch . . . . .	0	2	0
27. Manchester Trade Marks Office . . . . .	Same as above		
28. Sheffield Marks . . . . .	Same as above		
29. On appeal from Cutlers' Company, Sheffield, to comptroller . . . . .	1	0	0

J. CHAMBERLAIN,  
President of the Board of Trade.

Approved,  
CHARLES C. COTES,  
HERBERT J. GLADSTONE,  
Lords Commissioners of  
Her Majesty's Treasury.

4th December, 1883.

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SECOND SCHEDULE.

FORMS.

(See Appendix B., *infra*).

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## THIRD SCHEDULE.

## GENERAL NOTE.

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

## CLASSIFICATION OF GOODS.\*

*Illustrations.*

*Note.*—Goods are mentioned in this column by way of illustration, and not as an exhaustive list of the contents of a class.

*Class 1.*

Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.

Such as—

Acids, including vegetable acids.  
Alkalies.  
Artists' colours.  
Pigments.  
Mineral dyes.

*Class 2.*

Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.

Such as—

Artificial manure.  
Cattle medicines.  
Deodorisers.  
Vermin destroyers.

*Class 3.*

Chemical substances prepared for use in medicine and pharmacy.

Such as—

Cod liver oil.  
Medicated articles.  
Patent medicines.  
Plasters.  
Rhubarb.

\* For further information as to the classification of goods, see Guide to the Classification, obtainable at the Patent Office on application.

*Class 4.*

Raw or partly prepared vegetable, animal, and mineral substances used in manufactures, not included in other classes.

Such as—

Resins.

Oils used in manufactures and not included in other classes.

Dyes, other than mineral.

Tanning substances.

Fibrous substances (*e.g.*, cotton, hemp, flax, jute).

Wool.

Silk.

Bristles.

Hair.

Feathers.

Cork.

Seeds.

Coal.

Coke.

Bone.

Sponge.

*Class 5.*

Unwrought and partly wrought metals used in manufacture.

Such as—

Iron and steel, pig or cast.

Iron rough.

„ bar and rail, including rails for railways.

„ bolt and rod.

„ sheet, and boiler and armour plates.

„ hoop.

Lead, pig.

„ rolled.

„ sheet.

Wire.

Copper.

Zinc.

Gold, in ingots.

*Class 6.*

Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines included in class 7.

Such as—

Steam engines.

Boilers.

Pneumatic machines.

Hydraulic machines.

Locomotives.

*Class 6 (continued).*

Sewing machines.  
Weighing machines.  
Machine tools.  
Mining machinery.  
Fire engines.

*Class 7.*

Agricultural and horticultural machinery, and parts of such machinery.

Such as—  
Ploughs.  
Drilling machines.  
Reaping machines.  
Thrashing machines.  
Churns.  
Cyder presses.  
Chaff cutters.

*Class 8.*

Philosophical instruments, scientific instruments, and apparatus for useful purposes. Instruments and apparatus for teaching.

Such as—  
Mathematical instruments.  
Gauges.  
Logs.  
Spectacles.  
Educational appliances.

*Class 9.*

Musical instruments.

*Class 10.*

Horological instruments.

*Class 11.*

Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals.

Such as—  
Bandages.  
Friction gloves.  
Lancets.  
Fleams.  
Enemas.

*Class 12.*

Cutlery and edge tools.

Such as—  
Knives.  
Forks.  
Scissors.  
Shears.  
Files.  
Saws.

*Class 13.*

Metal goods not included in other classes.

Such as—  
Anvils.  
Keys.  
Basins (metal).  
Needles.  
Hoes.  
Shovels.  
Corkscrews.

*Class 14.*

Goods of precious metals (including aluminium, nickel, Britannia metal, &c.) and jewellery, and imitations of such goods and jewellery.

Such as—  
Plate.  
Clock cases and pencil cases of such metals.  
Sheffield and other plated goods.  
Gilt and ormolu work.

*Class 15.*

Glass.

Such as—  
Window and plate glass.  
Painted glass.  
Glass mosaic.  
Glass beads.

*Class 16.*

Porcelain and earthenware.

Such as—  
China.  
Stoneware.  
Terra Cotta.  
Statuary porcelain.  
Tiles.  
Bricks.

*Class 17.*

Manufactures from mineral and other substances for building or decoration.

Such as—  
Cement.  
Plaster.  
Imitation marble.  
Asphalt.

*Class 18.*

Engineering, architectural, and building contrivances.

Such as—

Diving apparatus.  
Warming apparatus.  
Ventilating apparatus.  
Filtering apparatus.  
Lighting contrivances.  
Drainage contrivances.  
Electric and pneumatic bells.

*Class 19.*

Arms, ammunition, and stores not included in Class 20.

Such as—

Cannon.  
Small arms.  
Fowling pieces.  
Swords.  
Shot and other projectiles.  
Camp equipage.  
Equipments.

*Class 20.*

Explosive substances.

Such as—

Gunpowder.  
Gun-cotton.  
Dynamite.  
Fog-signals.  
Percussion caps.  
Fireworks.  
Cartridges.

*Class 21.*

Naval architectural contrivances and naval equipments not included in Classes 19 and 20.

Such as—

Boats.  
Anchors.  
Chain cables.  
Rigging.

*Class 22.*

Carriages.

Such as—

Railway carriages.  
Waggons.  
Railway trucks.  
Bicycles.  
Bath chairs.

*Class 23.*

Cotton yarn and thread.

Such as—

Sewing cotton on spools or  
reels.Sewing cotton not on spools  
or reels.

Dyed cotton yarns.

*Class 24.*

Cotton piece goods of all kinds.

Such as—

Cotton shirtings.

Long cloth.

*Class 25.*Cotton goods not included in  
Classes 23, 24, or 38.

Such as—

Cotton lace.

Cotton braids.

Cotton tapes.

*Class 26.*Linen and hemp yarn and  
thread.*Class 27.*

Linen and hemp piece goods.

*Class 28.*Linen and hemp goods not  
included in Classes 26, 27,  
and 50.*Class 29.*Jute yarns and tissues, and  
other articles made of jute  
not included in Class 50.*Class 30.*

Silk, spun, thrown, or sewing.

*Class 31.*

Silk piece goods.

*Class 32.*

Other silk goods not included  
in Classes 30 and 31.

*Class 33.*

Yarns of wool, worsted, or hair.

*Class 34.*

Cloths and stuffs of wool,  
worsted, or hair.

*Class 35.*

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

*Class 36.*

Carpets, floor-cloth, and oil-cloth.	Such as— Drugget. Mats and matting. Rugs.
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*Class 37.*

Leather, skins unwrought and wrought, and articles made of leather not included in other classes.	Such as— Saddlery. Harness. Whips. Portmanteaus. Furs.
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*Class 38.*

Articles of clothing.	Such as— Hats of all kinds. Caps and bonnets. Hosiery. Gloves. Boots and shoes. Other ready-made clothing.
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*Class 39.*

Paper (except paper-hangings),  
stationery, and book-binding.

Such as—  
Envelopes.  
Sealing wax.  
Pens (except gold pens).  
Ink.  
Playing cards.  
Blotting cases.  
Copying presses.

*Class 40.*

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

*Class 41.*

Furniture and upholstery.

Such as—  
Paper hangings.  
Papier mâché.  
Mirrors.  
Mattresses.

*Class 42.*

Substances used as food, or as  
ingredients in food.

Such as—  
Cereals.  
Pulses.  
Olive oil.  
Hops.  
Malt.  
Dried fruits.  
Tea.  
Sago.  
Salt.  
Sugar.  
Preserved meats.  
Confectionery.  
Oil cakes.  
Pickles.  
Vinegar.  
Beer clarifiers.



*Class 43.*

Fermented liquors and spirits.

Such as—

Beer.  
Cyder.  
Wine.  
Whiskey  
Liqueurs.

*Class 44.*

Mineral and aerated waters,  
natural and artificial, inclu-  
ding ginger-beer.

*Class 45.*

Tobacco, whether manufactured  
or unmanufactured.

*Class 46.*

Seeds for agricultural and hor-  
ticultural purposes.

*Class 47.*

Candles, common soap, deter-  
gents; illuminating, heating,  
or lubricating oils; matches;  
and starch, blue, and other  
preparations for laundry  
purposes.

Such as—

Washing powders.  
Benzine collas.

*Class 48.*

Perfumery (including toilet ar-  
ticles, preparations for the  
teeth and hair, and perfumed  
soap).

*Class 49.*

Games of all kinds and sporting  
articles not included in other  
classes.

Such as—

Billiard tables.  
Roller skates.  
Fishing nets and lines.  
Toys.

*Class 50.*

Miscellaneous, including—

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

Such as—  
Coopers' wares.

J. CHAMBERLAIN,  
President of the Board of Trade.

21st December, 1883.

RULES OF AUGUST, 1876, WITH RESPECT TO  
COTTON MARKS, NOW REPEALED.\*

*Cotton Goods.*

57. For the purpose of facilitating the granting of trade marks in respect of cotton goods in Classes 23, 24 and 25, there shall be established by the Commissioners of Patents (a), and subject to their control, an office at Manchester (b) for the exhibition of all devices, marks, headings, labels, tickets, letters, words, or figures, or combinations of letters, words, or figures used in the cotton trade, and in these Rules included under the expression "cotton marks" (c).

Establishment of office for exhibition of cotton trade marks at Manchester.

(a) Previous to the coming into operation of the Patents Act, 1883, on January 1st, 1884, the registration of trade marks was under the control of the Commissioners of Patents, now no longer in existence.

(b) This was opened and is still maintained at No. 48, Royal Exchange, Manchester. See Instructions, par. 38.

(c) All cotton marks are treated as exceptional, and advertised and registered by deposit. See *In re Robinson*, 29 W. R. 31.

58 (a). Every person who at the date of the passing of the Act used any cotton mark shall, if resident in the United Kingdom, on or before the first day of January one thousand eight hundred and seventy-seven, and if resident elsewhere, on or before the first day of March, one thousand eight hundred and seventy-seven, send to the Manchester office three representations of such cotton mark, in such form and with such a description as may be from time to time required by the Commissioners of Patents.

Representations of cotton marks to be sent by owners resident in the United Kingdom on or before Jan. 1, 1877; by owners resident abroad on or before March 1, 1877.

(a) This Rule was made on Dec. 1st, 1876, in substitution for the previous Rule 58, by which representations of old cotton marks were to be sent in at Manchester on or before Dec. 1st, 1876.

58a (a). Every person who at the date of the passing of the

Extended time

\* These rules, though repealed, are given here in order that the position of cotton marks dealt with by the late Manchester Committee of Experts may be comprehended. Where it is not otherwise stated, the rules were included in the set of Rules issued in August, 1876. Various additions were made from time to time, and in March, 1883, after

the Committee of Experts had completed their labours, an entirely new set was substituted (see p. 372, *infrd*). Those rules are now, in their turn, repealed, and the new rules now in force (*ante*, p. 341) place cotton marks on the same footing as other trade marks, and this would seem to be the case even with B list marks.

for sending representations of combination stamps for cotton piece goods.

Trade Marks Registration Act, 1875, used any "combination stamp" (*b*) for cotton piece goods, shall on or before the first day of February, one thousand eight hundred and seventy-nine, send to the Manchester Branch of the Trade Marks Registry Office four representations of such "combination stamp," in such form and with such a description as may be from time to time required by the Commissioners of Patents.

(*a*) This Rule was made on Dec. 28th, 1878.

(*b*) Combination stamps are combinations of several different trade marks which dealers in cotton goods habitually use on such goods, treating the combination as equivalent to a single trade mark. See *Robinson v. Finlay*, 9 Ch. D. 487, for an example of such a combination.

Committee of experts to be appointed, and to divide cotton marks into two classes.

59. A committee (*a*) of persons versed in the usages of the cotton trade shall be appointed by the Commissioners of Patents, consisting of such number of persons as may from time to time be determined by them; and it shall be the duty of such committee, on or before a time to be named by the Commissioners of Patents, to divide the cotton marks, representations of which have been so sent in to the Manchester office, into two classes, the first class consisting of such of the said cotton marks as are, in the opinion of the committee, trade marks within the meaning of the Act, and the second class consisting of such of the said cotton marks as are not, in the opinion of the committee, trade marks within the meaning of the Act (*b*).

(*a*) A list of the Committee of Experts appointed under this Rule will be found in the Instructions issued during the existence of the committee.

(*b*) The committee were instructed by the Commissioners of Patents in a letter, dated April 4th, 1877, to act on the following principles in dividing the cotton marks into two classes, viz.: (i) To decide only from the evidence before them whether, in their opinion, a mark belonged to the first or second class of cotton marks; (ii) In case of further information being required, the keeper of the Manchester office was authorised to obtain such information for the use of the committee; (iii) In case of a difference of opinion among the committee as to the nature of marks applied for, their decision should be given according to the opinion of the majority, the chairman presiding at each meeting having a casting vote; (iv) Single letters were not trade marks within the meaning of the Act; (v) In all cases where more than three persons applied for registration of the same mark for the same description of goods, such mark must be considered as a trade mark not within the meaning of the Act, and must consequently be placed in the second class. By supplementary directions, the committee were instructed that Rule (v) extended to marks so similar, or so nearly resembling each other, as to be substantially the same marks, or calculated to deceive, and was not to be confined to identical marks. And they were also instructed that, in dealing with individual cases, they should bring to bear upon them the knowledge which the members of the committee might have of the state of things in the trade, and to decide with reference to that knowledge, and not merely upon such evidence as might be formally brought before them in the individual cases. Also that borders of marks should not be treated as parts of the marks. See *In re Brook*, 26 W. R. 791.

Acting on the principles thus laid down, the committee divided the marks submitted to them into two classes, known as the A list and the B list, of which the former contained registrable, and the latter non-registrable, cotton marks.

By Rule 62, *infrd*, the marks placed in the B list were not to be registered except in pursuance of an order of the court, and in *In re Orr-Ewing & Co.*, 8 Ch. D. 794, the question was raised how far the decision of the committee was a binding decision. Hall, V.-C. decided that the marks there in question, which had been placed in the B list, were good and valid trade marks, and that they ought to be registered; but the Court of Appeal reversed his decision, holding that the decision of the committee should not be interfered with except under special circumstances, James, L. J. saying that the court should not interfere, unless satisfied that the committee had proceeded upon some wrong principle or in some improper manner. When, however, the case was brought before the House of Lords (4 App. Cas. 479), the decision of Hall, V.-C. was restored, with the modification that only the essential particulars of the marks were admitted to registration, and the Lord Chancellor (Lord Cairns) said that "the Rules appear to provide a rough but useful way of separating, by means of the technical knowledge and judgment of the committee, the cotton trade marks into two classes. The first class is to consist of those marks which the committee is of opinion are trade marks within the Act, and proprietors in this class are to have the benefit, arising from this opinion, of being able at once to apply to be registered in respect of those marks. But in doing this they must satisfy the Registrar that they are the proprietors, and comply with the conditions of registration as any other applicants would do. With regard to the second class, there is no decision pronounced against them, but the proprietors cannot apply for registration as a matter of course. They must come to the court, and it must be for the court to say whether the registrar shall proceed on their application to register, or not. In deciding this the court will have before it the circumstance that the opinion of the committee was adverse to the claim of a trade mark; but this would be an opinion only, and not a decision arrived at after hearing both sides, or rendered in any judicial proceeding." *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 483, and see per Lords O'Hagan and Blackburn. See also, *Orr-Ewing & Co. v. Johnston & Co.*, 13 Ch. D. 434; 7 App. Cas. 219; and the cases noted under Rule 62, *infrd*.

The function of the committee was solely to decide on the question of registrability or non-registrability, and where they had assumed to decide a question of title, it was held by Sir G. Jessel, M. R., that the registrar must proceed with the application, leaving it to the owners of other marks to oppose the registration; *Ex parte Ede Bros. & Co.*, 28 W. R. 436.

60. The said committee shall form a list of the cotton marks sent to the Manchester office in each of the aforesaid classes (a), and shall transmit such lists to the Commissioners of Patents, accompanied by two representations of each of the marks specified in the second class in such list.

Committee to form list of marks sent in to Manchester office.

The third representation of each of the marks in the second class in such list shall be retained for reference in the Manchester office.

(a) *i.e.*, the A list and the B list.

61. The Commissioners of Patents may from time to time add Marks may be added to list.

to the aforesaid list any cotton marks as they may think just, and such addition shall be deemed to be part of the original list.

Any person claiming to be the proprietor of a cotton mark in Class 1 may apply to be registered.

62. Any proprietor of a cotton mark not specified in the second class in such list may apply to be registered as proprietor of such cotton mark in manner and subject to the conditions in which he may apply to be registered as proprietor of any other trade mark (a), but it shall not be lawful for the registrar to register (b) any person as proprietor of any cotton mark in the second class of the aforesaid list except in pursuance of an order of the Court (c).

(a) After being passed by the committee, the marks in the A list had to be advertised, so that an opportunity for opposition might be afforded. In *In re Robinson*, 29 W. R. 31, an A list cotton mark was opposed, but without success.

(b) But he might grant a certificate of refusal to register, thus preserving any previous rights.

(c) For an order of the court to be obtained for the registration of a B list mark, such a case had to be made out as, in the opinion of the court, was sufficient to outweigh the opinion of the Committee of Experts: per Lord Blackburn in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 501. It is, however, believed that an application to the court by an owner of a B list mark has never been unsuccessful. Such applications were granted in *Ex parte Ede Bros & Co.*, 28 W. R. 436; *In re Dugdale*, 49 L. J. Ch. 303; *In re J. Hoyle & Sons, Limited*, (1) V.-C. H., May 8th, 1880; S. C. (2) Chitty, J., Nov. 30th, 1883; *In re Dickinson, Akroyd & Co.*, V.-C. H., July 8th, 1880; *In re Jones Bros. & Co.*, V.-C. H., July 10th, 1880; *In re Ward, Sturt & Sharp*, 50 L. J. Ch. 347; *In re Sykes*, 43 L. T. N. S. 626; *In re T. Ashton & Sons*, V.-C. H., Feb. 26th, 1881; *In re Framjee, Sands & Co.*, V.-C. B., Nov. 30th, 1883. In *In re Brook*, 26 W. R. 791, which was decided against the applicants on the authority of the decision of the Court of Appeal in *In re Orr-Ewing*, 8 Ch. D. 794, an arrangement satisfactory to the applicants was afterwards arrived at.

"The Court" being the Chancery Division (now the High Court of Justice), the order of the House of Lords was made an order of the Chancery Division in *In re Orr-Ewing* (2), 28 W. R. 412. The comptroller will now register a B list mark in a proper case, without requiring the applicant to go to the court.

Advertisement of cotton marks.

62a (a). As soon as may be after the receipt of an application, made as provided by the Trade Marks Rules, for the registration of a mark in Classes 23, 24, 25 aforesaid, or in any one or more of such classes, the registrar shall insert in the official paper an advertisement of such application, showing the name and address of the applicant, the class in which he applies, the number given to the mark by the registrar, the places in London and Manchester respectively where a specimen of such mark is deposited for exhibition, and distinguishing whether the mark has or has not been used prior to the thirteenth day of August, one thousand eight hundred and seventy-five.

(a) This and the following Rule were made on Feb. 26th, 1877, in substitution, so far as related to cotton marks, for Rules 13, 15 and 17 of the General Rules of August, 1876, as to advertisement.

62b (a). On the expiration of three weeks from the date of the first appearance of the advertisement of a mark in Classes 23, 24, 25, or in any one or more of such classes, in the official paper, the registrar may, if he is satisfied that the applicant is entitled to registration, register such mark in respect of the description of goods for which he may be entitled to be registered, and the applicant as the proprietor thereof, on payment of the prescribed fee.

Time of registration of cotton marks.

(a) See note to previous Rule.

63. A cotton mark shall not be registered except in manner and subject to the conditions prescribed by these Rules with respect to the registry of cotton marks.

Cotton mark not to be registered except in manner herein prescribed.

63a (a). The Rules numbered 57 to 63 as aforesaid do not apply to such trade marks in respect of cotton goods in Classes 23, 24, and 25 as are not cotton marks which were in use at the date of the passing of the Trade Marks Registration Act, 1875; and applications for the registration of trade marks in respect of goods in Classes 23, 24, or 25, and which marks were not cotton marks in use at the date of the passing of the Trade Marks Registration Act, 1875, shall be made in manner and subject to the conditions in and subject to which applications for trade marks other than cotton marks may be made in conformity with the Rules in that behalf for the time being in force.

Applications for registration of new trade marks for cotton goods (classes 23, 24, and 25) to be made in the same manner as for all other classes of goods.

Provided that where application is made for the registration as a trade mark in respect of any goods in Classes 23, 24, or 25 of any mark being a cotton mark contained in the second class of the list mentioned in Rule 59 aforesaid, such registration shall not take place except in pursuance of an order of the Court.

(a) This Rule was made on Oct. 21st, 1879.

RULES OF MARCH, 1883, WITH RESPECT TO COTTON  
MARKS, NOW REPEALED.\*

Establishment  
of office for  
exhibition of  
cotton trade  
marks at  
Manchester.

Marks may  
be added to  
the first and  
second class  
lists of cotton  
marks.

Any person  
claiming to  
be the pro-  
prietor of a  
cotton mark  
in first class  
may apply to  
be registered.

Advertise-  
ment of cotton  
marks.

Time of  
registration of  
cotton marks.

57. [This Rule is identical with Rule 57, *suprà*.]

58 (a). The Commissioners of Patents may from time to time add to the first and second class lists of cotton marks formed by the late Manchester Committee of Experts any cotton marks as they may think just, and such addition shall be deemed to be part of the original lists.

(a) This is taken from the old rule 61.

59 (a). Any proprietor of a cotton mark in the first class may apply to be registered as proprietor of such cotton mark in manner and subject to the conditions in which he may apply to be registered as proprietor of any other trade mark, but it shall not be lawful for the registrar to register any person as proprietor of any cotton mark in the second class aforesaid, except in pursuance of an order of the Court.

(a) This is taken from the old rule 62.

60. [This Rule is identical with Rule 62a, *suprà*.]

61. [This Rule is identical with Rule 62b, *suprà*.]

\* See note, p. 367, *suprà*.



## INSTRUCTIONS TO PERSONS WHO WISH TO REGISTER TRADE MARKS.

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### PRELIMINARY.

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

They may be made by post, or left at the Patent Office, Trade Marks Branch, 25, Southampton Buildings, Chancery Lane, London, W.C.

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

*List of Places at which Stamped Forms under the Patents, Designs, and Trade Marks Act, 1883, may be obtained.*

(a.) At the Inland Revenue Office, Royal Courts of Justice, London.

(b.) At the following Post Offices in London:—

The General Post Office, London, E.C.

District Post Office, 226, Commercial Road, E.

” 9, Blackman Street, Borough, S.E.

” Charing Cross, W.C.

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

Post Office, 12, Parliament Street, S.W.

(c.) At the chief Post Office of—

## ENGLAND AND WALES.

Accrington.	Darlaston.	Lincoln.	St. Helen's.
Altrincham.	Derby.	Liverpool.	Scarborough.
Ashton - under - Lyne.	Dewsbury.	Macclesfield.	Sedgley.
Barnsley.	Doncaster.	Manchester.	Sheffield.
Barrow - in - Fur- ness.	Dorchester.	Middlesborough.	Southampton.
Bedford.	Driffield.	Nantwich.	Stafford.
Beverley.	Droitwich.	Newcastle.	Stalybridge.
Birkenhead.	Dudley.	Newport (Mon.).	Stockport.
Birmingham.	Durham.	Northallerton.	Stoke-on-Trent.
Blackburn.	Exeter.	Northampton.	Stourbridge.
Bolton.	Gateshead.	Nottingham.	Stourport.
Bradford.	Goole.	Nuneaton.	Sunderland.
Brighton.	Greenwich.	Oldbury.	Swansea.
Bristol.	Guildford.	Oldham.	Tamworth.
Bromsgrove.	Halifax.	Patrinton.	Truro.
Burnley.	Hartlepool.	Plymouth.	Tunstall.
Burslem.	Huddersfield.	Pontefract.	Wakefield.
Burton-on-Trent.	Hull.	Portsmouth.	Walsall.
Bury.	Ipswich.	Prescot.	Warrington.
Cambridge.	Keighley.	Preston.	Wednesbury.
Carlisle.	Kendal.	Reading.	West Bromwich.
Chatham.	Kidderminster.	Redditch.	Whitby.
Chester.	Knaresbro'.	Richmond (Yorks.).	Widnes.
Clitheroe.	Knutsford.	Ripon.	Wigan.
Congleton.	Lancaster.	Rochdale.	Wolverhampton.
Coventry.	Leamington.	Rotherham.	Wolverton.
Crewe.	Leeds.	Rugby.	Woolwich.
	Leicester.	Salford.	York.
	Lichfield.		

## SCOTLAND.

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

## IRELAND.

Belfast.	Dublin.	Galway.
Cork.	Dundalk.	Wexford.

Any of the forms may also be ordered from the Postmaster of *any Money Order Office* in the United Kingdom.

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

## TRADE MARKS.

Letter.	Title of Form.	Fee.		
		£	s.	d.
F	Application for registration of trade mark . . . . .	0	5	0
G	Additional representation form . . . . .	No stamp		
H	Appeal to Board of Trade on refusal of a comptroller to register a trade mark . . . . .	1	0	0
I	Registration fee . . . . .	1	0	0
J	Notice of opposition to application for registration . . . . .	1	0	0
K	Request to enter name of subsequent proprietor, with declaration in support thereof . . . . .	1	0	0
L	Request for certificate of refusal to register a trade mark . . . . .	1	0	0
M	Notice of application for alteration of address . . . . .	0	5	0
N	Notice of application for alteration or rectification of register . . . . .	0	10	0
O	Application to cancel entry of mark on register . . . . .	0	5	0
Q	Request for correction of clerical error . . . . .	0	5	0
R	Request for certificate of registration for use abroad . . . . .	0	5	0
S	Request for certificate of registration for use in legal proceedings . . . . .	0	10	0
T	Application for settlement of a special case . . . . .	2	0	0
T 1	Request for general certificate of comptroller . . . . .	0	5	0
V	Request for copy of official notification . . . . .	0	2	0
W	Appeal from Cutlers' Company at Sheffield to comptroller . . . . .	1	0	0

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

## SALE OF OFFICIAL PUBLICATIONS.

4. The Patents, Designs, and Trade Marks Act, 1883, and the Rules thereunder in relation to the registration of trade marks, should be carefully studied. Copies of the Act and the Trade Marks Rules can be had on payment of 2s. 2d. for each copy, at 38, Cursitor Street, Chancery Lane, London, E.C.

Post Office Orders sent in payment for the Act and Rules should be for the sum of 2s. 2d., made payable to H. Reader Lack, at the Chancery Lane Post Office.

5. The Act and the Trade Marks Rules may also be obtained for the above sum from any of the following publishers:—

Knight & Co., 90, Fleet Street.

Stevens & Sons, 119, Chancery Lane.

E. Stanford, 55, Charing Cross.

Shaw & Sons, Fetter Lane.

Butterworths, 7, Fleet Street.

G. Downing, 8, Quality Court, Chancery Lane.

Triibner & Co., 57 and 59, Ludgate Hill.

Waterlow & Sons, Limited, 25, 26 and 27, Great Winchester Street; 95 and 96, London Wall; Finsbury Stationery Works; and 49, Parliament Street.

J. M. Johnson & Sons, Limited, 1, Castle Street, Holborn.

Waterlow Bros. & Layton, 23, 24 and 25, Birchin Lane; and 28, 29 and 30 Lime Street.

Palmer & Howe, 73, 75 and 77, Princess Street, Manchester.

A. Thom & Co., 87 and 88, Abbey Street, Dublin.

A. and C. Black, Edinburgh.

Copies will also be sent by post by any of the above publishers on a prepaid application, containing the name and address of the sender, and accompanied by a Post Office Order for the amount due in respect of the copies required, together with  $1\frac{1}{2}d.$  postage, for each copy of the Act and the Rules.

6. Copies of the *Trade Marks Journal* may be obtained at the price of 1s. a number from the Superintendent of the Sale Branch of the Patent Office, 38, Cursitor Street, Chancery Lane, London, E.C.

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#### DEFINITION OF A TRADE MARK.

7. The definition of a trade mark (not used prior to the 13th August, 1875) is given in the 64th section of the Patents, Designs, and Trade Marks Act, 1883, as follows:—

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

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

“A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

“A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.”

All new marks, therefore, which it is desired to register *must include one or more of the above essential particulars.*

The 64th section goes on—“There may be added to any one or more of these particulars any letters, words, or figures, or combination of letters, words or figures, or any of them.”

In addition to the above—

“Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and

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

A person wishing to adopt a trade mark should, before engraving a block and circulating impressions of the mark among his customers, make a search or a formal application at the Trade Marks Branch of the Patent Office, with the view of ascertaining whether his proposed mark is already registered, or whether, from its being calculated to deceive by a resemblance to other marks already on record, it would be refused registration under the 72nd section of the Patents, Designs, and Trade Marks Act, 1883.

The fee for making a search amongst the classified representations of trade marks is 1s. for each quarter of an hour. The fee for a formal application is 5s.

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

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#### APPLICATIONS FOR REGISTRATION.

8. Applications sent by post should be addressed to—

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

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

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

(a.) An application form (Form F. in the Second Schedule to the Trade Marks Rules, 1883), giving certain particulars (specified in the form), and bearing an impressed stamp of 5s.

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

(b.) Certain additional representations of the trade mark, mounted on forms (Form G.).

10. A *separate* application form is required for *each* class.

11. If the mark be the property of a firm, it should be signed by a member of the firm, who should add after his signature

“a member of the firm;” if of a company, by the secretary or other principal officer, who should add after his signature and designation, “for the company.”

12. Applications may be made by agents in the names of and on behalf of the owners of trade marks. The agent must be duly authorised by the owner or owners; the necessary authority should be signed by the owner or owners.

Applications made by agents should have after the name of the agent the description “Agent.”

13. A representation of the trade mark should be placed in the centre of the application form.

14. When an application is made for a trade mark used on any metal goods other than cutlery, edge tools, and raw steel, it should be stated in the application form of what metal or metals the goods are made. See section 81 of the Act as to Sheffield marks.

15. When the mark consists of or includes words printed in other than Roman characters, there should be given at the back of or at the foot of the application form, and of each of the additional representations, a translation of such words, signed by the applicant or his agent.

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

#### *Additional Representations of Mark.*

16. Each of the additional representations should be placed in the centre of a separate form (Form G.).

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

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

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

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

### SERIES OF TRADE MARKS.

18. By section 66 of the Patents, Designs, and Trade Marks Act, 1883, the comptroller is empowered to register under one registration a series of trade marks which, whilst they resemble each other in the material particulars, differ from each other in respect of the statements of the goods for which they are used, of the statements of numbers, of the statements of price, of the statements of quality, or of the statements of names of places. When an application is made for such a series, a representation of each of the marks included in the series must be affixed to the Form F., and also to each of the Forms G.

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### COMMON OR OPEN MARKS.

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

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

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

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### CLASSIFICATION OF GOODS.

20. A Guide to the Classification of Goods under the Trade Marks Rules, 1883, can be obtained on application at the Patent Office, Trade Marks Branch, and should be asked for if the applicant feels any difficulty in determining to which of the classes set out in the Third Schedule to the Rules the goods for which he uses his mark belong.

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### ADVERTISEMENT IN THE TRADE MARKS JOURNAL.

21. A trade mark cannot in any case be entered upon the register until two months after its advertisement in the official paper.

22. A wood-block or electrotype must be furnished for each mark in each class claimed (except in the case of Classes 23, 24, and 25, for which no blocks or electrotypes are required), but no block or electrotype should be forwarded until a formal demand for it is sent by the comptroller.

23. In the case of a series of trade marks differing only in respect of the particulars mentioned in section 66 of the Patents, Designs, and Trade Marks Act, 1883, a wood-block or electrotype must be furnished for each mark in the series for each class claimed.

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

25. The largest space available for the insertion of any single block or electrotype is eight and a-half inches broad by ten inches deep.

When a block or electrotype *exceeds two inches in depth*, a charge for additional space is made, at the rate of 2s. for every inch or part of an inch beyond the two inches.

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

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

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

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#### RESTRICTIONS ON REGISTRATION.

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

30. The royal arms, or arms so nearly resembling them as to be calculated to deceive, and the words "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is Forgery," "Patent," "Patented," will not be registered under the Patents, Designs, and Trade Marks Act, 1883, and should not, therefore, appear upon the representations of trade marks forming part of an application.



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

Representations of Her Majesty the Queen, or of any member of the royal family.

Representations of the royal crown.

National arms or flags.

Prize or exhibition medals.

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

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#### FORMS OF COUNTER-STATEMENT AND BOND.

33. The following is a form of counter-statement.

[For this form see Appendix B., *infra*.]

The following is a form of bond which the comptroller is able to accept from persons opposing applications, and who have been required to give security for costs:—

[For this form see Appendix B., *infra*.]

34. Before he is required to bring an opposition matter before the Court under Rule 29, the applicant is afforded an opportunity of objecting, if he think fit, to the solvency of the security for the costs which may be awarded in respect of the opposition.

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#### FEEES.

35. See the First Schedule to the Trade Marks Rules, 1883, and the list of forms, par. 3 of these Instructions.

36. *An application for the registration of a trade mark will not be entered by the comptroller unless it be accompanied by the proper fees in impressed stamps.*

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#### CUTLERS' COMPANY.

37. By section 81, sub-section 3, of the Patents, Designs, and Trade Marks Act, 1883, application for the registration of trade marks used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, shall, if made by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company.

See Rules 53 to 56, and par. 14 of these Instructions.

Applications made to the Cutlers' Company in pursuance of section 81 of the Patents, Designs, and Trade Marks Act, 1883, should be made on Form F., the address in the left-hand corner to be, "To the Cutlers' Company, Sheffield," instead of "To the Comptroller," and should be left at, or sent by post to, the Cutlers Hall, Sheffield.

Each application should be accompanied by an unstamped copy on foolscap paper. See Rule 53.

Applications sent by post should be addressed—

CHAS. MACRO WILSON, Esq.,  
The Law Clerk,  
The Cutlers' Hall,  
Sheffield.

---

#### MANCHESTER OFFICE.

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

---

#### CERTIFICATES.

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

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

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

The form should be accompanied by two unmounted copies of each mark for which a certificate is required.

41. In every case where a certificate is required in respect of a cotton mark, or in respect of any trade mark of which the

representations or specimens forming part of the application for registration are *coloured*, two unmounted copies of the mark must be supplied, agreeing *in every respect* with the representations forming part of the application for registration. Special attention should be paid to this requirement, as the certificate cannot in any such case be prepared until these unmounted copies are received by the comptroller.

---

#### REGISTRATION OF SUBSEQUENT PROPRIETORS OF REGISTERED TRADE MARKS.

42. The request and declaration to be made by a subsequent proprietor on application for the registration in his name of a registered trade mark must be made on Form K. (see par. 3).

H. READER LACK,  
Comptroller.

Patent Office, Trade Marks Branch,  
London.  
January, 1884.

---

N.B.—The Rules and Instructions under the Trade Marks Registration Acts, 1875–7, were frequently added to and altered, and it will be advisable for intending applicants under the Patents Act, 1883, to take care to proceed in accordance with the Rules and Instructions for the time being in force.

**APPENDIX B.**  
**FORMS AND PRECEDENTS.**

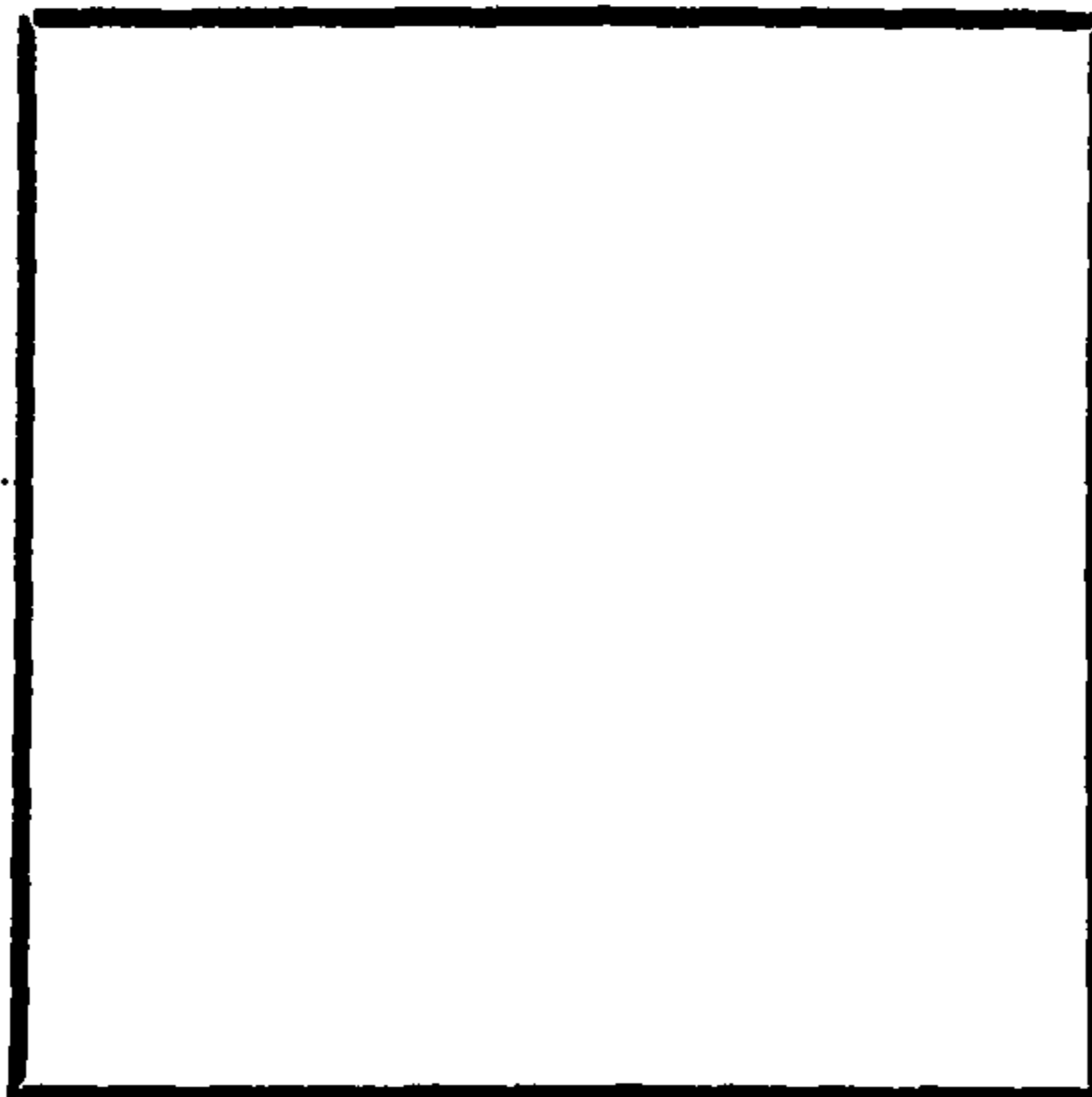
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**PART I.**  
**FORMS PRESCRIBED BY THE SECOND SCHEDULE TO  
THE RULES.**

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

## F.

## APPLICATION FOR REGISTRATION OF TRADE MARK.

TRADE  
MARKS.

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

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

You are hereby requested to register the accompanying trade mark in Class \_\_\_\_\_, in respect of (a) \_\_\_\_\_, in the name of (b) \_\_\_\_\_, who claims to be the proprietor thereof (c).

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1883.

**NOTE.**—If the trade mark has been in use in respect of the goods since before August 13, 1875, state length of such user.

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

(b) Here insert legibly the full name, address, and business of the individual, firm, or company. In the case of an individual, add trading style (if any).

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

(d) To be signed by the applicant; or, in the case of a firm, by a partner, adding "A member of the firm," or, in the case of a company, by the secretary or other principal officer, adding "For the Company." Or, in any case, an agent may sign, adding "Agent."



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

G.

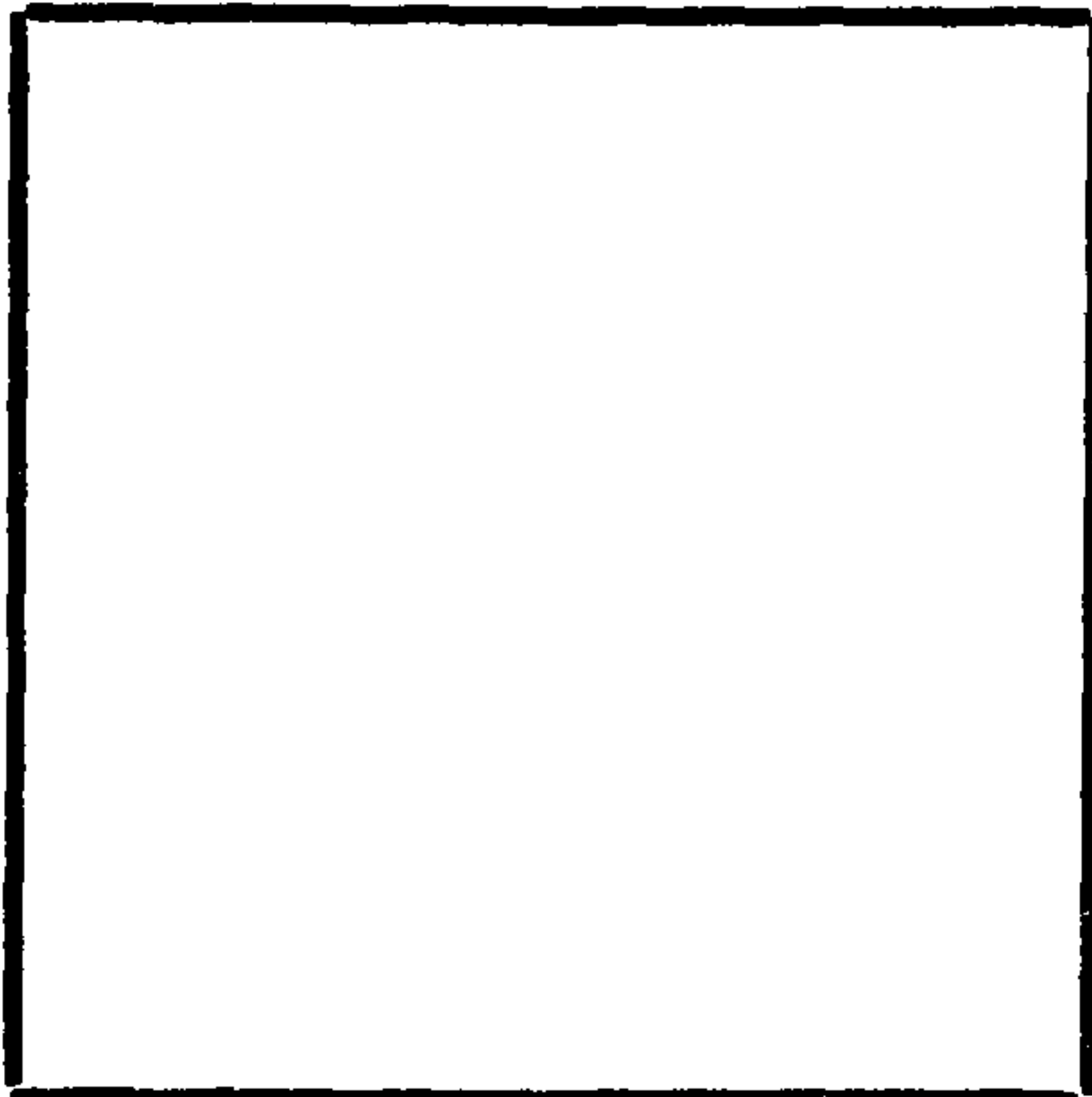
---

ADDITIONAL REPRESENTATION OF TRADE MARK TO ACCOMPANY  
APPLICATION FOR REGISTRATION.

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

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

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



Two of these ADDITIONAL REPRESENTATIONS of the Trade Mark must accompany *each* form of application.

In the case of a trade mark claimed in one of the CLASSES 23 to 35, THREE of these ADDITIONAL REPRESENTATIONS of the mark must accompany the form of application.

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

H.

## FORM OF APPEAL TO BOARD OF TRADE ON REFUSAL OF COMPTROLLER TO REGISTER A TRADE MARK.

TRADE  
MARKS.

SIR,

I HEREBY give notice of my intention to appeal against your decision upon my application to register a trade mark No.                      in Class                      for and I beg to submit my case (a) for the decision of the Board of Trade.

I am, Sir,  
Your obedient Servant,

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

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

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

I.

## FEE FOR REGISTRATION OF A TRADE MARK.

TRADE  
MARKS.

SIR,

IN reply to your request I hereby transmit the prescribed fee for the registration of the trade mark, No.                      in Class                      .

I am,  
Sir,  
Your obedient Servant,

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

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

J.

## NOTICE OF OPPOSITION TO APPLICATION FOR REGISTRATION.

[To be accompanied by an unstamped duplicate.]

In the matter of an application,  
 No.                    by  
 of

SIR,

NOTICE is hereby given that I  
 of  
 oppose the registration of the trade mark advertised under the  
 above number for Class                    in the *Trade Marks Journal* of  
 the                    day of                    188    , No.                    , page                    .

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

(b)

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

(a) See page 406, *infra*, for forms of grounds of opposition.

(b) To be dated and signed at the end by the opponent or his solicitor.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

K.

REQUEST TO ENTER NAME OF SUBSEQUENT PROPRIETOR OF TRADE MARK UPON THE REGISTER, WITH DECLARATION IN SUPPORT THEREOF.



I, (a)  
 hereby request that you will enter (b) name (c) in the  
 register of trade marks as proprietor of the trade mark  
 No. in Class

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

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

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

(g)  
 Declared at  
 this day of 188 }  
 Before me,  
 (h)

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

- (a) Or We. Here insert name, full address, and description.
- (b) My or our.
- (c) Or names.
- (d) I am, or We are.
- (e) Here state whether trade mark transmitted by death, marriage, bank-  
 ruptcy, or other operation of law, and if entitled by assignment, state the  
 particulars thereof, as, e.g., "by deed dated the day of , 188 , made  
 between So-and-So of the one part."
- (f) This paragraph is not required when the declaration is made out of  
 the United Kingdom.
- (g) To be signed here by the person making the declaration.
- (h) Signature and title of the authority before whom the declaration is  
 made.

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

L.

## REQUEST FOR CERTIFICATE OF REFUSAL TO REGISTER A TRADE MARK IN USE BEFORE 13TH AUGUST, 1875.

In the matter of an application  
for registration of an old trade  
mark, No.  
in Class .

SIR,  
I,

of  
the applicant in the above matter, hereby request you to furnish  
me with your Certificate of Refusal to register the said trade  
mark.

(a)  
Dated this                      day of                      188 .

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

(a) Signature of applicant.

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

M.

## NOTICE OF APPLICATION FOR ALTERATION OF ADDRESS ON REGISTER OF TRADE MARKS.

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

SIR,

NOTICE is hereby given that I  
of

the registered proprietor of the trade mark numbered as above  
desire that my address on the register of trade marks be altered  
to

Dated this                      day of                      , 188 .

(a)

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

(a) Signature of proprietor.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

N.

NOTICE OF ORDER FOR ALTERATION OR RECTIFICATION OF REGISTER OF TRADE MARKS.

In the matter of the trade mark,  
No. \_\_\_\_\_, registered  
in class \_\_\_\_\_ in the name of \_\_\_\_\_

SIR,

NOTICE is hereby given that by an order of the Court made on the \_\_\_\_\_ day of \_\_\_\_\_ 188\_\_\_\_, it was directed that the entry on the register of trade marks in respect of the trade mark numbered as above should be rectified in the manner therein specified.

An office copy of the order of the court is enclosed herewith.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 188\_\_\_\_.

(a)

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

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

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

O.

FORM OF APPLICATION BY PROPRIETOR OF REGISTERED TRADE MARK TO CANCEL ENTRY ON REGISTER.

Trade mark No. \_\_\_\_\_ class \_\_\_\_\_ advertised in "Trade  
Marks Journal," No. \_\_\_\_\_, page \_\_\_\_\_  
Name of registered proprietor or firm \_\_\_\_\_  
Place of business \_\_\_\_\_

I, the undersigned,  
of \_\_\_\_\_

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

of \_\_\_\_\_

on behalf of my said

firm]

apply that the entry upon the register of the trade marks in  
Class \_\_\_\_\_ of the trade mark No. \_\_\_\_\_ may be cancelled.

The \_\_\_\_\_ day of \_\_\_\_\_, 188\_\_\_\_.

(Signed)

This is the statement marked O referred to in the declaration  
of \_\_\_\_\_ made

before me the \_\_\_\_\_ of \_\_\_\_\_, 188\_\_\_\_.



## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

P.

## FORM OF DECLARATION IN SUPPORT OF APPLICATION FOR CANCELLATION OF TRADE MARK BY OWNER.

I, \_\_\_\_\_ of \_\_\_\_\_; [or  
 I \_\_\_\_\_ a member of the firm of \_\_\_\_\_  
 of \_\_\_\_\_]

do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows:—

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

(2) I am the person whose name appears on the register of trade marks as the proprietor of the trade mark referred to in the said application marked with the letter O.

[or my said firm is the firm whose name appears on the register of trade marks as the proprietor of the trade mark referred to in the said application marked with the letter O.]

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

(Signed)

Declared at  
 this \_\_\_\_\_ day of \_\_\_\_\_  
 , 188\_\_\_\_  
 before me,

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

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

Q.

FORM OF REQUEST FOR CORRECTION OF CLERICAL ERROR IN  
REGARD TO A TRADE MARK.

SIR,  
I HEREBY REQUEST that

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

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

R.

REQUEST FOR CERTIFICATE OF REGISTRATION OF TRADE MARK  
FOR USE IN OBTAINING REGISTRATION ABROAD.

In the matter of the trade mark,  
No. \_\_\_\_\_, registered in  
Class \_\_\_\_\_ in the name of

SIR,

I

of  
the registered proprietor of the above trade mark hereby request  
you to furnish me with your certificate of registration for use in  
obtaining registration of the same in (a)

(b)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 188 .

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

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

TRADE  
MARKS.TRADE  
MARKS.



PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

S.

REQUEST FOR CERTIFICATE OF REGISTRATION OF TRADE MARK  
FOR USE IN LEGAL PROCEEDINGS.

In the matter of the trade mark,  
No. \_\_\_\_\_, registered in  
Class \_\_\_\_\_ in the name of

SIR,

I

of \_\_\_\_\_,  
the registered proprietor of the above trade mark hereby request  
you to furnish me with your certificate of registration for use in  
the following legal proceedings (a).

(b)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 188 .

To the Comptroller,

Patent Office: Trade Marks Branch,  
25, Southampton Buildings,  
London.

(a) Here state exact title of legal proceedings.

(b) Signature.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

T.

APPLICATION FOR SETTLEMENT OF A SPECIAL CASE ON APPLI-  
CATION TO REGISTER A TRADE MARK.

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

SIR,

NOTICE is hereby given that I,  
of \_\_\_\_\_, and I,  
of \_\_\_\_\_

are unable to agree upon the facts on which the opinion of the  
Court is to be taken, and that we request you to fix a day on  
which we may attend before you and obtain your finding on the  
matters of fact to be submitted to the Court as settled.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 188 .

(a)  
(a)

To the Comptroller,

Patent Office: Trade Marks Branch,  
25, Southampton Buildings,  
London:

(a) To be signed by both parties.



## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

T<sup>1</sup>.REQUEST FOR CERTIFICATE OF COMPTROLLER AS TO APPLICATION  
FOR REGISTRATION OF A TRADE MARK.In the matter of the trade mark,  
No. , in Class .SIR,  
I,of  
hereby request you to furnish me with your certificate that (a)Dated this (b)  
day of , 188 .*To the Comptroller,  
Patent Office: Trade Marks Branch,  
25, Southampton Buildings,  
London.*N.B.—This form has been substituted for Form U in the  
Second Schedule.(a) Here set out the particulars which the comptroller is requested to  
certify.

(b) Signature.

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

V.

REQUEST FOR COPY OF OFFICIAL NOTIFICATION OF REGISTRA-  
TION OF TRADE MARK.In the matter of the trade mark,  
No. , registered  
in Class .SIR,  
Iof  
the registered proprietor of the trade mark above named, hereby  
request that you will furnish me with a copy of the official noti-  
fication of the registration of the same.

(a)

Dated this day of , 188

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

(a) Signature.

TRADE  
MARKS.TRADE  
MARKS.

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

W.

FORM OF APPEAL FROM CUTLERS' COMPANY AT SHEFFIELD TO  
COMPTROLLER.*[To be accompanied by an unstamped duplicate.]*

SIR,

I hereby give notice of appeal against the decision of the  
Cutlers' Company of Sheffield in regard to my application for  
registration of a trade mark, No. \_\_\_\_\_, in Class \_\_\_\_\_,  
for \_\_\_\_\_,  
and I beg to submit my case (a) for your decision accordingly.  
(b)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 188 .

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

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

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TRADE MARKS.
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## FORMS SUGGESTED BY THE COMPTROLLER.

[See Instructions, par. 33.]

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a.

## FORM OF COUNTER-STATEMENT.

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

## TRADE MARKS.

In the matter of an application  
No. \_\_\_\_\_, and of the oppo-  
sition thereto No. \_\_\_\_\_

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

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

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

(a) See page 409, *infra*, for forms of grounds of counter-statement.

---

b.

## FORM OF BOND.

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

## TRADE MARKS.

In the matter of an application  
No. \_\_\_\_\_, and of the opposi-  
tion thereto No. \_\_\_\_\_

Know all men by these presents that we \_\_\_\_\_ of  
\_\_\_\_\_, and \_\_\_\_\_ of \_\_\_\_\_,  
are jointly and severally held and firmly bound to Henry Reader  
Lack, the Comptroller-General of patents, designs, and trade  
marks, in the penal sum of \_\_\_\_\_ pounds of

good and lawful money of Great Britain, to be paid to the said Henry Reader Lack or to other the Comptroller-General of patents, designs, and trade marks for the time being, for which payment to be well and faithfully made we bind ourselves and each of us our and each of our heirs, executors, and administrators firmly by these presents sealed with our seals.

Dated this                      day of                      , 18                      .

Whereas pursuant to the provisions of the Patents, Designs, and Trade Marks Act, 1883, and of the Trade Marks Rules, 1883, an application (No.                      ) has been made by                      , of                      , to the Comptroller-General of patents, designs, and trade marks, for the registration of a certain trade mark. And whereas the above-bounden                      have delivered a notice of opposition to such registration, and the said                      have sent to the said Comptroller General a counter-statement of the grounds on which they rely for their application. And whereas the said Comptroller-General, pursuant to the terms of the said Act, hath required the said

                    to enter into the above-written obligation (subject to the condition hereinafter contained) as security for such costs as may be awarded in respect of such opposition.

Now the condition of the above-written obligation is such that if the said                      or either of them, their or either of their heirs, executors, or administrators, do and shall well and truly pay or cause to be paid to

                    all such costs as the High Court of Justice shall think fit to award to the said                      in respect of the said opposition, then the above written obligation is to be void or else to remain in full force and virtue.

Signed sealed and delivered by the above-bounden                      and                      in the presence of                      .

---

FORMS IN USE IN THE PATENT OFFICE, TRADE MARKS  
BRANCH (SELECTED.)

c.

FORM OF RECEIPT OF AN APPLICATION.

Patent Office: Trade Marks Branch,  
London.

Received this                      day of                      , 188    , an appli-  
cation for the registration of                      trade mark  
in the name of

*Comptroller.*

---

d.

FORM OF NOTIFICATION OF REGISTRATION.

Patent Office: Trade Marks Branch,  
London,                      188    .

Sir,

I have to inform you, pursuant to Rule 33 of the Rules under the Patents, Designs, and Trade Marks Act, 1883, that the trade mark in your application No.                      , which was duly advertised in No.                      of the *Trade Marks Journal*, has been registered in your name in respect of the goods specified by you under Class                      .

I am,  
Sir,  
Your obedient Ser.

*Comptroller.*

---

e.

## FORM OF ADVERTISEMENT.

## FORM FOR "TRADE MARKS JOURNAL."

Name, Address, and Calling of Applicant. 1.	Class of Goods. 2.	Description of Goods. 3.	Number. 4.	Date of Application received. 5.	If Mark used prior to 18th August, 1875, state how long used. 6.
			N.B.—For No.  in your application.		

*N.B.*—This Paper is to be sent with the Block or Electrotype of the Mark relating to the above particulars, *prepaid*, to

The Comptroller,  
Patent Office: Trade Marks Branch,  
25, Southampton Buildings,  
London.

f.

FORM OF NOTICE TO APPLICANT TO BRING OPPOSED APPLICATION  
BEFORE THE COURT.

Any further communication on this  
subject should be addressed to—  
*The Comptroller,*  
*Patent Office: Trade Marks Branch,*  
*25, Southampton Buildings,*  
*London.*

and the following number should be  
quoted in the communication :—  
Opp.

Patent Office: Trade Marks Branch,  
25, Southampton Buildings,  
London.

18 .

*Opp.**to App.*

SIR,

I have to inform you that this matter must now be submitted for the determination of the Chancery Division of Her Majesty's High Court of Justice, and that you should, within one month from this date, take the necessary steps, under Rule 29 of the Trade Marks Rules, 1883, to bring the matter before the said Division, and send me notice to that effect; and if you do not send me such notice within such time as aforesaid, you will be deemed to have abandoned your application.

I am,

Sir,

Your obedient Servant,

*Comptroller.*

To A. B.,  
c./o. C. D.

g.

FORM OF CERTIFICATE FOR USE IN LEGAL PROCEEDINGS.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

*Certificate of Registration.*

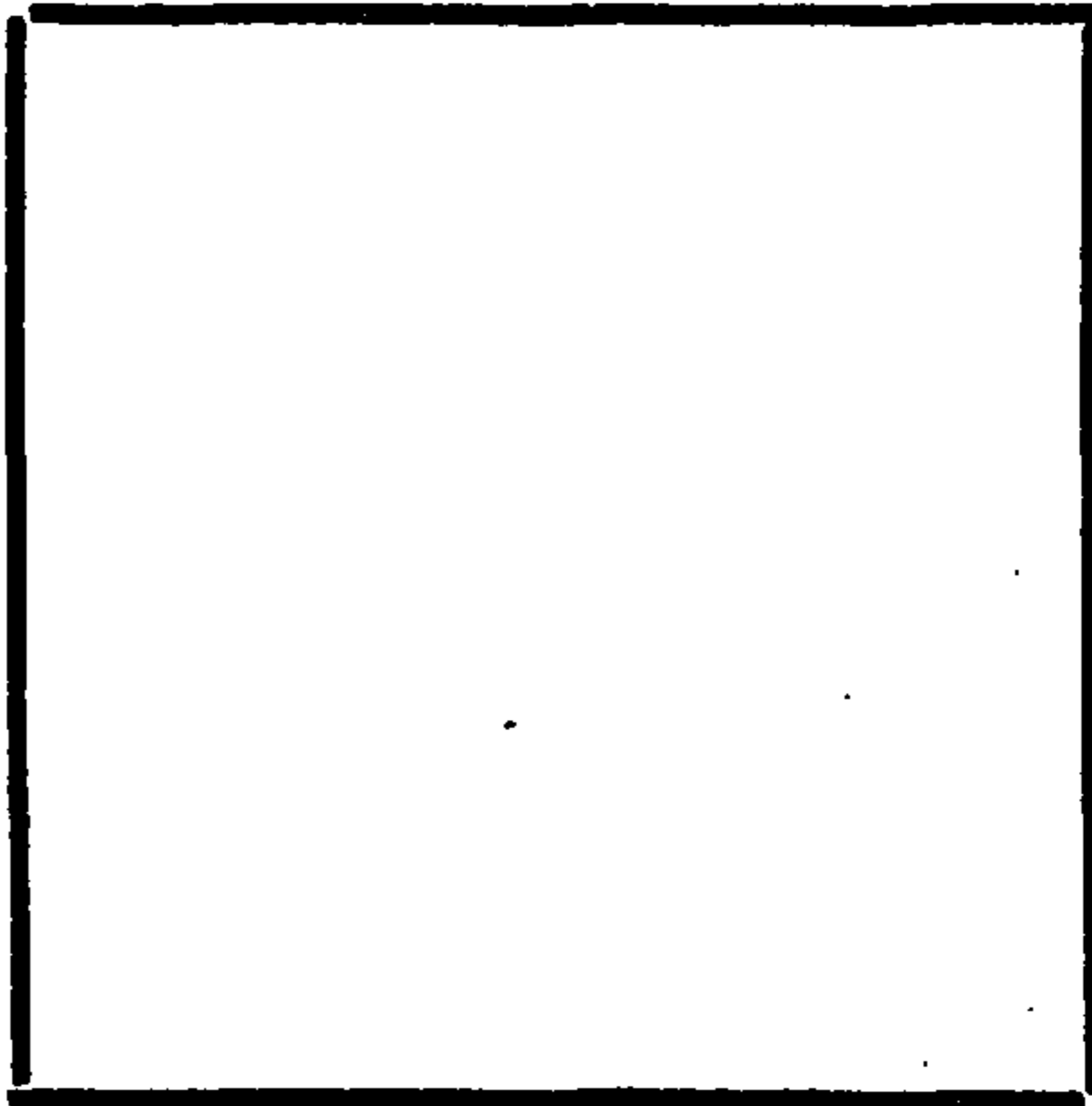
No.

In the matter of Legal Proceedings  
in the High Court of Justice,  
Chancery Division.Between *A. B.*, Plaintiff,  
and  
*C. D.*, Defendant.

I, HENRY READER LACK, Comptroller-General of Patents, Designs, and Trade Marks, hereby certify that *A. B.*, of \_\_\_\_\_, is entered on the register of trade marks as proprietor of the trade mark No. \_\_\_\_\_ in Class \_\_\_\_\_ in respect of \_\_\_\_\_, for the registration of which mark application was made on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

A representation of the said trade mark is shown hereunder.

## REPRESENTATION OF TRADE MARK.

Witness my hand and seal this \_\_\_\_\_ day of  
188 \_\_\_\_\_.*Comptroller-General.*

*Patent Office: Trade Marks Branch,  
25, Southampton Buildings,  
London.*



i.

## FORM OF GENERAL CERTIFICATE.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

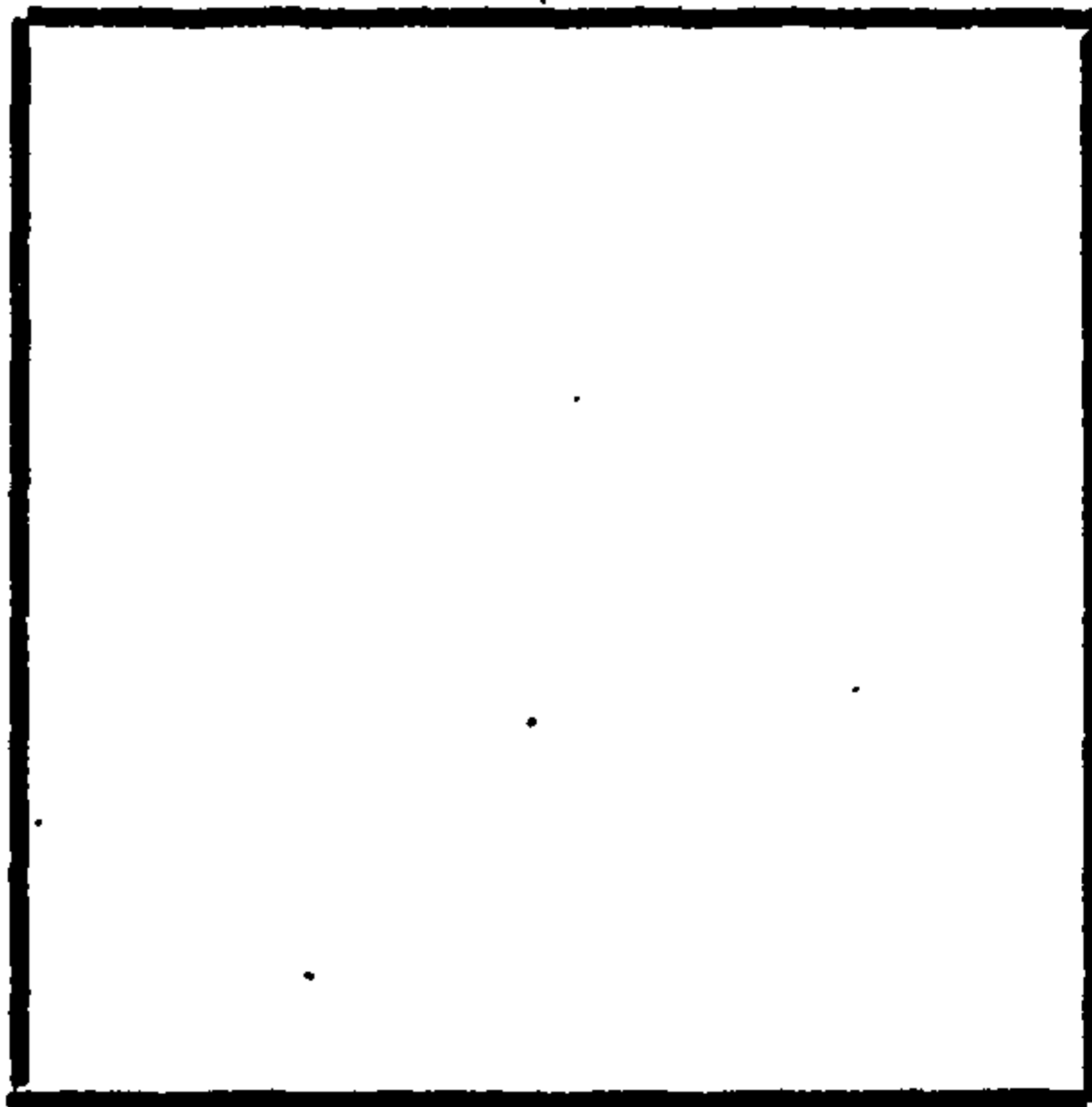
*General Certificate.*

In the matter of

No.

I, HENRY READER LACK, Comptroller-General of Patents,  
Designs, and Trade Marks, hereby certify that

## REPRESENTATION OF TRADE MARK:

Witness my hand and seal this                      day of  
188 .*Comptroller-General.**Patent Office: Trade Marks Branch,  
25, Southampton Buildings,  
London.*



k.

## FORM OF CERTIFICATE OF REFUSAL TO REGISTER.

## PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

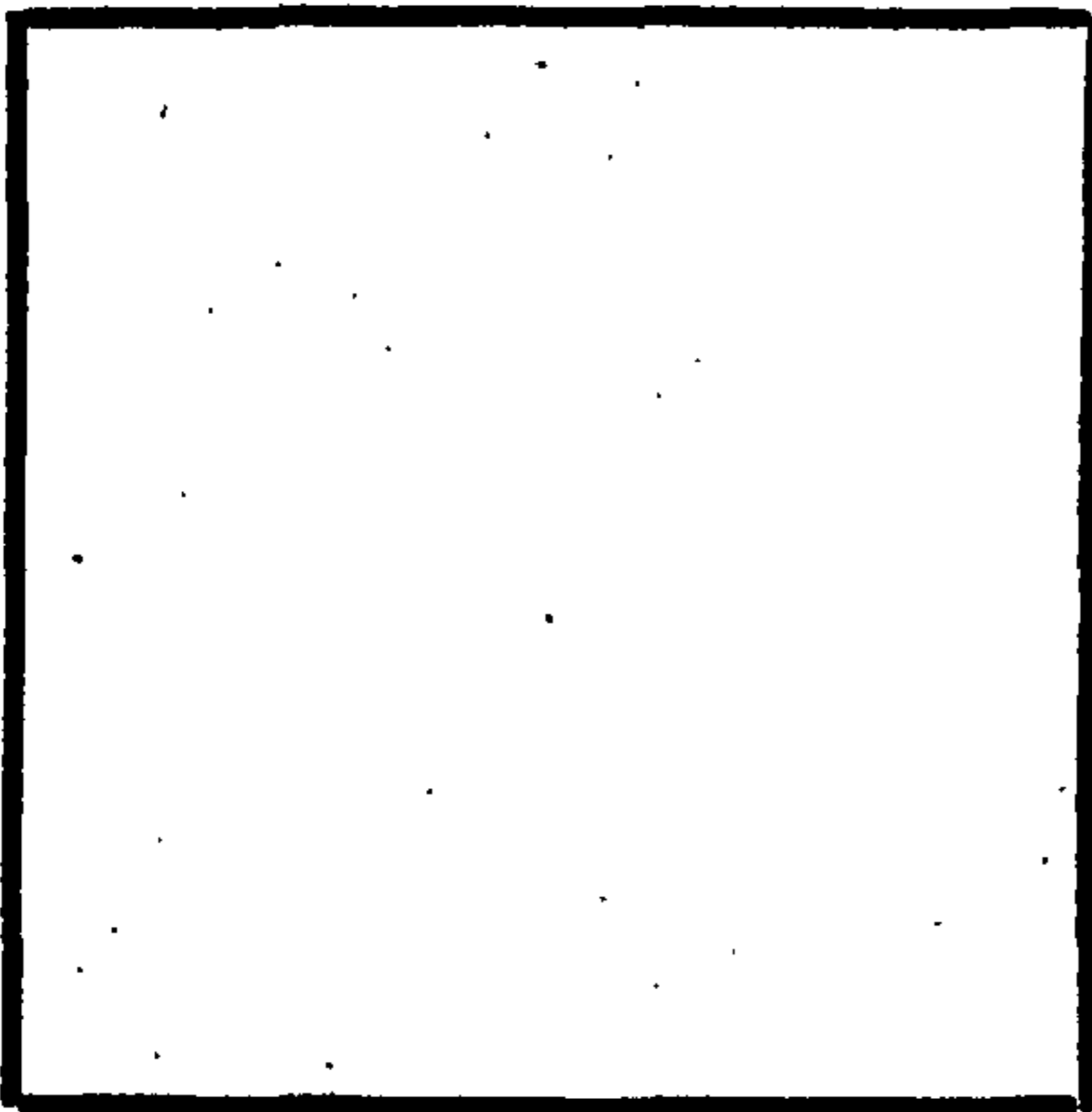
*Certificate of Refusal, under section 77.*

No.

I, HENRY READER LACK, Comptroller-General of Patents, Designs, and Trade Marks, hereby certify that on the day of 18 , of

applied to register the mark, of which a representation is annexed, in Class , stating that the said mark had been in use as a trade mark before the 13th day of August, 1875; and I also certify that registration of the said mark has been refused by me as not coming within the 64th section of "The Patents, Designs, and Trade Marks Act, 1883."

## REPRESENTATION OF TRADE MARK.



Witness my hand and seal this                      day of  
188 .

*Comptroller-General.*

*Patent Office: Trade Marks Branch,  
25, Southampton Buildings,  
London.*

## PART II.

## FORMS FOR USE IN REGISTRATION PROCEEDINGS.

## 1. GROUNDS OF OPPOSITION (a).

- (i.) The alleged trade mark to which the above-mentioned application relates is not a registrable trade mark within § 64 of the Patents, Designs and Trade Marks Act, 1883.
- (ii.) The alleged [as in (i.) to—relates] does not consist of or contain any essential particular as defined by § 64 of the Patents, Designs and Trade Marks Act, 1883, or any special and distinctive word, or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade mark before the 13th August, 1875.
- (iii.) It is not the fact, as alleged by the applicant in his application, that he has used the trade mark No. \_\_\_\_\_ for \_\_\_\_\_ years. The said trade mark has in fact been used exclusively for \_\_\_\_\_ years past by the opponent, who is now applying to register the same. If there has been any user by the applicant, the same has been clandestine and unknown to the opponent.
- (iv.) It is not the fact as alleged [as in (iii.) to—years]. The applicant has never used the said alleged trade mark otherwise than as a mere descriptive term, and he is not now entitled to register it as his old trade mark.
- (v.) The goods in respect of which the above-mentioned applicant is seeking to register the alleged trade mark No. \_\_\_\_\_ are not goods comprised in Class \_\_\_\_\_ of the classes under the Patents, Designs and Trade Marks Act, 1883.
- (vi.) The alleged [as in (i.) to—relates] is a mere word in ordinary use in the English language descriptive of quality, and the applicant is not entitled to acquire an exclusive right therein by registration.

(a) See Form J., p. 388, *supra*, for the formal parts of the notice of opposition. These forms are intended to be varied and combined

as may be necessary, or they may suggest others more suitable to particular cases.

- (vii.) The alleged [as in (i.) to—relates] is not distinctive of the above-named applicant's goods, but is merely descriptive of the nature and quality of the goods to which it is applied.
- (viii.) The alleged [as in (i.) to—relates] is not a mark distinctive of the above-named applicant's goods, but has for many years past been in common use in the trade, and is generally understood by the trade and the public to denote a particular quality [or pattern] of goods [and was for that reason placed by the Manchester Committee of Experts in their second class or B. list], and no person is entitled to acquire an exclusive right therein by registration.
- (ix.) The alleged [as in (i.) to—relates] consists of a name which has throughout the continuance of an expired patent been applied by the applicant as patentee, and by the trade and the public, to articles manufactured in accordance with the said patent. Upon the expiration of the said patent the trade became entitled to manufacture in accordance with the said patent, and to describe articles so manufactured by the name which was generally understood to be descriptive of them, and the applicant is not now entitled to exclude the trade from the use of the said name.
- (x.) The alleged [as in (i.) to—relates] is identical with the opponent's trade mark No. \_\_\_\_\_ registered with respect to the same goods or description of goods as those for which the applicant is now applying to register the same. If the applicant is allowed to register or use the said alleged trade mark, the trade and the public will be deceived and the opponent injured.
- (xi.) The alleged [as in (i.) to—relates] so nearly resembles the opponent's [as in (x.) to—register the same] as to be calculated to deceive. An action is now pending in the Chancery Division of the High Court of Justice in which the opponent is seeking to restrain the applicant from using the said alleged trade mark.
- (xii.) The alleged [as in (i.) to—relates] so nearly resembles the opponent's Sheffield mark No. \_\_\_\_\_, registered in the Sheffield register with respect to the same goods or description of goods as those for which the applicant is now applying to register the said alleged trade mark, as to be calculated to deceive.
- (xiii.) The trade mark [as in (i.) to—relates] is the trade mark of the opponent, and has been used by him in

his business for                    years last past, and an application by the opponent for the registration of the same is now pending. The applicant is a discharged servant of the opponent, in fraud of whose rights the present application is made.

- (xiv.) The trade mark [as in (i.) to—relates] was                    months since adopted by the opponent and used upon his [describe the goods], and the applicant was employed by the opponent to obtain the registration of the same on his behalf, and he is not now entitled to obtain the registration of the same in his own name.
- (xv.) The trade mark [as in (i.) to—relates] has for many years past been the exclusive property in [France] of the opponent, and it has for the same period been exclusively used in the United Kingdom upon goods of the opponent imported into this country. [The opponent has not hitherto registered the said trade mark in the United Kingdom from ignorance of the requirements of British law, but he is now about to apply for the registration of the same.]
- (xvi.) The alleged [as in (i.) to—relates] contains several material mis-statements with respect to the nature and composition of the article to which it is applied by the applicant, and the said alleged trade mark is therefore calculated to deceive, and ought not to be registered.
- (xvii.) The alleged [as in (i.) to—relates] contains a statement contrary to the fact, that the goods to which it is applied by the applicant are patented, and the said alleged trade mark ought not therefore to be registered.
- (xviii.) By articles of partnership, dated                    , under which the opponent and the applicant carried on business until recently in partnership, it was agreed that on the dissolution of the partnership the goodwill of the partnership business and the trade marks used therein (of which the trade mark [as in (i.) to—relates] was one) should belong solely to the opponent. The said partnership is now dissolved, and the applicant is not entitled to use or register the said trade mark.
- (xix.) By articles [as in (xviii.) to—dissolution of the partnership] neither of the partners should in any business carried on by him use the name or trade marks used by the said partnership. The trade mark [as in (i.) to—relates] is one of the trade marks which were used by the said partnership, and since the dissolution of the said partnership the applicant is not entitled to use or register the said trade mark.

- (xx.) The word \_\_\_\_\_ which forms part of the alleged [as in (i.) to—relates] is a word in common use in the trade, and the applicant is therefore not entitled to acquire any exclusive right in the said word by registration, or to obtain registration of the said alleged trade mark, except and unless he first disclaims any right to the exclusive use of the said word.
- (xxi.) The device of a [“lion”] is in common use in the trade, and the applicant is therefore not entitled to obtain registration of the words [“Lion Brand”] as part of his alleged trade mark No. \_\_\_\_\_, except and unless he first disclaims any right to the exclusive use of the said words.
- (xxii.) Goods of my manufacture [or, merchandise] of the same description as the goods for which the applicant is now applying to register his alleged trade mark, are constantly ordered and sold as [“Lion”] goods, and if the applicant is allowed to obtain registration of the device of a [lion] as [or as part of] his trade mark, it will cause his goods to be passed off as and for my goods.
- (xxiii.) The alleged [as in (i.) to—relates] so nearly resembles the opponent's registered trade mark No. \_\_\_\_\_ as to be calculated to deceive. The class of goods for the whole of which the above-mentioned applicant is now applying to register the said trade mark includes the goods in respect of which the opponent's said trade mark is registered, and the applicant is therefore not entitled to obtain registration of the said alleged trade mark except and unless the goods in respect of which registration is granted to him are so limited and defined as not to include the goods or description of goods for which the opponent's said trade mark is registered as aforesaid.

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## 2. GROUNDS OF COUNTER-STATEMENT (a).

- (i.) The trade mark to which the above-mentioned application relates has been exclusively used for \_\_\_\_\_ years last past by the applicant, and is a good, valid, and registrable trade mark.
- (ii.) The trade mark [as in (i.) to—relates] consists of [or contains] an essential particular as defined by § 64 of the Patents, Designs and Trade Marks Act, 1883, viz.,

(a) See Form a., p. 397, *supra*, for the formal parts of the counter-statement.

- [a distinctive device, mark, or label], and is therefore registrable as a new trade mark.
- (iii.) The trade mark [as in (i.) to—relates] consists of a special and distinctive word used by the opponent as a trade mark before the 13th day of August, 1875, and is therefore a good and valid trade mark and is registrable as an old mark.
- (iv.) I have publicly used the trade mark [as in (i.) to—relates] in the United Kingdom for \_\_\_\_\_ years, as alleged in my above-mentioned application. Such user has not been clandestine, but has been generally known to the trade in \_\_\_\_\_; and if it has not been known to the opponent, that must have been either because he was not engaged in such trade, or else because he conducted his business negligently.
- (v.) The goods in respect of which I am applying to register my above-mentioned trade mark No. \_\_\_\_\_ are goods comprised in Class \_\_\_\_\_ of the classes under the Patents, Designs and Trade Marks Act, 1883 [as appears from the Guide to the Classification issued at the Patent Office].
- (vi.) My above-mentioned trade mark is not a mere word in ordinary use in the English language descriptive of quality, but is a special and distinctive word by which my goods are generally recognised by the trade and the public, and I am entitled to register the same.
- (vii.) My above-mentioned trade mark is not merely descriptive of the nature and quality of the goods to which it is applied, but it was first adopted and has since been exclusively used by myself for the purpose of distinguishing goods of my manufacture [or merchandise], and it is generally recognised as being distinctive of such goods.
- (viii.) It is not the fact that my above-mentioned trade mark has for many years past, or at all, been in common use in the trade. In \_\_\_\_\_ instances I have obtained injunctions to restrain infringements thereof, and if there has been any user by persons not so restrained it has been without my knowledge, or I should have taken proceedings against them.
- (ix.) It is not the fact that my above-mentioned trade mark is generally understood by the trade or the public to denote a particular quality of goods; on the contrary, it is generally understood to denote goods of my manufacture [or merchandise], and the trade and the public

would be deceived and I should be injured if any other manufacturer were to use it.

- (x.) My above-mentioned trade mark was placed by the Manchester Committee of Experts in their 2nd class, or B. list, in consequence of a misapprehension as to the principles by which their action was to be governed, and the said mark was wrongfully so placed, and ought to be admitted to registration.
- (xi.) It is not the fact that I, or the trade, or the public, have used or understood my above-mentioned trade mark as describing articles made in accordance with my expired patent. On the contrary, I adopted it before the grant to me of the said patent, and it has always been used and understood as distinguishing goods of my make, and not goods of any particular pattern.
- (xii.) My above-mentioned trade mark is not identical with the opponent's registered mark [*or Sheffield mark*], nor does it so nearly resemble the same as to be calculated to deceive.
- (xiii.) The goods with respect to which the opponent's trade mark [*or Sheffield mark*] is registered are not the same goods nor goods of the same description as the goods with respect to which I am applying for registration of my above-mentioned trade mark.
- (xiv.) The opponent's trade mark No.                      is not a good or valid trade mark, but was registered by mistake and wrongfully, and I am now applying for the rectification of the register by the removal therefrom of the said mark.
- (xv.) Whether the trade mark which I am now applying to register is or is not the property of the opponent in a foreign country, as to which I have no knowledge, the said trade mark has not up to the present time been known in the United Kingdom in connection with [*describe the goods*], but the same is a new mark adopted for the first time by myself.                      months since.
- (xvi.) The statements contained in my above-mentioned trade mark are true, and my said trade mark is not calculated to deceive. If any of such statements are exaggerated, such exaggerations are trifling and immaterial and not calculated to deceive.
- (xvii.) The mention of a patent contained in my above-mentioned trade mark is not such as to lead to the belief that the patent there mentioned is an existing patent, and my said trade mark is not calculated to deceive.

- (xviii.) The articles of partnership mentioned in the notice of opposition provided that the goodwill and trade marks of the partnership business should belong to the opponent only in the event of the partnership being dissolved by effluxion of time. The said partnership was dissolved at an earlier date by common consent, and the provisions of the said articles were varied in such manner that the goodwill and trade marks devolved upon the opponent and myself equally.
- (xix.) The trade mark to which my above-mentioned application relates was used by me in my business concurrently with the opponent before the 13th day of August, 1875, and is an old trade mark, and was not used by any other person in the same trade, and I am therefore entitled to registration notwithstanding the opponent's registration.
- (xx.) The opponent uses his trade mark No.                    only by stamping it on his goods. I only use mine by placing it on the wrappers in which the goods are placed, and the concurrent use of the two trade marks in such different ways is not calculated to deceive. I have used my trade mark for                    years, and am willing to undertake to use it in the future only as I have hitherto used it.
- (xxi.) The opponent uses his trade mark No.                    only on goods exported by him to [the Colonies and the United States], I only use mine in [the United Kingdom], and the concurrent user of the two trade marks in such different parts of the world cannot deceive. I am willing [as in (xx.)].
- (xxii.) The word                   , which forms part of my above-mentioned trade mark No.                   , and also of the opponent's registered mark No.                   , is a mere word of description, and is not an essential particular of the opponent's said registered mark, nor has he any exclusive rights therein by reason of his registration.



## 3. SPECIAL CASE.

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

188 . B. No. .

Between [*A.B.*], Plaintiff,  
and  
[*C.D.*], Defendant.

Special case stated for the opinion of the High Court of Justice, pursuant to the Patents, Designs and Trade Marks Act, 1883, and the Rules made thereunder.

1. [The facts necessary to enable the Court to determine the
2. rights of the parties must be stated concisely in
3. numbered paragraphs.]
- 4.

The questions submitted for the opinion of the Court are:

1. Whether the plaintiff *A.B.*, or the defendant *C.D.*, or either of them, is entitled to have his name entered in the register of trade marks kept under the authority of the above-mentioned Act as the proprietor of the said trade mark, or whether both of them are so entitled.
2. By whom the costs of this special case should be paid.

*E. F.*, Solicitor for Plaintiff.

*G. H.*, Solicitor for Defendant.

*Note.*—This special case is filed by *E. F.* of \_\_\_\_\_, Solicitor for the above-named Plaintiff.

## 4. SUMMONS FOR LEAVE TO REGISTER.

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

In the matter of an application by *A. B.* for  
the registration of a trade mark No. \_\_\_\_\_,  
and

In the matter of the opposition thereto,  
No. \_\_\_\_\_ of *C. D.*,  
and

In the matter of the Patents, Designs and  
Trade Marks Act, 1883.

Let all parties concerned attend at the chambers of Mr.  
Justice \_\_\_\_\_, at the Royal Courts of Justice, on

, the            day of            , 18        at  
 o'clock in the            noon, upon the application of the above-  
 named *A. B.* that the Comptroller-General of Patents, Designs,  
 and Trade Marks may be directed to proceed with the above-  
 mentioned application of the said *A. B.* [notwithstanding the  
 above-mentioned opposition thereto of *C. D.*] *or* [notwithstanding  
 the registration of *C. D.*'s trade mark No.            ], *or* [notwith-  
 standing the registration of *C. D.*'s trade mark No.            in the  
 Sheffield register].

Dated the            day of            188 .

(Seal).

This summons was taken out by *E. F.* of            , solicitor  
 for the above-named *A. B.*

To the Comptroller-General of Patents, Designs,  
 and Trade Marks, *or, where there is an  
 opposition, To the above-named C. D.*

*The following note to be added to the original summons, and  
 when the time is altered by indorsement the indorsement to be  
 referred to as below.*

*Note.*—If you do not attend either personally or by your  
 solicitor at the time and place above mentioned [*or, at the  
 place above mentioned at the time mentioned in the indorse-  
 ment hereon*] such order will be made and proceedings  
 taken as the judge may think just and expedient.

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#### 5. NOTICE OF MOTION FOR LEAVE TO REGISTER.

[Heading as in No. 4.]

Take notice that the Court will be moved before His Lordship  
 Mr. Justice            on            the            day of            188 ,  
 or so soon thereafter as counsel can be heard, by Mr.            ,  
 of counsel on behalf of the above-named *A. B.*, that you [*or,*  
 that the Comptroller-General of Patents, Designs, and Trade  
 Marks] may be directed to proceed [as in No. 4].

Dated the            day of            , 188 .

(Signed) *E. F.* of            , Solicitor  
 for the above-named *A. B.*

To the Comptroller-General of Patents, Designs,  
 and Trade Marks *or, if there is an opposition,*  
 To *Mr. C. D.*

6. NOTICE OF MOTION FOR LEAVE TO ADD TO, OR ALTER A REGISTERED TRADE MARK.

In the High Court of Justice,  
Chancery Division.

Mr. Justice

In the matter of the registered trade mark  
No.            of *A. B.*

and

In the matter of the Patents, Designs, and  
Trade Marks Act, 1883.

Take notice [as in No. 5 to—that] leave may be given to add to the above-mentioned trade mark in the register of trade marks [the words “            ”, *or*, as the case may be], *or*, that leave may be given to alter the registration of the above-mentioned trade mark in the following respects, that is to say by [diminishing the size of the words            and altering the address from            to            , *or*, as the case may be].

[Dated and signed as in No. 5.]

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

7. NOTICE OF MOTION FOR THE RECTIFICATION OF THE REGISTER.

[Heading as in No. 6.]

Take notice [as in No. 5 to—behalf of] *C. D.* of            , that the register of trade marks kept under the authority of the above-mentioned Act may be rectified [by removing therefrom the above-mentioned trade mark No.            ], *or* [by removing therefrom the name of the above-mentioned *A. B.* as the proprietor of the above-mentioned trade mark and entering therein the name of the said *C. D.* as the proprietor of the said trade mark], *or* [by adding to the registration of the above-mentioned trade mark No.            a note disclaiming any exclusive right in the above-named *A. B.* to the use of the word            ], *or* [by adding, &c., &c., a note stating that the above-named *A. B.* is only entitled to use the same in respect of goods intended for export to            ], *or* [by adding, &c., &c., entitled to use the same by placing it upon the wrappers in which the goods are sold, and not by placing it upon the goods themselves], *or* [by limiting the registration of the above-mentioned trade mark No.            to (describe the goods), and not allowing it to remain in respect of all the goods in class            ], *or* that such further or other order may be made for the rectification of the said register as to the Court shall seem just.

[Dated and signed as in No. 5.]

To Mr. *A. B.* [and the Comptroller-General of  
Patents, Designs, and Trade Marks.]



*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for an injunction to restrain the defendant from [see forms of Injunction in Part IV. of this Appendix], and for an account or damages;

or, The plaintiff's claim is for damages for wrongfully using [or, imitating] the plaintiff's trade mark, and for an injunction to restrain, &c.

This writ was issued by the said plaintiff, who resides at \_\_\_\_\_ ;

or, This writ was issued by *E. F.* of \_\_\_\_\_, whose address for service is \_\_\_\_\_, solicitor for the said plaintiff, who resides at \_\_\_\_\_ ;

or, This writ was issued by *G. H.* of \_\_\_\_\_, whose address for service is \_\_\_\_\_, agent for *E. F.* of \_\_\_\_\_, solicitor for the said plaintiff, who resides at \_\_\_\_\_ [mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any.]

*Indorsement to be made on the writ after service thereof.*

This writ was served by me at \_\_\_\_\_ on the defendant \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 18 .

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
 (Signed)  
 (Address)

2. NOTICE OF MOTION FOR INJUNCTION.

[Heading as in No. 1.]

Take notice that the Court will be moved before His Lordship Mr. Justice \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18 , or so soon thereafter as counsel can be heard, by [Mr. \_\_\_\_\_ of] counsel for the above-named plaintiff, that an injunction may be granted to restrain the defendant, &c., until judgment in this action or further order, from [see Part IV. of this Appendix] [and take also notice that special leave to serve you with this [short] notice for the day aforesaid [with the writ of summons] has been obtained from the said Mr. Justice \_\_\_\_\_.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
 (Signed) *E. F.* of \_\_\_\_\_,  
 Solicitor for the above-named Plaintiff.

To the Defendant *C. D.*

## 3. STATEMENT OF CLAIM.

[Heading as in No. 1, inserting above the title of the action—  
“Writ issued the                      day of                      , 18    .”]

## Statement of Claim (a).

1. The defendant has infringed the plaintiff's trade mark.
2. The trade mark is [*describe it*].<sup>1</sup>

*(If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.)*

3. The following are the acts complained of, viz.:—

*(Set them out.)*

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from infringing the plaintiff's said trade mark, and in particular from [*see forms of Injunction in Part IV. of this Appendix.*]  
The plaintiff also claims an account or damages.

(Signed)

(Delivered)

(a) The above is the form appended to the Rules of Court, 1883, but it is thought that fuller particulars will usually be required. The Forms 3 (i.), 3 (ii.), and 3 (iii.) are therefore suggested.

## 3 (i). [Heading as above.]

## Statement of Claim.

1. The plaintiff is the registered proprietor of a trade mark [consisting of                      ] (a), which was advertised in the *Trade Marks Journal* of the                      day of 18    , and is registered for                      in Class                      [the date of such registration being the                      day of                      , 18    ] (b).

2. The defendant has infringed the plaintiff's said trade mark in manner following; that is to say [he has                      ].

[3. The plaintiff has applied to the defendant to desist from his wrongful acts aforesaid, but he has refused [*or neglected*] so to do] (c).

4. The defendant has made considerable profits by selling goods not being the plaintiff's goods under the trade mark of which the plaintiff complains [*or in manner aforesaid*].

5. The plaintiff has sustained considerable damage from the defendant's wrongful acts aforesaid.

The plaintiff claims—

1. An injunction [as above].

2. An account of profits or damages and delivery up to him of all goods in the possession or power of the defendant having thereon the trade mark of which complaint is hereby made in order that such trade mark may be obliterated therefrom, and also delivery up to him for the purpose of destruction of all copies in the possession or power of the defendant of the said trade mark and of all blocks, dies, or other apparatus in the like possession or power adapted for the production of the said trade mark.
3. Costs.

(a) The trade mark need not be described unless the nature of the infringement renders it necessary.

(b) The date of registration may be omitted, if not more than five years before writ issued.

(c) Though previous application is not necessary, if it has been made, it should be mentioned.

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### 3 (ii). [Heading as above.]

#### Statement of Claim.

1. [As in 3 (i.), omitting the description of the plaintiff's trade mark].

2. The said trade mark consists of [or contains] the device of a [lion], and the plaintiff's goods bearing such trade mark are extensively known in the [Indian] markets as ["Lion"] goods, and are frequently ordered and invoiced under that name.

3. No other goods of the same kind are or ever have been known in the [Indian] markets as ["Lion"] goods.

4. The defendant is using on goods intended for export to the [Indian] markets a trade mark [or label, or wrapper] on which he places the device of a [lion], and such user is calculated to deceive by inducing purchasers to buy the defendant's goods in the belief that they are buying those of the plaintiff.

5. [As in 3 (i.), par. 4].

6. [As in 3 (i.), par. 5].

The plaintiff claims [as in 3 (i.). For form of injunction, see that in *Orr-Ewing & Co. v. Johnston & Co.*, Part IV., No. 4, *infra*].

## 3. (iii.) [Heading as above.]

## Statement of Claim (a).

1. The plaintiff has for        years last past and upwards offered for sale and sold [a preparation for the human hair] of his manufacture under the title of [Robinson's Hair Stimulant], and previously to the defendant commencing his wrongful acts hereinafter stated no other person except the plaintiff offered for sale or sold under that title any similar preparation.

2. The plaintiff offers for sale and sells and always has offered for sale and sold [his said preparation] in bottles of a peculiar and distinctive shape packed in cases which are also of a peculiar and distinctive shape, and previously to the defendant commencing his wrongful acts hereinafter stated no other person except the plaintiff used for the purposes of trade in any [preparation for the human hair] bottles or cases similar in shape to the plaintiff's bottles and cases.

3. The plaintiff has recently ascertained as the fact is that the defendant for the purpose of passing off his goods as and for the plaintiff's goods is offering for sale and selling [a preparation] not of the plaintiff's manufacture under the title of [Robinson's Hair Stimulant], and in bottles similar in shape to the plaintiff's bottles and packed in cases similar in shape to the plaintiff's cases, whereby divers persons have been induced to purchase the defendant's [preparation] as and for the goods of the plaintiff [or and such acts are calculated to induce, &c.].

4. The defendant has made considerable profits by selling his goods as and for the goods of the plaintiff.

5. [As in 3 (i.), par. 5.]

The plaintiff claims—

1. An injunction to restrain the defendant his servants and agents from passing or attempting to pass off the defendant's goods as or for the plaintiff's goods and in particular from offering for sale or selling any [preparation for the human hair] not of the plaintiff's manufacture by means of the use of the title [Robinson's Hair Stimulant], and by means of the use of bottles similar in shape to the plaintiff's bottles, and by means of the use of cases similar in shape to the plaintiff's cases, or by any of such means [or as may be].

2. An account of profits or damages.

3. Costs.

(a) This is intended for a case in which no trade mark has been registered.



## 4. DEFENCE.

[Heading as in No. 1.]

## Defence (a).

The defendant says that:—

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

(Signed)

(Delivered).

(a) The above is the form appended to the Rules of Court, 1883, but a fuller form varying with the nature of the defence will generally be required.

## 5. REPLY.

[Heading as in No. 1.]

## Reply.

The plaintiff as to the defence says that:—

- 1.
- 2.

(Signed)

(Delivered)

## 6. SUMMONS TO STAY PROCEEDINGS BY CONSENT, THE DEFENDANT SUBMITTING TO AN INJUNCTION.

[Heading as in No. 1.]

Let all parties concerned attend at the chambers of Mr. Justice \_\_\_\_\_ at the Royal Courts of Justice on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the hearing of an application on the part of the above-named defendant that the defendant submitting to a perpetual injunction restraining [see forms of Injunction in Part IV. of this Appendix, *infra*] and submitting to pay the plaintiff £ \_\_\_\_\_ in respect of [damages and] his taxed costs of this action, all further proceedings in this action may be stayed, or that such further or other order may be made as to the judge shall seem just.

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

This summons was taken out by G. H. of \_\_\_\_\_, Solicitor for the above-named Defendant.

To the above-named Plaintiff.

## PART IV.

## PRECEDENTS OF INJUNCTIONS, &amp;c.

1. CROFT *v.* DAY, 7 Beav. 84—90.*Label on Blacking Bottles—Trade Cards—Injunction.*

INJUNCTION to restrain the defendant, his servants, &c., “from selling, or exposing for sale, or procuring to be sold, any composition or blacking described as, or purporting to be, blacking manufactured by Day and Martin, in bottles having affixed thereto such labels as in the complainant’s bill mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by John Weston (the manager), for the benefit of the estate of Charles Day, the testator; and from using trade cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by John Weston” (a).

2. SEIXO *v.* PROVEZENDE, L. R. 1 Ch. 192—194.*Brand on Casks of Wine—Injunction.*

Injunction to restrain the defendants, &c., “from affixing or causing to be affixed to any casks of wine shipped to their orders the brand or marks of a crown and the word *Seixo*, or any other combination of marks or words so contrived as, by colourable imitation or otherwise, to represent the marks or brands of the plaintiff, and from employing any marks or words which shall be so contrived as to represent, or induce the belief, that such wines are Crown *Seixo*, or the produce of the *Quinta do Seixo*, or otherwise using the word *Seixo* without clearly distinguishing the same from the wine produced by the *Quinta do Seixo*” (b).

3. STEPHENS *v.* PEEL, 16 L. T. N. S. 145.*Labels on Bottles of Ink—Injunction.*

Injunction restraining the defendant, &c., “from selling, or exposing, or advertising for sale, or procuring to be sold, any ink or writing fluid in

(a) Lord Langdale, M. R.

(b) Wood, V.-C.

bottles bearing thereon such labels as after mentioned, and from using any labels, or stamps, or advertisements so contrived or expressed as by colourable imitation or otherwise to represent or lead to the belief that the ink sold by the defendant is the ink or writing fluid manufactured by the plaintiffs, and sold by them under the name of 'Stephens' Blue Black Writing Fluid' " (a).

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4. ORR-EWING & Co. v. JOHNSTON & Co., 7 App. Cas. 219—233.

*"Two Elephant" Yarn—Injunction.*

Injunction restraining the defendants, &c., "from affixing or causing to be affixed to any Turkey red yarn not dyed by the plaintiffs the ticket marked 'B,' and from using two elephants on any ticket used on Turkey red yarn, without clearly distinguishing such ticket from the plaintiff's ticket mentioned in the pleadings, being the exhibit marked 'A' referred to in the depositions, or so as to represent or induce the belief that any of the said yarn was dyed by the plaintiffs" (b).

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5. READ BROTHERS v. RICHARDSON & Co., 45 L. T. N. S. 54—60.

*"Dog's Head" Beer for Exportation—Undertaking—Injunction to the Hearing—Costs.*

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

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6. BROADHURST v. BARLOW, L. J. Notes of Cases, 1872, p. 183.

*Stamps on Shirtings—Injunction.*

Injunction restraining the defendants, &c., "from stamping, impressing, or affixing, or causing to be stamped, impressed, or affixed on or to

(a) Wood, V.-C.

(b) House of Lords.

(c) Court of Appeal.

any Spanish shirtings or pieces of white calico manufactured or sold by them, any mark consisting of words in the Turkish, Armenian, and Greek languages, meaning 'exactly 12 yards,' and placed between a figure or crest and the words 'Spanish Shirtings' enclosed in a scroll in the same manner as those are respectively placed in the plaintiff's trade mark, or in any manner only colourably differing therefrom" (a).

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7. WOTHERSPOON *v.* CURRIE, L. R. 5 H. L. 508—523.

*"Glenfield Starch"—Injunction.*

Injunction restraining the respondent, &c., "from using the word 'Glenfield' in or upon any labels affixed to packets of starch manufactured by or for him, and from in any other way representing the starch manufactured by or for him to be 'Glenfield Starch,' and from selling or causing the same to be sold as 'Glenfield Starch,' and from doing any act or thing to induce the belief that starch manufactured by or for him, the respondent, is 'Glenfield Starch,' or starch manufactured by the appellant" (b).

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8. FORD *v.* FOSTER, L. R. 7 Ch. 611—634.

*"Eureka" Shirts—Injunction.*

Injunction restraining the defendants, &c., "from applying the mark or title 'Eureka' to any shirts manufactured by them, or to any shirts sold by them, unless manufactured by the plaintiffs, and from selling any shirts already marked with the mark and title 'Eureka,' unless such mark or title has been applied with the sanction of the plaintiffs; and from issuing any boxes or packages on which the mark or title of 'Eureka' shall be applied to shirts not of the plaintiff's manufacture; and from affixing or using any label, or card, or other mark containing the word 'Eureka' to or upon any shirts not of the plaintiffs' manufacture" (c).

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9. APOLLINARIS Co. *v.* NORRISH, 33 L. T. N. S. 242.

*"Apollinaris Water"—Injunction.*

Injunction restraining the defendants, &c., "from selling, &c., any mineral or other waters, not being the genuine Apollinaris water, under the name of 'Apollinaris Water,' or 'London Apollinaris Water,' or under any other

(a) Wickens, V. C.

(b) House of Lords.

(c) James, L. J.

name of which the word 'Apollinaris' so forms part as to be calculated to deceive the public" (a).

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10. *CARUNCHO v. STEPHENSON*, 25 Sol. J. 929.

*"La Intimidad" Cigars—Injunction.*

Injunction restraining the defendant, &c., "from selling or causing or allowing to be sold, and from in any manner representing, or causing or procuring to be represented, any cigars manufactured, sold, or dealt in by the defendant as "La Intimidad" cigars, or as cigars manufactured, imported, or sold by the plaintiffs or either of them; and also from affixing, or procuring or causing or allowing to be affixed, to any boxes of cigars manufactured, or bought, or procured, or sold, or attempted to be sold by the defendant, or otherwise using, or employing, or permitting to be used or employed, any labels, wrappers, brands, or marks used by the plaintiffs or either of them, or so contrived or prepared as to represent or lead to the belief that the cigars manufactured or sold by the defendant are cigars manufactured or sold by the plaintiffs or either of them; and from using the words "La Intimidad" on any cigars, or boxes, or wrappers containing cigars, so as to induce the belief that such cigars are manufactured or imported by the plaintiffs or either of them, pending the trial of this action" (b).

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11. *EDELSTEN v. EDELSTEN*, 1 De G. J. & S. 185—189.

*"Anchor Brand Wire"—Prayer of Bill—Injunction—Account—Delivery up.*

Prayer of Bill: "that an account may be taken of the gains and profits made and obtained by the defendants by the sale of wire having tallies or labels attached thereto with the plaintiff's trade mark, or a trade mark in imitation of, or only colourably differing from that of the plaintiff, stamped or impressed thereon; and that the defendants may be ordered to pay to the plaintiff the amount of such gains and profits. That the defendants may be restrained by injunction from attaching to wire, not the manufacture of the plaintiff, any tally or label with the plaintiff's trade mark,

(a) Bacon, V.-C. And see also forms of injunctions in *Apollinaris Co. v. Edwards*, Seton, 4th ed. 237; *Millington v. Fox*, 3 My. & Cr. 338; and Pemberton, 3rd ed. 238; *Edelsten v. Vick*, 11 Hare, 78; *Collins Co. v. Walker*, 7 W. R. 222, and Seton, 4th ed. 235; *Harrison v. Taylor*, 11 Jur. N. S. 408, and Pemberton, 3rd ed. 239; *Braham v. Bustard*, 1

H. & M. 447; *McAndrew v. Bassett*, 4 De G. J. & S. 380, and Pemberton, 3rd ed. 239; *Mickle v. Emery*, Seton, 4th ed. 234; *Siegert v. Findlater*, 7 Ch. D. 801—814; *McLean v. Fleming*, 96 U. S. Rep. (6 Otto) 245; 13 U. S. Pat. Gaz. 913, 914.

(b) Cave, J.

or any mark in imitation thereof, or only colourably differing therefrom, stamped or impressed thereon, and from otherwise using the plaintiff's trade mark, or any mark in imitation thereof, so as to denote or represent that the said wire is the 'Anchor Brand Wire,' or is the manufacture of the plaintiff; and from selling, or offering for sale, or procuring to be sold, any wire not being of the plaintiff's manufacture, having a tally or label attached thereto with the plaintiff's trade mark, or a mark in imitation thereof, or only colourably differing therefrom, stamped or impressed thereon, or otherwise in any manner having the said trade mark, or a mark in imitation thereof, or only colourably differing therefrom, attached thereto. That the defendants may deliver up to be cancelled all tallies, labels, and papers in their possession, or in the possession of their servants or agents, having the said trade mark so in colourable imitation of the plaintiff's as hereinbefore mentioned; and also all tallies, labels, and papers in their possession, or in the possession of their servants or agents, having the plaintiff's trade mark, or any mark in imitation thereof, or only colourably differing therefrom, stamped or impressed thereon, and also all dies for stamping or impressing the same; and that the defendants may pay all the costs of the suit" (a).

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12. GUINNESS *v.* ULLMER, 10 L. T. (Old Series), 127.

*Engraving Blocks for Printing Forged Labels—Injunction.*

Injunction restraining the defendants, &c., "from cutting, engraving, casting, or making, and from causing to be cut, engraved, cast, or made, and also from using or permitting to be used, and from selling, or otherwise disposing of or parting with any blocks or plates adapted for printing labels or sheets of labels in imitation of the label furnished by Sparkes Moline to and used by the agents appointed by him for sale of the plaintiffs' stout, as in the plaintiffs' bill mentioned, or any of them, or differing only colourably therefrom. And also from selling, or otherwise disposing of, and from delivering over or parting with any of such blocks or plates as are now in their possession, custody, or power, to any person other than the plaintiffs or such person as they shall appoint to receive the same" (b).

(a) Wood, V.-C., made a decree in the terms of the prayer of the bill. See 1 De F. J. & S. 196; Lord Westbury, C., affirmed the decree. As to the account, see also *Poster v. Megerand*, Pemberton, 3rd ed. 239; and the full decree in *Ford v. Poster*, Seton, 4th ed. 236. As to order restraining exportation of goods with forged trade marks, see *Henderson*

*v. Jorss*, Seton, 4th ed. 236. As to order restraining the bringing into the market of imported goods with forged trade marks, see *Upmann v. Elkan*, L. R. 12 Eq. 140; 7 Ch. 130; *Rivero v. Norris*, Seton, 4th ed. 236; *Del Valle v. Mayer*, *ib.*; *Moet v. Pickering*, 6 Ch. D. 770—1; 8 *ib.* 372.

(b) Shadwell, V.-C. of Eng.

13. FARINA *v.* SILVERLOCK, 1 K. & J. 509.*Printing Forged Labels—Injunction.*

Injunction restraining the defendant, &c., “from printing or selling, or exposing for sale, or procuring to be printed or sold, any labels similar to those in use by the plaintiff, as in the bill in this cause mentioned, or containing copies of the signature, or address, or flourish, seal, or stamp, or other marks invented and used by the plaintiff as therein mentioned, or any signature, address, flourish, seal, stamp, or other mark merely colourably differing therefrom, or any other papers or labels so printed or contrived as, by colourable imitation or otherwise, to represent or lead to the belief that Eau de Cologne prepared by other parties was Eau de Cologne prepared by the plaintiff” (a).

14. CLEMENT *v.* MADDICK, 1 Giff. 98—101.*Name of Newspaper—Injunction.*

Injunction restraining the defendants, &c., “from printing, publishing, or continuing to print or publish, any newspaper or other periodical paper with or under the name or style of ‘The Penny Bell’s Life and Sporting News,’ or with or under any name or style of which the name, style, or words of ‘Bell’s Life’ shall form a part, or in any way occur [therein]; and from using the said name, style, or title of ‘Bell’s Life’ by way of name, style, or title to any newspaper or periodical without the licence or consent of the plaintiff” (b).

15. INGRAM *v.* STIFF, 5 Jur. N. S. 947.*Name of Newspaper—Injuring Plaintiff’s Paper—Injunction.*

Injunction restraining the defendant, &c., “from printing, publishing, or selling any newspaper or other periodical under the name of ‘The Daily London Journal,’ or under any other name or style of which the words ‘London Journal’ form part, and from doing or committing any act or default which may tend to lessen or diminish the sale or circulation of the plaintiff’s periodical, called ‘The London Journal’” (c).

(a) Wood, V.-C.

(b) Stuart, V.-C. And see *Edmonds v. Benbow*, Seton, 3rd ed. 905; *Corns v.**Griffiths*, Pemberton, 3rd ed. 238; *MacI v. Petter*, 41 L. J. Ch. 782.

(c) Wood, V.-C.

16. WALTER *v.* HEAD, 25 Sol. J. 757.*Name of Newspaper—Injunction.*

Injunction restraining the defendant, &c., “from printing or publishing any newspaper or other publication in the form of a newspaper with or under the name or title of ‘The Times,’ and from doing any other act in invasion or infringement of the plaintiff’s right or interest in the name or title of ‘The Times’” (a).

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17. PROWETT *v.* MORTIMER, 2 Jur. N. S. 414.*Name of Newspaper—Soliciting Customers—Injunction.*

Injunction restraining the defendant, &c., “from printing, or publishing, or exposing for sale, or procuring to be printed or sold the newspaper publication called ‘The True Britannia,’ or any other newspaper or publication, as a continuation of the plaintiff’s newspaper ‘The Britannia,’ in the bill mentioned, and from soliciting custom in the name of the plaintiff’s trade and business as for ‘The Britannia’ newspaper” (b).

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18. HOGG *v.* KIRBY, 8 Ves. 215—226.*Publication of a Magazine as a Continuation of Plaintiff’s Magazine—Injunction.*

Injunction restraining the defendant, &c., “from publishing or exposing for sale any copy or copies of the defendant’s said work, and from printing, publishing, or exposing for sale, any other work or publication as or being a continuation of the plaintiff’s work, or of the defendant’s work which has been so published as such continuation as aforesaid; and from printing all or any part or parts of the plaintiff’s said work;” and Ordered “that the injunction shall be continued as to any letters, &c., admitted by the Answer to have been received from correspondents by the defendant, while publishing for the plaintiff” (c).

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19. AINSWORTH *v.* BENTLEY, 14 W. R. 630.*Publication of Magazine in Breach of Contract—Order—Injunction.*

Ordered, “That the defendant, &c., be restrained from carrying on, &c., the said ‘Temple Bar Magazine,’ but the order to be without pre-

(a) Court of Appeal.

(b) Stuart, V.-C.

(c) Lord Eldon, C.



judice to the publication of the said magazine until the hearing of the cause, so as the name of Bentley do not appear either in the title-page, or in any other part of the said publication, or in any advertisement of the said publication, and this order to be without prejudice to the right (if any) of the plaintiff to damages or profits in respect of any publication of the work" (a).

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20. *PRINCE ALBERT v. STRANGE*, 2 De G. & Sm. 652—717.

*Etchings Improperly Obtained and Published—Catalogues Improperly Published—Decree—Delivery up—Injunction.*

Decree, by which—"Declared that the plaintiff is entitled to have delivered to him the impressions (by the Answer of defendant J. admitted to be in his possession) of such of the several etchings in the pleadings mentioned as in the catalogue and in the pleadings are stated to have been etched by the plaintiff; that is to say (description by reference to Nos. in the catalogue); Ordered, that J. shall, within four days after the service of the decree, deliver up the impressions above specified on oath, and leave them with the Clerk of Records and Writs at the Record Office. Ordered, that the defendant S. shall, within four days after the service of the decree, deliver to the Clerk of Records and Writs, at the said office, the twenty-five copies of the catalogue, being the same as are mentioned in the decree in the other suit of even date. Similar directions as to six copies of the catalogue admitted by J. to be in his possession. Ordered, that the Clerk of Records and Writs shall destroy those copies of the catalogue, giving notice to the solicitors of the several parties of the time and place at which he intends to do so. Injunction, restraining the defendants, &c., from making or permitting to be made any engraving or copy of such etchings, or any of them, and from publishing the same; and from parting with or disposing of them or any of them, except in obedience to the decree; and from selling, or in any manner publishing the catalogue, or any work being or purporting to be a catalogue of the etchings made by the plaintiff. Provision made for costs. Liberty to apply reserved" (b).

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21. *CHAPPELL v. SHEARD*, 2 K. & J. 117—122.

*Name and Title-page of Song—Injunction.*

Injunction restraining the defendants, &c., "from printing, publishing, selling, exposing for sale, or otherwise disposing of the song 'Minnie

(a) Wood, V.-C.

(b) Knight-Bruce, V.-C.

Dale,' or any copy or copies thereof, or any other publication containing a colourable imitation of the name, title, or title-page of the plaintiff's said song" (a).

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22. MORISON *v.* MOAT, 9 Hare, 241—267.

*Name of Patent Medicine—Secret Recipe—Injunction.*

Injunction restraining the defendant, &c., "from selling, or causing or procuring to be sold, under the title or designation of 'Morison's Universal Medicine,' or 'Morison's Vegetable Universal Medicine,' any medicine made or manufactured by the defendant, or by or under his order or direction;" and restraining the defendant, &c., "from making or compounding any medicines according to the secret in, &c., and from in any manner using the secret of compounding the said medicines, or any part thereof" (b).

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23. ESTCOURT *v.* ESTCOURT HOP ESSENCE CO., 31 L. T. N. S. 567.

*Hop Essence—Secret Recipe—Trade Name—Representation of Succession in Business—Manufacturing Contrary to Agreement—Injunction.*

Injunction restraining the defendants C. Estcourt and the Estcourt Hop Essence Co., &c., "from manufacturing, or selling, or advertising for sale, an article called 'Hop Essence,' or any other substance identical with or only colourably differing from the 'Hop Supplement' manufactured and sold by the plaintiffs, and from using or disclosing to any persons the secret of compounding the said 'Hop Supplement'; and also restraining the defendant company from trading under the name of 'The Estcourt Hop Essence Co., Limited,' and from using any designation, either of the vendors or of the substance offered for sale, calculated to lead purchasers into the belief that such substance is the 'Hop Supplement' manufactured by the plaintiffs, or equivalent or substantially equivalent thereto, or that they, such defendants, or any of them, are the successors in business of the plaintiffs' firm, or the original firm who manufactured and sold the said article; and also restraining the defendant C. Estcourt from carrying on or being connected with the business of manufacturing or selling any substance intended to be used as a substitute for hops in brewing" (c).

(a) Wood, V.-C. And see *Emperor of Austria v. Day* (V.-C. Stuart, 2 Giff. 628—631; Court of Appeal, 3 De G. F. & J. 217—219), for injunction against printing spurious Hungarian notes, and order for delivery up of plates used in such printing.

(b) Turner, V.-C. And see *Ansell v. Gaubert*, Seton, 4th ed. 235; *Weston v. Hemmons*, 2 Vict. L. R. Eq. 121.

(c) Malins, V.-C. The injunction was afterwards rescinded, but on grounds independent of the form of it. L. R. 10 Ch. 276.

24. FRANKS *v.* WEAVER, 8 L. T. (Old Series), 510.*Fraudulently Using Another's Testimonials—Injunction.*

Injunction restraining the defendant, &c., "from making, vending, or offering for sale, or in any manner disposing of any preparation, mixture, compound, or nostrum, having around, or upon, or in connection with the same, or the bottles or other vessels containing the same, any cover, wrapper, envelope, label, bill, circular, notice, advertisement, or other formula, in the terms or to the purport or effect of the cover, wrapper, envelope, label, bill, circular, notice, advertisement, or other formula in the plaintiff's bill stated to have been used by the said defendant, or any other cover, &c., containing any testimonial in favour of the plaintiff's medicine or medical preparation in the said bill described as 'Franks' Specific Solution of Copaiba,' or in which any statement or representation is made or contained indicating, or implying, or tending to induce the public or purchasers to suppose that such preparation, mixture, compound, or nostrum is the same as 'Franks' Specific Solution of Copaiba,' or referred to in connection with any preparation, mixture, compound, or nostrum made, vended, or disposed of by the said defendant, or in which any use is made of the character and reputation of the plaintiff, or his said specific solution of copaiba, and from publishing, or circulating, or causing to be published, or circulated, or in any manner using such cover, &c., as aforesaid" (a).

25. KNOTT *v.* MORGAN, 2 Keen, 213—219.*Imitating a Rival Line of Omnibuses—Injunction.*

Injunction restraining the defendant, &c., "from running, or in any manner using, or causing to be used, for the conveyance of passengers, his omnibus in the bill mentioned, or any other omnibus, having painted, stamped, printed, or written thereon the words or names 'London Conveyance,' or 'Original Conveyance Company,' or any other names, words, or devices painted, stamped, printed, or written thereon, in such manner as to form or be a colourable imitation of the names, words, and devices painted, stamped, printed, or written on the omnibuses of the plaintiffs" (b).

26. GLENNY *v.* SMITH, 2 Dr. & Sm. 476.*Trade Name—Injunction.*

Injunction restraining the defendant, &c., "from continuing to use, or from exhibiting or using the words 'Thresher and Glenny,' or the name of

(a) Lord Langdale, M. R.

(b) Lord Langdale, M. R. The M. R. altered the form so as not to restrain all

use of the words "London Conveyance Company."

the plaintiffs' said firm in any form in or about his said shop in such a way as to deceive the public, or to lead to the belief that his shop is a shop of the plaintiffs, or that the business carried on there is carried on by the plaintiffs, or is in any way connected with the business of the plaintiffs" (a).

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27. HENDRIKS v. MONTAGU, 17 Ch. D. 638—39—47.

*Name of Company—Registration—User—Advertisements, &c.—  
Injunction.*

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

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28. LEE v. HALEY, L. R. 5 Ch. 155.

*Name of Company—Injunction against User within a certain Locality.*

Injunction restraining the defendant, &c., "from continuing to use, and from exhibiting or using the words 'The Pall Mall Guinea Coal Company,' in Pall Mall, or any other name or style so framed as to be a colourable imitation of the name or style in which the plaintiffs' branch business mentioned in the bill is carried on, or so as to deceive the public, or to lead to the belief that the business carried on by the defendant is the same as the business carried on by the plaintiffs under the name or style of 'The Guinea Coal Company,' or is in any way connected therewith" (c).

(a) Kindersley, V.-C. And see *Hudson v. Osborne*, 39 L. J. Ch. 79; *Hookham v. Pottage*, L. R. 8 Ch. 92; *James v. James*, Seton, 4th ed. 237; *Montague v. Moore*,

*ib.* 238; and *Care v. Myers*, *ib.* 238; *Fullwood v. Fullwood*, 38 L. T. N. S. 381.

(b) Court of Appeal.

(c) Malins, V.-C.

29. *WHEELER v. JOHNSTON*, 3 L. R. Ir. 284.*Name of Mineral Springs—Injunction.*

Injunction restraining the defendant, &c., "from using the words 'Cromac Springs' in connection with his trade or business as a manufacturer or seller of mineral waters, so as to represent that his said waters are so manufactured or sold by the plaintiffs at their works in the bill mentioned, called 'The Cromac Springs,' and from using the words 'Cromac Springs' as the name of the defendant's place of business so as to represent as aforesaid" (a).

30. *BRAHAM v. BEACHAM*, 7 Ch. D. 848—857.*Name of Collieries—Injunction until certain events,*

Injunction restraining the defendants, "unless and until they shall acquire a colliery or coal mine within the parish of Radstock, from trading under or using the name or style of 'The Radstock Colliery Proprietors,' or any other name or style signifying that the defendants, or either of them, are proprietors of any colliery or collieries at Radstock," and restraining the defendants, "unless and until they shall become authorised to sell or supply any coals raised or gotten from any colliery or coal mine within the parish of Radstock, from using any style or name signifying or implying that the defendants are selling or supplying, or are authorised to sell or supply, any coal raised or gotten from any colliery or coal mine within the parish of Radstock" (b).

31. *SCOTT v. SCOTT*, 16 L. T. N. S. 143.*False Representation of Continuation of Business—Injunction.*

Injunction restraining the defendants, &c., "from allowing or permitting the brass plate affixed by the defendants to the door of the premises in Regent Street to remain affixed, with any inscription thereon representing or holding out to the customers of the late partnership of 'R. & W. Scott,' or to any other persons whatsoever, that they are carrying on business in continuation of, or in succession to, the business carried on by the late firm of 'R. & W. Scott'" (c).

(a) Chatterton, V.-C. of I.

(b) Fry, J.

(c) Wood, V.-C. And see *Hoffman**v. Duncan*, Seton, 4th ed. 256; *Witt v. Corcoran*, *ib.*, 257; *Graveley v. Winchester*, *ib.* 257; *England v. Curling*, 8 Beav. 129.

32. BURROWS *v* FOSTER, 1 N. R. 156.*False Representation of Continuation of Business—Soliciting former Customers - Injunction.*

Injunction restraining the defendant, &c., "from issuing or sending, and from causing or procuring to be issued or sent, to any person or persons any further copies or copy of the circular or letter bearing date the 3rd April, 1862, in the plaintiffs' bill mentioned, or any other circular or letter signifying or importing that the business carried on by him the said defendant is, and from in any manner representing such business to be a continuation of the business formerly carried on by the firms of Foster, Lacy & Co., and Bashall, Lacy & Co., in the plaintiffs' bill mentioned, or by either of such firms, and from in any manner soliciting or inviting any person or persons who, at the date of the indenture of the 31st March, 1862, in the plaintiffs' bill mentioned, was or were a customer or correspondent, customers or correspondents of the firms of Foster, Lacy & Co., and Bashall, Lacy & Co., or of either of such firms, and from causing or procuring any such person or persons to be solicited or invited to become or be a customer or correspondent or customers or correspondents of, or to employ him the said defendant in the business carried on by him, or to cease from employing or not to employ the said plaintiffs in the business formerly carried on by the said firms of Foster, Lacy & Co., and Bashall, Lacy & Co., or either of them" (a).

33 MASSAM *v*. THORLEY'S CATTLE FOOD CO., 14 Ch. D. 748-762.*False Representation of Continuation of Business—Trade Name—Labels—Advertisements—Circulars—Injunction.*

Injunction restraining the defendants, &c., "from selling, shipping, or exporting, or causing or procuring, or allowing to be sold, shipped, or exported, and from in any manner representing, or causing or procuring to be represented, any goods manufactured by the defendant company as the manufacture or goods of the late Joseph Thorley, or of the plaintiffs, his trustees and successors in business; and also from in any manner representing, or causing or procuring to be represented, or doing anything which shall lead to the belief that the defendant company have been or are carrying on the business of the late Joseph Thorley; and also from affixing, or permitting, or causing to be affixed to any goods or articles manufactured, or bought, or procured, or sold, or shipped, or exported by the defendant company, or otherwise using or employing, or permitting to be used or employed, any labels, wrappers, or marks used by the late Joseph Thorley and the plaintiffs, his trustees and successors in business, or so contrived and prepared as to represent or lead to the belief that the goods or articles manufactured, or sold, or shipped; or exported by the defendant company, are the goods or manufacture of the late Joseph

(a) Turner, L. J.

Thorley or of the plaintiffs; and also from employing, using, or circulating, or causing to be employed, used, or circulated, any circulars, pamphlets, notices, or advertisements of the late Joseph Thorley or of the plaintiffs, or which shall in any manner represent or lead to the belief that the defendant company have been or are carrying on the business of the late Joseph Thorley, or that they are his successors in business" (a).

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34. LABOUCHERE v. DAWSON, L. R. 13 Eq. 322—327.

*Soliciting former Customers, after Sale of Business—Injunction.*

Injunction restraining the defendant, &c., "from applying to any person who was a customer of the firm of B. Dawson & Co. prior to the 12th of June, 1871, privately, by letter, personally, or by a traveller, asking such customer to continue to deal with the defendant, or not to deal with the plaintiffs, the Kirkstall Brewery Co., Limited" (b).

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35. WHEELER & WILSON MANUFACTURING CO. v. SHAKESPEAR, 39 L. J. Ch. 36—38—41.

*False Representation of Agency—Injunction.*

Injunction restraining the defendant, &c., "from, in manner aforesaid, or in any other manner, calling, or describing, or representing, his said shop or place of business, No. 32, Union Street, Birmingham, or any other shop, warehouse, or place, not belonging to the plaintiffs, as 'The Original Wheeler & Wilson Sewing Machine Depot,' or 'Wheeler & Wilson Sewing Machine Depot, established in 1860,' or as a place of business of the plaintiffs, or of 'Wheeler & Wilson,' manufacturers of sewing machines; and from in manner aforesaid, or in any other manner, calling, or describing, or representing, himself or his said firm of T. Shakespear & Co., as the agent or agents for the American 'Wheeler & Wilson' sewing machines, in the same manner in which he has been since 1860, or as the agent of the 'Wheeler & Wilson' sewing machines; and from in any other manner representing himself as the agent of the plaintiffs, and from permitting the names 'Wheeler & Wilson' to remain over the door of his shop or business premises, at 32, Union Street, Birmingham, or on the brass plate under the window, or on the brass plate on the door jamb, or on any other part of his said shop or place of business, or

(a) James, L. J.

(b) Lord Romilly, M. R. And see *Leygott v. Barrett*, 15 Ch. D. 306; and *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191. As to opening letters containing

orders intended for another firm, see *Scheile v. Brukell*, 11 W. R. 796; and *Seton*, 4th ed. 253; *Witt v. Corcoran*, *Seton*, 4th ed. 257; *England v. Curling*, 8 Beav. 129.

on any placard in his said shop, or on the door, or in the window thereof; and from causing the names 'Wheeler & Wilson' to be inserted in any railway time table, or directory, or other book or publication, under the head of, or described as sewing machine manufacturers, as residing or carrying on business at No. 32, Union Street, Birmingham, or as in any other manner connected with that or any other shop or place of business of the said defendant, and from doing any other act, matter, or thing representing, or whereby the trade or the public may be led to believe that the defendant has any connection whatever in business with the plaintiffs" (a).

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36. JAMES v. JAMES, 41 L. J. Ch. 358.

*Fraudulent disuse of Christian Name—Claim to be the "Only Genuine"—Injunction.*

Injunction restraining the defendant, &c., "from using the name of 'Robert James' singly, instead of 'Robert Joseph James,' or 'R. J. James'; also from stating or inserting in his advertisement or circular any words or expressions asserting or suggesting that the ointment manufactured and sold by the plaintiffs is spurious and not genuine" (b).

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37. THORLEY'S CATTLE FOOD CO. v. MASSAM, 14 Ch. D. 763—781.

*Trade Libel—Representation that the Plaintiffs' Goods are Spurious—Injunction.*

Injunction restraining the defendants, &c., "from advertising, or representing, or suggesting in their advertisements or circulars that they are alone possessed of the secret for compounding the condiment known as 'Thorley's Food for Cattle,' and from representing, or suggesting, or doing anything calculated to represent or suggest, that the cattle food manufactured and sold by the plaintiffs is spurious or not genuine" (c).

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38. THOMAS v. WILLIAMS, 14 Ch. D. 864—875.

*Trade Libel—Representation that the Plaintiff's Goods are Spurious—Injunction.*

Injunction restraining the defendants, &c., "from issuing or permitting the issue of the circular dated the 6th February, 1879, and from in any

(a) James, V.-C.

(b) Lord Romilly, M.R.

(c) Malins, V.-C., affirmed by Court of Appeal.



manner representing or suggesting that the goods now made or sold by the plaintiff are imitations of the goods made or sold by J. Thomas & Sons, or Edmund Holyoake" (a).

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39. ROUTH *v.* WEBSTER, 10 Beav. 561—563.

*Unauthorised and Injurious Use of a Person's Name—Injunction.*

Injunction restraining the defendants, &c., "from printing, publishing, or circulating, any prospectus or other document of, or relating to, a certain company called 'The Economic Conveyance Company,' mentioned and referred to in the plaintiff's bill in this cause, with the plaintiff's name thereto, and from in any manner using the name of the plaintiff so as to identify him as a party interested in, or associated with, the said company" (b).

(a) Fry, J.

(b) Lord Langdale, M. R.

## APPENDIX C.

### STATUTORY ENACTMENTS WITH RESPECT TO MARKS ON GOODS, &c.

#### THE MERCHANDISE MARKS ACT, 1862.

25 & 26 Vict. c. 88 (a).

*An Act to amend the Law relating to the Fraudulent Marking  
of Merchandise. [7th August, 1862.]*

WHEREAS it is expedient to amend the laws relating to the fraudulent marking of merchandise, and to the sale of merchandise falsely marked for the purpose of fraud: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Construction  
of words:  
"Person."

1. In the construction of this Act, the word "person" shall include any person, whether a subject of Her Majesty or not, and any body corporate, or body of the like nature, whether constituted according to the law of this country or of any of Her Majesty's colonies or dominions, or according to the law of any foreign country, and also any company, association, or society of persons, whether the members thereof be subjects of Her Majesty or not, or some of such persons subjects of Her Majesty, and some of them not, and whether such body corporate, body of the like nature, company, association, or society, be established or carry on business within Her Majesty's dominions or elsewhere, or partly within Her Majesty's dominions, and partly elsewhere; the word "mark" shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram,

"Mark."

(a) It is not against the policy of the law for proceedings taken under

this Act to be compromised: *Fisher v. Apollinaris Co.*, L. R. 10 Ch. 297.

label, ticket, or other mark of any other description; and the expression "trade mark" shall include any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark as aforesaid, lawfully used by any person to denote any chattel, or (in Scotland) any article of trade, manufacture, or merchandise, to be an article or thing of the manufacture, workmanship, production, or merchandise of such person, or to be an article or thing of any peculiar or particular description made or sold by such person, and shall also include any name, signature, word, letter, number, figure, mark, or sign, which in pursuance of any statute or statutes for the time being in force relating to registered designs (a) is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provisions of such statutes, or any of them (b); the word "misdemeanour" shall include crime and offence in Scotland; and the word "court" shall include any sheriff or sheriff-substitute in Scotland.

"Trade mark."

"Misdemeanour."  
"Court."

2. Every person who, with intent to defraud, or to enable another to defraud any person, shall forge or counterfeit, or cause or procure to be forged or counterfeited any trade mark, or shall apply, or cause or procure to be applied, any trade mark, or any forged or counterfeited trade mark, to any chattel or article not being the manufacture, workmanship, production, or merchandise of any person denoted or intended to be denoted by such trade mark, or denoted or intended to be denoted by such forged or counterfeited trade mark, or not being the manufacture, workmanship, production, or merchandise of any person whose trade mark shall be so forged or counterfeited, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any chattel or article, not being the particular or peculiar description of manufacture, workmanship, production, or merchandise, denoted or intended to be denoted by such trade mark, or by such forged or counterfeited trade mark, shall be guilty of a misdemeanour, and every person so committing a misdemeanour shall also forfeit to Her Majesty every chattel and article belonging to such person, to which he shall have so unlawfully applied, or caused or procured to be applied, any such trade mark or forged or counterfeited trade mark as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark, or forged or counterfeited trade mark as aforesaid, shall

Forging a trade mark, or falsely applying any trade mark with intent to defraud, a misdemeanour.

(a) The Patents Act, 1883, is the only Act now in force relating to registered designs. See § 51, and Rule 32 of the Designs Rules, 1883,

*infra*.

(b) As to this definition of "trade mark," see per Sir J. Bacon, V.-C., in *Ford v. Foster*, L. R. 7 Ch. 611.

have been so applied, and every instrument in the possession or power of such person for applying any such trade mark, or forged or counterfeit trade mark as aforesaid, shall be forfeited to Her Majesty; and the Court before which any such misdemeanour shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of, as such Court shall think fit.

Applying a forged trade mark to any vessel, case, wrapper, &c., in or with which any article is sold or intended to be sold, a misdemeanour.

3. Every person who, with intent to defraud, or to enable another to defraud any person, shall apply or cause or procure to be applied any trade mark, or any forged or counterfeited trade mark, to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, on, or with which any chattel or article shall be intended to be sold, or shall be sold or uttered or exposed for sale, or intended for any purpose of trade or manufacture, or shall enclose or place any chattel or article, or cause or procure any chattel or article to be enclosed or placed in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall apply or attach, or cause or procure to be applied or attached to any chattel or article, any case, cover, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall enclose, place, or attach any chattel or article, or cause or procure any chattel or article to be enclosed, placed, or attached in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing having thereon any trade mark of any other person, shall be guilty of a misdemeanour, and every person so committing a misdemeanour shall also forfeit to Her Majesty every such chattel and article, and also every such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, in the possession or power of such person; and every other similar cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing made to be used in like manner as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been applied; and also every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeit trade mark as aforesaid, shall be forfeited to Her Majesty; and the Court before which any such misdemeanour shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such Court shall think fit.

4. Every person who, after the 31st day of December, one thousand eight hundred and sixty-three, shall sell, utter, or expose either for sale or for any purpose of trade or manufacture, or cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, which he shall know to be forged or counterfeited, or together with the trade mark of any other person applied or used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark of another person to have been so applied or used as aforesaid, and that whether any such trade mark or forged or counterfeited trade mark as aforesaid, together with which any such chattel or article shall be sold, uttered, or exposed for sale or other purpose as aforesaid, shall be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall be so sold or uttered or exposed for sale or other purpose as aforesaid, shall for every such offence forfeit and pay to Her Majesty a sum of money equal to the value of the chattel or article so sold, uttered, offered, or exposed for sale or other purpose as aforesaid, and a further sum not exceeding five pounds and not less than ten shillings.

Selling articles with forged or false trade marks after 31st December, 1863, penalty equal to value of article sold, and a sum not exceeding £5, nor less than 10s.

5. Every addition to and every alteration of, and also every imitation of any trade mark which shall be made, applied, or used, with intent to defraud, or to enable any other person to defraud, or which shall cause a trade mark with such alteration or addition, or shall cause such imitation of a trade mark to resemble any genuine trade mark, so or in such manner as to be calculated or likely to deceive, shall be and be deemed to be a false, forged, and counterfeited trade mark within the meaning of this Act; and every act of making, applying, or otherwise using any such addition to or alteration of a trade mark, or any such imitation of a trade mark as aforesaid done by any person with intent to defraud, or to enable any other person to defraud, shall be and be deemed to be forging and counterfeiting a trade mark within the meaning of this Act.

Additions to and alterations of trade marks made with intent to defraud, to be deemed forgeries.

6. Where any person who, at any time after the thirty-first day of December, one thousand eight hundred and sixty-three, shall have sold, uttered, or exposed for sale or other purpose as aforesaid, or shall have caused or procured to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, or together with the trade mark of any other person used without lawful authority or excuse as aforesaid, and that whether any such trade mark, or such forged or counterfeited trade mark as

Any person who, after 31st December, 1863, shall have sold an article having a false trade mark, to be bound to give information where he procured it.

Power to  
justices to  
summon  
parties refus-  
ing to give in-  
formation.  
Penalty for  
refusal £5.

aforesaid, be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall have been sold or exposed for sale, such person shall be bound, upon demand in writing delivered to him or left for him at his last known dwelling-house, or at the place of sale or exposure for sale by or on the behalf of any person whose trade mark shall have been so forged or counterfeited, or used without lawful authority or excuse as aforesaid, to give to the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information in writing of the name and address of the person from whom he shall have purchased or obtained such chattel or article, and of the time when he obtained the same: and it shall be lawful for any justice of the peace, on information on oath of such demand and refusal, to summon before him the party refusing, and, on being satisfied that such demand ought to be complied with, to order such information to be given within a certain time to be appointed by him; and any such party who shall refuse or neglect to comply with such order shall for every such offence forfeit and pay to Her Majesty the sum of five pounds, and such refusal or neglect shall be *prima facie* evidence that the person so refusing or neglecting had full knowledge that the trade mark, together with which such chattel or article was sold, uttered, or exposed for sale, or other purpose as aforesaid, at the time of such selling, uttering, or exposing was a forged, counterfeited, and false trade mark, or was the trade mark of a person which had been used without lawful authority or excuse, as the case may be.

Marking any  
false indica-  
tion of quan-  
tity, &c., upon  
an article with  
intent to  
defraud,  
penalty a sum  
equal to the  
value of the  
article and a  
further sum  
not exceeding  
£5 and not  
less than 10s.

7. Every person who, with intent to defraud or to enable another to defraud, shall put or cause or procure to be put upon any chattel or article, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which any chattel or article shall be intended to be or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture, or upon any case, frame, or other thing in or by means of which any chattel or article shall be intended to be or shall be exposed for sale, any false description, statement, or other indication of, or respecting the number, quantity, measure, or weight of such chattel or article, or any part thereof, or of the place or country in which such chattel or article shall have been made, manufactured, or produced, or shall put or cause or procure to be put upon any such chattel or article, cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing as aforesaid, any word, letter, figure, signature, or mark for the purpose of falsely indicating such

chattel or article, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent (a), privilege, or copyright, shall for every such offence forfeit and pay to Her Majesty a sum of money equal to the value of the chattel or article so sold or uttered or exposed for sale, and a further sum not exceeding five pounds and not less than ten shillings.

8. Every person who, after the thirty-first day of December, one thousand eight hundred and sixty-three, shall sell, utter, or expose for sale, or for any purpose of trade or manufacture, or shall cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article upon which shall have been, to his knowledge, put, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall have been so put, or upon any case, frame, or other thing used or employed to expose or exhibit such chattel or article for sale, shall have been so put, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or any part thereof, or the place or country in which such chattel or article shall have been made, manufactured, or produced, shall for every such offence forfeit and pay to Her Majesty a sum not exceeding five pounds and not less than five shillings.

Selling or exposing for sale after the 31st December, 1863, articles with false statement of quantities, &c., penalty not more than £5, nor less than 5s.

9. Provided always, that the provisions of this Act shall not be construed so as to make it any offence for any person to apply to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label or other thing with which such chattel or article shall be sold or intended to be sold, any name, word, or expression generally used for indicating such chattel or article to be of some particular class or description of manufacture only, or so as to make it any offence for any person to sell, utter, or offer or expose for sale any chattel or article to which, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label or other thing sold therewith, any such generally used name, word, or expression as aforesaid shall have been applied.

Proviso that it shall not be an offence to apply names or words known to be used for indicating particular classes of manufactures.

10. In every indictment, pleading, proceeding, and document whatsoever in which any trade mark shall be intended to be mentioned, it shall be sufficient to mention or state the same to be a trade mark, without further or otherwise describing such

Description of trade marks and forged trade marks in indictments, &c

(a) A person who himself wrongfully inserts or retains the word "patent" in his trade mark cannot

avail himself of the benefits of this Act: *Morgan v. McAdam*, 36 L. J. Ch. 228.

trade mark, or setting forth any copy or facsimile thereof; and in every indictment, pleading, proceeding, and document whatsoever in which it shall be intended to mention any forged or counterfeit trade mark it shall be sufficient to mention or state the same to be a forged or counterfeit trade mark, without further or otherwise describing such forged or counterfeit trade mark, or setting forth any copy or facsimile thereof.

Conviction not to affect any right or civil remedy.

11. The provisions in this Act contained of or concerning any act, or any proceeding, judgment, or conviction for any act hereby declared to be a misdemeanour or offence, shall not nor shall any of them take away, diminish, or prejudicially affect any suit, process, proceeding, right, or remedy which any person aggrieved by such act may be entitled to at law, in equity, or otherwise, and shall not nor shall any of them exempt or excuse any person from answering or making discovery upon examination as a witness or upon interrogatories, or otherwise, in any suit or other civil proceeding: Provided always, that no evidence, statement, or discovery which any person shall be compelled to give or make shall be admissible in evidence against such person, in support of any indictment for a misdemeanour at common law or otherwise, or of any proceeding under the provisions of this Act.

Intent to defraud, &c., any particular person need not be alleged in an indictment, &c., or proved.

12. In every indictment, information, conviction, pleading, and proceeding against any person for any misdemeanour or other offence against the provisions of this Act in which it shall be necessary to allege or mention an intent to defraud, or to enable another to defraud, it shall be sufficient to allege or mention that the person accused of having done any act which is hereby made a misdemeanour or other offence, did such act with intent to defraud, or with intent to enable some other person to defraud, without alleging or mentioning an intent to defraud any particular person; and on the trial of any such indictment or information for any such misdemeanour, and on the hearing of any information or charge of or for any such other offence as aforesaid, and on the trial of any action against any person to recover a penalty for any such other offence as aforesaid, it shall not be necessary to prove an intent to defraud any particular person, or an intent to enable any particular person to defraud any particular person, but it shall be sufficient to prove with respect to every such misdemeanour and offence that the person accused did the act charged with intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

Persons who

13. Every person who shall aid, abet, counsel, or procure the



commission of any offence which is by this Act made a misdemeanour shall also be guilty of a misdemeanour.

14. Every person who shall be convicted or found guilty of any offence which is by this Act made a misdemeanour shall be liable, at the discretion of the Court and as the Court shall award, to suffer such punishment by imprisonment for not more than two years, with or without hard labour, or by fine, or both by imprisonment, with or without hard labour, and fine, and also by imprisonment until the fine (if any) shall have been paid and satisfied.

aid in the commission of a misdemeanour to be also guilty. Punishment for misdemeanour under this Act.

15. In every case in which any person shall have committed or done any offence or act whereby he shall have forfeited or become liable to pay to Her Majesty any of the penalties or sums of money mentioned in the provisions of this Act, every such penalty or sum of money shall or may be recovered in England, Wales, or Ireland in an action of debt, which any person may as plaintiff for and on behalf of Her Majesty commence and prosecute to judgment in any Court of Record, and the amount of every such penalty or sum of money to be recovered in any such action shall or may be determined by the jury (if any) sworn to try any issue in such action, and if there shall be no such jury then by the Court or some other jury, as the Court shall think fit, or instead of any such action being commenced, such penalty or sum of money shall or may in England or Wales be recovered by a summary proceeding before two justices of the peace having jurisdiction in the county or place where the party offending shall reside or have any place of business, or in the county or place in which the offence shall have been committed; and shall or may in Ireland be recovered in like manner by civil bill in the Civil Bill Court of the county or place in which the offence was committed, or in which the offender shall reside or have any place of business; and shall or may in Scotland be recovered by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence shall have been committed, or the offender may reside or have any place of business, which sheriff, upon proof of the offence, either by the confession of the person offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable in the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: Provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzing the defender, to find the

Recovery of penalties.

complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary action shall be final and conclusive, and not subject to review by advocacy, suspension, reduction, or otherwise.

Summary proceedings before justices to be within 11 & 12 Vict. c. 43.

16. In every case in which any such penalty or sum of money forfeited to Her Majesty as hereinbefore mentioned shall be sought to be recovered by a summary proceeding before two justices of the peace, the offence or act by the committing or doing of which such penalty or sum of money shall have been so forfeited shall be and be deemed to be an offence and act within the meaning of a statute passed in the twelfth year of the reign of Her present Majesty, intituled *An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders*; and the information, conviction of the offender, and other proceedings for the recovery of the penalty or sum so forfeited shall be had according to the provisions of the said Act.

In actions penalties to be accounted for in like manner as other moneys payable to the Crown, and plaintiffs to recover full costs of suit.

17. In every case in which judgment shall be obtained in any such action as aforesaid for the amount of any such penalty or sum of money forfeited to Her Majesty, the amount thereof shall be paid by the defendant to the sheriff or the officer of the Court, who shall account for the same in like manner as other moneys payable to Her Majesty, and if it be not paid, may be recovered, or the amount thereof levied, or the payment thereof enforced, by execution or other proper proceeding, as money due to Her Majesty; and the plaintiff suing on behalf of Her Majesty, upon obtaining judgment, shall be entitled to recover and have execution for all his costs of suit, which shall include a full indemnity for all costs and charges which he shall or may have expended or incurred in, about, or for the purposes of the action, unless the Court or a judge thereof shall direct that costs of the ordinary amount only shall be allowed.

Limitations of actions, &c.

18. No person shall commence any action or proceeding for the recovery of any penalty, or procuring the conviction of any offender in manner hereinbefore provided, after the expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

After 31st December, 1863, vendor of an article with a trade mark to be deemed to contract that the mark is genuine.

19. In every case in which at any time after the thirty-first day of December, one thousand eight hundred and sixty-three, any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article with any trade mark thereon, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or con-

tracted to be sold, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that every trade mark upon such chattel or article, or upon any such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, was genuine and true, and not forged or counterfeit, and not wrongfully used, unless the contrary shall be expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

20. In every case in which at any time after the thirty-first day of December, one thousand eight hundred and sixty-three, any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article upon which, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or the place or country in which such chattel or article shall have been made, manufactured, or produced, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that no such description, statement, or other indication was in any material respect false or untrue, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor and delivered to and accepted by the vendee.

After 31st December, 1863, vendor of an article with description upon it of its quantity to be deemed to contract that the description was true.

21. In every case in any suit at law or in equity against any person for forging or counterfeiting any trade mark, or for fraudulently applying any trade mark to any chattel or article, or for selling, exposing for sale, or uttering any chattel or article with any trade mark falsely or wrongfully applied thereto, or with any forged or counterfeit trade mark applied thereto, or for preventing the repetition or continuance of any such wrongful act, or the committal of any similar act, in which the plaintiff shall obtain a judgment or decree against the defendant, the Court shall have power to direct every such chattel and article to be destroyed or otherwise disposed of; and in every such suit in a Court of law the Court shall or may upon giving judgment for the plaintiff award a writ of injunction or injunctions to the defendant, commanding him to forbear from committing and not by himself or otherwise to repeat or commit any offence or wrongful act of the like nature as that of which he shall or may have been convicted by such judgment, and any disobedience of any such writ of injunction or injunctions shall be punished as a contempt of Court, and in every such suit at law or in equity it shall be lawful for the Court or a judge thereof to make such

In suits at law or in equity against persons for using forged trade marks, Court may order article to be destroyed, and may award injunction, &c.

order as such Court or judge shall think fit for the inspection of every or any manufacture or process carried on by the defendant in which any such forged or counterfeit trade mark, or any such trade mark as aforesaid, shall be alleged to be used or applied as aforesaid, and of every or any chattel, article, and thing in the possession or power of the defendant alleged to have thereon or in any way attached thereto any forged or counterfeit trade mark, or any trade mark falsely or wrongfully applied, and every or any instrument in the possession or power of the defendant used or intended to be or capable of being used for producing or making any forged or counterfeit trade mark, or trade mark alleged to be forged or counterfeit, or for falsely or wrongfully applying any trade mark ; and any person who shall refuse or neglect to obey any such order shall be guilty of a contempt of Court.

Persons aggrieved by forgeries may recover damages against the guilty parties.

22. In every case in which any person shall do or cause to be done any of the wrongful acts following (that is to say,) shall forge or counterfeit any trade mark ; or for the purpose of sale, or for the purpose of any manufacture or trade, shall apply any forged or counterfeit trade mark to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing in or with which any chattel or article shall be intended to be sold or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture ; or shall enclose or place any chattel or article in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied ; or shall apply or attach to any chattel or article any case, cover, reel, wrapper, band, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied ; or shall enclose, place, or attach any chattel or article in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, reel, wrapper, band, ticket, label, or other thing having thereon any trade mark of any other person ; every person aggrieved by any such wrongful act shall be entitled to maintain an action or suit for damages in respect thereof against the person who shall be guilty of having done such act or causing or procuring the same to be done, and for preventing the repetition or continuance of the wrongful act, and the committal of any similar act.

Defendant obtaining a verdict to have full indemnity for costs.

23. In every action which any person shall, under the provisions of this Act, commence as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money, if the defendant shall obtain judgment, he shall be entitled to recover his costs of suit, which shall include a full indemnity for all the

costs, charges, and expenses by him expended or incurred in, about, or for the purposes of the action, unless the Court or a judge thereof shall direct that costs of the ordinary amount only shall be allowed.

24. In any action which any person shall, under the provisions of this Act, commence as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money, if it shall be shown to the satisfaction of the Court or a judge thereof that the person suing as plaintiff for or on behalf of Her Majesty has no ground for alleging that he has been aggrieved by the committing of the alleged offence, in respect of which the penalty or sum of money is alleged to have become payable; and also that the person so suing as plaintiff is not resident within the jurisdiction of the Court, or not a person of sufficient property to be able to pay any costs which the defendant may recover in the action, the Court or judge shall or may order that the plaintiff shall give security by the bond or recognizance of himself and a surety, or by the deposit of a sum of money, or otherwise, as the Court or judge shall think fit, for the payment to the defendant of any costs which he may be entitled to recover in the action.

A plaintiff suing for a penalty may be compelled to give security for costs.

25. Nothing in this Act contained shall be construed to affect the rights and privileges of the Corporation of Cutlers of the liberty of Hallamshire, in the county of York, nor shall anything in this Act contained be construed in any way to repeal or make void any of the provisions contained in the fifty-ninth George Third, chapter seven, intituled *An Act to regulate the Cutlery Trade in England*.

Act not to affect the Corporation of Cutlers of Hallamshire, nor to repeal 59 Geo. III. c. 7.

26. The expression "The Merchandise Marks Act, 1862," shall be a sufficient description of this Act.

Short title.

## THE WEIGHTS AND MEASURES ACT, 1878.

41 & 42 Vict. c. 49.

### PART I.—LAW OF WEIGHTS AND MEASURES.

#### *Stamping and Verification of Weights and Measures.*

§ 28. Every weight, except where the small size of the weight renders it impracticable, shall have the denomination of such weight stamped on the top or side thereof in legible figures and letters.

Stamping of weights and measures with denomination.

Every measure of capacity shall have the denomination thereof stamped on the outside of such measure in legible figures and letters.

A weight or measure not in conformity with this section shall not be stamped with such stamp of verification under this Act as is hereinafter mentioned.

Stamping of verification on measures and weights.

§ 29. Every measure and weight whatsoever used for trade shall be verified and stamped by an inspector with a stamp of verification under this Act.

Every person who uses or has in his possession for use for trade any measure or weight not stamped as required by this section, shall be liable to a fine not exceeding five pounds, or in the case of a second offence ten pounds, and shall be liable to forfeit the said measure or weight, and any contract, bargain, sale, or dealing made by such measure or weight shall be void.

Lead or pewter weights.

§ 30. A weight made of lead or pewter, or of any mixture thereof, shall not be stamped with a stamp of verification or used for trade, unless it be wholly and substantially cased with brass, copper, or iron, and legibly stamped or marked "cased:"

Provided that nothing in this section shall prevent the insertion into a weight of such a plug of lead or pewter as is *bonâ fide* necessary for the purpose of adjusting it and of affixing thereon the stamp of verification.

A person guilty of any offence against or disobedience to the provisions of this section, shall be liable to a penalty not exceeding five pounds, or in case of a second offence ten pounds.

Stamping of verification on weights for coin.

§ 31. Every coin weight, not less in weight than the weight of the lightest coin for the time being current, shall be verified and stamped by the Board of Trade with a mark of verification under this Act, and otherwise shall not be deemed a just weight for determining the weight of gold and silver coin of the realm.

Every person who uses any weight declared by this section not to be a just weight shall be liable to a fine not exceeding fifty pounds.

Forgery, &c., of stamps on measures or weights.

§ 32. If any person forges or counterfeits any stamp used for the stamping under this Act of any measure or weight, or used before the commencement of this Act for the stamping of any measure or weight, under any enactment repealed by this Act, or wilfully increases or diminishes a weight so stamped, he shall be liable to a fine not exceeding fifty pounds.

Any person who knowingly uses, sells, utters, disposes of, or exposes for sale any measure or weight with such forged or counterfeit stamp thereon, or a weight so increased or diminished, shall be liable to a fine not exceeding ten pounds.

All measures and weights with any such forged or counterfeit stamp shall be forfeited.

## THE WEIGHTS AND MEASURES (IRELAND) AMENDMENT ACT, 1862.

25 &amp; 26 Vict. c. 76 (a).

## PART III.

*Prevention of Frauds.*

§ 14. If any person commit any of the following offences, he shall for each offence be liable to a penalty not exceeding five pounds : Penalty on counterfeiting brand.

- (1.) If he, with intent to defraud, counterfeit or procure to be counterfeited any brand or stamp used by or under the authority of the owner or lessee of a market or fair, or of any person having by law the control of a market or fair, to denote the weight, measure, or quality of any article sold in the market or fair, or within the prescribed limits, during the holding of the market or fair, or of any cask, firkin, or other vessel, covering, or thing in which such article is sold, or the impression of any such brand or stamp :
- (2.) Or, with the like intent, use or procure to be used any such counterfeit brand, or stamp, or impression :
- (3.) Or, with the like intent, alter an impression of any such genuine brand or stamp :
- (4.) Or, with the like intent, have in his possession anything having thereon an impression of any such counterfeit brand or stamp, or a fraudulently altered impression of any such genuine brand or stamp :
- (5.) Or, with the like intent, transfer or apply any cask, firkin, or other vessel, covering, or thing, having thereon an impression of any such genuine brand or stamp, to any article other than that for denoting the weight, measure, or quality whereof such impression was made on such cask, firkin, or other vessel, covering, or thing, or in any other manner alter the *bonâ fide* application of an impression of any such genuine brand or stamp :
- (6.) Or knowingly weigh or cause to be weighed, contrary to the provisions of this Act, or act or assist in committing or connive at any fraud respecting the weighing or the weight or measure of any such article as in Part II. of this Act is mentioned :
- (7.) Or, with intent to defraud, alter any ticket specifying the weight of any such article :

(a) This Act was repealed in part by 41 & 42 Vict. c. 49.

(8.) Or, with intent to defraud, make or use, or be privy to the making or using of any such ticket, falsely stating the weight of any such article, or of any covering, cart, or load :

(9.) Or shall dispose of, sell, or cause to be sold any weight or measure having a false or counterfeit stamp, or a stamp purporting to resemble a genuine stamp.

Penalty for fraudulently increasing weight of butter in casks.

§ 15. If any person shall wilfully pack up or mix, or cause to be packed up or mixed, with or in any butter contained in any firkin or cask, any salt, pickle, or other substance, with intent to increase the weight of such butter, and shall bring or send any butter so packed or mixed to any market for sale, he shall be liable to pay a fine not exceeding forty shillings, or be imprisoned for any period not exceeding one month, as the justice or justices shall determine.

Penalty for fraudulently increasing weight of fleeces.

§ 16. If any person shall wind or cause to be wound in any fleece or wool not being sufficiently rivered or washed, or wind or cause to be wound within any fleeces any deceitful locks, cots, skin, or lamb's wool, or any substance, matter, or thing, whereby the fleece may be rendered more weighty, to the deceit and loss of the buyer, such person shall be liable to a penalty of two shillings for every fleece so fraudulently made up.

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#### THE EXHIBITION MEDALS ACT, 1863—26 & 27 Vict. c. 119.

Penalty on false representations. As to having obtained medals.

§ 1. If any trader commits any of the offences following; that is to say—

- (1.) Falsely represents that he has obtained a medal or certificate from the Exhibition Commissioners (a) in respect of any article or process for which a medal or certificate has been awarded by the Commissioners :
- (2.) Falsely represents (knowing such representation to be false) that any other trader has obtained a medal or certificate from the Exhibition Commissioners :
- (3.) Falsely represents (knowing such representation to be false) that any article sold or exposed for sale has been made by, or by any process invented by, a person who has obtained in respect of such article or process a medal or certificate from the Exhibition Commissioners :

(a) Of 1851 or 1862. See § 3.



He shall incur the following penalties, that is to say :

- (1.) For the first offence he shall forfeit to Her Majesty a sum not exceeding five pounds :
- (2.) For any subsequent offence he shall forfeit to Her Majesty a sum not exceeding twenty pounds, or be imprisoned for a period not exceeding six months.

By § 2, in proceedings under this Act, it is not necessary to prove that any person has sustained damage by the false representations.

By § 5 no provision of this Act is to affect any right or civil remedy.

## REGISTERED DESIGNS.

### THE PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

46 & 47 Vict. c. 57.

§ 51. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered ; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article. Marking registered designs.

### THE DESIGNS RULES, 1883.

§ 2. Before the delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall, if such article is included in any of the classes one to twelve in the Third Schedule hereto, cause each such article to be marked with the abbreviation "RD." and the number appearing on the certificate of registration, and shall, if such article is included in the classes thirteen or fourteen in the Third Schedule hereto, cause each such article to be marked with the abbreviation "REGD." Registration mark.

Class 13 includes "Printed or woven designs on textile piece goods."

Class 14 includes "Printed or woven designs on handkerchiefs and shawls."

The first twelve classes include all other goods.

## CUSTOMS REGULATIONS.

*The Customs Consolidation Act, 1876—39 & 40 Vict. c. 36.*

Table of prohibitions and restrictions.

§ 42 (a). The goods enumerated and described in the following table of prohibitions and restrictions inwards are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported or brought into the United Kingdom contrary to the prohibitions or restrictions contained therein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

## A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS.

*Goods prohibited to be imported.*

\* \* \* \* \*

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 (b).

\* \* \* \* \*

Foreign manufactures with British marks.

§ 153. If any articles of foreign manufacture, and any packages of such articles, bearing any names, brands, or marks being or purporting to be the names, brands, or marks of manufacturers resident in the United Kingdom, shall be imported into any of the British possessions abroad, the same shall be forfeited (c).

*The Customs and Inland Revenue Act, 1879—42 & 43 Vict. c. 21.*

## PART I.—CUSTOMS.

Entry of British goods returned.

§ 6. \* \* Provided also, that if any British goods brought into the United Kingdom bear the name, brand, or mark of any British manufacturer, the same shall, either by bill of store, or by and with the consent in writing of the proprietor of such name, brand, or mark, or his legal representative, or on proof to the satisfaction of the Commissioners of Customs, by declaration of the importer, that such goods are of British manufacture, be admitted to entry as British (d).

(a) This section is amended by 46 & 47 Vict. c. 55, *q.v. infra*.

(b) This is re-enacted from 16 & 17 Vict. c. 107, § 44.

(c) This is re-enacted from 16 &

17 Vict. c. 107, § 161.

(d) This is re-enacted from 30 & 31 Vict. c. 82, § 6, and 39 & 40 Vict. c. 36, § 63.

*The Revenue Act, 1883—46 & 47 Vict. c. 55.*

PART I.—AMENDMENT OF LAW RELATING TO THE CUSTOMS.

§ 2. The following enactments shall, on and after the first day of January, one thousand eight hundred and eighty-four, have effect as if they were contained in section forty-two of the Customs Consolidation Act, 1876, in substitution for the portion of that section repealed by this Act, that is to say—

Amendment  
of § 42 of 39  
& 40 Vict.  
c. 36.

(1.) (a.) Articles of foreign manufacture not imported by, or for, but bearing the name and address or name and trade mark of a manufacturer of such articles resident, or having a place of business, in the United Kingdom (a).

(b.) Articles of foreign manufacture bearing, either alone or in conjunction with other names or words, the name of a part of, or a place in, the United Kingdom, which name in the opinion of the Commissioners of Customs has been placed upon such articles in order to impart to them a special character of British manufacture (b).

(2.) The proprietary right of a manufacturer in any name or mark on any articles of foreign manufacture shall be proved or evidenced in such manner and upon such conditions as the Commissioners of Customs shall prescribe.

(3.) Articles bearing the name of a place which would render them subject to prohibition under this section shall not be admissible by reason of there being another place of the same name out of the United Kingdom (c).

(4.) Names, addresses, and marks on boxes, cases, cards, or other things in which or attached to which articles of foreign manufacture are imported, shall be deemed to be borne by the articles themselves.

(5.) The Commissioners of Customs in administering 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.

(6.) In this section the word "name" as applied to a manufacturer shall include any abbreviation or imitation of a name, and the word "manufacturer" shall include a dealer, and a manufacturing or trading company having a place of business in the United Kingdom.

(a) See 39 & 40 Vict. c. 36, § 42, re-enacting 16 & 17 Vict. c. 107, § 44.

re-enacting 35 & 36 Vict. c. 20, § 4.

(c) See 39 & 40 Vict. c. 36, § 42, re-enacting 35 & 36 Vict. c. 20, § 4.

(b) See 39 & 40 Vict. c. 36, § 42,

## APPENDIX D.

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### STATUTORY ENACTMENTS WITH RESPECT TO MARKS ON SPECIAL CLASSES OF GOODS (a).

#### CUTLERY.

59 *Geo. III. c. 7 (b)*, "An Act to regulate the Cutlery Trade in England."

§ 1. Manufacturers may mark with the figure of a hammer articles of cutlery made by them by means of the hammer.

§ 3. No person is to mark articles of cutlery not made by means of the hammer with the figure of a hammer, or to possess for the purpose of sale, or offer for sale such articles so marked, under penalty of forfeiture of the articles so marked, together with a fine of 5*l.* a dozen.

§ 4. No person is to mark articles of cutlery, or possess for the purpose of sale, or offer for sale articles marked with any words indicative of a quality other than the true one, under similar penalties.

§ 5. No person is to mark articles, or possess, &c., articles marked with the words "London" or "London made," unless such articles were made within the City of London, or twenty miles distance therefrom, under penalty of forfeiture, together with a fine of 10*l.* a dozen.

§ 14. Articles of cutlery subject to forfeiture by virtue of the Act may be seized and destroyed, &c., by order of justices.

The remaining provisions refer chiefly to forms of procedure, recovery of penalties, &c.

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#### *The Cutlers' Company of Hallamshire.*

21 *Jac. I. c. 31* (1623).

§ 1 (c). The cutlers living in Hallamshire, or within six miles distance therefrom, are incorporated under the corporate name of "The Master,

(a) The Acts abstracted in the text are in force at present.

(b) The Merchandise Marks Act, 1862, does not interfere with this Act. See

§ 25 of that Act.

(c) The remainder of this Act is repealed by 31 *Geo. III. c. 58*.

Wardens, Searchers, Assistants and Commonalty of the Company of Cutlers in Hallamshire in the county of York.”

31 *Geo. III. c. 58* (1791) (*a*).

§ 1. The company to consist of the trades hereinafter mentioned, and of none other.

§ 3 enumerates “the arts or trades of makers of knives, sickles, shears, scissors, razors, files and forks.”

§ 7. Apprentices who have served for seven years are to have, at twenty-one years of age, their freedom of the company and a mark to be assigned them.

§ 17. Members of the company counterfeiting marks assigned to others are for every offence to pay a penalty not exceeding 20*l.* nor less than 4*l.*

§ 26. Penalties may be sued for by the company, or by the party aggrieved, in the Courts at Westminster.

§ 27. One or more justice or justices of the peace for the West Riding of the county of York, or for the county of Derby, shall, upon information of an offence for which a penalty is imposed, summon the parties and witnesses, and hear and determine the matter in a summary way, and give judgment with costs, and issue a warrant for levying the penalties by distress, and if the goods are insufficient, then shall commit the offender to the House of Correction for one month. Costs may be given to a person wrongly accused.

§ 28 contains a form of conviction.

§ 29. An appeal is given to the Court of Quarter Sessions at Sheffield, Rotherham, Barnsley, Wakefield, or Pontefract.

§ 31. The penalties which come to the company are to be distributed among the poor of the company.

The Act contains other provisions with respect to the constitution of the company, procedure, &c.

41 *Geo. III. c. 97* (1801), (Local).

§ 2. A freeman of the company is empowered to give his mark by will to any person or persons, in the same manner as his other personalty, subject to the life estate therein which his widow is to have during her widowhood or any future coverture, and which she may sell, though on her death the provisions of the husband's will take effect.

§ 3. In default of a will, the mark is to pass in the same manner as its owner's other personalty, subject to the widow's life estate (*b*).

§ 5. Parish apprentices who shall prove to the satisfaction of a justice that they have regularly served a freeman for seven years shall be entitled to their freedom and a mark.

54 *Geo. III. c. 119* (1814), (Local).

This Act repeals several of the provisions of the Act of 1791, in favour of free trade.

(*a*) Considerable portions of this Act have been repealed by the Acts which follow.

(*b*) And see § 6 of the Act of 1814.

§ 3. Any person carrying on any of the specified trades within the specified limits has a right to have a mark assigned to him by the company on application, which mark is not to be one that is the property of another, nor a surname (a); and for such mark he is to pay forty shillings, and if the mark be one previously assigned but surrendered, 3*l.* in addition, besides, in either case, any stamp duty imposed by Act of Parliament (b).

§ 4. No mark is to be assigned by the company if they have notice that it is in common use, or in the use of any person within the district (c).

§ 5. Members of the company, or any other persons carrying on any of the specified trades within the specified limits, who shall use a mark assigned by the company to another person, with intent to counterfeit, shall for every offence forfeit and pay a sum not exceeding 20*l.*, half of the fine to go to the injured person, the other half to the company. The fine is to be recovered and applied as under the Act of 1791.

§ 6. The provisions made by § 2 of the Act of 1801, for the devolution of marks on the deaths of their owners, are to apply to marks assigned under the present Act (d), but not more than one person of the family shall be entitled to use the mark at the same time.

23 *Vict. c. xliii.* (1860), (Local).

§ 1. The provisions of the previous Acts are extended to "the arts or trades of manufacturers of steel and makers of saws and edge-tools and other articles of steel, or of steel and iron combined, having a cutting edge."

§ 2. Any person exercising any of the trades formerly or now specified, within the specified limits, may and shall, on application to the company and payment of 20*l.* in addition to any other fees payable, become a freeman of the company and have a mark assigned to him.

§ 3. The former and present Acts may be cited as "The Cutlers' Company's Acts, 1623, 1791, 1801, 1814, 1860," respectively.

The rights of the Cutlers' Company were expressly reserved by the

(a) The similar provision in § 24 of the Act of 1791 (repealed by the present Act), with respect to non-freemen, provided that, on a non-freeman having a mark assigned to him, he should become a freeman of the company. This is not repeated here.

(b) A mark assigned to a non-freeman is assignable by him. See *Bury v. Bedford*, 4 De G. J. & S. 352. But where a person to whom a Sheffield mark had been assigned had assigned it to another, and had not gone through the process of surrendering it to the company for re-assignment to his assignee, the latter was

not recognised by the company as the proprietor of the mark, nor admitted to registration under the Trade Marks Registration Act, 1875, until he had perfected his title: *In re Rabone*, Dig. 643.

(c) By the Trade Marks Registration Act, 1875, § 9, no mark was to be assigned by the company which had been registered under the Trade Marks Registration Acts, notice of the registration having been given to the Cutlers' Company. And see the Patents, &c., Act, 1883, § 81.

(d) Thus including non-freemen in possession of company's marks.

Merchandise Marks Act, 1862 (*a*), § 25, and also by the Trade Marks Registration Act, 1875, § 9.

See also the special provisions in regard to the Cutlers' Company contained in the Trade Marks Registration Act, 1875, § 9, and in 46—56 of the Rules under that Act, now repealed; the effect of which was that the registrar of trade marks was to be supplied with copies of all Sheffield corporate marks, and the Cutlers' Company with copies of all trade marks registered for goods or classes of goods within § 2 of the Cutlers' Company's Act, 1860; that notice of applications for assignment or registration of such marks, and of such assignment or registration, when complete, was to be given by the Cutlers' Company to the registrar and *vice versa*; that marks identical with, or similar to marks already assigned or registered, were not to be registered or assigned respectively (except, in the former case, with the special leave of the Court); and that Sheffield marks might be registered under the Trade Marks Registration Acts.

By § 81 of the Patents, &c., Act, 1883 (*b*), and Rules 53—56 of the Trade Marks Rules (*c*), the Sheffield Cutlers' Register is reorganized. A new "Sheffield Register" is established, in which are to be entered all trade marks for cutlery, edge-tools, raw steel, or goods made of steel, or of steel and iron combined, whether with or without a cutting edge, belonging to persons carrying on business in Hallamshire, or within six miles thereof, and registered under the Act of 1875, or assigned by the Cutlers' Company and actually used before the commencement of the present Act. All applications for marks for similar goods are, when made by persons trading within the specified limits, to be made to the company. Notice of such applications is to be given by the company to the comptroller, who may give notice of objection; and notice of applications by persons trading outside the specified limits for marks for similar goods is to be given by the comptroller to the company. Notice of registrations in the Sheffield Register is to be given to the comptroller, who is to enter the mark in the general register; and notice of all other entries is also to be given to him. The practice at Sheffield is to follow generally that at London, and an appeal is given from the company's decisions to the comptroller, and from him to the Court. The provisions of the company's Acts for the summary punishment of persons counterfeiting Sheffield corporate marks are to apply to marks entered in the new Sheffield Register. The old cutlers' register of corporate marks is to be closed after five years from the commencement of the Act (*i.e.*, after five years from December 31st, 1883). The net result will be that the Sheffield Register will be an exact duplicate of the general register, so far as that relates to marks used for the specified goods within the specified limits.

(*a*) 25 & 26 *Vict. c.* 88. See p. 438-49.

(*b*) See p. 321.

(*c*) See p. 353.

## GOLD AND SILVER PLATE.

## ENGLAND.

2 *Hen. VI. c. 17* (in Ruffhead's ed. c. 14) (1423) (*a*).

No goldsmith or silversmith in the City of London to sell wrought silver of less than sterling fineness. No harness of silver to be offered for sale in that city, until touched with the touch of the leopard's head, if it may reasonably bear the same, and also with the workman's mark, under penalty of forfeiture of double value. The mark of every goldsmith to be known to the wardens of the same craft. In the cities of York, Newcastle-upon-Tyne, Lincoln, Norwich, Bristol, Salisbury, and Coventry, to be divers touches. In other places, where no touch is ordained, silver not to be worked of less than sterling fineness, nor to be offered for sale without the worker's mark. Penalty of double value (*b*).

18 *Eliz. c. 15* (1576) (*c*).

If plate marked by the Goldsmiths' Company be found deceitful, the company to forfeit the value.

8 & 9 *Wm. III. c. 8* (1697).

§ 8 (in Ruffhead's ed. § 9) (*d*). No silver plate to be made of less fineness than 11 oz. 10 dwt. in the lb. troy (*e*), nor offered for sale until marked (*f*).

If plate marked by the Goldsmiths' Company be found deceitful, the company to forfeit the value, half to the Crown, half to the informer.

12 & 13 *Wm. III. c. 4* (1700), "An Act for appointing wardens and assay masters for assaying wrought plate in the cities of York, Exeter, Bristol, Chester, and Norwich" (*g*).

(*a*) The earliest statute on the subject was 28 *Edw. I. c. 20* (1300), by which it was provided, among other things, that no vessel of silver should pass out of the worker's hands until assayed by the wardens of the craft, and marked with the leopard's head, and that no worse gold should be worked than that of the touch of Paris. This Act was repealed, saving the King's prerogative, by 19 & 20 *Vict. c. 64*.

(*b*) 4 *Hen. VII. c. 2* (1487) (repealed by 19 & 20 *Vict. c. 64*) required finers of gold and silver to put their marks upon the metal.

(*c*) It was provided by the earlier part of this Act (repealed by the Statute Law Revision Act, 1863) that gold should not be made or sold under 22 carats in fineness, nor silver under 11 oz. 2 dwt.; and that no silver plate should be sold without the worker's mark, under penalty of forfeiting the value.

(*d*) The remainder of the Act was repealed by the Statute Law Revision Act, 1867.

(*e*) The standard was thus raised from that fixed by the preceding Act (11 oz. 2 dwt.), but by 6 *Geo. I. c. 11*, both standards were established. See *infra*.

(*f*) The following marks are appointed by this Act:—

The worker's mark, to be expressed by the two first letters of his surname.

The mark of the mystery or craft of the goldsmiths, which, instead of the leopard's head and the lion, shall for this plate be the figure of a lion's head erased, and the figure of a woman commonly called Britannia.

A distinct variable mark to denote the year of manufacture of the plate.

Penalty—Forfeiture of the plate or its value, half to the Crown, half to the informer. See 12 *Geo. II. c. 26*, § 5.

(*g*) Bristol never exercised the powers



§ 2. Goldsmiths, &c., of the cities of York, Exeter, Bristol, Chester, and Norwich, incorporated into respective companies, to be called respectively "The Company of Goldsmiths of ——."

§ 3. No goldsmith, &c., in those cities to make silver plate of less fineness than the standard for the time being, nor sell it until marked with—

The worker's mark, to be expressed with the two first letters of his surname.

The lion's head erased and the figure of Britannia.

The arms of that one of the above cities in which the plate is assayed and marked.

A distinct variable mark or letter in Roman character to denote the year (*a*).

Penalty—Forfeiture of the plate or value, half to the Crown, half to the informer.

The Act also contains provisions with respect to the appointment of wardens and assayers, procedure, &c.

1 *Anne, c. 3* (1 *Anne, stat. 1, c. 9*, in Ruffhead's ed.) (1701).

The provisions of the last Act extended to Newcastle upon-Tyne, and "The Company of Goldsmiths of Newcastle-upon-Tyne" incorporated.

6 *Geo. I. c. 11* (1719) (*b*).

§ 1. The old silver standard of 11 oz. 2 dwt. restored.

§ 3. No goldsmith, &c., to work silver plate of less fineness than 11 oz. 2 dwt., nor to sell it, &c., until touched, assayed and marked, under the former penalties.

§ 41. Two standards of silver, 11 oz. 10 dwt. and 11 oz. 2 dwt. continued (*c*).

12 *Geo. II. c. 26* (1739) (*d*).

§ 1. Gold plate not to be made under 22 carats in fineness, nor silver plate under 11 oz. 2 dwt. Penalty, 10*l*.

§ 5. Gold and silver plate not to be sold or exported until marked as follows:—

Gold plate of 22 carats fine and silver plate of 11 oz. 2 dwt. with—

The worker's mark, which shall be the first letters of his Christian and surname.

hereby conferred. York and Norwich have discontinued doing so.

(*a*) See 12 *Geo. II. c. 26*, § 5.

(*b*) The whole of this Act but §§ 1—3 and § 41 repealed by Statute Law Revision Act, 1870.

(*c*) Silver plate of 11 oz. 10 dwt. to be marked with—

The workman's mark.

The mark of the wardens of the Goldsmiths' Company.

The figure of a lion's head erased.

The figure of Britannia.

Silver plate of 11 oz. 2 dwt. to be marked with—

The workman's mark.

The mark of the wardens of the Goldsmiths' Company.

The figure of a lion passant.

The figure of a leopard's head.

See 12 *Geo. II. c. 26*, § 5.

(*d*) Repealed in part, 30 *Geo. III. c. 31*, § 1, Statute Law Revision Act, 1867.

These marks of the Company of Goldsmiths in London, viz., the leopard's head, the lion passant (*a*), and a distinct variable mark or letter to denote the year. Or,

The worker's mark, and

The marks appointed to be used by the assayers at York, Exeter, Bristol, Chester, Norwich, or Newcastle-upon-Tyne.

Silver plate of 11 oz. 10 dwt., with—

The worker's mark as before.

These marks of the said company, viz., the lion's head erased, the figure of Britannia, and the mark or letter to denote the year. Or,

The worker's mark, and

The mark of one of the said cities or towns.

Penalty—10*l.* fine, or, in default, hard labour not exceeding six months (*b*).

§ 21. All goldsmiths, &c., to enter their new marks, names, and places of abode in one of the assay offices at London, York, Exeter, Bristol, Chester, Norwich, or Newcastle-upon-Tyne. Such new marks to be of a character or alphabet different from their old marks; all old marks to be broken. Penalty—10*l.* fine, and 10*l.* more for using any other mark; in default, hard labour not exceeding six months.

13 *Geo. III. c. 52* (1772), "An Act for appointing wardens and assay-masters for assaying wrought plate in the towns of Sheffield and Birmingham" (*c*).

§ 2. Incorporation of "The Guardians of the Standard of Wrought Plate for Birmingham" (*d*).

§ 4. No silversmith or plate worker in either of these towns, or within twenty miles thereof, to sell or export silver plate made in these towns, and the specified limits, until marked as follows:—

Silver plate of 11 oz. 2 dwt., with—

The mark of the worker or maker, which shall be the first letters of his Christian and surname.

The lion passant.

The mark of the company in whose assay office the plate was assayed and marked.

A distinct variable mark or letter to denote the year.

Silver plate of 11 oz. 10 dwt., with—

The worker's mark.

The figure of Britannia.

The mark of the company, and

The mark or letter to denote the year.

(*a*) By 38 *Geo. III. c. 69*, § 2, gold plate of 18 carats fine is to be marked with a crown and 18, instead of the lion passant, and by 7 & 8 *Vict. c. 22*, § 15, gold of 22 carats with a crown and 22.

(*b*) See *Robinson v. Currey*, 6 Q. B. D.

21; 7 *ib.* 465.

(*c*) Repealed as to Birmingham, by 5 *Geo. IV. c. lii.* (local). As to Sheffield, see 24 *Geo. III. sess. 2, c. 20*. The present Act only deals with silver.

(*d*) Or "Sheffield."

Penalty—Forfeiture of the plate or value, half to the Crown, half to the informer.

§ 5. The peculiar mark of the Birmingham company to be an anchor, of the Sheffield company a crown.

The Act also contains provisions for the election of wardens and assayers, the process of assaying, punishment of counterfeiting, &c.

24 *Geo. III. sess. 2, c. 20* (1784), relates to Sheffield.

§ 2. Manufacturers of goods plated with silver, within Sheffield or 100 miles thereof, may strike upon such goods their surname or the name of their firm, together with some other mark, figure, or device.

§ 3. Names to be in legible characters and struck with only one punch, and marks to be approved and registered by the Guardians for Sheffield.

24 *Geo. III. sess. 2, c. 53* (1784) (a).

§ 5. The assaying officer to mark with an additional new mark, of the King's head, all gold and silver plate sent to be touched, marked and assayed, but to ask and receive duty before touching, marking, or assaying.

§ 8. Gold and silver plate not to be sold or exported until marked with the King's head. Penalty—50*l.*, or, in default, hard labour of not more than one year, nor less than six months. Also, forfeiture of the unmarked plate, half to the Crown, half to the informer.

30 *Geo. III. c. 31* (1790).

This Act regulates the exemptions from marking.

38 *Geo. III. c. 69* (1798).

§ 1. Gold plate may be manufactured down to 18 carats fine.

§ 2. Such gold plate not to be sold or exported until marked with a crown and the figures 18, instead of the lion passant. Penalty—10*l.*

§ 3. Gold plate of 18 carats fine may be marked by the various goldsmiths' companies, &c., as before, with the exception of the alteration of this mark.

§ 4. Gold plate of 22 carats may still be made, sold, exported, &c.

§ 5. This Act not to authorise the application of the mark used before the Act to gold plate of less than 22 carats fine.

§ 6. Penalty of 50*l.* for selling, exporting, &c., gold plate not marked with one of the marks.

§ 8 (b). Previous regulations for gold of 22 carats, except as to the mark of the lion passant, to apply to gold of 18 carats.

55 *Geo. III. c. 185* (1815).

§ 7 (c). Penalties for forging duty marks on plate, or selling or exporting plate so marked, or possessing dies, &c.

5 *Geo. IV. c. lii.* (1824) (Local—Birmingham and thirty miles round).

§ 1. 13 *Geo. III. c. 52*, repealed, so far as relates to Birmingham.

(a) Repealed in part 25 *Geo. III. c. 64*, § 2; 30 *Geo. III. c. 31*, § 1; Statute Law Revision Acts, 1861—71.

(b) § 7 provided penalties for counterfeiting, but this was repealed as to Eng-

land by 7 & 8 *Vict. c. 22*, § 1, though still unrepealed for Scotland.

(c) The greater part of this Act is repealed by 33 & 34 *Vict. c. 99*, and 36 & 37 *Vict. c. 91*.

§ 4. Re-incorporation of "The Guardians of the Standard of Wrought Plate in Birmingham," with authority within a radius of thirty miles.

§ 20. No goldsmith, silversmith, &c., within Birmingham or thirty miles thereof, to sell or export gold or silver plate made within the specified limits until marked as follows:—

Gold of 22 carats fine with the lion passant (*a*).

„ 18 „ „ crown and 18.

Silver of 11 oz. 2 dwt. fine with the lion passant.

„ 11 oz. 10 dwt. „ Britannia.

And all gold and silver alike with the following additional marks:—

The worker's mark (the first letters of his Christian and surname, or in case of any partnership, the initials of the name or firm of such partnership).

The company's mark (an anchor).

A distinct variable mark or letter, to denote the year.

Penalty—Forfeiture of the plate or its value, half to the Crown, half to the informer.

§ 21. Goldsmiths, silversmiths, &c., within Birmingham and thirty miles, to enter their names, marks, and places of abode with the company.

Penalty—100*l.*, half to the informer, half to the purposes of the Act.

§ 22. Penalties of counterfeiting, &c.

The Act also contains numerous provisions with respect to the constitution of the company, the election of its officers, its procedure, &c.

7 & 8 *Vict. c. 22* (1844).

This Act (which see) regulates the punishments and penalties for counterfeiting, &c., hall-marks (*b*).

§ 15. Gold plate of 22 carats fine to be marked with a crown and 22, instead of the lion passant.

17 & 18 *Vict. c. 96* (1854).

This Act authorises Her Majesty, by Order in Council, to allow any standard for gold plate, not being less than one-third part of the whole, and to approve thereby of the instrument for stamping such plate, setting forth in figures the actual fineness of the metal (*c*).

(*a*) By 7 & 8 *Vict. c. 22*, § 15, a crown and 22.

(*b*) See *R. v. Lee*, 1 Leach, 416, and *R. v. Ogden*, 6 C. & P. 631, decided on the earlier statutes; also *R. v. Suter & Coulson*, 10 Cox, 577; and *R. v. Ardley*, L. R. 1 C. C. R. 301, 12 Cox, 23, in which a spurious hall mark was made the means of obtaining money by false pretences. In *R. v. Roberts*, 70 L. T. 265, the jury found that the marks used by the defendant were not imitations of the genuine hall-mark. An action by the Goldsmiths' Company for penalties under this Act is not an action by a common

informer within 31 *Eliz. c. 5*, nor an action by a "party grieved" within 3 & 4 *Will. IV. c. 42*, § 3, and can, therefore, be maintained after the lapse of two years from the commission of the offence, but (in the opinion of Lush, L. J.) not after 20 years: *Robinson v. Currey*, 6 Q. B. D. 21; 7 *ib.* 465.

(*c*) Accordingly the following reduced standards were ordered by the Council:—

15 carats, to be marked with 15 and 625.

12 „ „ 12 „ 500.

9 „ „ 9 „ 375.

The crown and sovereign's head are not placed on plate of these qualities.

## ENGLISH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.					SILVER.	
	22 CARATS.	18 CARATS.	15 CARATS.	12 CARATS.	9 CARATS.	11 oz. 2 DWT.	11 oz. 10 DWT.
Quality Mark ... ..	22	18	15·625	12·5	9·375	None (b).	None.
Standard Mark ... ..	Crown.	Crown.	None.	None.	None.	Lion passant.	Britannia.
Date Mark ... ..	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Maker's Mark ... ..	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Duty Mark ... ..	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.	Sovereign's head.
Assay Town Mark ... ..	On all qualities of gold and silver the special mark of the town.						

HALL MARKS.

The special marks of the assay towns are as follows:—London, a leopard's head (except for silver of 11 oz. 10 dwt., for which it is a lion's head erased); Exeter, a castle; Chester, a dagger and 3 sheaves; Newcastle, 3 castles; Sheffield, a crown; Birmingham, an anchor (c).

(a) Gold and silver of all these qualities are manufactured at London, Chester, Newcastle-on-Tyne, and Birmingham. At Exeter only gold of 22 carats and silver of 11 oz. 2 dwt. are manufactured; at Sheffield only silver of 11 oz. 2 dwt. and 11 oz. 10 dwt. At York and Norwich no plate is now manufactured. At Bristol the powers conferred by 12 & 13 Wm. III.

c. 4, were never exercised.

(b) Except at Newcastle, where the mark of a leopard's head crowned is used.

(c) The marks for York and Norwich (now discontinued) were:—York, 5 lions on a cross; Norwich, a castle and a lion passant.

18 & 19 *Vict. c. 60* (1855).

Gold wedding rings are to be assayed and marked in the same way as other gold plate.

5 & 6 *Vict. c. 47* (1842) (Customs Act) (*a*).

§ 59. Foreign gold and silver plate imported from abroad shall be of the respective standards required for plate wrought in England, and it shall not be sold, &c., until assayed, stamped and marked in England, Scotland, or Ireland, as plate of the same description made in that country.

5 & 6 *Vict. c. 56* (1842) (Customs Act).

§ 6 (*b*). Foreign ornamental plate, manufactured before 1800, and imported, is exempted from the operation of the last Act.

39 & 40 *Vict. c. 35* (1876) (Customs Act).

§ 2 (*c*). Foreign gold and silver plate imported and sent to an assay office in the United Kingdom for assay shall be marked, in addition to the marks ordinarily used at that office for British plate, with an F. on an oval escutcheon, to denote the foreign origin of the plate.

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#### SCOTLAND (*d*).

13 *Geo. III. c. 59* (1773) (*e*).

§ 2, which provided penalties for counterfeiting, &c., the marks for plate, is unrepealed in Scotland.

38 *Geo. III. c. 69* (1798) (see p. 463, *suprà*).

§ 7 (*f*), which provided penalties for counterfeiting, &c., the marks for plate, is unrepealed in Scotland.

6 & 7 *Wm. IV. c. 69* (1836).

§ 1. Gold plate not to be made, sold, or exported, under 18 carats fine, nor silver under 11 oz. 2 dwt. fine. Penalty—Fine not exceeding 100*l*.

(*a*) The entire Act but §§ 59 and 60 is repealed.

(*b*) The remainder of the Act is repealed by 8 & 9 *Vict. c. 84*, § 2.

(*c*) This re-enacts 30 & 31 *Vict. c. 82*, § 24, the whole of which Act is repealed by the present one. See also 46 & 47 *Vict. c. 55*, § 10, as to foreign plate.

(*d*) In the reign of James III. of Scotland (1483) gold 22 carats fine, and silver

11 penny fine were to be marked with the maker's mark, the mark of the deacon of the craft, and the mark of the town.

(*e*) This Act was repealed as to *England* by 7 & 8 *Vict. c. 22*, § 1. The first section was repealed by the Statute Law Revision Act, 1871.

(*f*) Repealed as to *England* by 7 & 8 *Vict. c. 22*, § 1.

SCOTCH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.					SILVER.	
	22 CARATS.	18 CARATS.	15 CARATS.	12 CARATS.	9 CARATS.	11 oz. 2 DWT.	11 oz. 10 DWT.
Quality Mark ...	— 22	— 18	— 15	— 12	— 9	None.	Britannia.
Standard Mark—							
Edinburgh ...	Thistle.	Thistle.	None.	None.	None.	Thistle.	Thistle.
Glasgow ...	Lion rampant.	Lion rampant.	Lion rampant.	Lion rampant.	Lion rampant.	Lion rampant.	Lion rampant.
Date Mark	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Maker's Mark ...	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Duty Mark ...	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.	Sovereign's head.
Assay Town Mark ...	On all qualities of gold and silver the special mark of the town.						

HALL MARKS.

The special marks of the assay towns are:—Edinburgh, a castle; Glasgow, a tree, fish, and bell.

(a) Gold and silver of all these qualities are manufactured at Edinburgh and Glasgow.

§ 2. Scotch goldsmiths to send their names, descriptions, and marks (to consist of the initial letters of their Christian and surnames, or, in the case of a partnership, of the initial letters of the firm name) for registration to the Goldsmiths' Company of Edinburgh, or of Glasgow.

§ 3. Gold plate of 22 carats fine, and silver plate of 11 oz. 2 dwt. to be sent, marked with the maker's mark, to the assay office, and to be there marked with—

The mark of the thistle.

A distinct variable letter to denote the year.

The mark of the assaying company.

Gold plate of 18 carats fine to be marked in addition with 18.

Silver plate of 11 oz. 10 dwt. fine to be marked in addition with the figure of Britannia.

§§ 16 and 17 contain certain exemptions from marking.

§§ 18, 19 and 21 contain penalties for selling or exporting plate not duly marked, counterfeiting marks, &c., marking base metal, &c.

The Act also contains provisions with respect to the assaying, recovering penalties, &c.

The following statutes mentioned above under the head of "England" are also in force in Scotland: 6 *Geo. I. c. 11*; 24 *Geo. III. sess. 2, c. 53*; 38 *Geo. III. c. 69*; 5 & 6 *Vict. c. 47*; 5 & 6 *Vict. c. 56*; 17 & 18 *Vict. c. 96*; 18 & 19 *Vict. c. 60*; and 39 & 40 *Vict. c. 35*.

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#### IRELAND.

3 *Geo II. c. 3* (1730), (Irish Act) (*a*).

§ 32. Gold and silver plate not to be sold until assayed, touched and marked.

§ 33. Plate to be assayed by the Dublin Company of Goldsmiths. Gold of 22 carats, and silver of 11 oz. 2 dwt., to be touched by the wardens of the company, and marked with "the marks now usual for that purpose." On payment of duty, the plate to be marked with a mark to be appointed by the Commissioners of His Majesty's Revenue (*b*).

§ 38. Penalties for counterfeiting, &c., provided.

(*a*) This Act was repealed as to gold by 23 & 24 *Geo. III. c. 23*, § 1 (Irish). It fixed a standard of 22 carats for gold

(§ 33).

(*b*) The figure of Hibernia was accordingly appointed.



IRISH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.						SILVER.
	22 CARATS.	20 CARATS.	18 CARATS.	15 CARATS.	12 CARATS.	9 CARATS.	11 oz. 2 DWT.
Quality Mark ... ..	—	—	—	—	—	—	—
	22	20	18	15·625	12·5	9·375	None.
Standard Mark ... ..	Harp crowned.	Plume of 3 feathers.	Unicorn's head.	None.	None.	None.	Harp crowned.
Date Mark ... ..	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Maker's Mark ... ..	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Duty Mark ... ..	Sovereign's head.	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.
Dublin Mark ... ..	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.

HALL MARKS.

(a) The only assay town in Ireland is Dublin, where gold is manufactured of a standard (20 carats) not used in England or Scotland, but silver only of the earlier standard of 11 oz. 2 dwt., and none of 11 oz. 10 dwt.

23 & 24 *Geo. III. c. 23* (1783), (Irish Act).

§ 2. No gold plate to be made, sold, &c., except of 22 carats, 20 carats, or 18 carats fine. Penalty—Forfeiture and fine of 10%.

§ 3. The following marks appointed for gold of 22 carats:

The mark of the maker, which is the number 22, and the first letter of the maker's Christian and surname. And,  
For Dublin, a harp crowned.

For New Geneva (*a*), a like harp with a bar across the strings.

§ 4. Marks for gold of 20 carats:

The number 20.

The maker's initials. And,

For Dublin, a plume with three feathers.

For New Geneva, a plume with two feathers.

§ 5. Marks for gold of 18 carats.

The number 18.

The maker's initials. And,

For Dublin, an unicorn's head.

For New Geneva, an unicorn's head, with a collar round the neck.

§ 6 contains exemptions.

§ 11 provides for the registration of new marks.

§ 28 provides penalties for counterfeiting, &c.

47 *Geo. III. sess. 2, c. 15* (1807).

§ 3. Irish gold plate of 22, 20 or 18 carats, and silver plate of 11 oz. 2 dwt., to be assayed by the Goldsmiths' Company of Dublin, touched and marked with "the marks now or hereafter to be used."

§ 6. On payment of duty, gold and silver plate to be marked with the King's head to denote that this has been done (*b*).

§§ 14, 15 and 16 provide penalties for persons selling or buying unmarked plate, or counterfeiting, &c., the marks used.

The Act also provides for the manner in which duty is to be paid, books kept, &c.

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The following statutes mentioned above under the head of "England" are also in force in Ireland: 5 & 6 *Vict. c. 47*; 5 & 6 *Vict. c. 56*; 17 & 18 *Vict. c. 96*; 18 & 19 *Vict. c. 60*; 39 & 40 *Vict. c. 35*.

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N.B.—For very full information on all points connected with Hall Marks, see Mr. Chaffers' book on Hall Marks, 6th ed., London, 1883, 8vo.

(*a*) This was a company of Geneva watchmakers, who established themselves in co. Waterford. They carried on opera-

tions only from about 1784 to 1790.

(*b*) The figure of Hibernia continued to be used in addition.

## PRINTS AND ENGRAVINGS.

8 *Geo. II. c. 13* (1735).

§ 1. Copyright for fourteen years given to "every person who shall invent and design, engrave, etch, or work, in mezzotinto or chiaro-oscuro, or from his own works and invention shall cause to be designed and engraved, etched, or worked in mezzotinto or chiaro-oscuro" any print, "to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints" (a). Penalties for Piracy.

7 *Geo. III. c. 38* (1766).

The former Act extended in various respects, including an extension of the term to twenty-eight years.

17 *Geo. III. c. 57* (1777).

The former Acts further extended in various respects.

6 & 7 *Will. IV. c. 59* (1836).

The former Acts extended to Ireland.

## SCULPTURES.

54 *Geo. III. c. 56* (1814) (b).

§ 1. Copyright for fourteen years given to "every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast," to commence from the "first putting forth or publishing the same: Provided, in all and every case, the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy, or cast, and on every such cast from nature, before the same shall be put forth or published" (c).

(a) It is clearly settled law that both the date of publication and the name of the proprietor must appear with the engraving, in order to enable the proprietor to assert his statutory rights, notwithstanding *Blackwell v. Harper*, 2 Atk. 95, Barnard. 210; and *Roworth v. Wilkes*, 1 Camp. 94. See *Sayer v. Dicey*, 3 Wils. 60; *Harrison v. Hogg*, 2 Ves. Jun. 323; *Thompson v. Symonds*, 5 T. R. 41; *Bonner v. Field*, 5 T. R. 44; *Macmurdo v. Smith*, 7 *ib.* 518; *Newton v. Cowie*, 4 Bing. 234; *Colnaghi v. Ward*, 12 L. J. Q. B. 1; *Brooks v. Cock*, 3 Ad. & Ell. 138; *Graves v. Ashford*, L. R. 2 C. P. 410; *Rock v. Luzurus*, L. R. 15 Eq. 104. The requirements of 8 *Geo. II. c. 13* must be complied with in the case of engravings sought to be protected under the International Copyright Act, 1844 (7 & 8 Vict. c. 12, § 4): *Aranzo v. Mudie*, 10 Ex. 203.

(b) The earlier Act, 38 *Geo. III. c. 71*

(1798) was repealed by the Statute Law Revision Act, 1861 (24 & 25 Vict. c. 101).

(c) By the Registration of Designs Act, 1850 (13 & 14 Vict. c. 104, §§ 6, 7) sculptures, &c., were allowed to be registered under that Act, and penalties were imposed for infringement, but this was subject to the provision that every copy or cast of the sculpture, &c., must be marked with the word "registered" and the date of registration. By the Patents, &c. Act, 1883, the Act of 1850 is repealed, and sculptures, &c., within the protection of the Act of 1814, are excluded from registration for the future (see § 60). Existing registrations at the commencement of the Act are, however, preserved (§ 113). The requirements of 54 *Geo. III. c. 56* must be complied with in the case of sculptures, &c., sought to be protected under the International Copyright Act, 1844 (7 & 8 Vict. c. 12, § 4).

## CLOCKS AND WATCHES, &amp;C.

39 & 40 *Vict. c. 36*, § 42 (*a*), (1876).

Clocks and watches and other metal articles marked in imitation of British marks are forbidden to be imported into the United Kingdom (*b*).

## METAL BUTTONS.

36 *Geo. III. c. 60* (*c*), (1796).

§ 1 provides penalties for ordering metal buttons to be falsely marked in indication of quality, and for purchasing buttons so marked.

§ 2 provides penalties for falsely marking buttons in indication of quality, and for offering them for sale so marked.

§ 3. No marks indicative of quality are to be placed upon metal buttons, except the words "gilt," or "plated," respectively.

§ 4. The words "double gilt" and "treble gilt" may be placed upon buttons gilt to a specified degree.

§ 7 declares what quality is required to constitute a "gilt" or "plated" button.

The Act also contains provisions with respect to procedure, &c.

## GUN-BARRELS.

By *Royal Charter, 1637*, "The Master Wardens and Society of the Mystery of Gunmakers of the City of London" were incorporated, proof marks assigned to them, &c.

53 *Geo. III. c. 115* (*d*), (1813).

§ 4 incorporates "The Guardians, Trustees and Wardens of the Gun-Barrel Proof House of the Town of Birmingham."

§ 7 appoints the Birmingham proof marks to be—1. Crossed sceptres surmounted by a crown, with the letters B. C. P. 2. The same device, with the letter V. (*e*).

18 & 19 *Vict. c. 148* (1855) (Local), "The Gun-Barrel Proof Act, 1855."

§ 9 repeals the former Acts.

§ 12 continues the incorporation of the Birmingham Company, under the name of "The Guardians of the Birmingham Proof House."

Many provisions follow for the regulation of the Birmingham Company.

§§ 84—101 contain provisions with respect to the marking of gun-barrels, penalties for falsely marking, &c.

§§ 106—109 relate to foreign gun-barrels.

(*a*) This is a re-enactment, with some variations, of 16 & 17 *Vict. c. 107*, § 44.

(*b*) See p. 454.

(*c*) Repealed in part, Statute Law Revision Act, 1871.

(*d*) Repealed by 18 & 19 *Vict. c. 148*,

§ 9 (Local).

(*e*) 55 *Geo. III. c. 59* (1815), further regulated the marking of gun-barrels, but was also repealed by 18 & 19 *Vict. c. 148*, § 9 (Local).

## CHAIN CABLES AND ANCHORS.

27 & 28 *Vict. c. 27* (1864); 34 & 35 *Vict. c. 101* (1871); 35 & 36 *Vict. c. 30* (1872); and 37 & 38 *Vict. c. 51* (1874), regulate the testing, proving, and marking of chain cables and anchors, and provide penalties for falsely marking, &c.

By § 4 of the Act of 1874, every contract for the sale of a chain cable implies, in the absence of an express stipulation to the contrary, that the cable has been duly tested and marked.

## PLAYING CARDS.

25 & 26 *Vict. c. 22* (1862).

§§ 28—37 provide that playing cards are to be sold in separate packs, enclosed in wrappers to be provided by the Commissioners of Inland Revenue, on which the duty chargeable and the name of the maker are to be marked. Penalties for frauds, &c.

16 & 17 *Vict. c. 107* (1853).

§§ 114—115. Imported playing cards are to be sold in separate packs, to be enclosed in proper wrappers to be provided by the Commissioners of Inland Revenue.

§ 116. Penalties for counterfeiting, &c., such wrappers.

## PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

25 & 26 *Vict. c. 68* (1862), "Copyright for Works of Art Act."

§ 7. By this section it is forbidden to do any of the following acts:—

1. Fraudulently sign any painting, drawing, photograph, or negative with any name, initials or monogram.

2. Fraudulently sell, publish, &c., any painting, &c., marked with the name, &c., of a person who did not execute such work.

3. Fraudulently utter any copy or colourable imitation of any painting, &c., whether the subject of subsisting copyright or not, as having been executed by the author of the original.

4. Where the author of any painting, &c., has parted with the possession of the work, and the work is altered by any other person, it is forbidden, during the life of the author, to make, sell, publish, &c., such work or a copy of it so altered as or for the unaltered work of the author.

The section provides penalties for offenders against its provisions, but limits the time during which they can be incurred to within twenty years after the death of the person whose works have been wrongfully dealt with.

## HOPS.

54 *Geo III. c. 123 (a)*, (1814).

§ 1. Growers of hops are to mark the bags, in letters of specified dimensions, with their names, and the names of the parish and county in which the hops were grown, before putting the hops into the bag. Penalty for putting in the hops before marking the bag.

29 & 30 *Vict. c. 37* (1866), "The Hop (Prevention of Frauds) Act, 1866."

§ 2. Growers of hops are to mark each bag, in addition to their own names and the names of the parish and county, with the year in which the hops were grown, the progressive number of the bag, and its weight.

Penalties are provided for not marking, falsely marking, wilfully altering marks, &c. (b).

§ 18. The vendor is to be deemed to contract that the marks are genuine.

§ 20. The provisions of the Merchandise Marks Act, 1862, §§ 23 and 24, are incorporated.

## WOOLLEN CLOTHS.

5 *Geo. III. c. 51* (1765), (West Riding of Yorkshire).

§ 2 provides for the appointment by the justices of the peace for the West Riding of Yorkshire of searchers and measurers of cloth within the riding.

§ 3. After measuring cloths milled at the fulling mill as provided, the searcher and measurer is to affix to one end of each cloth a leaden seal provided by the clothier, and to stamp on the seal or rivet the name of the searcher and measurer, the length and breadth of the cloth, and the number of the piece, according to an annual rotation.

§ 6. After the milled cloth is brought from the fulling mill, and before it is put upon the tenter, the clothier is to seal the other end, and stamp the seal or rivet with the length and breadth of the cloth.

§ 18. Every clothier is to weave or sew into the head of the cloth, at the time of making, his name and place of abode.

Penalties for frauds, &c.

(a) This Act is repealed in part. The former Acts, now repealed, were 14 *Geo. III. c. 68*, under which the excise officer was to mark each bag of hops with the weight of hops, the name and place of abode of the grower, and the date of the year; 39 & 40 *Geo. III. c. 81*, under which the grower was himself to mark his name and place of abode, the excise officer the weight, date, and progressive number of the bag; and 48 *Geo. III. c.*

184, under which the owner was in addition to mark the name of the parish and county in which the hops were grown.

(b) See *R. v. Morgan*, 1 Trade Marks, 313, in which the defendant was convicted at the Wandsworth Police Court, on May 18th, 1878, of selling inferior hops in the bags and as the hops of a well-known grower, under § 6 of the above Act, and fined £10, the maximum penalty; £44, the value of the hops; and £10 10s. costs.

6 *Geo. III. c. 23* (1766), (West Riding of Yorkshire).

§ 2. The searcher and measurer is to measure milled cloths as provided by the last Act, and to rivet on a leaden seal, and to stamp on the rivet his name and the name of the mill where he is stationed, and on the rest of the seal the length, breadth, and number of the cloth.

§ 5. Where cloth is remeasured, as provided, and is found to be of less length, or of less length for above one third of the length than was stated on the previous seal, the last measurer is to affix a new stamp, and place his own name on the rivet, with the words "Inspector" or "Supervisor," and on the same seal the true length and breadth.

§ 13. The clothier may weave or sew his name and place of abode into the cloth, either in distinct letters or words, or in common or usual abbreviations.

Penalties for frauds, &c.

## LINEN.

13 *Geo. I. c. 26 (a)*, (1726), (Scotland).

§ 30. Every trader, dealer, and weaver of linen may weave in any piece of linen of his make his name, or some known mark. Penalty for counterfeiting such mark.

17 *Geo. II. c. 30 (b)*, (1743).

§ 1. Penalties provided for stamping foreign linens in imitation of British or Irish, and for placing counterfeit stamps on British or Irish linens.

18 *Geo. II. c. 24 (b)*, (1744).

§ 1. Linens to be stamped must be sworn to be of the manufacture of [Scotland or] Ireland.

§ 2 (c). No bounty to be paid on British or Irish linens exported, but on such as are marked at both ends of every piece with the name and place of abode of the maker, the year of manufacture, the number of the piece in rotation, the name and place of abode of the exporter or seller for exportation; and unless the ends are also marked with the month and year when, and the name of the port at which the linens are entered for exportation. The marks to be stamped with lamp black and burnt oil.

Penalties for falsely stamping, &c.

4 *Geo. IV. c. 40* (1823), (Scotland).

§ 3. Every manufacturer or weaver of linen and dealer in linen in Scotland may weave his name, or fix any mark or seal, in any piece of linen of his make, to denote the length, breadth, or quality of the linen, or the maker's name. Penalties for counterfeiting.

(a) This Act is in great part repealed.

(b) Repealed as to Scotland by 4 *Geo. IV. c. 40*, § 1.

(c) Repealed as to bounty by 6 *Geo. IV. c. 105*.

5 & 6 Wm. IV. c. 27 (1835), (Ireland).

§ 4. Across each end of every piece of linen offered for sale in open fair or market in Ireland there are to be woven two coarse threads or cords at a distance of one fourth of an inch, and close to such threads or cords on each end are to be written the Christian name, surname, and place of residence of the weaver or manufacturer, and on the outside fold of every piece its length and breadth.

§ 14. The Lord Lieutenant to appoint a committee of twelve in each county, to superintend the brown linen trade.

§ 19. The committee in each county to prescribe the form and device of the seal or stamp to be used by the county sealmaster of brown linen.

§ 21. The sealmaster shall affix to each piece of brown linen brought for the purpose, and which shall be in accordance with the Act, an impression of the seal, in black, red, or blue; and shall also mark with the same ingredients on the back of each piece its length, breadth, name of sealmaster, and the parish and county where he resides, or the name of the market town to which he is appointed.

Regulations for sales, penalties for frauds, &c.

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#### PUBLIC STORES.

38 & 39 Vict. c. 25 (a), (1875), "The Public Stores Act, 1875."

§ 4. The marks described in the First Schedule to the Act are appropriated to denote Her Majesty's property. Penalty for unauthorised use of such marks.

§ 5. Penalty provided for obliteration of marks.

§ 6. Penalty for unlawful possession of public stores (b).

(a) This Act repealed the following Acts, by which the Public Stores had previously been regulated:—9 Wm. III. c. 41 (1697); this Act provided penalties for forging the King's marks, or having in possession goods so marked; 9 Geo. I. c. 8 (1722); this Act modified the penalties contained in the former Act; 17 Geo. II. c. 40, § 10 (1743); this provided for the trial of offences against these Acts before any judge, justice, or justices at assizes, or justices of the peace at general quarter sessions; 39 & 40 Geo. III. c. 89 (1800); this Act provided penalties for selling or having in possession goods marked with the marks specified, or defacing, &c., such marks; 54 Geo. III. c. 60 (1814); this extended the provisions of the former Acts to cordage wrought with worsted threads; 54 Geo. III. c. 159, § 10 (1814); this provided a penalty

for sweeping for lost anchors, cables, &c., belonging to the King's service; 55 Geo. III. c. 127 (1815); this extended the previous Acts to include all public stores; 30 & 31 Vict. c. 128 (1867), "The War Department Stores Act, 1867"; and 32 & 33 Vict. c. 12 (1869), "The Naval Stores Act, 1869." The following Acts have also from time to time regulated Naval Stores: 25 & 26 Vict. c. 64, "The Naval and Victualling Stores Act, 1862"; 27 & 28 Vict. c. 91, "The Naval and Victualling Stores Act, 1864"; 30 & 31 Vict. c. 119, "The Naval Stores Act, 1867"; all of which Acts were previously repealed.

(b) It has been repeatedly decided that on an indictment under 9 & 10 Wm. III. c. 41, for being unlawfully in possession of marked stores, the prisoner cannot be convicted unless he is in possession with knowledge of the marks. See *R. v.—*,



*First Schedule.*

Marks appropriated for use in or on Her Majesty's stores :

Stores.	Marks.
Hempen cordage and wire rope.	White, black, or coloured worsted threads laid up with the yarns and the wire respectively.
Canvas, fearnought, hammocks, and seamen's bags.	A blue line in a serpentine form.
Buntin.	A double tape in the warp.
Candles.	Blue or red cotton threads in each wick or wicks of red cotton.
Timber or metal.	The name of Her Majesty, her predecessors, her heirs or successors, or of any public department or any branch thereof, or the broad arrow, or a crown, or Her Majesty's arms, whether such broad arrow, crown, or arms be alone or be in combination with any such name as aforesaid, or with any letters denoting any such name.
Any stores not before enumerated, whether similar to the above or not.	

Foster Cr. Cas. 439 ; *R. v. Banks*, 1 Esp. 144 ; *R. v. Willmet*, 3 Cox, 281 ; *R. v. Cohen*, 8 Cox, 41 ; *R. v. Sleep*, 8 Cox, 472. In *R. v. Banks* it was, indeed, held by Lord Kenyon, C. J., that it was sufficient for the prosecution to prove the finding of the marked goods in the prisoner's possession, the prisoner being allowed to obtain acquittal by proving his ignorance ; but it is now for the prosecution to prove the knowledge, in the affirmative (see *R. v. Willmet* ; *R. v. Cohen* ; *R. v. Sleep*). Thus in *R. v. O'Brien*, 15 L. T. N.S. 419, it was held that for a conviction of persons in charge of closed and fastened cases, containing marked goods, to be obtained, it must be proved that they knew that the goods in the cases were marked. Such knowledge may, however, be presumed by the jury from the circumstances attending the possession : *R. v. Sleep*. Although a specified certificate was required by 9 & 10 Wm. III. c. 41, to justify possession of marked goods, it was held that another form of

certificate might be accepted (*R. v. Willmet*), or even the certificate be dispensed with altogether (*R. v. —* ; *R. v. Banks*), there being no proof of knowledge.

Possession by a railway company for purpose of transfer, on behalf of the prisoner, is such a possession by the prisoner as to justify a conviction : *R. v. Sunley*, 8 Cox, 179 ; and see *R. v. Sleep*, 8 Cox, 472, as to the words "receive or have" in 9 & 10 Wm. III. c. 41 ; and *R. v. Cole*, 8 East P. C. 767, as to the necessity for the marked articles to be found in the defendant's possession. In *R. v. Willmet*, 3 Cox, 281, it was held that a man could not be held criminally responsible for the act of his servants, who had, without his knowledge, improperly taken marked goods into his warehouse.

As to the exception in favour of contractors and contractors' servants, see *R. v. Silversides*, 3 Q. B. 406 ; and *R. v. Fitzgerald*, 43 C. C. C. Sess. Pap. 369.

## APPENDIX E.

### UNITED STATES STATUTE LAW.

#### ACT OF CONGRESS OF 1870 (a).

§ 77 (b). *And be it further enacted, that any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which, by treaty or convention, affords similar privileges to citizens of the United States, and who are entitled to the exclusive use (c) of any lawful trade mark, or who intend to adopt and use any trade mark (d), for exclusive use within the United States, may obtain protection for such lawful trade mark (e) by complying with the following requirements (f), to wit:—*

*First—By causing to be recorded in the Patent Office, the names of the parties and their residences and place of business (g), who desire the protection of the trade mark.*

*Second—The class of merchandise (h) and the particular description of goods (i) comprised in such class, by which the trade mark has been or is intended to be appropriated.*

*Third—A description of the trade mark itself (k) with fac-similes thereof (l), and the mode in which it has been or is intended to be applied and used (m).*

*Fourth—The length of time, if any, during which the trade mark has been used (n).*

*Fifth—The payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents (o).*

*Sixth—The compliance with such regulations as may be prescribed by the Commissioner of Patents (p).*

*Seventh—The filing of a declaration (q), under the oath of the person or of some member of the firm or officer of the corporation, to the effect that the party claiming protection for the trade mark, has a right to the use of the same, and that no other person, firm, or corporation, has the right to such use, either in the identical form, or having such near resemblance thereto as might be calculated to deceive (r), and that the description and*

*fac-similes presented for record are true copies of the trade mark sought to be protected.*

(a) Although this Act is no longer in force, the Act of 1881 having been substituted for it, it is thought advisable to print the earlier Act, in order that the effect of the decisions upon it may not be misapprehended. In *Leidersdorf v. Flint* (1), 8 Biss. 327, the validity of the Act of 1870 was questioned by the U. S. Circuit Court, on the ground that the constitution of the United States did not authorise legislation by Congress on the subject of trade marks, except such as had been actually used in commerce with foreign nations, or with the Indian tribes; and in *U. S. v. Stephens*, 100 U. S. Rep. 82, the Act was formally declared by the Supreme Court to be on this ground unconstitutional and invalid. But this does not entitle persons registered under the invalid Act to recover back the fees paid by them (*Woodman v. U. S.*, 15 Ct. of Cl. 541), though they will be credited with such fees when applying for registration under the new Act. See Act of 1881, § 6, *infra*. Nor does the invalidity of the Act justify the disregard of injunctions granted under the general jurisdiction of the Court: *U. J. v. Roche*, 1 McCrary, 385. Since the passing of the Act of 1870, it has been considered in the U. S. Patent Office that, while, on the one hand, the benefits of registration as trade marks were to be reserved for trade marks, and for trade marks only (e.g., in *In re Parker*, 13 U. S. Pat. Gaz. 323, registration as a trade mark was refused to that which could at most amount to a design), so, on the other hand, it was only by registering them as trade marks, and not by patenting them as designs (*Ex parte King*, U. S. Pat. Comm. Decis. 1870, 109; *In re Whyte*, *ib.* 1871, 304) or registering them as labels (*In re Godillot*, 6 U. S. Pat. Gaz. 641; *In re Simpson & Sons*, 10 *ib.* 333; *Ex parte Davids & Co.*, 16 *ib.* 94; *Ex parte Schumacher & Ettliger* (1), 19 *ib.* 791) that statutory protection could be obtained for trade marks. Descriptive words, not registrable as trade marks, were properly allowed to be registered as labels: *Ex parte Waeferling*, 16 *ib.* 764; *Ex parte Brigham*, 20 *ib.* 891; and see *In re Park*, 12 *ib.* 2, in which it was sought to register as part of a label a device for which the applicant had previously sought registration as a trade mark. In *U. S. v. Marble*, 22 *ib.* 1366, however, the Supreme Court of Columbia held that the Commissioner of Patents had no authority to refuse registration to a label merely on the ground that it might have been registered as a trade mark; but in the later case of *Ex parte Schumacher & Ettliger* (2), 22 *ib.* 1291, the Commissioner has again refused registration as labels to what he considered to be trade marks.

(b) See Act of 1881, §§ 1, 2.

(c) In *McElwee v. Blackwell*, 15 U. S. Pat. Gaz. 658, it was held that, although, where registration had been wrongfully granted to one, it might subsequently be properly granted to another who was really entitled to the exclusive use, yet it would not be granted to another who was not entitled to the exclusive use, even though he might be entitled to use the mark to some extent. And see *Wright v. Simpson*, 15 *ib.* 968; also *Sorg v. Welsh*, 16 *ib.* 910, as to admissions of right in another.

(d) Under these words a new trade mark might be registered prior to any actual use: *In re Rothschild*, 7 U. S. Pat. Gaz. 220; and see *Hoosier Drill Co. v. Ingels*, 14 *ib.* 785. This is not the case under the Act of 1881. See §§ 1 and 2, and *Ex parte Strasburger & Co.*, 20 *ib.* 155.

(e) As to what is a lawful trade mark, see *infra*, § 79. Registration cannot make a lawful trade mark out of that which does not contain the necessary elements: *Moorman v. Hoge*, 2 Sawy. 78; but it has been doubted whether the use of a registered trade mark could be restrained: *Decker v. Decker*, 52 How. Pr. 218. Separate registration must be obtained for each mark which differs from another by the addition of a symbol; e.g., "X," "XX," "XXX," were held to require separate registration: *In re English*, U. S. Pat. Comm. Decis. 1870, 142; and see *In re Eagle Pencil Co.*, 10 U. S. Pat. Gaz. 981.

(f) Absolute compliance with these requirements is necessary on the part of applicants: *In re Hankinson*, 8 U. S. Pat. Gaz. 89. But it is not necessary that the very

words of the Act should be cited, so long as the spirit of it is satisfied: *In re Vidvard & Sheehan*, 8 *ib.* 143.

(g) The registration of the name, &c., of a firm has been held to be sufficient, without giving the particulars as to each of the partners: *Smith v. Reynolds* (2), 10 Bl. C. C. 100.

(h) This requirement has been interpreted to exclude from registration the marks of persons other than manufacturers or merchants, e.g., a carpet cleaner: *In re Hankinson*, 8 U. S. Pat. Gaz. 89.

(i) It has been held that a description of the class and goods as "paints" is sufficient: *Smith v. Reynolds* (2), 10 Bl. C. C. 100; and so with "alcoholic spirits": *In re Boehm & Co.*, 8 U. S. Pat. Gaz. 319; but that "fancy goods" is insufficient, as being too general a term: *In re Lisner*, 13 *ib.* 455. Different persons may register the same trade mark for different descriptions of goods even in the same class: *Sorg v. Welsh*, 16 *ib.* 910. In *Smith v. Reynolds* (2), 10 Bl. C. C. 100, and s. o. (3), 13 *ib.* 458, it was held that a firm who had registered a trade mark for "paints" were not entitled to restrain the use of the mark on white lead by another firm who had used the mark on that variety of paint before the plaintiffs had used or registered their mark; and in the former case it was held that the registration being bad as to white lead was bad *in toto*, though but for that it might have been good.

(k) The trade mark must be sufficiently described for it to be possible to clearly distinguish between the essential and non-essential elements in it: *In re Volta Belt Co.*, 8 U. S. Pat. Gaz. 144; and see Rule 6, *infra*.

(l) The fac-simile limits the verbal description of the mark: *Duke v. Green*, 16 U. S. Pat. Gaz. 1094.

(m) The previous user of the applicants or their derivative title must be stated: *Ex parte Consolidated Fruit Jar Co.*, 16 U. S. Pat. Gaz. 679. Only one example of the mode of use will be admitted: *In re Kimball*, 11 *ib.* 1109; and see *Smith v. Reynolds* (2), 10 Bl. C. C. 100.

(n) See *Ex parte Consolidated Fruit Jar Co.*, 16 U. S. Pat. Gaz. 679.

(o) A fee paid can only be recovered when it was paid by actual mistake, e.g., a payment in excess, or one not required by law. When, therefore, an application has failed because the proposed mark was not registrable, the fee paid cannot be recovered, although a renewed application for the registration of an essentially different mark has proved successful: *In re Block & Co.*, 14 U. S. Pat. Gaz. 235. See note (a), *supra*, as to crediting fees paid under this invalid Act.

(p) See § 81, *infra*, and note thereto.

(q) As to the necessity for the filing of this declaration, and for the production of sufficient evidence of it on a trial for infringement, see *Smith v. Reynolds* (1), 10 Bl. C. C. 85, where an injunction was refused on the ground of a deficiency of such evidence.

(r) A declaration that no other person, firm, or corporation has a right to the use of the same, or substantially the same, mark, is a sufficient compliance with this requirement: *In re Vidvard & Sheehan*, 8 U. S. Pat. Gaz. 143.

§ 78 (a). *And be it further enacted, that such trade mark shall remain in force for thirty years from the date of such registration, except in cases where such trade mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this Act, at the same time that it becomes of no effect elsewhere, and during the period that it remains in force it shall entitle the person, firm, or corporation registering the same to the exclusive use thereof, so far as regards the description of goods to which it is appropriated in the statement filed under oath as aforesaid, and no other person shall lawfully use the same trade mark, or substantially the*

same, or so nearly resembling it as to be calculated to deceive, upon substantially the same description of goods (b). Provided that six months prior to the expiration of the said term of thirty years, application may be made for a renewal of such registration, under regulations to be prescribed by the Commissioner of Patents, and the fee for such renewal shall be the same as for the original registration, certificate of such renewal shall be issued in the same manner as for the original registration, and such trade mark shall remain in force for a further term of thirty years: And provided further, that nothing in this section shall be construed by any Court as abridging or in any manner affecting unfavourably the claim of any person, firm, corporation, or company to any trade mark after the expiration of the term for which such trade mark was registered.

(a) See Act of 1881, §§ 5, 7, 11.

(b) See *Sternberger v. Thalheimer*, 3 U. S. Pat. Gaz. 120, where the same mark was registered in two names; and *McElwee v. Blackwell*, 15 *ib.* 658.

§ 79 (a). And be it further enacted, that any person or corporation who shall reproduce, copy, counterfeit, or imitate any such recorded trade mark, and affix the same to goods of substantially the same description, properties, and qualities as those referred to in the registration (b), shall be liable to an action on the case for damages for such unlawful use of such trade mark at the suit of the owner thereof in any Court of competent jurisdiction in the United States, and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade mark, and to recover compensation therefor in any Court having jurisdiction over the person guilty of such wrongful use (c). The Commissioner of Patents (d) shall not receive and record any proposed trade mark which is not and cannot become a lawful trade mark (e), or which is merely the name of a person, firm, or corporation only (f), unaccompanied by a mark sufficient to distinguish it from the same name where used by other persons, or which is identical with a trade mark appropriated to the same class of merchandise and belonging to a different owner and already registered or received for registration, or which so nearly resembles such last-mentioned trade mark as to be likely to deceive the public (g): Provided, that this section shall not prevent the registry of any lawful trade mark rightfully used at the time of the passage of this Act (h).

(a) See Act of 1881, §§ 7, 8.

(b) See *Osgood v. Rockwood*, 11 Bl. C. C. 310, where it was held that persons who had registered a trade mark for prints made according to a patented process were not entitled under this Act to an injunction against a person who had used the mark on prints not made in accordance with the patent.

(c) It seems that the U. S. Circuit Courts have jurisdiction in cases of infringement of trade mark, even when both parties are citizens of the same State: *Duvel v. Bohmer*, 14 U. S. Pat. Gaz. 270; but see *Leiderdorf v. Flint* (1), 8 Biss. 327.

(d) As to the validity of the decisions of the acting commissioner, see *Simpson v. Wright* (2), 15 U. S. Pat. Gaz. 298.

(e) The question what may be registered as being a "lawful trade mark" has been

considered in many cases. The device of a crown is a good trade mark: *Smith v. Reynolds* (2), 10 Bl. C. C. 100. The arms of one of the United States cannot, however, constitute of themselves a good trade mark: *Ex parte Davids & Co.*, 16 U. S. Pat. Gaz. 94; and it has been held that the same is the case with the Freemasons' square and compass: *In re Tolle*, 2 *ib.* 415; and the word "masonic": *Ex parte Smith* (3), 16 *ib.* 764; though in *In re Thomas*, 14 *ib.* 821, the Freemasons' symbols were allowed to be registered in combination. A word which has become common, e.g., "Calhoun" plough, cannot be registered: *In re Hall & Co.*, 13 *ib.* 229. Registration has been refused to the following words and expressions, on the ground of descriptiveness:—"Beeswax Oil," *In re Hawthaway* (1), U. S. Pat. Comm. Decis. 1871, 97; S. C. (2), *ib.* 284; "Razor Steel," *In re Roberts* (4), *ib.* 100; "Invisible" face powder, *Ex parte Palmer*, *ib.* 289; "A. Richardson's Patent Union Leather Splitting Machine," *In re Richardson*, 3 U. S. Pat. Gaz. 120; "Für Familien Gebrauch," and "Lawrence Feiner Familien Flannel," *In re Lawrence*, 10 *ib.* 163; "Croup Tincture," *In re Roach*, 10 *ib.* 333; "Crack-proof" india-rubber, *In re Goodyear Rubber Co.*, 11 *ib.* 1062; "Evaporated" articles of food, *Ex parte Alden*, 15 *ib.* 389; "Standard A" cigars, *Ex parte Cohn* (1), 16 *ib.* 680; "Druggists' Sundries" cigars, *Ex parte Cohn* (2), 16 *ib.* 680; "Safety" powder, *Ex parte Safety Powder Co.*, 16 *ib.* 136; "Medicated Prunes," *Ex parte Smith* (2), 16 *ib.* 679; "Swing" scythe-sockets, *Ex parte Thompson, Derby & Co.*, 16 *ib.* 137; "Granulated Dirt-killer" soap, *Ex parte Waeserling*, 16 *ib.* 764; and "Satin Polish" boots and shoes, *Ex parte Brigham*, 20 *ib.* 891. And the same has been the case with respect to the figure of a fish for fishing lines: *In re Pratt & Farmer*, 10 *ib.* 866; and the representation of a twig with 3 leaves and a plum for prunes: *Ex parte Smith* (2), 16 *ib.* 679; and see *Popham v. Wilcox*, 66 N. Y. 69. On the other hand, "The Blanchard Churn," *In re Porter Blanchard's Sons*, U. S. Pat. Comm. Decis. 1871, 97; "Beaverine" boots and shoes, *In re Francis & Mallon*, *ib.* 283; and "Dr. Lobenthal's Essentia Antiphthisica," *In re Rohland*, 10 U. S. Pat. Gaz. 980, have been admitted to registration as being non-descriptive. In a series of cases registration has been refused on the ground that the term claimed, if properly applicable to the goods with respect to which it was used, was descriptive, but if not, was deceptive, e.g., "American Sardines," *In re American Sardine Co.*, 3 *ib.* 495; "Egg Macaroni," *In re Dole Bros.*, 12 *ib.* 939; "Cachemire Milano," *In re Warburg & Co.*, 13 *ib.* 44; "French Paints," *Ex parte Marsching & Co.*, 15 *ib.* 294; "London" animal foods, *Ex parte Knapp*, 16 *ib.* 318; but see *In re Green*, 8 *ib.* 729, where registration was granted to "German Sirup." On the latter ground of deceptiveness, the word "patent" cannot be registered as part of a mark for an article made under an expired patent: *In re Richardson*, 3 *ib.* 120. A geographical name is not usually registrable: *Armistead v. Blackwell*, 1 *ib.* 603, "Durham" tobacco; *In re Tolle*, 2 *ib.* 415, "Cherry Street Mills," and "Market Street Mills"; *Ex parte Knapp*, 16 *ib.* 318, "London" animal foods; *Ex parte Marsching & Co.*, 15 *ib.* 294, "French Paints"; *Ex parte Farnum & Co.*, 18 *ib.* 412, "Lancaster" goods. But such a name may be registered when arbitrarily selected: *In re Cornwall* (2), 12 *ib.* 312, "Dublin" soap. Similarly, numerals may be registered when arbitrarily selected: *Kinney v. Allen*, 1 Hughes, 106; *Ex parte Dawes & Fanning*, 1 U. S. Pat. Gaz. 27; but not otherwise: *In re Eagle Pencil Co.*, 10 *ib.* 981. It has been held that a peculiarity in the form of a barrel is not registrable as a trade mark: *Moorinan v. Hoge*, 2 Sawy. 78; nor a representation of such barrel when applied to the goods contained in it: *Ex parte Halliday Bros.*, 16 U. S. Pat. Gaz. 500; nor is a speciality in the hoops of the barrel registrable: *In re Kane & Co.*, 9 *ib.* 105. But see *Cook v. Starkweather*, 13 Abb. Pr. N. S. 392. A special collar-box has been refused registration: *Harrington v. Libby*, 14 Bl. C. C. 128; and so have a sampler-pattern: *In re Parker*, 13 U. S. Pat. Gaz. 323; and a strip of tobacco intended to be wrapped round the mouthpiece of cigarettes, on the ground that it was intended to serve purposes of convenience rather than of identification: *In re Gordon*, 12 *ib.* 517; but registration has been granted to a peculiarly shaped stick intended to be so placed in a roll of carpet as to show an octagonal ring at each end: *Lowell Manufacturing Co. v. Larned*, Dig. 428. Registration cannot be granted to minor and non-essential features in a compound mark: *Ex parte Coats*, 16 U. S. Pat. Gaz. 544. Occasionally a mark has

been allowed to be registered in alternative forms, e.g., "The Star Shirt," the same words with the figure of a star, and "The \* Shirt": *Morrison v. Case*, 9 Bl. O. C. 548; the figure of a lion, the word "Lion," or both: *In re Weaver*, 10 U. S. Pat. Gaz. 1; and see *In re Park*, 12 *ib.* 2; *In re Thomas*, 14 *ib.* 821; *Ex parte Peper*, 16 *ib.* 678. A bad trade mark does not become a good one by the addition of unobjectionable elements: *In re Blakeslee & Co.*, U. S. Pat. Comm. Decis. 1871, 284, "Cundurango Ointment, C. O."; *In re Dick & Co.*, 9 U. S. Pat. Gaz. 538, "D. D. & Co. Tasteless" drugs; *In re Roder & Co.*, 13 *ib.* 596, "Ironstone" in an oval border; but it appears to be possible for two marks, which separately are not good trade marks, to form one in combination: *Ex parte Davids & Co.*, 16 *ib.* 94. A trade mark cannot be registered for the purpose of being used by all the members of an association on goods of any quality, nor can a mark which is intended to be used in furtherance of a scheme for the restraint of trade: *Ex parte Cigar Makers' Association*, 16 *ib.* 958. It seems that the decision of a competent Court as to the validity of a mark is binding upon the Patent Office: *In re India Rubber Comb Co.*, 8 *ib.* 905. If an application is refused on the ground that the proposed mark is not a registrable trade mark, a renewed application for the registration of a mark not open to objection must be treated as a new application, and it cannot be treated as an amendment of the original application, nor can the fee originally paid be returned: *In re Block & Co.*, 14 *ib.* 235.

(f) Thus in *In re Rowe & Post*, 9 U. S. Pat. Gaz. 496, the name "The New York Cutlery Co." was refused registration as a new mark. As to the registration of names as old marks, see note (h), *infra*. See also *In re Porter Blanchard's Sons*, U. S. Pat. Comm. Decis. 1871, 97; *In re Roberts* (1), *ib.* 113; S. C. (2), *ib.* 100; S. C. (3) *ib.* 101; *In re India Rubber Comb Co.*, 8 U. S. Pat. Gaz. 905; *In re Consolidated Fruit Jar Co.*, 14 *ib.* 269; *Ex parte Davids & Co.*, 16 *ib.* 94. The prohibition does not extend to the registration of the name of a person other than the applicant, and such names may be registered, at all events with their owners' consent, if living: *Ex parte Sullivan & Burke*, 16 *ib.* 765; *Ex parte Pace, Talbot & Co.*, 16 *ib.* 909.

(g) Thus in *In re The American Lubricating Oil Co.*, 9 U. S. Pat. Gaz. 687, registration was refused to the word "Star" as a trade mark on oil, the device of a star having already been registered for the same article; so in *In re Coggin, Kidder & Co.*, 11 *ib.* 1109, to a device in which the principal feature was the name "Haxall," which had long been the trade mark of another firm; so in *In re Bush & Co.*, 10 *ib.* 164, to a combination mark consisting of the applicants' own registered trade mark and two other devices appropriated by other firms; so in *Ex parte Caire*, 15 *ib.* 248, to the words "Black Swan," the word "Swan" being already registered; so in *Ex parte Smith* (1), 16 *ib.* 679, to "A. S. California Family \* Soap," "California" and "\*" being already separately on the register; and see *Ex parte Weisert Bros.*, 16 *ib.* 680. On the other hand, in *In re Imbs*, 10 *ib.* 463, registration was granted, notwithstanding that two other marks contained somewhat similar features; and in *In re Cornwall* (1), 12 *ib.* 138, a device of a star and crescent was registered, although there was a star already on the register.

(h) Under this proviso registration was granted to a name used as a trade mark before 1870, e.g., "The India Rubber Comb Co. of New York," *In re India Rubber Comb Co.*, 8 U. S. Pat. Gaz. 905; "The Rubber Clothing Co.," *In re Rubber Clothing Co.*, 10 *ib.* 111. See *In re Dole Bros.*, 12 *ib.* 939; *In re Consolidated Fruit Jar Co.*, 14 *ib.* 269; *Ex parte Consolidated Fruit Jar Co.*, 16 *ib.* 679. This saving proviso is, however, omitted from the Act of 1881, so that the prohibition as to names, &c., is universal. See Act of 1881, § 3, and *Ex parte Fairchild*, 21 *ib.* 789, in which case registration was refused to a name which had been used as a trade mark for 20 years, and had been registered under the Act of 1870.

§ 80 (a). *And be it further enacted, that the time of the receipt of any trade mark at the Patent Office for registration shall be noted and recorded, and copies of the trade mark and of the date of the receipt thereof, and of the statement filed therewith under the seal of the Patent Office, certified by*

*the Commissioner, shall be evidence in any suit in which such trade mark shall be brought in controversy.*

(a) See Act of 1881, §§ 3, 4.

§ 81 (a). *And be it further enacted, that the Commissioner of Patents is authorised to make rules and regulations (b) and to prescribe forms for the transfer of the right to use such trade marks, conforming as nearly as practicable to the requirements of the law respecting the transfer and transmission of copyrights.*

(a) See Act of 1881, § 12.

(b) It was formerly decided that the authority given to the Commissioner by § 81 to make regulations, empowered him to declare an interference in a trade mark case, for the purpose of deciding a question of title to the trade mark, on the analogy of the practice in patent cases: *Lautz Bros. & Co. v. Schultz & Co.*, 9 U. S. Pat. Gaz. 791; *Duke v. Green*, 16 *ib.* 1094. And though it was thought in *Swift v. Peters*, 11 *ib.* 1110, that the question whether a registered proprietor of a mark was entitled to the exclusive use of it as against an ex-partner, was a question for a Court of law, and not for the Office, it was held in *Hoosier Drill Co. v. Ingels*, 14 *ib.* 785, that, in investigating the title to the mark, all matters relating to the ownership should be gone into; and in *Hanford v. Westcott*, 16 *ib.* 1181, the U. S. Circuit Court decided that a decision of the Examiner of Interferences, unappealed, was conclusive as to the right to a mark; and see *Josselyn v. Swezey & Dart*, 15 *ib.* 702, as to reopening the evidence taken on an interference, and *Simpson v. Wright* (1), 15 *ib.* 248, and S. C. (2), 15 *ib.* 293, as to re-hearing an interference. Since the case of *U. S. v. Steffens*, 100 U. S. Rep. 82, however, it has been held that the Patent Office has no longer any authority to decide questions of disputed titles to trade marks, or to declare interferences in such cases: *Braun & Co. v. Blackwell*, 19 *ib.* 481; but see *Ex parte Strasburger & Co.*, 20 *ib.* 155, and *Jacoby & Co. v. Lopes & Co.*, 23 *ib.* 342.

§ 82 (a). *And be it further enacted, that any person who shall procure the registry of any trade mark, or of himself as the owner thereof, or an entry respecting a trade mark, in the Patent Office under this Act, by making any false or fraudulent representations or declarations verbally or in writing, or by any fraudulent means, shall be liable to pay damages in consequence of any such registry or entry to the person injured thereby, to be recovered in an action on the case in any Court of competent jurisdiction within the United States.*

(a) See Act of 1881, § 9.

§ 83 (a). *And be it further enacted, that nothing in this Act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade mark might have had if this Act had not been passed (b).*

(a) See Act of 1881, § 10.

(b) See *Osgood v. Rockwood*, 11 Bl. C. C. 310; *U. S. v. Roche*, 1 McCrary, 385.

§ 84 (a). *And be it further enacted, that no action shall be maintained under the provisions of this Act by any person claiming the exclusive right to any trade mark which is used or claimed in any unlawful business, or*



upon any article which is injurious in itself, or upon any trade mark which has been fraudulently obtained, or which has been formed and used with the design of deceiving the public in the purchase or use of any article of merchandise (b).

(a) See Act of 1881, § 8.

(b) It seems that this Act provided no means for removing from the register a mark which was wrongly registered, e.g., a mark which did not contain any of the essential particulars. See *Armistead v. Blackwell*, 1 U. S. Pat. Gaz. 608; *McElwee v. Blackwell*, 15 *ib.* 658; *Wright v. Simpson*, 15 *ib.* 968.

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### ACT OF CONGRESS OF 1875 (a).

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled :—

§ 1. That every person who shall, with intent to defraud, deal in or sell, or keep or offer for sale, or cause or procure the sale of, any goods of substantially the same descriptive properties as those referred to in the registration of any trade mark, pursuant to the statutes of the United States, to which, or to the package in which the same are put up, is fraudulently affixed said trade mark, or any colourable imitation thereof, calculated to deceive the public, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or imprisonment not more than two years, or both such fine and imprisonment.

(a) So far as this Act was dependent on the Registration Act of 1870 it fell to the ground when that Act was declared invalid in *U. S. v. Steffens*, 100 U. S. Rep. 82.

§ 2. That every person who fraudulently affixes, or causes or procures to be fraudulently affixed, any trade mark registered pursuant to the statutes of the United States, or any colourable imitation thereof, calculated to deceive the public, to any goods of substantially the same descriptive properties as those referred to in said registration, or to the package in which they are put up, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this Act.

§ 3. That every person who fraudulently fills, or causes or procures to be fraudulently filled, any package to which is affixed any trade mark, registered pursuant to the statutes of the United States, or any colourable imitation thereof, calculated to deceive the public, with any goods of substantially the same descriptive properties as those referred to in said registration, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this Act.

§ 4. That any person or persons who shall, with intent to defraud any

person or persons, knowingly and wilfully cast, engrave, or manufacture, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any die or dies, plate or plates, brand or brands, engraving or engravings, on wood, stone, metal, or other substance, moulds, or any false representation, likeness, copy, or colourable imitation of any die, plate, brand, engraving or mould of any private label, brand, stamp, wrapper, engraving on paper or other substance, or trade mark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this Act.

§ 5. That any person or persons who shall, with intent to defraud any person or persons, knowingly and wilfully make, forge or counterfeit, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any representation, likeness, similitude, copy, or colourable imitation of any private label, brand, stamp, wrapper, engraving, mould, or trade mark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this Act.

§ 6. That any person who shall, with intent to injure or defraud the owner of any trade mark, or any other person lawfully entitled to use or protect the same, buy, sell, offer for sale, deal in, or have in his possession any used or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed, so that the same may be obliterated without substantial injury to such box or other thing aforesaid, any trade mark, registered pursuant to the statutes of the United States, not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, shall, on conviction thereof, be punished as prescribed in the first section of this Act.

§ 7. That if the owner of any trade mark, registered pursuant to the statutes of the United States, or his agent, make oath, in writing, that he has reason to believe, and does believe, that any counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, or moulds, of his said registered trade mark, are in the possession of any person with intent to use the same for the purpose of deception and fraud, or make such oaths that any counterfeits or colourable imitations of his said trade mark, label, brand, stamp, wrapper, engraving on paper or other substance, or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed said registered trade mark not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, are in the possession of any person with intent to use the same for the purpose of deception and fraud, then the several judges of the circuit and district courts of the United States, and the commissioners of the circuit courts, may, within their respective jurisdictions, proceed under the law relating to search-warrants, and may issue a search-warrant authorising and directing the marshal of the United States for the proper district to search for and seize all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, and said counterfeit trade marks, colourable imitations thereof, labels, brands, stamps, wrappers, engravings on paper, or other

substance, and said empty boxes, envelopes, wrappers, cases, bottles, or other packages that can be found; and upon satisfactory proof being made that said counterfeit dies, plates, brands, engravings on wood, stone, metal or other substance, moulds, counterfeit trade marks, colourable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, are to be used by the holder or owner for the purpose of deception and fraud, that any of said judges shall have full power to order all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trade marks, colourable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, to be publicly destroyed.

§ 8. That any person who shall, with intent to defraud any person or persons, knowingly and wilfully aid or abet in the violation of any of the provisions of this Act, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or imprisonment not more than one year, or both such fine and imprisonment.

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### ACT OF CONGRESS OF 1881.

#### AN ACT TO AUTHORISE THE REGISTRATION OF TRADE MARKS AND PROTECT THE SAME.

*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,*

§ 1 (a). That owners of trade marks used in commerce with foreign nations or with the Indian tribes, provided such owners shall be domiciled in the United States or located in any foreign country or tribe which, by treaty, convention, or law, affords similar privileges to citizens of the United States, may obtain registration of such trade marks by complying with the following requirements:

1st. By causing to be recorded in the Patent Office a statement specifying name, domicile, location, and citizenship of the party applying; the class of merchandise and the particular description of goods comprised in such class to which the particular trade mark has been appropriated; a description of the trade mark itself, with fac-similes thereof, 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.

2nd. By paying into the Treasury of the United States the sum of twenty-five dollars, and complying with such regulations as may be prescribed by the Commissioner of Patents.

(a) See Act of 1870, § 77.

§ 2 (a). That the application prescribed in the foregoing section must, in order to create any right whatever in favour of the party filing it, be accompanied by a written declaration verified by the person, or by a member of a firm, or by an officer of a corporation applying, to the effect that such party has at the time a right to the use of the trade mark sought to be registered, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that such trade mark is used in commerce with foreign nations or Indian tribes, as above indicated (b), and that the description and fac-similes presented for registry truly represent the trade mark sought to be registered.

(a) See Act of 1870, § 77.

(b) This Act only recognises trade marks actually in use, and not trade marks which it is only intended to use in the future; and the user must be user in commerce with foreign nations or the Indian tribes, and the declaration on oath (see Rule 7, post) that there has been such user is strictly insisted on: *Ex parte Strasburger & Co.*, 20 U. S. Pat. Gaz. 155.

§ 3 (a). That the time of the receipt of any such application shall be noted and recorded. But no alleged trade mark shall be registered unless the same appear to be lawfully used as such (b) by the applicant in foreign commerce or commerce with Indian tribes, as above mentioned, or is within the provision of a treaty, convention, or declaration with a foreign power; nor which is merely the name of the applicant (c); nor which is identical with a registered or known trade mark owned by another and appropriate to the same class of merchandise, or which so nearly resembles some other person's lawful trade mark as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers (d). In an application for registration the Commissioner of Patents shall decide the presumptive lawfulness of claim to the alleged trade mark; and in any dispute between an applicant and a previous registrant, or between applicants, he shall follow, so far as the same may be applicable, the practice of courts of equity of the United States in analogous cases.

(a) See Act of 1870, § 80, 79.

(b) As to what may be lawfully used as a trade mark, see the cases cited in note (d) to § 79 of the Act of 1870, ante. Under the present Act it has been decided that "Albany Beef" was no trade mark for canned sturgeon, being descriptive: *Ex parte Ams*, 23 U. S. Pat. Gaz. 844; that, on the same ground, "Time-keeper" could not be registered as an essential part of a trade mark for watches: *Ex parte Strasburger & Co.*, 20 *ib.* 155; nor "Cristalline" as a trade mark for artificial brilliants: *Ex parte Kipling*, 24 *ib.* 899; but that "Invigorator" was not descriptive, but a good trade mark for spring bed-bottoms: *Ex parte Heyman*, 18 *ib.* 922. Registration has been refused to the geographical name "Raleigh" (*Ex parte Oliver*, 18 *ib.* 923), but granted to a distinctive band or ribbon, intended to be attached to cigar-boxes, as a trade mark for cigars, it serving no mechanical purpose: *Ex parte Straiton & Storm*, 18 *ib.* 923).

(c) This prohibition being so general, registration has been refused to a name which had been used for 20 years as a trade mark, and had been registered as such under the Act of 1870: *Ex parte Fairchild*, 21 U. S. Pat. Gaz. 789. And in *Ex parte Adriance*,

*Platt & Co.*, 20 *ib.* 1820, registration was refused to a name as part of a trade mark which also included a device. But a name has been allowed to be registered as part of an old combination trade mark: *Ex parte Frieberg & Workum*, 20 *ib.* 1164.

(d) In *Ex parte Strasburger & Co.*, 20 U. S. Pat. Gaz. 155, registration as part of a trade mark was refused to the word "railway," that having already been registered by another manufacturer.

§ 4 (a). That certificates of registry of trade marks shall be issued in the name of the United States of America, under the seal of the Department of the Interior, and shall be signed by the Commissioner of Patents, and a record thereof, together with printed copies of the specifications, shall be kept in books for that purpose. Copies of trade marks and of statements and declarations filed therewith and certificates of registry so signed and sealed shall be evidence in any suit in which such trade marks shall be brought in controversy.

(a) See Act of 1870, § 80.

§ 5 (a). That a certificate of registry shall remain in force for thirty years from its date, except in cases where the trade mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this Act at the time that such trade mark ceases to be exclusive property elsewhere. At any time during the six months prior to the expiration of the term of thirty years such registration may be renewed on the same terms and for a like period.

(a) See Act of 1870, § 78.

§ 6. That applicants for registration under this Act shall be credited for any fee or part of a fee heretofore paid into the Treasury of the United States with intent to procure protection for the same trade mark.

§ 7 (a). That registration of a trade mark shall be *prima facie* evidence of ownership. Any person who shall reproduce, counterfeit, copy, or colourably imitate any trade mark registered under this Act and affix the same to merchandise of substantially the same descriptive properties as those described in the registration shall be liable to an action on the case for damages for the wrongful use of said trade mark at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of such trade mark used in foreign commerce or commerce with Indian tribes, as aforesaid, and to recover compensation therefor in any Court having jurisdiction over the person guilty of such wrongful act; and Courts of the United States shall have original and appellate jurisdiction in such cases without regard to the amount in controversy.

(a) See Act of 1870, §§ 78, 79.

§ 8 (a). That no action or suit shall be maintained under the provisions of this Act in any case when the trade mark is used in any 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 under any certificate of registry fraudulently obtained.

(a) See Act of 1870, § 84.

§ 9 (a). That any person who shall procure the registry of a trade mark, or of himself as the owner of a trade mark, or an entry respecting a trade mark, in the office of the Commissioner of Patents, by a false or fraudulent representation or declaration, orally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence thereof to the injured party to be recovered in an action on the case.

(a) See Act of 1870, § 82.

§ 10 (a). That nothing in this Act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade mark might have had if the provisions of this Act had not been passed.

(a) See Act of 1870, § 83.

§ 11 (a). That nothing in this Act shall be construed as unfavourably affecting a claim to a trade mark after the term of registration shall have expired; nor to give cognizance to any Court of the United States in an action or suit between citizens of the same State, unless the trade mark in controversy is used on goods intended to be transported to a foreign country, or in lawful commercial intercourse with an Indian tribe.

(a) See Act of 1870, § 78.

§ 12 (a). That the Commissioner of Patents is authorised to make rules and regulations and prescribe forms for the transfer of the right to use trade marks and for recording such transfers in his office.

(a) See Act of 1870, § 81.

§ 13. That citizens and residents of this country wishing the protection of trade marks in any foreign country the laws of which require registration here as a condition precedent to getting such protection there may register their trade marks for that purpose as is above allowed to foreigners, and have certificate thereof from the Patent Office.

Approved March 3, 1881.

**RULES AND FORMS ADOPTED BY THE U. S. PATENT OFFICE FOR THE REGISTRATION OF TRADE MARKS UNDER ACT OF MARCH 3, 1881.**

*Who may obtain Registration.*

1. (a.) Any person, firm, or corporation domiciled in the United States or located in any foreign country which, by treaty, convention, or law, affords similar privileges to citizens of the United States (a), and who is entitled to the exclusive use of any trade mark and uses the same in commerce with foreign nations or with Indian tribes.

(b.) Any citizen or resident of this country wishing the protection of his trade mark in any foreign country the laws of which require registration in the United States as a condition precedent.

(a) The following countries have treaties with the United States at this time, viz.: Russia, Belgium, France, Austria, the German Empire and Great Britain.

*Statutory Requirements.*

2. Every applicant for registration of a trade mark must cause to be recorded in the Patent Office—

(a.) The name, domicile, and place of business or location of the firm or corporation desiring the protection of the trade mark, and the residence and citizenship of individual applicants.

(b.) The class of merchandise and the particular description of goods comprised in such class to which the trade mark has been appropriated.

(c.) A description of the trade mark itself, with fac-similes thereof, and the mode in which it has been applied and used.

(d.) The length of time during which the trade mark has been used by the applicant on the class of goods described.

3. A fee of twenty-five dollars is required on filing each application, except in the cases hereinafter named. (See par. 16 and 17.)

*The Application.*

4. An application for the registration of a trade mark will consist of a statement and specification, a declaration or oath, and the fac-simile, with duplicates thereof.

5. These should be preceded by a brief letter of advice requesting registration and signed by the applicant.

6. The statement should announce the full name, citizenship, domicile, residence, and place of business of the applicant, (or if the applicant be a corporation, under the laws of what State or nation incorporated,) with a full and clear specification of the trade mark, particularly discriminating between its essential and non-essential features. It should also state from what time the trade mark has been used by the applicant, the class of merchandise, and the particular goods comprised in such class to which the

trade mark is appropriated, and the manner in which the trade mark has been applied to the goods.

7. The declaration should be in the form of an oath by the person or by a member of the firm or by an officer of the corporation making the application, to the effect that the party has at the time of filing his application a right to the use of the trade mark described in the statement; that no other person, firm, or corporation has a right to such use, either in the identical form or in such near resemblance thereto as might be calculated to deceive; that such trade mark is used in lawful commerce with some foreign nation (or nations) or some Indian tribe (or tribes), and that it is truly represented in the fac-simile presented for registry (a).

(a) This statement on oath will be insisted on: *Ex parte Strasburger*, 20 U. S. Pat. Gaz. 155.

8. This oath may be taken within the United States, before a notary public, justice of the peace, or the judge or clerk of any court of record. In any foreign country it may be taken before the secretary of a legation or consular officer of the United States, or before any person duly qualified by the laws of the country to administer oaths, whose official character shall be certified by a representative of the United States having an official seal.

#### *Fac-similes to be Filed.*

9. Where the trade mark can be represented by a fac-simile which conforms to the rules for drawings of mechanical patents (a), such a drawing may be furnished by applicant, and the additional copies will be produced by the photolithographic process at the expense of the office. Or the applicant may furnish one fac-simile of the trade mark, mounted on a card ten by fifteen inches in size, and ten additional copies upon flexible paper, not mounted; but in all cases the sheet containing the mounted fac-simile or the drawing must be signed by the applicant or his authorised attorney.

(a) These rules are furnished on application by letter to the Commissioner.

#### *Proceedings in the Office.*

10. All applications for registration are considered in the first instance by the Trade Mark Examiner. An adverse decision by such examiner upon the applicant's right to registration will be reviewed by the Commissioner in person upon petition without fee.

11. No trade mark will be registered unless it shall be made to appear that the same is used as such by the applicant in commerce with foreign nations or with Indian tribes, or is within the provisions of a treaty, convention, or declaration with a foreign power, nor which is merely the name of the applicant, nor which is identical with a known or registered trade mark owned by another and appropriated to the same class of merchandise, or which so nearly resembles some other person's lawful trade



mark as to be likely to cause confusion in the mind of the public or to deceive purchasers,

12. In case of conflicting applications for registration, or in any dispute as to the right to use which may arise between an applicant and a prior registrant, the office will declare an interference, in order that the parties may have opportunity to prove priority of adoption or right; and the proceedings on such interference will follow, as nearly as practicable, the practice in interferences upon applications for patents; but each applicant and registrant will be held to the date of adoption alleged in the statement filed with his application. On the petition of any party dissatisfied with the decision of the Examiner of Interferences the case will be reviewed by the Commissioner without fee (a).

(a) It has been held that since *U. S. v. Steffens*, 100 U. S. Rep. 82, the U. S. Patent Office has no authority to decide disputed questions of title to trade marks, or to declare interferences: *Braun & Co. v. Blackwell*, 19 U. S. Pat. Gaz. 481. But see *Ex parte Strasburger & Co.*, 20 *ib.* 155, and *Jacoby & Co. v. Lopes & Co.*, 23 *ib.* 342.

13. When these requirements have been complied with, and the office has adjudged the trade mark lawfully registrable, a certificate will be issued by the Commissioner, under seal of the Interior Department, to the effect that applicant has complied with the law, and that he is entitled to the protection of his trade mark in such cases made and provided. Attached to the certificate will be a fac-simile of the trade mark and a printed copy of the statement and declaration.

14. The protection for such trade mark will remain in force for thirty years, and may, upon the payment of a second fee, be renewed for thirty years longer, except in cases where such trade mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in which case it will cease to have force in this country, by virtue of the registration, at the same time that the trade mark ceases to be exclusive property elsewhere.

15. The right to the use of any trade mark is assignable by an instrument of writing, and such assignment of a registered trade mark must be recorded in the Patent Office within sixty days after its execution, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice. No particular form of assignment or conveyance is prescribed, but the trade mark should be identified by the certificate number.

16. Owners of trade marks for which protection has been sought by registering them in the Patent Office under the Act of July 8, 1870, (declared unconstitutional by the Supreme Court of the United States,) may register the same for the same goods, without fee, on compliance with the foregoing requirements. With each application of this character a specific reference to the date and number of the former certificate is required (a).

(a) See *Jacoby & Co. v. Lopes & Co.*, 23 U. S. Pat. Gaz. 342.

17. Applicants whose cases were filed under the Act of 1870, either prior to or since the decision of the Supreme Court declaring it unconstitutional, which are now pending before the office, are advised to prepare applications in conformity with the law and foregoing rules. On the receipt of such an application, referring to the date of the one formerly filed, all fees paid thereon will be duly applied. Those who have paid only ten dollars as a first fee are advised that the law does not provide for a division of the legal fee of twenty-five dollars, and that the remainder of the entire fee is required before the application can be entertained.

### *Copies and Publications.*

18. Printed copies of the statement and declaration in each case, with a duplicate of the trade mark, can be furnished by the office. The *Official Gazette* of the Patent Office, published weekly, will contain a list of all trade marks registered, with the name and address of the registrant, a brief statement of the essential features of the trade mark, and the particular description of goods to which it is applied.

### *Fees.*

19. On filing an application for registration of trade mark . . . . .	\$25 00
For recording assignments—	
Under 300 words . . . . .	1 00
Over 300, and less than 1000, words . . . . .	2 00
Over 1000 words . . . . .	3 00
For single printed copy of statement and declaration . . . . .	25
Single copy <i>Official Gazette</i> . . . . .	10
Annual subscription <i>Official Gazette</i> . . . . .	5 00

### *Correspondence.*

20. All letters should be addressed to "The Commissioner of Patents," and all remittances by postal order, check, or draft should be to his order.

21. Letters relating to pending applications should refer to the name of the applicant and date of filing. Letters relating to registered trade marks must refer to the name of registrant, number or date of certificate, and the class of merchandise to which the trade mark is applied.

22. The office cannot undertake to respond to inquiries propounded with a view to ascertain whether certain trade marks have been registered, or, if so, to whom or for what goods; nor can it give advice as to the nature and extent of the protection afforded by the law, or act as its expounder, except as questions may arise upon applications regularly filed. A copy of these rules with this paragraph marked will be regarded as a courteous answer to all such inquiries.

FORMS.

The following forms have been prepared to be used in filing applications for registration of trade marks. Their use is not absolutely required, but as they have been made to conform to the conditions of the law, applicants will find their business facilitated by following them closely.

*Letter of Advice.*

To the Commissioner of Patents :

The undersigned presents herewith a fac-simile of his lawful trade mark, and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office in accordance with the law in such cases made and provided.

A. B.

*Statement.*

To all whom it may concern :

Be it known that I, A. B.,\* a citizen of the United States, residing at \_\_\_\_\_, in the county of \_\_\_\_\_ and State of \_\_\_\_\_, and doing business at \_\_\_\_\_, have adopted for my use a trade mark for \_\_\_\_\_,\* of which the following is a full, clear, and exact specification.

My trade mark consists of the letters and words (or arbitrary symbols, as the case may be) \_\_\_\_\_. These have generally been arranged as shown in the accompanying fac-simile. (Here give a full description of the fac-simile, including all its features.) But \_\_\_\_\_ may be omitted and \_\_\_\_\_ changed at pleasure without materially altering the character of my trade mark, the essential features of which are \_\_\_\_\_.

This trade mark I have used continuously in my business since \_\_\_\_\_, 18 \_\_\_\_\_.

The class of merchandise to which this trade mark is appropriated is \_\_\_\_\_, and the particular description of goods comprised in such class on which I use the said trade mark is \_\_\_\_\_. † It has been my practice to (here state fully the manner of applying it to the goods or the packages containing them.)

A. B.

Witnesses :

C. D.

E. F.

\* The first paragraph of the statement should be modified to conform to the circumstances of each applicant. If a firm, the domicile and place of business are required; if a corporation, under what State or other laws incorporated, where located, and place of business; if a person not an American citizen, of what country he is a citizen, (or subject, as the case may be,) &c., &c.

† The description of the goods on which the trade mark is used should be in the same language in the first and last paragraphs of the statement.

*Declaration.*

State of \_\_\_\_\_, County of \_\_\_\_\_, ss:

A. B., being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he has at this time a right to the use of the trade mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used in commerce with (here name one or more foreign nations or Indian tribes, or both, as the case may be;) that the description and facsimiles presented for record truly represent the trade mark sought to be registered; and that he is a citizen of the United States.

Sworn and subscribed before me a \_\_\_\_\_ this day of \_\_\_\_\_, 1881.  
G. H., J. P.

If the application is made by a firm or corporation, or by a citizen or subject of a foreign power, this declaration should be modified accordingly.

**APPENDIX F.**

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**TREATY WITH THE UNITED STATES, 1877.****DECLARATION BETWEEN GREAT BRITAIN AND THE UNITED STATES FOR  
THE PROTECTION OF TRADE MARKS.**

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 or 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.

(L.S.)      DERBY.  
(L.S.)      EDWARDS PIERREPONT.

## INDEX.

---

"A. C. A." cloths, 54.

**ABANDONMENT** of trade mark, 11, 46, 99.  
 intention necessary for, 99.  
 user with name is not, 101.  
 by adoption of new mark, 102.  
 by a retiring partner, 102.  
 by dismissal of action, 102.

**ACCOUNT**, 12, 158, 208.  
 injunction formerly ancillary to, 171.  
 not so now, 172.  
 incident to injunction, 209.  
 wherever another's mark is placed on the goods by the defendant,  
 209.  
 not where defendant bought the goods ready marked, 208.  
 sometimes useless, 210.  
 none where laches, 189, 210.  
 where offer of submission, 210.  
 subdivided, 170, 210.  
 extent of, 13, 211.  
 directed at plaintiff's risk, 211, 217.  
 election between damages and, 211.

**ACQUIESCENCE**, as a defence, 185.  
 none where no knowledge, 188.  
*And see DELAY.*

**ACQUISITION** of trade marks, 74.  
 by aliens, 74.  
 length of user formerly required for, 76.  
     now not required for, 77.  
 by common repute, 77.  
 former conditions of, 78.  
 by registration. *See REGISTRATION.*  
 by user is only in respect of the goods on which there has been  
 user, 81.

**ACTION** on the case, 12, 106, 142.

**ACTS**, repeal of, 338.

**ACTUAL FRAUD**, infringement without, 8, 11, 12, 109, 147, 151, 201.  
always restrained, 49.

**ACTUAL USER** of title of publication necessary, 267.

**ADDITIONAL REPRESENTATION**, form of, 386.

**ADDITIONS** to trade marks, 84, 315.  
and alterations of trade marks, punishable when fraudulent, 135.

**ADDRESS** of applications, to comptroller, 373.  
form of application for alteration of, in register, 390.  
use of defendant's, together with infringing mark, no defence, 203.

**ADVANTAGES** of use of trade marks, 5.

**ADMINISTRATRIX**, action not continued against, 165.

**ADVERTISEMENT** no trade mark, 59.  
expenditure on, gives no right to what is advertised, 78, 267.  
in "Trade Marks Journal," 83, 308, 345, 379.  
marks incapable of, 343.  
form of, 400.  
of series of marks, 346, 380.  
no obligation to see, 308.

**AFFIXED** to the article, trade mark must be, 19.

**AGENT**, question of title between principal and, 168.  
cannot acquire his principal's trade mark by user, 76.  
application may be made by, 342, 378.  
infringement by, 173.  
when costs not given against, 214.

**AGGRIEVED**, person, 327.  
foreigner may be, 17, 327.

**AGREEMENT** will not be enforced when fraudulent, 177.

"**AINSWORTH'S THREAD**," 29, 31.

"**AKRON**," 64.

"**ALBANY BEEF**," 51, 488.

"**ALDERNEY**" oleomargarine, 64, 123.

**ALIENS** may acquire trade marks, 15, 74, 303, 333, 334.  
new enactments with respect to, 76, 303.

**ALMANACK**, imitation of, 262.

- ALTERATION of registered trade mark, 87, 329.
- ALTERNATIVE MARKS, 84, 483.
- AMBIGUOUSNESS of defendant's mark, no defence, 120, 201.
- AMENDMENT of documents, 352.
- AMERICA. *See* UNITED STATES.
- "AMERICAN GROCER, THE," 265.  
SARDINES," 50, 56, 66, 315, 482.
- "AMMONIATED BONE SUPERPHOSPHATE OF LIME," 51, 59.
- "AMOSKEAG" cloths, 64.
- ANALOGOUS CASES to those of trade mark, 17, 224.
- "ANATOLIA LIQUORICE," 51, 63, 65.
- "ANCHOR BRAND WIRE," 38, 122.
- ANCHORS, chain cables and, 473.
- "ANCHOVIES, BURGESS' ESSENCE OF," 27.
- "ANGLO-INDIAN TEA CO., THE," 230.
- "ANGLO-PORTUGO" oysters, 50, 56, 315.
- "ANGOSTURA BITTERS," 50, 64, 77, 123.
- ANNUAL report of comptroller, 333.
- "ANTIQUARIAN BOOK STORE, THE," 50, 240.
- "APOLLINARIS WATER," 64.
- APPEAL, delay in, 162.  
when not to be brought, 162.  
advanced, 163.  
costs of, 218.  
to Board of Trade, 85, 345.  
Form of, 387.  
from Cutlers' Company, Form of, 396.
- APPLICANT, definition of, 350.
- APPLICATION for registration, 82, 302, 341, 342, 377.  
representations of trade mark on, 82, 302.



**APPLICATION—continued.**

of old marks, mode of, 82.  
 Form of receipt of, 399,  
 by a firm, 83, 342, 377.  
 by a body corporate, 83, 342, 377.  
 advertisement of, 83, 308, 345, 379.  
 in case of Sheffield and cotton marks, 83.  
 opposition to, 85.  
 costs of opposed, 86, 222, 223.  
 by subsequent proprietor, 93, 349, 383.  
 may be sent by post, 331, 344.  
 instructions with respect to, 373, 377, and *Addendum*.  
 Form of, 385.  
 for alteration of address, Form of, 390.

**APPORTIONMENT** of costs, 216.

**APPROPRIATION** of trade marks to special classes of goods, 10, 79, 306.

**"ARABIAN BALSAM, HAYNES,"** 34.

**ARMS**, national, 305, 381, and *Addendum*.

of one of the United States, 482.

wrongful assumption of Royal, punishable by fine, 336.

**"ARMY AND NAVY CO-OPERATIVE SOCIETY, THE,"** 230.

**ASSIGNEE** or transmittee, registration of. *See* **SUBSEQUENT PROPRIETOR.**

**ASSIGNMENT** of trade marks, 10, 87, 310, 325.

to be registered, 310.

**ASSUMED NAME** used as trade name, 233.

**ATTORNEY'S** practice, goodwill of. *See* **GOODWILL.**

**"ATWOOD'S PHYSICAL VEGETABLE JAUNDICE BITTERS,"** 33.

**"AUSTRALIAN MORTGAGE, LAND, AND FINANCE CO., THE,"**  
 231.

**AUTHORITY**, colourable, 202.

**BAILEE** of goods falsely marked, 174.

**"BALM OF THOUSAND FLOWERS,"** 50, 51, 58.

**BAND** for cigar boxes, 73.

**"BANK OF ENGLAND"** sealing wax, 316.

**BANKING BUSINESS**, 147.



"BODY CORPORATE," 350.

BOND, form of, 381, 397.

BOOK, title of, registration under Copyright Acts useless, 15. *And see*  
LITERARY PUBLICATION.

"BOOTH'S THEATRE," 243.

"BORWICK'S BAKING POWDER," 131.

BOTTLES, shape of, 72.  
infringement by use of moulded, 128.

"BOUQUET HAMS," 122.

"BOVILENE" pomade, 51, 57, 125.

"BRAIDED FIXED STARS," 46, 316, 318.

BRAND, distinctive, may be a trade mark, 23, 36, 304.

"BRAND'S ESSENCE OF BEEF," 163.  
"original maker of," 253.

BRICK WORKS, question of title in respect of, 167.

"BRITANNIA, THE," 428.

BRITISH possession, registration of trade marks originating in, 335.  
definition of, 339.

"BROOKLYN WHITE LEAD CO.," 230.

"BROOKMAN AND LANGDON," 295.

"BROSELEY" pipes, 64.

"BROWN CHEMICAL EXTRACT," 51.

"BRUSH MIDLAND ELECTRIC LIGHT AND POWER CO., THE,"  
231.

BURDEN of proof is on defendant where essential particular taken, 116.  
person alleging a mark to be common, 316, 327.

"BURGESS' ESSENCE OF ANCHOVIES," 27, 125.

BUSINESS. *See* GOODWILL.

BUTTONS, metal, 472.

BYRON, Lord, 244.

CABLES. *See* CHAIN CABLES.

"CACHEMIRE MILANO," 50, 56, 66, 315, 482.

"CALHOUN PLOUGH," 44, 482.

"CALIFORNIA" soap, 314, 483.

"CANADA PLATES," 179.

CANCELLATION of entry in register, 104, 329.  
form of application for, 391.  
declaration in support of application for, 392.

"CAPITAL AND COUNTIES BANK, THE," 230.

"CAPTAIN'S LIVE AND LET LIVE OYSTER AND DINING SALOON,  
THE," 241.

CARDS, Great Mogul stamp on, 6.  
wrappers for, 473.

CARPET cleaner's mark no trade mark in the United States, 480.

CARPET stick, 72, 482.

"CARRIAGE BAZAAR," 234, 240.

CARRIER of goods falsely marked, 174.

"CASCADE" ale, 58.

CASE, action on the, 12, 106, 142.

CASES analogous to cases of trade mark, 17, 224.

"CAVENDISH HOUSE," 241.

"CELEBRATED STOMACH BITTERS," 51.

"CENTENNIAL" clothing, 52, 58.  
wines, 52.

CERTIFICATE of comptroller, 382.  
to be evidence, 330, 353.  
general, form of, 404.  
form of request for, 395.  
of registration for use abroad, form of, 403.  
form of request for, 393.

**CERTIFICATE**—*continued.*

- in legal proceedings, form of, 402.
- form of request for, 394.
- of refusal to register, 24, 318.
- form of, 405.
- form of request for, 390.

**CHAIN** cables and anchors, 473.

**CHANCERY DIVISION** administered Trade Marks Registration Acts, 150.

**CHARACTERISTICS** of registered trade mark, 304.

“**CHARBONNEL AND WALKER,**” 286.

“**CHARITY,**” 266.

“**CHARTER OAK**” stoves, 51, 58, 123.

“**CHEAVIN'S FILTERS,**” 59.

“**CHERRY PECTORAL,**” 50, 241.

“**CHERRY ST. MILLS,**” 66, 482.

“**CHINESE LINIMENT,**” 51.

“**CHLORODYNE,**” 50, 57.

“**CHRISTY'S MINSTRELS,**” 233.

“**CHUBB'S PATENT-LOCK FIRE-PROOF SAFES,**” 33.

**CIRCUIT** courts, jurisdiction of, in the United States, 481.

**CIRCULARS,** deceptive, 235.

**CIVIL REMEDY,** 143.

- not affected by conviction under the Merchandise Marks Act, 1862,...136, 180.

**CLAIM,** forms of statements of, 418, 419, 420.

“**CLARIBEL'S**” songs, 245.

“**CLARKE'S PILLS,**” 245.

**CLASSES** of goods, registration must be for particular goods or, 10, 79, 306.  
infringement must be by use on same, 127.

**CLASSIFICATION** of goods, 79, 302, 306, 342, 357.  
guide to, 379.  
cotton marks, 368.

- CLERICAL** error in registration, correction of, 87, 329.  
form of request for, 393.
- CLERKS** to be appointed by Board of Trade, 325.
- CLOCKS** and watches, 454, 472.
- CLOTHS**, woollen, 474.
- "CLUB HOUSE GIN,"** 50.
- "COCK"** mark, 38.
- "COCOAINE,"** 51, 57, 125.
- "COCOATINA,"** 125.
- "COE'S SUPERPHOSPHATE OF LIME,"** 33, 125.
- COLLAR-BOX**, shape of, 482.
- COLLATERAL MISREPRESENTATIONS** do not disentitle, 13, 193.
- COLLIERIES**, use of name of, restrained, 244.
- "COLLINS CO. HARTFORD CAST STEEL WARRANTED,"** 33.
- "COLONIAL LIFE ASSURANCE CO., THE,"** 229.
- COLONIAL** trade marks, registration of, 335.
- COLOUR**, when it can be claimed, 72.  
registration of trade marks in, 307, 313.  
protects in all colours, 79, 84, 307.  
infringement of marks registered with or without, 117.
- COLOURABLE AUTHORITY**, 202.  
differences, infringement with, 124.
- "COLTON DENTAL ROOMS, THE,"** 254.
- COMBINATION** marks, 71, 168, 368.  
of name with mark, no abandonment, 101, 165.
- COMMISSION MERCHANTS**, 173.
- COMMISSIONERS OF PATENTS**, functions of, transferred to Board of Trade, 151.  
instructions given by, to Manchester Committee of Experts, 368.
- COMMITTAL**, motion for, 163.  
delay in respect of, 189.  
costs of, 164, 217.

**COMMITTEE OF EXPERTS FOR COTTON MARKS.** *See* **MANCHESTER COMMITTEE OF EXPERTS.**

**COMMON LAW** remedy, 12, 106, 142.

development of law of trade marks at, 7.

requisites to entitle to damages at, 7.

fraudulent intention at, 7, 12, 106, 144, 145.

injury to the plaintiff must be shown at, 147.

Equity at first followed the, 152.

mark, no exclusive right in, 11.

removable from register, 308.

burden of proof is on person alleging that mark is, 316.

delay may make mark a, 186.

registrable as an addition, 315.

disclaimer of, 84, 379.

repute, acquisition of trade marks by, 77.

user, statements in application for registration, no evidence of, 47, 316.

**COMPANIES ACT, 1862.** *See* **STATUTES.**

**COMPANY,** name of, 229.

descriptive, 231.

registrable under the Companies' Act, 1862, ...231.

application for registry by, 83, 342, 377.

**COMPROMISE,** costs in case of, 219.

**COMPTROLLER-GENERAL,** office of, 324.

definition of, 339.

subject to Board of Trade, 151, 324.

discretionary powers of, 330, 344.

may take directions of law officers, 330.

may correct clerical errors, 329.

not to refuse registration without hearing applicant, 85, 330.

costs of, in registration cases, 222.

certificate of, 382. *And see* **FORMS.**

to be evidence, 330, 353.

annual report of, 333.

**CONCURRENT** rights in same trade mark, 97, 101.

**"CONDY'S FLUID CO., THE,"** 231.

**CONFLICT** of laws, 16.

**CONFLICTING** claims to registration, 87, 310.

mode of trial of, 311.

by special case, 350.

**"CONGRESS SPRING"** water, 51, 64.





**COSTS**—*continued.*

not given where each side partly successful, 222.  
 paid by successful applicant, 222.  
 of comptroller, 222.  
     when he opposes application, 222, 314.  
 extent of, 223.  
 of application to rectify the register by removal, 223, 328.  
 security required for, on opposition to registration, 309.

**COTTON CLOTHS**, trade mark indicative of printer of, 4, 167.

marks, registration of, 83, 313.  
     rules as to, now repealed, 367.  
     Manchester office for exhibition of, 367, 372, 382.  
     time for applying for registration of, 367.  
         when combination marks,  
         367.  
 classification of, by Manchester Committee of Experts, 368,  
 369.  
     instructions for, 368.  
 in B. list formerly not registered without Order of Court,  
 369, 372.  
 added to lists, 369, 372.  
 in A. list, application for registration of, 370, 372.  
 advertisement of, 370, 372.  
 time of registration of, 371, 372.  
 not to be registered except as prescribed, 371.  
 application for registration of new, 371.  
 now on the same footing as other trade marks, 367.  
 name of, to be stated in application, 378.

“**COUGH REMEDY**,” 50.

**COUNTER-CLAIM**, injunction granted on, 158.

**COUNTER-STATEMENT**, 85, 308.

form of, 381, 397.  
 grounds of, 409.

**COURT**, definition of the, 337, 339.

in Scotland, 336.  
 reference of appeal from the Comptroller to the, 302.  
 manner of bringing opposed case before the, 309.  
 submission of conflicting claims to the, 311, 350.

**COVENANT** by servant, benefit of, passes with goodwill, 270.

by vendor of goodwill usual, 283.  
     to make profitable, 285.  
 by purchaser of goodwill to keep up business implied, 288.

“**CRACK-PROOF**” indiarubber, 50, 482.

**CREST** as a trade mark, 38.

use of, may be restrained, 38.

**CRIMINAL PROSECUTION**, 131

"**CRISTALLINE**" brilliants, 51, 488.

"**CROMAC SPRINGS**," 64, 241.

"**CRONICA, LA**," 265.

"**CRONISTA, EL**," 265.

"**CROSS COTTON**," 38, 122, 164.

"**CROUP TINCTURE**," 47, 50, 482.

**CROWN**, representations of the royal, will not be registered as new marks, or parts of new marks, 305, 381.

"**CROWN**" clothing, 122.

"**CROWN SEIXO**" wine, 65, 125, 422.

"**CUNDURANGO OINTMENT C. O.**," 50, 483.

**CUSTOMS** regulations, 454.

**CUTLERS' COMPANY**, Acts relating to the, 456.  
 not affected by the Merchandise Marks Act, 1862,...449.  
 ordered to pay costs of opposition, 222.  
 registration of Sheffield marks by the, 83, 321, 353, 381.  
 form of appeal from, to Comptroller, 396.

**CUTLERY**, marks on, 456.

**DAMAGES**, 12, 158, 212.

affected by fraudulent intention, 111.

given, though no fraudulent intention, 146.

special damage proved, 212.

measure of, 148, 213.

at least nominal, where infringement, 149, 212.

withheld in case of delay, 189, 212.

election between an account and, 212.

inquiry as to, given at plaintiff's risk, 213.

under Merchandise Marks Act, 1862,...214.

costs given, though only nominal, 214.

for improper solicitation of old customers after sale of goodwill  
 285.

**DATE** of registration, 349.

establishment appropriated, 253.

"DAVE JONES" whiskey, 32, 52.

"DAY AND MARTIN'S BLACKING," 118, 235, 253, 422.

DEAD LANGUAGES, trade marks consisting of words from the, 59.

DEATH, transmission of trade mark on, 96.

DECEPTION, actual, 110, 119.

probable, 110, 120.

must be probable for injunction to issue, 120, 245, 265.

of first purchaser immaterial, 7, 106, 146.

DECEPTIVE MARKS, not protected, 55, 91, 190.

not registrable, 314.

circulars, 235.

labels and notices, 253.

or descriptive, marks which are, 55, 315, 482.

DECLARATION on application by subsequent proprietor, 93, 350.

form of, 389.

on application by registered proprietor for cancellation, 104, 329.

form of, 392.

by infant, lunatic, &c., 331.

how to be made, 354.

DEFENCES, 181.

non-infringement, 181.

plaintiff's trade mark bad, 181.

even though registered for five years, 182.

no registration or certificate of non-registration, 183.

plaintiff not the registered proprietor, 183.

trade mark severed from goodwill, 184.

licence, 184.

may not be used fraudulently, 185.

delay and acquiescence, 185.

marks may become common by, 186

no, where no knowledge, 188.

plaintiff's misrepresentation, 13, 55, 91, 190.

improper allegation of patent by plaintiff, 13, 195.

inoperative, 201.

ignorance, 201.

no intention to sell, 201.

no actual deception or fraud, 7, 151, 201.

immediate purchasers not deceived, 146, 152, 201.

words ambiguous, 120, 201.

only part of mark taken, 201.

name used is defendant's own, 202.

colourable authority, 202.

goods are plaintiff's own of different quality, 202.

equality in quality, 8, 202.

**DEFENCES—continued.**

- addition of defendant's name, 202.
- address, 203.
- user by others, 203.
- infringement by others, 203.
- a plurality of marks or names, 166, 203.
- puffing, 203.
- slight delay, 204.
- infancy, 204.
- defendant's mark registered, 204.
- interference with defendant's business, 204.
- form of, 421.

- DEFINITION** of trade mark in Merchandise Marks Act, 1862...22, 439.  
 Trade Marks Act, 1875...23.  
 Patents Act, 1883...23, 304, 376.  
 effect of, 24.  
 clause in Patents Act, 1883...339.

**DELAY, 185.**

- may make mark common, 186.
- on motion for injunction, 186.
- at the hearing or on demurrer, 187.
- where rights not actively defended, 187.
- no, where no knowledge, 188.
- may affect rights against unintentional infringer, 111.
- by retiring partner, 188.
- on appeal, 162.
- on motion to commit, 164, 189.
- for the purpose of obtaining evidence, 188, 204.
- indulgence to defendant by reason of plaintiff's, 189.
- no account or damages where, 189, 212.
- costs not given by reason of, 190, 214.

**DELIVERY** up and destruction of spurious marks, 158, 180.

**"DEMOCRATIC REPUBLICAN NEW ERA, THE,"** 265.

**"DENT"** watches, 32.

**DEPOSIT,** registration by, 84, 307, 343, 370.

**"DERRINGER"** pistols, 32.

**DESCRIPTIVE WORD** no trade mark, 11, 21, 41, 49, 166, 482, 488.  
 fancy words may become, 100.  
 list of words which are, 50.  
 name of patented article is, 47.  
 new name for new article is, 49.  
 effect of registration of mark which is, 45.  
 or deceptive, marks which are, 55, 315, 482.

- "DESICCATED COD-FISH," 50.
- DESIGNS, trade marks distinguished from, in the United States, 479.  
marks to be placed on registered, 453.
- DESTRUCTION, delivery up of spurious labels, &c., for, 158, 180.
- DETERMINATION of doubt as to classes, 312.
- DEVICE, 23, 35, 304.
- "DIAMOND POWDER," 122.
- DIORAMA, imitation of a, 245.
- DIRECTIONS for use, 234.
- DISCLAIMER of common marks, 84, 305, 316, 317, 328, 379.
- DISCONTINUANCE of trade marks, 97.  
by removal from register for non-payment of fees, 98.
- DISCOVERY, 158, 204.  
principle on which given, 205.  
not given where oppressive, 205.  
given where necessary, 205.  
action for, against carrier, 174, 207.  
under Merchandise Marks Act, 1862...207.
- DISCRETIONARY POWERS of comptroller, the, 330, 344.
- DISENTITLED, plaintiff may be, by his own misrepresentations, 13, 55, 190,  
482.  
by improper use of word "patent," 13, 195.  
not, by use of his name with his mark, 101, 166.  
to protection, words which are, not registrable, 66, 314.
- DISMISSAL of suit, abandonment of trade mark by, 102.
- DISPOSAL of goodwill on dissolution of partnership, 290.
- DISPUTED CLAIM of registration, registrar's duty in case of, 310.
- DISSOLUTION of partnership, 94, 236, 290.
- DISSOLVE, motion to, 162.
- DISTINCTION between trade mark and patent, 13.  
copyright, 15.
- DISTINCTIVENESS requisite, 22, 35, 41.

- DISUSED MARK, infringement of, 103, 128.
- "DR. McLANE'S PILLS," 31.
- "DR. JOHNSON'S OINTMENT," 259.
- DOG AND PORRIDGE POT, THE, 122, 314.
- "DOG-BRAND" files, 122, 314.
- "DOG'S HEAD" beer, 122.
- "DOUGLAS & CO.," 234, 280.
- DRAWINGS, 473.
- "DRUGGISTS' SUNDRIES" cigars, 51, 482
- "DUBLIN SOAP," 52, 56, 64, 482.
- DURATION of registration, 98, 320.
- "DURHAM" tobacco, 52, 66, 123, 482.
- "EAGLE" mark, 38.
- EARLY use of trade marks, 6.
- "ECONOMIC CONVEYANCE CO., THE," 248.
- "EDELWEISS" perfume, 52, 56.
- "EDINBURGH CORRESPONDENT, THE," 264.  
Philosophical Journal, The," 264.
- EDITOR, name of, 247.
- EFFECT of registration of descriptive mark, 45.
- "EGG MACARONI," 50, 56, 166, 315, 482.
- ELECTION between account and damages, 211, 212.
- "ELECTRO-SILICON," 57, 125.
- ELEMENTS necessary to found jurisdiction, 157.
- "ELEPHANT" cotton goods, 38.

"ELISE, MADAME," 233.

'ELKINGTON'S A SPOONS," 137.

EMPLOYMENT, former, may be stated, 238, 298.

ENGLAND, hall marks in, 460.

ENGRAVER, infringement by, 129, 173.

ENGRAVINGS, marks to be placed on, 471.

ENLARGEMENT of time, 352.

"ENO'S FRUIT SALT," 123.

"ENTERED AT STATIONERS' HALL," the words, will not be registered,  
305, 380.

ENTRIES to be made in register, 320.  
fabrication of, 330.

ENTRY of rectification in register, 350.

"EQUAL TO DAY AND MARTIN'S," 253.

EQUALITY in quality no defence, 8, 202.

EQUITY, 8, 106, 150.  
remedy in, 12, 158.  
principles adopted in, 151, 158.  
at first followed the law, 152.  
question as to foundation of jurisdiction in, 153.  
in what sense fraud is required in, 148, 151, 156.

"ERA, THE," 265.

ERASURE of spurious marks, 159.

"ESSENCE OF ANCHOVIES, BURGESS'," 27.  
Beef, Brand's," 163.  
original maker of," 253.

ESSENTIAL PARTICULARS of trade mark, 85, 304.  
infringement must be of, 116, 304.  
of, throws burden of proof on defendant, 116.  
may not be altered, 304, 329.

ESTABLISHMENT, fraudulent use of name of, 240.

**ETCHINGS**, 257.

“**ETHIOPLAN**” stockings, 51, 64.

**ETON ARMS**, The, 316.

“**EUREKA SHIRTS**,” 52, 60, 166.  
manure,” 51, 60.

“**EVAPORATED**” articles of food, 51, 482.

“**EVERETT'S PREMIER BLACKING**,” 51, 136.

**EVIDENCE**, 161, 352.

of proprietor's right, registration is, 115, 318.

of common user, statements in applications for registration are not,  
47, 316.

must be produced by person alleging it, 316.

of experts as to similarity, value of, 119.

of fraud, 112, 233.

certificate of comptroller to be, 330.

sealed copies of register to be, 326.

delay for the purpose of obtaining, 188, 204.

**EXACT FAC-SIMILE** not required to constitute forgery, 136.

“**EXACTLY 12 YARDS**,” 62.

“**EXCELSIOR**” soap, 51, 60, 165.

**EXCLUSIVE USE** of trade mark, 318.

**EXHIBITION** medals, 172, 452.

will not be registered as new marks, or parts of new marks,  
305, 381.

**EXPERT EVIDENCE**, value of, 119.

**EXPERTS** for cotton marks, committee of. *See* **MANCHESTER COMMITTEE OF EXPERTS**.

**EXPORTER**, manufacturer and, 4, 168.

**EXPRESSIONS** generally understood may be employed in marks, notwithstanding the provisions of the Merchandise Marks Act, 1862,...136, 443.

**EXPUNGING** trade mark from register, 326.

**EXTENT** of account, 211.

**EXTRACTS** from register, 325.



**EXTRAVAGANCE** an advantage in fancy names, 56.

“**FABER**” pencils, 32.

**FAC-SIMILE**, to constitute forgery there need not be an exact, 136.

**FACT**, intentional mis-statement as to, criminally punishable, 141.

“**FAIRBANKS’ PATENT**,” 50, 56.

**FALSE PRETENCES**, 12, 131, 136, 137.

as to weight, 141.

without words, 141.

representations, general law as to, 145.

by plaintiff, a ground of defence, 190.

**FALSIFICATION** of entries in register, 330.

**FAMILY** names, no exclusive right in, apart from business, 225.

“**FAMILY SALVE**,” 52, 123.

**FANCY WORDS**, 23, 41, 304.

list of, 51.

extravagance an advantage in, 56.

specially invented, 57.

composed of existing words, 57.

geographical names, 63.

become descriptive, 100.

**FEEs** for registration, 321, 341, 361.

table of, 355.

how payable, 373.

form of transmission of, 387.

removal of mark from register for non-payment of, 98, 320.

“**FERNDALE**” coal, 64.

“**FERRO-PHOSPHORATED ELIXIR OF CALISAYA BARK**,” 50.

**FIGURES**, numerical, 66, 70, 304, 482.

“**FINCH AND CO.**,” 237, 280.

**FIRM**, application for registry by, 83, 342, 377.

name. See **TRADE NAME**.

part of goodwill, 277.

how continuing partners may use, 295.

former, may be stated, 238.

**FIRST PURCHASER**, deception of, immaterial, 146, 152, 201.

**FLAGS**, national, of Great Britain will not be registered as new marks, or parts of new marks, 305, 381, and *Addendum*.

**"FLOR FINA PRAIRIE SUPERIOR TABAC,"** 60.

**FOREIGN LANGUAGE**, trade marks consisting of words from, 60, 378.  
false statement in, 193.

subjects, protection of trade marks of, 15, 74, 303, 333, 334.

new enactments with respect to, 76, 303.

user, not equivalent to English user, 17, 313.

countries, form of certificate of registration for use in, 403.

request for certificate of registration for use in, 393.

**FORGERY**, at Common Law infringement no, 131.

under Merchandise Marks Act, 1862,...132.

**FORM OF** application for registration, 385.

additional representation, 386.

receipt of application, 399.

advertisement, 400.

transmission of fee, 387.

notification of registration, 399.

request for copy of, 395.

certificate of registration for use abroad, 403.

request for, 393.

in legal proceedings, 402.

request for, 394.

appeal from Cutler's Co., Sheffield, to comptroller, 396.

to Board of Trade, 387.

certificate of refusal to register, 405.

request for, 390.

special case, 413.

application for settlement of, 394.

notice of opposition, 388.

grounds of, 406.

counter statement, 381, 397.

grounds of, 409.

bond, 381, 397.

notice to applicant to bring opposed application before the Court, 401.

summons for leave to register, 413.

notice of motion for leave to register, 414.

application for alteration of address, 390.

request for correction of clerical error, 393.

notice of motion for leave to add to or alter a mark, 415.

request and declaration by subsequent proprietor, 389.

application for cancellation, 391.

declaration in support of, 392.

notice of motion for rectification of the register, 415.

order for rectification, 391.

**FORM OF—continued.**

- general certificate of comptroller, 404.
- request for, 395.
- writ of summons, with indorsement, 416.
- notice of motion for injunction, 417.
- statement of claim, 418, 419, 420.
- defence, 421.
- reply, 421.
- summons to stay proceedings, 421.
- injunctions and orders, 422—437.

**FORMS, 341, 356.**

- list of stamped, 375.
- places where stamped, obtainable, 373.
- in which injunctions granted, 162.
- and precedents, 384.
- And see* PRECEDENTS.

**FORMER EMPLOYMENT** may be stated, 238.

**“FRANK LESLIE'S ILLUSTRATED NEWS,”** 234.

**“FRANKS' SPECIFIC SOLUTION OF COPAIBA,”** 253, 431.

**FRAUD, 7, 12, 49, 106, 111, 144, 156, 159, 201.**

- in what sense there must be, for infringement, 8, 156.
- actual, always restrained, 49, 183.
- shown by purchasing right to use name, 32.
- question of, is for the jury, when there is one, 145.
- circumstances pointing to, 112, 233.
  - to absence of, 114.
- disentitling plaintiff, 13, 190.
- by defendant, punished by refusal of costs, 215.
- unjustifiable charges of, punished in respect of costs, 216, 217.
- costs incurred by defendant's, recovered from him, 148, 221.
- on the public, 177, 185, 190.
- evidence of, 233.

**FRAUDULENT ADDITIONS to and alterations of marks, 135.**

- partnership, 235.
- use of name of establishment, 240.

**FRAUDULENT INTENTION** does not increase injury wrought by infringement, 108.

- may affect account or damages, 111.
- may render further inquiry unnecessary, 112.
- continuance of infringement after complaint shows, 112, 146, 154, 228, 263.
- unnecessary, when mark registered, 115.

**FRAUDULENT INTENTION—continued.**

need not be proved in cases of trade mark, 8, 11, 12, 109, 147, 151, 201.

trade name, 226.

title of publications, 263.

must be proved when defendant is using his own name, 25.

agreement will not be enforced, 177.

speculation, no relief given in cases of, 194.

use of testimonials, 253.

secret, 260.

**FREEMASONS' EMBLEMS** as trade marks, 37, 482.

"**FRENCH**" PAINTS, 51, 56, 66, 315, 482.

"**FRUIT SALT, ENO'S,**" 43, 50, 123.

"**FULLWOOD & CO.,**" 233.

**FUNCTION** of trade mark, 2.

"**FÜR FAMILIEN GEBRAUCH,**" 50, 62, 482.

"**GALAXY PUBLISHING CO., THE,**" 231.

"**GARNHART'S OLD BOURBON,**" 125.

"**GASEOUS FLUID,**" 51.

**GENERAL PRINCIPLE** of trade mark law, 1.

**GENUINE MARK**, improper use of, 128, 141.

**GENUINENESS**, misrepresentations of, 252.

**GEOGRAPHICAL NAMES**, 63.

American rule as to, 65, 482.

"**GERMAN SIRUP,**" 52, 56, 66, 315, 482.

"**GLENBOIG**" bricks, 170, 171.

"**GLENDON**" iron, 66.

"**GLENFIELD**" starch, 63, 126, 424.

"**GLENLIVET**" whiskey, 208.

"**GLOBE**" steel, 122.

GOLD and silver plate. See HALL MARKS.

GOLD MEDAL, injunction not granted to restrain untrue assertions as to, 53.

"GOLDEN CROWN" cigars, 51.

"GOLDEN LION, THE," 241.

"GOLDEN OINTMENT," 50.

GOODS, registration must be for particular goods or classes of, 10, 306.  
 guide to classification of, 379.  
 registration of a series of marks differing only in statements of the,  
 306.

"GOODS AND CHATTELS," within the Bankruptcy Act, trade mark is,  
 11, 93.

GOODWILL, value of, 268.

- connexion of trade marks with, 10, 18, 88, 268, 310, 317.
- trade mark cannot be severed from, 88, 96, 184, 269.
- trade mark passes with, 88, 268, 279.
- provisions of the Registration and Patents Acts with respect to,  
 269.
- what constitutes, 269.
- formerly treated as always local, 270.  
     not so now, 271.
- importance of local connexion to, 271.
- of public house, 271.
- another view of, 272.
- in learned professions, 272, 273.
- division of, into personal and local, 272, 289.  
     into goodwill of profession and of trade, 272.
- of a profession held to be assignable, 273.  
     assignability of, doubted, 273.  
     sale of, enforced, 274.  
     devolution of, on dissolution of partnership, 274.  
         on death, 275.  
     rights on sale of, 275.  
     incidents of, 275.
- of a trade, incidents of, 276.  
     universally valuable, 276.  
     firm name part of, 225, 277.  
     sale of, specifically enforced, 278.  
     connected with the business, 279.
- vendor of, after sale, may set up new business, 236, 279.  
     but must not interfere unfairly with the purchaser, 281.  
     user of old trade name by, 280.  
     solicitation of old customers by, 281, 283.

**GOODWILL—continued.**

- restrained, though no express covenant, 281.
- express restrictive covenant by, usual, 283.
- damages in respect of improper solicitation by, 285.
- covenant by, to make profitable, 285.
- rights of purchaser of, 285.
  - with respect to trade name, 285.
- mortgagee of, with respect to trade name, 286, 289.
- implied contract by purchaser of, to keep up business, 288.
- is partnership assets, 290.
- disposal of, on dissolution, 236, 290.
- what terms in partnership articles include, 291.
- cannot be monopolized by one partner, when no articles, 235, 292.
- does not survive to surviving partner, 294.
- rights on dissolution of partnership by retirement or death, and sale of, 295.
- right of election in respect of, protected, 299.
- valuation of, 299.

**"GOURAUD'S ORIENTAL CREAM, OR MAGICAL BEAUTIFIER,"**  
33, 52.

**"GOURAUD'S SONS,"** 234.

**"GRADUATED GROOVELESS, DRILL-EYED, GROUND DOWN"**  
needles, 59.

**"GRANULATED DIRT-KILLER"** soap, 51, 482.

**"GREAT IXL AUCTION COMPANY, THE,"** 241.

**"GREAT MOGUL"** stamp on cards, 6.

**"GRENADE"** syrup, 51, 62, 123.

**"GROSVENOR LIBRARY, THE,"** 241.

**GROSS**, trade mark cannot exist in, 10, 88, 310.

**GROUNDWORK**, when registration of, will be permitted, 305, 380.

**GROWTH** of Chancery jurisdiction, 150.

**"GUARDIAN FIRE AND LIFE ASSURANCE CO., THE,"** 280

**GUIDE** to classification of goods, 379.

**"GUINEA COAL COMPANY, THE,"** 229, 432.

**"GUINNESS"** stout, 125.

GUN-BARRELS, 472.

HALL MARKS in England, 460.  
                                           table of, 465.  
           in Scotland, 466.  
                                           table of, 467.  
           in Ireland, 468.  
                                           table of, 469.  
 fraudulent imitation of, 157.

HALLAMSHIRE. *See* CUTLERS' COMPANY.

"HAMBURG TEA," 51.

"HAND" mark, 38.

"HANFORD'S CHESTNUT GROVE WHISKEY," 34.

"HARVEY'S SAUCE," 45, 50, 163.

"HAXALL" goods, 123, 314, 483.

"HAYNES' ARABIAN BALSAM," 34.

HEADING, 23, 36, 40, 304.

"HEGEMAN'S FERRATED ELIXIR OF BARK," 51.

"HEMY'S PIANOFORTE TUTOR," 264.

"HERO" jars, 151.

"HIGHLY CONCENTRATED COMPOUND FLUID EXTRACT OF  
 BUCHU," 59.

"HOLBROOK'S SCHOOL APPARATUS," 44, 50.

"HOLLOWAY'S PILLS AND OINTMENT," 27, 31.

"HOLMES, BOOTH, AND ATWOOD M'FG. CO., THE," 230.

"HOMEWASHER, THE," 51.

"HOOD & CO.'S SOLUBLE SHEEP-DIP," 34.

HOPS, 474.

"HOSTETTER'S CELEBRATED STOMACH BITTERS," 34.

"HOSTETTER AND SMITH," 125.

- HOTEL**, exclusive right in name of, protected, 242.
- HOUSE**, no exclusive right in name of private, 242.
- "HOWE"** sewing machines, 32.
- "HOWQUA'S MIXTURE,"** 51, 191.
- HUMOURIST**, name of, 244.
- "IXL. GENERAL MERCHANDISE AUCTION STORE, THE,"** 241.
- IDENTICAL**, or nearly identical marks not to be registered, 310, 311, 350.
- IGNORANCE** of plaintiff's rights no defence, 201.
- ILLEGAL** trade marks not to be registered, 325.
- IMMEDIATE** purchaser not deceived, no defence, 7, 12, 106, 201.
- IMMORAL** trade marks not to be registered, 325.
- "IMPERIAL"** soap, 58, 123.
- IMPERTINENT** charges disallowed, 159.
- IMPORTER** of goods, trade mark may indicate, 4.
- IMPROVER** of goods, trade mark may indicate, 4.
- "INDEPENDENT NATIONAL SYSTEM OF PENMANSHIP, THE,"**  
264.
- "INDIA AND CHINA TEA CO., THE,"** 231.
- "INDIA RUBBER COMB CO. OF NEW YORK, THE,"** 483.
- INDIAN** trade marks, registration of, 325.
- INDIVIDUAL**, trade name consisting of name of, 232.
- INDORSEMENT** on writ, form of, 417.
- INDULGENCE** to defendant who infringed innocently, 111, 159.  
plaintiff having delayed, 189.
- INFANCY** is no defence, 204, 221.
- INFANT**, declaration by an, 331.



**INFERIORITY** in quality of spurious goods, not material to relief, 8, 116, 202.

**INFRINGEMENT**, 11, 105.

requisites for, 105.

fact of, 105.

in a single instance, 106.

fraudulent intention in, 106, 109, 151, 156, 159.

without deception of immediate purchaser, 106, 152.

without proof of actual deception, 110.

indulgence in cases of unintentional, 111, 159.

continuance of, after complaint, shows fraudulent intention, 112, 146, 154, 228, 263.

of registered trade mark, fraud immaterial in cases of, 115.

must be of mark as registered, 115.

essential particular, 116, 304.

of names as old marks, 116.

as new marks, 117.

of marks registered with or without colour, 117.

of numeral, 117.

of title of song, 266.

what constitutes, 118.

tests of, 12, 119, 157.

by actual deception, 119.

delay for purpose of obtaining evidence of, 119.

by probable deception, 120, 201.

without identity of marks, 121, 124.

where ordinary purchasers purchasing with ordinary caution may be deceived, 121.

by use of a mark calculated to give a deceptive name to the goods, 121.

of essential part, 123.

of part of mark only, 201.

of general appearance, 123.

with colourable differences, 123, 124.

by imitation of mode of packing, 126.

in consequence of a trap, 127.

must be in respect of same class of goods, 60, 127.

of disused mark, 103, 128.

by use of a registered mark, 128.

man's own name, 26.

crest, 38.

by improper use of genuine mark, 128.

by use of moulded bottles, 128.

by engraver, 129, 173.

by servant, 172.

by agent, 173.

by commission-merchant, 173.

remedies for, 12, 131.

criminally punishable, 12, 131.

not a forgery at Common Law, 131.

may be false pretences, 131.

is forgery under the Merchandise Marks Act, 1862,...132.

**INFRINGEMENT**—*continued.*

- civil remedy for, 143.
- measure of damages recoverable for, 148.
- entitles to nominal damages at least, 149.
- though spurious mark affixed by a third party, 159.
- risks incurred by, 180.
- by others is no defence, 203.
- no notice necessary before taking proceedings for, 220.

**INITIALS**, 38, 67.**INJUNCTION**, 12, 158, 180.

- plaintiff entitled to protection of, 219.
- formerly ancillary to account, 171.
- not so now, 172.
- account incident to, 209.
- though only one case of infringement, 106.
- not granted, where trap laid, 127.
  - to restrain harmless misrepresentation, 9.
  - use of word not distinctive, 53.
- granted in all cases of actual fraud, 49, 183.
- though spurious mark affixed by a third party, 159.
- to restrain imitation of mode of packing, 126.
  - name of hotel, 242.
  - title of song, 266.
- trade libel, 250.
- use of trade secret, 257.
- untrue assertions of plaintiff's retirement, 238.
- not to restrain use of name of private house, 242.
- forms in which granted, 162.
- interlocutory, 160.
- form of notice of motion for, 417.
- delay as a defence on motion for, 186.
- enlarged, 164.

**INJUNCTIONS** and Orders, precedents of, 422.**INJURIOUS USE OF NAME**, 247.**INJURY** to the plaintiff, there must be, at Common Law, 147.**INNOCENT OFFENDER**, indulgence to, 111, 159.

- vendor of goods falsely marked, 148.
- bailee of goods falsely marked, 174.
- mortgagee of goods falsely marked, 175.

**INOPERATIVE** defences, 201.**INQUIRY** as to damages given at plaintiff's risk, 213.**INSCRIPTIONS** claimed as trade marks, 59.

INSPECTION, 158, 180, 204, 207, 208.  
of register, 326, 351.

INSTRUCTIONS to persons applying for registration of trade marks, 373,  
and see *Addendum*.  
to Manchester Committee of Experts, 368.

“INSURANCE” oil, 52.

INTENTION to defraud, formerly necessary at Common Law, 7, 106, 144,  
145.  
not necessary in Equity, 8, 148, 151, 156.  
a particular person need not be alleged in proceedings under the  
Merchandise Marks Act, 135.

INTERDICT in Scotch law, 162.

INTERFERENCE, declaration of, 484.  
with defendant's business caused by injunction, no defence, 204.

INTERLOCUTORY injunction, 160.

INTERNATIONAL arrangements, 17, 333.

“INTIMIDAD” cigars, 60.

INTRODUCTION, general, 1.

“INVIGORATOR” spring bed-bottoms, 52, 488.

“INVISIBLE” face powder, 50, 482.

IRELAND, reservation of remedies in, 337.  
Hall marks in, 468.

“IRON-STONE” water-pipes, 50, 483.

“IRON TRADE CIRCULAR, THE,” 264.

IRON WORKS, question of title between landlord and tenant of, 167.

“IRVING HOUSE, THE,” 242.

ISLE OF MAN, 337.

ISSUE may be directed on proceeding for rectification of register, 87, 326.

“JAMES' HORSE-BLISTER,” 50, 436.

“JOHN BULL AND BRITANNIA, THE,” 264, 428.

"JOHNSON'S AMERICAN ANODYNE LINIMENT," 50, 59.

JUDICATURE ACTS, effect of, on trade libel, 249.  
*And see* STATUTES.

"JULES JURGENSEN" watches, 32.

"JULIENNE" soup, 50.

"JUNIOR ARMY AND NAVY STORES, THE," 230.

JURISDICTION, elements necessary to found, 157.

JURY, questions for the, 145, 146.  
 infringement case is properly tried without a, 160.

"KATHAIRON," 51.

"KEYSTONE LINE" of steamships, 169, 243.

"KITCHEN CRYSTAL SOAP," 52.

"LL." whiskey, 68.

LABEL, 23, 37, 304.  
 deceptive, 253.  
 trade mark distinguished from, in the United States, 179.

LACHES. *See* DELAY.

"LACKAWANNA" coal, 50, 66.

"LACTOPEPTINE," 52, 57, 125.

"LAFERME" cigarettes, 16.

"LANCASTER" tickings, 56, 66, 482.

LANDLORD AND TENANT, 167, 170.

"LATE OF," or "LATE WITH," 238.

LAW OFFICER, definition of, 339.  
 Comptroller may take directions of, 330.

LAWS, conflict of, 16.

"LAWRENCE FEINER FAMILIEN FLANNEL," 50 62, 482.

"LAZENBY'S HARVEY'S SAUCE," 163.

LEARNED PROFESSIONS, goodwill of. *See* GOODWILL.

"LEATHER CLOTH COMPANIES' CASE," 191, and *passim*.

LEGAL AUTHOR'S NAME, 244.

personal representative, title of, to trade mark, 11, 96.

action not continued against, 165.

practice, goodwill of. *See* GOODWILL.

proceedings, form of certificate of registration for use in, 402.

request for certificate of registration for use  
in, 394.

"LEGISLATURE," definition of, 339.

"LEOPOLD" cloth, 52, 58.

"LEOPOLDSHALL KAINIT," 64, 113, 125.

"LESLIE'S ILLUSTRATED NEWS," 234.

LESSEES of brickworks, question between successive, 167.

LETTERS, opening, 235.

as trade marks, 66, 304.

LIBEL, trade, 248.

LICENCE, 184.

proprietor of trade mark may grant, 325.

"LICENSED VICTUALLERS' RELISH," 52, 58.

"LIEBIG'S EXTRACT OF MEAT," 50, 232, 251.

LIEN, wharfingers', 175.

LIMITS to Court's interposition, 9.

registration, 86, 309, 313.

"LINDSEY'S IMPROVED BLOOD-SEARCHER," 33.

LINEN, 474.

LINNELL'S PAINTINGS, 132.

"LINOLEUM," 50.

"LION" mark, 38, 52, 122, 483.

LITERARY PUBLICATION, title of, 260, 263.

value of, 261.

fraudulent intention need not be proved in cases of, 263.

deception must be probable in cases of, 265.

protected generally, 265.

incidents of, 266.

no copyright in, 266.

must be actual user of, 267.

protected, though work out of print, 267.

"LITTLE RED BOOK, THE," 265.

"LIVE AND LET LIVE DINING SALOON, THE," 241.

"LIVERPOOL" cloth, 52, 58.

"LOBENTHAL'S ESSENTIA ANTIPHTHISICA," 33, 52, 482.

LOCAL, goodwill formerly treated as always, 270.

not so now, 271.

connexion still of importance, 271.

and personal goodwill. See GOODWILL.

"LOCHGELLY" coal, 64.

"LOCH KATRINE" whiskey, 50.

"LODER'S VIOLIN SCHOOL," 264.

"LONDON" animal foods, 56, 66, 315, 482.

and County Banking Co., The," 230.

and Provincial Law Assurance Society, The," 229.

Assurance Company, The," 229.

Conveyance Company, The," 256, 431.

Journal, The," 264, 427.

Manure Co., The," 229.

"LONE JACK" tobacco, 32, 123.

LOSS of trade mark, 11, 99, 320.

LUNATIC, declaration by, 331.

"MACASSAR" oil, 50.

"McCARDEL HOUSE, THE," 242.

"McGOWAN BROS. PUMP AND MACHINE CO., THE," 230.

"McLANE'S PILLS," 31, 33.

MACHINE, configuration of, 72.

"MADAME ELISE," 233.

MAGAZINE, 261. And see LITERARY PUBLICATION.

"MAGNETIC BALM," 52.

"MAGNOLIA" whiskey, 52, 58.

"MAISON BOISSIER DE PARIS, 240.

"MAMMOTH WARDROBE, THE," 50, 241.

MAN, Isle of, 337.

MANCHESTER office for exhibition of cotton marks, 367, 372, 382.  
 committee of experts, appointment of, 368.  
     duties of, 368, 369.  
     instructions given to, 368.  
     action of, 369.  
     effect of decisions of, 369.  
     additions to lists of cotton marks formed by the, 369, 372.

MANUFACTURER OF GOODS, trade mark may serve to indicate, 4.  
     and printer of cotton goods, 167.  
     and exporter of cotton goods, 168.  
     and patentee, 199.

MARK, 23, 36, 304.  
     with a merely mechanical purpose, no trade mark, 3, 39.  
     representing the article, no trade mark, 39.  
     And see TRADE MARK, OLD MARKS, NEW MARKS.

"MARK TWAIN," 244.

MARKED GOODS, contract for purchase of, 178.

"MARKET ST. MILLS," 66, 482.

"MARSHALL'S CANADA PLATES," 179.  
     Celebrated Liniment," 51.

"MASON'S HOTEL," 242.

"MASONIC" cigars, 51.  
     emblems as trade marks, 37.

MASSACHUSETTS statute as to names of partners, 236.

- MEASURE of damages, 148, 213.
- MEASURES, weights and, 449, 451.
- MEDALS, prize, would formerly not be registered as new marks, or parts of new marks, 305, 381.  
 not so now, see *Addendum*.  
 false statements as to, not restrained, 53, 172.  
 act, the exhibition, 452.
- MEDICAL MAN'S NAME, 245.  
 practice, goodwill of. *See* GOODWILL.
- "MEDICATED MEXICAN BALM," 43, 51, 191.  
 Prunes," 51, 482.
- MEDICINE, goodwill of quack, 271.
- MERCHANDISE MARKS ACT, 1862,...438.  
 offences punishable under, 133.  
 no allegation of intention to defraud a particular person necessary under, 146, 444.  
 when use of word "patent" allowed under, 200, 443.  
 discovery under, 207.  
 damages under, 214.  
 And see STATUTES.
- "MERCHANT BANKING CO. OF LONDON, THE," 230.
- METAL BUTTONS, 472.  
 goods, statement to be made on application for registration of trade mark for, 343, 378.
- "MEXICAN BALM," 43, 51, 191.
- "MIDLAND ELECTRIC LIGHT AND POWER CO., THE," 231.
- MILITARY STORES, 476.
- "MINTON BRICK AND TILE COMPANY, THE," 230, 233.
- MISDEMEANOUR, forgery of trade marks is now a, 132.
- MISREPRESENTATION disentitling plaintiff, 13, 55, 190, 191.  
 not disentitling plaintiff, 13, 193, 199.  
 in foreign language may disentitle, 193.  
 as to manufacturer, 193.  
 collateral, 193.  
 as to genuineness, 252.  
 intentional, as to fact, criminally punishable, 141.
- MODE of packing, 126, 255.  
 trial without a jury, preferable, 160.



MOHUR, device of a, 308, 313.

“MOLINE” ploughs, 66.

MONOGRAM as trade mark, 39.

MONOPOLY not object of trade marks, 5.

“MORISON'S MEDICINES,” 430.

MORTGAGE of goods spuriously marked, 159, 175.  
goodwill of property subject to, 270.

“MORSE'S INDIAN ROOT PILLS,” 51.

MOTION for injunction, 158.  
delay as a defence on, 186.  
to commit, 163.  
delay in regard to, 189.  
costs of, 217.  
And see NOTICE OF MOTION.

MOTIVE of defendant immaterial, if he has acted so that deception is probable,  
110.

MOULDED BOTTLES, infringement by use of, 128.

MOUTHPIECE of cigarettes, 72, 482.

NAME, trade mark consisting of, 23, 25, 304.  
how it differs from others, 25.  
may be used by person who bears it, though another  
person has used it first, 25.  
but not with fraudulent intention, 26, 202, 233.  
evidence of fraudulent intention in the use of, 233.  
must now be in a distinctive form, 30, 304.  
need not be that of the actual manufacturer, 30.  
may pass with the business, 31, 90.  
of fancy personages, 32.  
used alone, 32.  
in combination, 33, 165.  
geographical, 63.  
of patented article is no trade mark, 47.  
of new article is no trade mark, 49.  
son may not use father's changed, so as to deceive, 28.  
fraud to purchase right to use small maker's, because it is the same  
as that of a maker of reputation, 32.  
infringement by use of mark calculated to attract to the goods a  
deceptive, 122.  
trade mark not lost by being habitually coupled with, 166, 203.

**NAME—continued.**

- no defence for defendant to say that he uses his own, with the infringing mark, 202.
- no exclusive right in, apart from business, 225.
- of company, 229.
- of individual used as trade name, 232.
- assumed, used as trade name, 233.
- man's own, used as trade name, 233.
- of former firm or employer may be stated, 238.
- of establishment, fraudulent use of, 240.
- of private house, 242.
- of hotel, 242.
- of line of steamships, 243.
- of collieries, 244.
- of waggons, 244.
- not used as trade name, 244.
- right of property injured by use of another's, 244, 246.
- of poet, 244.
- of humourist, 244.
- of legal author, 244.
- of painter, 132, 179, 245.
- of medical man, 245.
- of editor, 247.
- of patentee, 255.
- contracts in respect of, 247.
- so used as to injure, 247.
- of secret manufacture, 258.
  - cannot be used in ignorance of the true recipe, 258.
- transfer of registered mark into new, 328.
- And see **TRADE NAME.**

**"NATIONAL ADVOCATE, THE," 265.**

- arms or flags of Great Britain will not be registered as new marks, or parts of new marks, 305, 381, and see *Addendum.*
- Police Gazette, The," 264.
- System of Penmanship, The," 264.

**NATURAL OBJECT, trade mark consisting of representation of, 37.**  
product, trade mark indicative of, 4.**NAVAL STORES, 476.****"NEW ERA, THE," 265.**

- Manny Harvester, The," 50.
- marks, 304, 376.
  - what will not be registered as new marks, or parts of, 305, 381, and see *Addendum.*
  - may be registered for part of a class, 306.
- York Cutlery Co., The," 483.
- National Advocate, The," 265.

**"NEWCASTLE DAILY CHRONICLE, THE," 265.**



**OFFICIAL PAPER, 346.**

means of advertising trade mark to be supplied to, 346.  
 stamp can never become a private trade mark, 72, 76.  
 publications, sale of, 375, and see *Addendum*.

**"OLD BOURBON" whiskey, 50.**

London Dock Gin," 50.

marks, 66.

become descriptive, 100.

become common if used by more firms than three, 46, 101, 304,  
 312, 317.

what user necessary to constitute, 305.

must have been used as trade marks, 67, 82, 305.

within the United Kingdom, 67, 82, 305.

mode of applying for registration of, 82, 342.

must be registered as a whole, 305.

in the exact form in which used, 305.

may be registered for part of a class, 306.

sometimes admitted to registration when new marks would not  
 be, 24, 312.

Moore's Pictorial Almanack," 262.

Real John Bull, The," 264.

**"OLDFIELD LANE DOCTOR, THE," 233.**

**OMISSION** to give notice at office of proceedings in opposition case, 349.

**OMNIBUSES**, imitation of line of, 255.

**ONUS** of proof is on person alleging a registered mark to be common, 316,  
 327.

**OPEN OR COMMON MARKS**, disclaimer of, 84, 316, 379.

**OPENING LETTERS**, 235.

**"OPOPONAX" perfume**, 51, 58.

**OPPOSITION**, notice of, 85, 308, 347.

form of, 388.

grounds of, 406.

mode of trial in cases of, 347.

costs of, 309.

**ORDERS IN COUNCIL**, prolonging time for registration, 319.

forms of injunctions and, 422.

**ORDINARY PURCHASER**, deception of, 12, 121.



- PATENT**, trade mark distinguished from, 13.  
 untrue allegation of, in trade mark, disentitles plaintiff, 13, 195.  
     though not likely to deceive, 199.  
     after expiration of patent, 197.  
     so as not to deceive, 198.
- collaterally, 199.  
     punishable by fine, 200, 335.
- the word, would formerly not be registered as a new mark, or part of a new mark, 199, 305, 380.  
 not so now, see *Addendum*.
- allegation of, under Merchandise Marks Act, 1862,...136, 200.  
 Office to be provided, 324.  
     to have seal, 325.  
     days for leaving documents at, 331.  
     Library, deposit of trade marks at, 308.
- PATENTS ACT**, 1883, registration of trade marks under, 302.  
 commissioners of, functions of, transferred to Board of Trade, 151.  
     instructions given by, to Manchester Committee of Experts, 368.
- "PATENTED,"** the word, would formerly not be registered as a new mark, or part of a new mark, 305, 380.  
     not so now, see *Addendum*.  
     wrongful use of, punishable in the United States, 200.  
     articles, name of, is descriptive, 47.
- "PATENTEE, MANUFACTURER AND,"** 199.  
     name of, may not be fraudulently used, 199.
- PATTERN-MARKS** may be trade marks, 54.
- "PAYSON, DUNTON, AND SCRIBNER'S NATIONAL SYSTEM OF PENMANSHIP,"** 264.
- "PECTORINE,"** 52, 57.
- "PENNY BELL'S LIFE, THE,"** 263.
- "PEPPER'S SIGNAL OIL,"** 31, 33.
- PERIODICAL**, title of, 260. See **LITERARY PUBLICATION**.
- "PERRY DAVIS' VEGETABLE PAIN-KILLER,"** 33.
- "PERSIAN THREAD, TAYLOR'S,"** 31, 33, 51, 63.
- "PERSON,"** definition of, 339.  
     aggrieved," 327.  
     foreigner may be, 17, 327.

- PERSONAL TRADE MARK, 89, 90.  
goodwill, 272. *And see* GOODWILL.
- “PESENDEDE” watches, 60.
- “PFEIFFER'S EGG MACARONI,” 166.
- “PHARAOH'S SERPENTS,” 58.
- PHOTOGRAPHS, 473.  
of Baron Liebig, 38, 232.
- “PICTORIAL ALMANACK, THE,” 262.
- PLACES, registration of a series of marks differing only in statements of names of, 306.
- PLAINTIFF must be injured at common law, 147.  
not the registered proprietor, 183.  
misrepresentation by, 190.
- PLATE, 460.
- PLAYING CARDS, 473.
- “PLUMBAGO CRUCIBLES, PATENT,” 195.
- “PLUMBER AND DECORATOR AND JOURNAL OF GAS AND  
SANITARY ENGINEERING, THE,” 265.
- PLURALITY of marks or names used by plaintiff is no defence, 203.
- POET'S NAME, 244.
- “POLICE GAZETTE, THE,” 264.
- “POND LILY WASH,” 58.
- “POROUS PLASTERS,” 47, 50.
- PORTRAIT as a trade mark, 38, 232.
- POST, applications and notices may be sent by, 331, 344.  
Office Directory, The,” 265.  
offices where stamped forms obtainable, 373.
- PRECEDENTS of injunctions, &c.  
label on blacking bottles, trade cards, injunction, 422.  
brand on casks of wine, injunction, 422.

PRECEDENTS—*continued.*

- labels on bottles of ink, injunction, 422.  
 "Two Elephant" yarn, injunction, 423.  
 "Dog's Head" beer for exportation, injunction to the hearing, costs, 423.  
 stamps on shirtings, injunction, 423.  
 "Glenfield" starch, injunction, 424.  
 "Eureka" shirts, injunction, 424.  
 "Apollinaris" water, injunction, 424.  
 "La Intimidad" cigars, injunction, 425.  
 "Anchor brand" wire, prayer of bill, injunction, account, delivery up, 425.  
 engraving blocks for printing forged labels, injunction, 426.  
 printing forged labels, injunction, 427.  
 name of newspaper, injunction, 427, 428.  
     injuring plaintiff's paper, injunction, 427.  
     soliciting customers, injunction, 428.  
 publication of magazine as a continuation of plaintiff's magazine, injunction, 428.  
     in breach of contract, order, injunction, 428.  
 etchings improperly obtained and published, catalogues improperly published, decree, delivery up, injunction, 429.  
 name and title page of song, injunction, 429.  
 name of patent medicine, secret recipe, injunction, 430.  
 hop essence, secret recipe, trade name, representation of succession in business, manufacturing contrary to agreement, injunction, 430.  
 fraudulently using another's testimonials, injunction, 431.  
 imitating a rival line of omnibuses, injunction, 431.  
 trade name, injunction, 431.  
 name of company, registration, user, advertisements, &c., injunction, 432.  
     injunction against user within a certain locality, 432.  
 name of mineral springs, injunction, 433.  
 name of collieries, injunction until certain events, 433.  
 false representation of continuation of business, injunction, 433.  
 soliciting former customers, injunction, 434.  
 false representation of continuation of business, trade name, labels, advertisements, circulars, injunction, 434.  
 soliciting former customers, after sale of business, injunction, 435.  
 false representation of agency, injunction, 435.  
 fraudulent disuse of Christian name, claim to be the "only genuine," injunction, 436.  
 trade libel, representation that the plaintiff's goods are spurious, injunction, 436.  
 unauthorized and injurious use of a person's name, injunction, 437.  
 And *see* FORMS.

PREDECESSOR'S NAME, use of, 193.

"PRESCOTT HOUSE," 243.

"PRESCRIBED," definition of, 339.





*PUBLICI JURIS*, no exclusive right in mark which has become, 11, 44, 100.

PUFFING, 192, 203.

"PUNCH," 265.

"PUNCH AND JUDY," 265.

PURCHASER of goodwill, rights of, 288.

"PYRAMID" mark, 38.

"PYRETIC SALINE," 51, 57.

QUACK MEDICINE, goodwill of, 271.

QUALITY, equality in, no defence, 8, 202.

no defence that goods are plaintiff's of a different, 202.

registration of a series of marks differing only in statements of, 306.

mere statement of, is no trade mark, 3, 21, 53.

marks which indicate the maker as well as the, may be trade marks, 3, 53.

trade marks are a sign of, 5.

mark denoting, in one trade, may be distinctive in a different trade, 55.

question as to criminal misrepresentation of, 137.

QUEEN, representations of the, will not be registered as new marks, or parts of new marks, 305, 381.

QUESTION as to foundation of equitable jurisdiction, 103.

QUESTIONS for jury, 146.

of contract in respect of trade marks, 176.

names, 247.

trade secrets, 257.

of title, 167.

"RADSTOCK COLLIERIES, THE," 64, 163, 230, 244.

"RADWAY'S READY RELIEF," 34.

"RAGSDALE AMMONIATED DISSOLVED BONE," 33.

"RALEIGH" tobacco, 64, 488.

"RAMSAY" bricks, 31, 32.

"RAZOR-STEEL," 50, 59, 482.

"REAL JOHN BULL, THE," 264.

RECIPE, secret, 169, 252.

RECTIFICATION of register, 326, 351.

by registration, 327.

by removal, 327.

costs of application for, 223, 328.

by varying, 328.

by transferring mark into new name, 328.

by cancellation at request of proprietor, 329.

notice of order for, to be given to comptroller, 326.

entry of, in register, 351.

publication of, 351.

form of notice of motion for, 415.

order for, 391.

"RED AND WHITE BOOK, THE," 265.

Paste," "Red Drench," 51.

White and Blue" tea, 307.

REFERENCE of appeal to the Court, 302.

REFUSAL to register, certificate of, given to unsuccessful claimant of old  
mark, 9, 24, 79, 84, 318.

form of, 405.

request for, 390.

illegal or immoral trade mark, 325.

REGISTER of trade marks established, 320.

continuation of former, 338.

trust not to be entered in, 325.

inspection of, and extracts from, 326, 351.

sealed copies of, to be evidence, 326.

rectification of, 326.

falsification of entries in, 330.

"REGISTERED," the word, will not be registered, 305, 380.

design," the words, will not be registered, 305, 380.

proprietors alone recognised, 183, 318.

trade mark, assignment and transmission of, 310.

cancellation of, 104, 329.

alteration of, 87, 329.

property in, 157, 170.

transfer of, into new name, 328.

infringement of, must be of mark as registered, 115.

by use of, restrained, 128.

designs, marks on, 453.

- REGISTRATION** of trade marks, 79, 302, 348.
- register for, 320.
  - acquisition by, 79.
  - steps necessary to obtain, 82.
  - application for, 79, 302, 342.
    - when old marks, 82, 342.
    - form of, 385.
      - receipt of, 399.
    - advertisement, 308, 345, 400.
    - limit of time for proceeding with, 303.
  - conditions of, 304.
  - must be for particular goods or classes of goods, 10, 79, 306.
  - for part of a class of goods, 306, 311.
  - representative, 84, 306, 312.
  - in a series, 84, 306, 312, 344, 346, 379.
  - in colour, 84, 307.
    - by deposit, 84, 307, 343, 370.
  - in an alternative shape, 84, 482.
  - of common marks as additions, 84, 315.
  - of ground work as part of a mark, 380.
  - for cotton goods, 83, 313, 367.
  - at Sheffield, 83, 321, 353.
  - from foreign countries, 333.
    - British possessions, 335.
  - fees for, 321, 355.
  - form of notification of, 399.
    - request for copy of notification of, 395.
    - certificate of, for use abroad, 403.
    - request for certificate of, for use abroad, 393.
    - certificate of, for use in legal proceedings, 402.
    - request for certificate of, for use in legal proceedings, 394.
  - rules for, 341.
  - instructions to applicants for, 385, and see *Addendum*.
  - time of, 348.
  - date of, 349.
  - notice of, 349.
  - restrictions on, 86, 380, and see *Addendum*.
  - opposition to, 308, 347.
    - by whom made, 309.
    - costs in cases of, 222.
  - conflicting claims to, 87, 310.
    - mode of trial of, 311, 347.
  - forbidden, where identical or similar marks already registered, 81, 311.
    - for five years after removal of similar marks from register, 81, 320.
  - old marks favoured in the, 312.
  - the "three mark rule" for the, 46, 101, 312, 317.
  - with a note of limitation, 309, 313, 349.
  - mode of comparison in the, 313.
  - may be refused to a mark which has not been restrained, 22.
  - refusal of, in America, to geographical names, 66, 482.
    - to words disentitled to protection, 66, 482.

**REGISTRATION**—*continued.*

- refusal of, to deceptive words or scandalous designs, 314.
  - cases of, 314.
    - in America, 314, 481.
  - cases of non-refusal of, 314.
  - words which will not be admitted to, 305, 380, 381, and see *Addendum.*
  - appeal to Board of Trade from Comptroller's refusal of, 85, 302.
  - certificate of refusal of, 9, 24, 79, 84, 183, 318.
    - form of, 405.
    - request for, 390.
  - effect of, 44, 317.
  - renders fraudulent intention unnecessary, 115, 317.
  - equivalent to public use, 7, 21, 75, 99, 184, 317.
  - is evidence of proprietor's right, 79, 115, 318.
  - qualifies for suing, 79, 318.
  - which are descriptive, effect of, 45.
  - protects in all colours, 79.
  - which are invalid, does not make them valid after five years, 182.
  - of defendant's mark is no defence, 15, 204.
  - duration of, 98, 320.
  - cancelled after fourteen years, unless fee paid, 320.
  - of subsequent proprietor by assignment or transmission, 93, 310, 325, 349, 383.
  - in name of successor to goodwill, 348.
  - form of application for, by subsequent proprietor, 389.
  - of joint owners as separate owners, 97, 311.
  - Acts administered by Chancery Division, 150.
  - wrongful assertion of, punishable by fine, 130, 141, 336.
  - in the United States, 478. *And see UNITED STATES.*
    - rules for the, 491.
  - of name of company under the Companies Act, 1862,...231.
  - of title of publication under the Copyright Acts, useless, 15, 267.

**REGULATION** of customs, 454.

**REMEDIES** for infringement, 12, 131.

**REMOVAL** of mark from register, 98, 320, 326.
 

- effect of, 81, 103, 320.
- costs of application for, 223.

**REPEAL** of Acts, 338.
 

- rules, 354.

**REPLY**, form of, 421.

**REPORT**, Comptroller to make an annual, 333.

**REPRESENTATIONS**, general law as to false, 145.
 

- of trade mark on application for registration, 82, 302, 343, 378.
- with respect to partnership goodwill, 235.

- REPRESENTATIVE** registration, 84, 306, 312.
- RESTORATION** to register of mark removed from it, 98, 320.
- RESTRICTIONS** on registration of trade marks, 86, 380.
- RESTRICTIVE** covenant on sale of goodwill. *See* **GOODWILL**.
- RETIREMENT**, false representations as to, 238.
- RETIRING PARTNER** may state his former connexion, 298.
- "RICHARDSON'S PATENT UNION LEATHER-SPLITTING MACHINE,"** 50, 482.
- "RISING SUN"** stove polish, 52, 125.
- "ROBERTS' PARABOLA GOLD-BURNISHED SHARPS,"** 59.
- "ROBERTS' RAZOR-STEEL SCISSORS,"** 59.
- "RODGERS AND SONS'"** cutlery, 33, 125.
- "ROGER WILLIAMS"** longcloth, 32.
- ROLT'S ACT.** *See* **STATUTES**.
- ROYAL** arms, the, will not be registered, 305, 380.  
     wrongful assumption of, punishable by fine, 336.  
     baking powder," 58, 125, 305.  
     crown, representations of the, will not be registered as new marks, or parts of new marks, 305, 381.  
     family, representations of any member of the, will not be registered as new marks, or parts of new marks, 305, 381.  
     letters patent," 199.  
     Station Hotel, the," 242.
- "RUBBER CLOTHING CO., THE,"** 483.
- RULES** under Trade Marks Acts, repeal of the, 354.  
     Patents Act, 1883,...341.  
     power to make, given to Board of Trade, 332.  
     United States Registration Act, 491.
- RUPEE**, device of a, 308, 313.
- "RYE AND ROCK"** liquor, 51.

"SAFETY" powder, 50, 482.

"ST. JAMES'" cigarettes, 64, 66.  
Evening Post," 96.

SALE of goodwill, 278. *And see* GOODWILL.  
trade mark, 10, 87, 92, 310, 325.

SAMPLER pattern, 72, 482.

"SAPOLIO" soap, 57.

"SATIN-POLISH" boots and shoes, 51, 482.

SCALE of costs in case of defendant's submission, 217.

SCANDALOUS CHARGES disallowed, 159.  
designs not registrable as trade marks, 314.

SCHEDULES to rules, 355.

"SCHIEDAM SCHNAPPS," 50, 57.

SCOTLAND, law of trade marks in, 7, 157, 162.  
courts in, 336.  
hall marks in, 466.

"SCOTT AND CO.," 286.

SCULPTURES, marks on, 471.

SEAL for Patent Office, 325.

SEALED copies of register to be evidence, 326.

SECRET RECIPE, 169, 252. *And see* TRADE SECRET.

SECURITY for costs required on opposition to registration, 309.

"SEFTON" cloth, 58.

"SEIXO" wine, 65, 125, 422.

"SELECTED" steel pens, 316.

SELECTOR, trade mark indicative of, 4, 130

SENTENCES claimed as trade marks, 59.

- SERIES** of marks, registration of, 84, 306, 344, 346, 379.  
     can only be assigned and transmitted as a whole, 96, 306.  
     advertisement of, 346, 380.
- SERVANT**, infringement by, 172.
- SEVERAL PROPRIETORS** of the same mark, 97, 170.
- SEWING MACHINE** cases, the, 48.
- "SHAVER"** waggons, 244.
- SHEFFIELD** marks, registration of, 83, 321, 353, 381.  
     Acts regulating. *See* **CUTLERS' Co.'s ACTS.**
- SHERIFF** cannot seize goodwill or title of publication, 266, 276.
- SHIPPER** and ship owner, 169.
- SHORT WEIGHT**, 195.
- "SHREWSBURY, MARSHALL AND CO., PATENT THREAD,"** 125.
- SIGNATURE**, trade mark consisting of, 23, 34, 304.  
     is transmissible, 35.  
     in trade mark may not be altered, 304, 330.  
     of painter, imitation of, not forgery at Common Law, 132.  
     punishable under 25 & 26 Vict. c. 68, 132, 473.
- SIGN BOARD**, 241.
- "SILICON"** polishing powder, 51.
- "SILVER GROVE"** whiskey, 52.  
     plate, 460. *And see* **HALL MARKS.**
- SIMILARITY** of packing, 126, 255.
- "SINGER"** sewing machines, 48, 166.
- SINGLE LETTERS**, 69.
- "SLATE ROOFING PAINT,"** 52, 58.
- SLIGHT DELAY**, 204.
- "SMITH, SNYDER & CO'S."** goods, 31
- SOLICITATION** of old customers by voluntary vendor of goodwill, not allowable, 281.  
     by involuntary vendor of goodwill, allowable, 282.



SOLICITOR'S practice, goodwill of, 273. *And see* GOODWILL.

SOVEREIGN princes or states may own trade marks, 76.

SPECIAL CASE, conflicting claims to registration tried by, 87, 311.  
 mode of settling, 350.  
 form of, 413.  
     application for settlement of, by Comptroller, 394.  
 damage, damages may be given without proof of, 212.

"SPECIFIC SOLUTION OF COPAIBA, FRANKS'," 254, 431.

"SPLENDID MISERY," 265.

"SPORTING CHRONICLE AND PROPHEIC BELL, THE," 265.  
*Life, The,* 263.

STAMPED FORMS, list of, 375.  
 places where obtainable, 373.

"STANDARD A" cigars, 51, 482.

"STAR" oil, 122, 314.  
 pencils, 51, 58.  
 shirts, 483.

"STARK" mills, 125.

STATEMENT OF CLAIM, forms of, 418, 419, 420.

"STATION HOTEL, THE," 242.

"STATIONERS' HALL," the words "Entered at —," will not be registered  
 305, 380.  
 registration at, is useless, 267.  
 is no defence, 15, 204.

#### STATUTES CITED:

- 28 Edw. I. c. 20 (Hall marks), 460.
- 2 Hen. VI. c. 17 (Hall marks), 460.
- 4 Hen. VII. c. 2 (Hall marks), 460.
- 18 Eliz. c. 15 (Hall marks), 460.
- 31 Eliz. c. 5 (Informations), 464.
- 21 Jac. I. c. 31 (Cutlers' Co.), 456.
- 8 & 9 Will. III. c. 8 (Hall marks), 460.
- 9 & 10 Will. III. c. 41 (Public Stores), 476, 477.
- 12 & 13 Will. III. c. 4 (Hall marks), 460, 465.
- 1 Anne, c. 3 (Hall marks), 461.
- 6 Geo. I. c. 11 (Hall marks), 460, 461, 468.

STATUTES CITED—*continued.*

- 9 Geo. I. c. 8 (Public Stores), 476.  
 13 Geo. I. c. 26 (Linen), 475.  
 3 Geo. II. c. 3 (Irish), (Hall marks), 468.  
 8 Geo. II. c. 13 (Prints and Engravings), 471.  
 12 Geo. II. c. 26 (Hall marks), 460, 461.  
 17 Geo. II. c. 30 (Linen), 475.  
 17 Geo. II. c. 40 (Public Stores), 476.  
 18 Geo. II. c. 24 (Linen), 475.  
 5 Geo. III. c. 51 (Woollen Cloths), 474.  
 6 Geo. III. c. 23 (Woollen Cloths), 475.  
 7 Geo. III. c. 38 (Prints and Engravings), 471.  
 13 Geo. III. c. 52 (Hall marks), 462, 463.  
 13 Geo. III. c. 59 (Hall marks), 466.  
 14 Geo. III. c. 68 (Hops), 474.  
 17 Geo. III. c. 57 (Prints and Engravings), 471.  
 23 & 24 Geo. III. c. 23 (Irish), (Hall marks), 468, 470.  
 24 Geo. III. sess. 2, c. 20 (Hall marks), 462, 463.  
 24 Geo. III. sess. 2, c. 53 (Hall marks), 463, 468.  
 25 Geo. III. c. 64 (Hall marks), 463.  
 30 Geo. III. c. 31 (Hall marks), 461, 463.  
 31 Geo. III. c. 58 (Cutlers' Co.), 456, 457.  
 36 Geo. III. c. 60 (Metal Buttons), 472.  
 38 Geo. III. c. 69 (Hall marks), 462, 463, 466.  
 38 Geo. III. c. 71 (Sculpture Copyright), 471.  
 39 & 40 Geo. III. c. 81 (Hops), 474.  
 39 & 40 Geo. III. c. 89 (Public Stores), 476.  
 41 Geo. III. c. 97 (local), (Cutlers' Co.), 457.  
 47 Geo. III. sess. 2, c. 15 (Hall marks), 470.  
 48 Geo. III. c. 134 (Hops), 474.  
 53 Geo. III. c. 115 (Gun-barrels), 472.  
 54 Geo. III. c. 56 (Sculpture Copyright), 471.  
 54 Geo. III. c. 60 (Public Stores), 476.  
 54 Geo. III. c. 119 (local), (Cutlers' Co.), 457.  
 54 Geo. III. c. 123 (Hops), 474.  
 54 Geo. III. c. 159 (Public Stores), 476.  
 55 Geo. III. c. 59 (Gun-barrels), 472.  
 55 Geo. III. c. 127 (Public Stores), 476.  
 55 Geo. III. c. 185 (Hall marks), 463.  
 59 Geo. III. c. 7 (Cutlery), 449, 456.  
 4 Geo. IV. c. 40 (Linen), 479.  
 5 Geo. IV. c. 52 (local), (Hall marks), 462, 463.  
 6 Geo. IV. c. 105 (Customs), 475.  
 3 & 4 Will. IV. c. 42 (Limitations), 464.  
 5 & 6 Will. IV. c. 27 (Linen), 476.  
 5 & 6 Will. IV. c. 62 (Declarations), 389, 392.  
 5 & 6 Will. IV. c. 83 (Patents), 200, 335.  
 6 & 7 Will. IV. c. 59 (Prints and Engravings), 471.  
 6 & 7 Will. IV. c. 69 (Hall marks), 466.  
 5 & 6 Vict. c. 47 (Customs), 466, 468, 470.  
 5 & 6 Vict. c. 56 (Customs), 466, 468, 470.  
 7 & 8 Vict. c. 12 (International Copyright), 471.  
 7 & 8 Vict. c. 22 (Hall marks), 462, 463, 464, 466.

STATUTES CITED—*continued.*

- 8 & 9 Vict. c. 84 (Customs), 466.  
 13 & 14 Vict. c. 104 (Designs), 471.  
 16 & 17 Vict. c. 107 (Customs), 454, 455, 472, 473.  
 17 & 18 Vict. c. 96 (Hall marks), 464, 468, 470.  
 18 & 19 Vict. c. 60 (Hall marks), 466, 468, 470.  
 18 & 19 Vict. c. 148 (local) (Gun-barrels), 472.  
 19 & 20 Vict. c. 64 (Statute Law Revision), 460.  
 23 Vict. c. 43 (local) (Cutlers' Co.), 458.  
 24 & 25 Vict. c. 101 (Statute Law Revision), 463.  
 25 & 26 Vict. c. 22 (Customs), 473.  
 25 & 26 Vict. c. 27 (Rolt's Act), 150, 154, 161, 174, 196.  
 25 & 26 Vict. c. 64 (Naval Stores), 476.  
 25 & 26 Vict. c. 68 (Art Copyright), 473.  
 25 & 26 Vict. c. 76 (Weights and Measures [Ireland]), 451.  
 25 & 26 Vict. c. 88 (*Merchandise Marks*), 438, and *passim*.  
 25 & 26 Vict. c. 89 (Companies), 231.  
 26 & 27 Vict. c. 119 (Exhibition Medals), 172, 452.  
 26 & 27 Vict. c. 125 (Statute Law Revision), 463.  
 27 & 28 Vict. c. 27 (Chain Cables and Anchors), 473.  
 27 & 28 Vict. c. 91 (Naval Stores), 476.  
 29 & 30 Vict. c. 37 (Hops), 474.  
 30 & 31 Vict. c. 59 (Statute Law Revision), 460, 461.  
 30 & 31 Vict. c. 82 (Customs), 454, 466.  
 30 & 31 Vict. c. 119 (Naval Stores), 476.  
 30 & 31 Vict. c. 128 (Military Stores), 476.  
 32 & 33 Vict. c. 12 (Naval Stores), 476.  
 32 & 33 Vict. c. 71 (Bankruptcy), 11.  
 33 & 34 Vict. c. 99 (Statute Law Revision), 461, 463.  
 34 & 35 Vict. c. 101 (Chain Cables and Anchors), 473.  
 34 & 35 Vict. c. 116 (Statute Law Revision), 463, 466, 472.  
 35 & 36 Vict. c. 20 (Customs), 455.  
 35 & 36 Vict. c. 30 (Chain Cables and Anchors), 473.  
 36 & 37 Vict. c. 66 (Judicature), 7, 12, 151, 176, 249, 253.  
 36 & 37 Vict. c. 91 (Statute Law Revision), 463.  
 37 & 38 Vict. c. 51 (Chain Cables and Anchors), 473.  
 38 & 39 Vict. c. 25 (Public Stores), 72, 476.  
 38 & 39 Vict. c. 91 (Trade Marks Registration), *passim*.  
 39 & 40 Vict. c. 33 (Trade Marks Registration Amendment), *passim*.  
 39 & 40 Vict. c. 35 (Customs), 466, 468, 470.  
 39 & 40 Vict. c. 36 (Customs), 454, 455, 472.  
 40 & 41 Vict. c. 37 (Trade Marks Registration Extension), *passim*.  
 41 & 42 Vict. c. 49 (Weights and Measures), 449, 451.  
 42 & 43 Vict. c. 21 (Customs), 454.  
 46 & 47 Vict. c. 52 (Bankruptcy), 11.  
 46 & 47 Vict. c. 55 (Revenue), 454, 455, 466.  
 46 & 47 Vict. c. 57 (*Patents, Designs, and Trade Marks*), 301, 453,  
 and *passim*.  
*United States Act of 1870*,...478.  
                                           1875,...485.  
                                           1881,...487.  
 repeal of, 338.

- STATUTORY** declaration, manner of making, 354.  
by infant, lunatic, or other person under disability, 331.  
by subsequent proprietor seeking registration, necessary, 93, 350.  
form of, 389.  
by proprietor seeking cancellation, necessary, 104, 329.  
form of, 392.
- STEAMSHIPS**, name of line of, 243.
- "STEPHENS' WRITING FLUID,"** 33, 125, 422.
- "STILLMAN MILL,"** 66.
- STORES**, Public, 476.
- "STRAIGHT CUT"** cigarettes, 56, 315.
- SUBDIVIDED ACCOUNT**, 210.
- SUBMISSION**, offer of, damages in case of, 213.  
scale of costs in case of, 217.  
must be complete, 219.
- SUBSEQUENT PROPRIETOR** after the first, position of, 97.  
registration of, 93, 349, 383.  
form of request for, and declaration, 389.
- SUMMONS** for leave to register, form of, 413.  
form of writ of, with indorsement, 416,  
to stay proceedings, form of, 421.
- "SUPERFINE"** no trade mark, 53.
- "SUPERIOR"** no trade mark, 53.
- SURVIVING PARTNER** may state former connexion, 298.
- "SWAN"** goods, 314, 483.
- "SWEET OPOPONAX OF MEXICO,"** 51, 58.
- "SWING"** scythe sockets, 51, 482.
- "TAMAR INDIEN,"** 52, 60.
- "TAPER-SLEEVE PULLEY WORKS, THE,"** 231
- "TASTELESS"** drugs, 50, 483.

- "TAYLOR'S PERSIAN THREAD," 31, 33, 51.
- "TEMPLE BAR," 208.
- TENANT, landlord and, 167, 170.
- TESTS of infringement, 119, 156.
- TESTIMONIALS, fraudulent use of another's, 254.
- "THOMSONIAN MEDICINES," 50.
- "THORLEY'S FOOD FOR CATTLE," 31, 33, 231.
- "THREE MARK RULE, THE," 46, 101, 312, 317.  
foreign user does not bring a mark within, 17, 313.
- TICKET, 23, 37, 304.
- "TIDAL WAVE" tobacco, 52.
- "TIME-KEEPER" watches, 51, 488.
- TIME of registration of trade marks, 348.  
enlargement of, 352.
- "TIMES, THE," 264, 428.
- TITLE to trade marks, 167.  
of proprietor of a trade mark, 318.  
of subsequent proprietor, 97.  
of literary publication, 265.  
incidents of, 266.  
no copyright in, 266.  
of song, 266.
- "TIVOLI" lager beer, 52, 123.
- "TO COUNTERFEIT THIS IS FORGERY," the words, will not be registered, 305, 380.
- "TONGE'S GOODS," 125.
- "TOUCHSTONE," 265.
- "TOWER PALACE, THE," 241.
- TRADE, goodwill of a, 276. *And see GOODWILL.*
- TRADE LIBEL, 248.
- TRADE MARK, general principles of law of, 1.  
property in, formerly doubted, 152, 153.  
now settled, 1, 80, 153, 157.  
function of, 2.

**TRADE MARK**—*continued.*

- carries a warranty, 3, 5.
- may serve to indicate the manufacturer, or improver, or importer, or exporter, or selector, of goods, or the exclusive owner of a natural product, 4, 5, 130.
- advantages of use of, 5.
- gives no monopoly, 5.
- early use of, 6.
- sketch of history of law of, 6, 142.
- cannot exist in gross, 10, 310.
- necessarily connected with goodwill, 10, 268, 310.
- distinguished from patent, 13.
  - copyright, 15.
- what is a, 19, 304.
- must be affixed to article, 19.
  - or registered, 21.
- descriptive word is not, 21, 482.
- need not state proprietor's name or address, 21.
- must be distinctive, 22.
- may be refused registration though not restrained, 22.
- definition of, 23, 304, 376.
- a name in a distinctive form, 25, 304.
- a signature, 34, 304.
- a distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use, 35, 304.
- representation of natural object, 37.
- crest, 38.
- initials, 38.
- marks representing the article are not, 39.
  - with a merely mechanical purpose are not, 3, 39.
- name of patented article is not, 47, 482.
  - new article is not, 49.
- marks in common use merely indicating quality are not, 3, 53.
  - which indicate the maker as well as the quality, may be, 3, 53.
  - containing false representations cannot be protected as, 55.
- words from the dead languages as, 59.
  - modern foreign languages as, 60.
- geographical names as, 63, 482.
- old marks, 67.
- devices and words which will not be registered as, 305, 380.
  - as new, 305, 381.
- Sheffield corporate, 321.
- for cotton goods. *See* COTTON MARKS.
- official stamps cannot be, 72, 76.
- prices cannot be, 72.
- may be consumed with the article, 73.
- acquisition of, 9, 74, 78.
  - by alien, 15, 74.
  - by sovereign princes or states, 76.
  - by common repute, 77.
  - by registration, 79, 224, 302.
- rules for registration of, 341.
- instructions to applicants for registration of, 373, and see *Addendum.*

**TRADE MARK—continued.**

- appropriation of, to special classes of goods, 10, 79, 306.
- incapable of advertisement in the "Trade Marks Journal," 343, 345.
- not used before the passing of the Registration Act, 1875,...376.
- in a series, 84, 306, 344, 346, 379.
- powers of registered owner of, 325.
- two or more, may be used on same goods at same time, 165.
- alteration of registered, 87, 329.
- transfer of, by assignment or transmission, 10, 87, 268.
- transmission of, on bankruptcy, 11, 93.
  - formation of a partnership, 94.
  - dissolution of a partnership, 94.
  - death of owner, 96.
- may be bequeathed, together with goodwill, 96.
- may belong to several proprietors, 97, 170.
- used to indicate goods passed through the hands of several persons, 94.
- questions of title to, 167.
- discontinuance of, 97.
  - by removal from the register for non-payment of fees, 98.
  - by abandonment, 11, 46, 99.
  - habitual use with name is no, 101, 166.
  - infringement after, 103.
- cancellation of, 104, 329.
- infringement of, 11, 105.
  - tests of, 12, 119, 157.
  - criminal prosecution for, 131.
  - civil remedy for, 143.
  - measure of damages for, 148.
- Acts for the registration of, administered by the Chancery Division, 150.
- cases analogous to cases of, 224.
- in the United States, registration of, 478.
  - rules for the, 491.
  - what is a lawful, 481.
  - distinguished from designs and labels, 479.
- And see* OLD MARKS, NEW MARKS, REGISTRATION, UNITED STATES, FORMS.

**"TRADE MARKS JOURNAL," 346, 376.**

- Registration Acts, 1875—7...9, 23. *And see* STATUTES.
- register to be at the Patent Office, 324.

**TRADE NAME, 17, 225, 295.**

- part of goodwill of business, 225, 268, 277, 288.
- no exclusive right in, apart from business, 225.
- as meaning the name by which goods are identified, 225.
- fraud need not be proved in cases of, 226.
- innocent imitation of, may become fraudulent, if continued, 228.
- of company, 229.
- of individual, 232.

**TRADE NAME—continued.**

assumed, 233.

man's own name as, 233.

of old business may be used by purchaser of goodwill, 285.

does not survive, 295.

*And see* GOODWILL.

**TRADE SECRET, 169, 257.**

when, may be used, 257

contract not to use or divulge, 257.

name of article manufactured by means of, 258.

not to be used, without knowledge of, 258.

passes with owner's personal estate, 259.

settlement of, 259.

mode of dealing with, 259.

fraudulent, 260.

**TRADE SIGN, 241.****TRANSFER, TRANSMISSION of trade mark, 10, 87, 310, 325.**

of signature mark, 35.

on bankruptcy, 11, 93.

on formation of a partnership, 94.

on dissolution of a partnership, 94.

on death of owner, 96.

of a series of marks, 306.

**TRANSMISSION OF FEE, form of, 387.**

*And see* TRADE MARK.

**TRANSMITTEE, registration of assignee or, 325.****TRAP, no injunction to restrain an infringement resulting from a, 127****"TREASURY," definition of, 339.****TREATY with the United States, 497.****TRIAL of action for infringement, without a jury, 160.**

of opposed application, mode of, 347.

**"TRIANGLE" beer, 38, 122, 314.****"TRUE BRITANNIA, THE," 264.****TRUST not to be entered on register, 87, 325.****"TUCKER SPRING-BED," 50.****"TURIN" cloth, 58.****"TWIN BROTHERS" yeast, 52.**



- "TWO ELEPHANT" yarn, 122.**  
 or more marks used on same goods, 165.
- ULTIMATE purchaser, deception of, sufficient to constitute infringement, 7,**  
 12, 106, 152, 201.
- "UNITED SERVICE" soap, 58.**  
 States, registration of trade marks in, 478.  
     Act of 1870,...478.  
         declared invalid, 479.  
     Act of 1875,...485.  
     Act of 1881,...487.  
     rules for registration of trade marks in, 491.  
     trade marks of aliens protected in, 16, 75.  
         distinguished from labels and designs in,  
         479.  
         jurisdiction of circuit courts in cases of, 481.  
         what are lawful, in, 481.  
         descriptive, 482, 488.  
             or deceptive, 482.  
         geographical names as, 65, 482.  
         numerals as, 482.  
         vessels of peculiar shape, 482.  
         alternative, 84, 483.  
         names as, 483.  
         deceptive, 483.  
         interferences in cases of, 484.  
         wrongly registered, no means of removing  
         from register, 485.  
     treaty between Great Britain and the, 497.
- "UNIVERSAL LIFE ASSURANCE SOCIETY, THE," 230.**
- UNLAWFUL POSSESSION of public stores, 476.**
- UNNECESSARY LITIGATION, costs of, 146.**
- USER, length of, formerly required for acquisition of trade mark, 76.**  
     latterly considered unnecessary, 77.  
     only gives a right in respect of the goods on which the mark has  
     been used, 81, 305.  
     limits of rights acquired by, 81.  
     registration of trade mark equivalent to, 7, 21, 75, 99, 317.  
     of genuine trade mark wrongfully, 128, 141.  
     of predecessor's name, 193.  
     of word "patent," 195.  
     necessary to constitute an old mark, 305.  
     abroad, not equivalent to British user, 17, 305.  
     comparison of marks in manner of actual, 313.  
     of name with trade mark, not abandonment of mark, 101.  
     by others, no defence, unless mark is common, 203.  
     of title of publication, necessary for its protection, 267.

VALUATION of goodwill, 299.

"VALVOLINE" oil, 49, 50, 123, 318.

"VANITY FAIR" cigarettes, 58, 164.

VENDIBLE ARTICLE, the mark must be on a, 9, 78, 98.

VENDOR of business and goodwill may recommence business, 236, 279.  
     but must not interfere unfairly with purchaser, 281.  
     restrained, though no express covenant, 283.  
 of goods falsely marked, innocent, 148.

"VICTORIA" lozenges, 50, 166.

"VIENNA" bread, 64, 123.

"VIOLIN SCHOOL, LODER'S," 264.

"VULCAN PARAFFIN MATCHES," 125.

WAGGONS, name of, 244.

"WAMSUTTA" goods, 125.

WAREHOUSEMEN in charge of goods falsely marked, 176.

WARRANTY given by trade mark, 3, 5.  
     of painting by painter's name, 179.  
     under the Merchandise Marks Act, 1862,...180.

WATCHES, clocks and, 454, 472.

"WEDGWOOD" pottery, 32.

WEIGHT, false pretences as to, 141.  
     relief refused to persons who sell short, 195.

WEIGHTS and measures, 449, 451.

"WESTERN OR MASON'S HOTEL, THE," 242.

"WESTON'S WIZARD OIL," 33, 58.

WHARFINGERS, lien of, 175.  
     costs of, 215.

WHAT is a trade mark? 19.  
     first class, a name, 25,  
     second class, a signature, 34.  
     third class, a distinctive device, mark, brand, heading, label, ticket  
     or fancy word or words not in common use, 35.  
     fourth class, old marks, 36.

- “WHAT CHEER HOUSE, THE,” 242.
- “WHEELER AND WILSON’S SEWING MACHINES, 48, 435.
- “WHITE CHEMICAL EXTRACT,” 51.
- “WILDER AND CO.’S STOMACH BITTERS,” 33.
- “WILKIE” ploughs, 32.
- “WILLIAM ASH” metal goods, 31.
- “WINSLOW’S SOOTHING SYRUP,” 33.
- “WISTAR’S BALSAM OF WILD CHERRY,” 51.
- “WOLFE’S AROMATIC SCHIEDAM SCHNAPPS,” 33.
- “WONDERFUL MAGAZINE, THE,” 261, 428.
- “WOODS’ HOTEL,” 242.
- WOOLLEN CLOTHS, 474.
- “WORCESTERSHIRE SAUCE,” 11, 44, 64, 66.
- WORDS, in common use or descriptive, no trade mark, 3, 41, 47, 49, 53.  
     not necessary to constitute false representation, 141.  
     which will not be registered, 305, 380, 381, and see *Addendum*.  
     in other than Roman characters to be translated on application,  
     82, 378.  
     *And see* TRADE MARK.
- “WOTHERSPOON’S VICTORIA LOZENGES,” 166.
- WRIT of summons with indorsement, form of, 416.
- WRONGFUL USER of genuine trade marks, 128, 141.
- “YANKEE SOAP,” 51, 58.
- “YORKSHIRE RELISH,” 64.

THE END.