

It will be convenient to consider first what words ought to be allowed as trade marks. There can be no objection to permitting the registration of an invented word not to be found in the vocabulary of our own or any other country. It seems to us further that existing words may with advantage be permitted as trade marks, subject to limitations which at once suggest themselves. It is manifest that no one ought to be granted the exclusive use of a word descriptive of the quality or character of any goods. Such words of description are the property of all mankind, and it would not be right to allow any individual to monopolise them and exclude others from their use. Again geographical words, which can be regarded as descriptive of the place of manufacture or sale of the goods, are open to obvious objections. One manufacturer or merchant cannot properly be allowed to prevent all his competitors from attaching to their goods the name of the place of their manufacture or sale. The mischief would not be the same where the person seeking to register was the first who had manufactured or sold the goods in the place the name of which he seeks to appropriate as a trade mark. But there are objections to giving a monopoly even in that case, and to attempt to draw any such distinction would be likely to lead to difficulty and litigation. We think, therefore, that geographical names ought only to be permitted where they clearly could not be regarded as indicative of the place of manufacture or sale. We would add upon this point that we think that where any English word would be rejected as not entitled to registration no person ought to be permitted to register its translation into any other language. The question has been raised whether a word having the same sound as one entered on the register, though differently spelt and with a different meaning should be registered. The question in such a case would seem to be whether the resemblance between the old mark and that applied for was such as to be calculated to deceive; if it were it ought, of course, to be rejected.

Our attention has been called to the rejection of words which it is said indicate the use to be made of the articles to which they are to be applied. As, for example, "Mariner's Rum." We think that if the word sought to be registered would be understood as suggesting a special use of the goods, or their adaptability to a particular purpose, it would be objectionable as descriptive of their character.

Registration, it appears, is sometimes sought of devices which are descriptive of the goods to which they are to be applied, *e.g.*, a representation of a hinge to be applied to doors. We think these are not legitimate marks.

Complaints have also been made that where words have been refused as not being distinctive, they have afterwards been allowed where the applicant has applied for a mark consisting of the same word preceded by the applicant's name with an apostrophe. We think this course ought not to be pursued. Little or no mischief might result where the name of the applicant was an uncommon one, but where the name was a common one the result would be to deprive all persons bearing the same name of their right to use a common word in connexion with their own name, and even if the name were an uncommon one it would be impossible to say that there were not other persons bearing it who

might wish to use in connection with it the common word which it is sought to monopolise.

Evidence has been given that marks consisting of a combination of the applicant's name with the article he manufactures or sells are highly valued. There can be no doubt that if a manufacturer or vendor has obtained for his goods a reputation amongst the public he could, by process of law, quite apart from the Trade Marks Act, prevent goods that were not his from being offered to the public on the representation that they were so. But it would be quite a different thing to give by virtue of registration under the Trade Marks Act a right to prevent another manufacturer or merchant honestly describing his own goods by his own name.

It is said that there is often a desire to register short phrases, such as proverbs, &c., and that owing to the difficulty of finding new marks it is expedient that they should be allowed. We see no objection to this, provided that they are in no way descriptive of the character or quality of the goods, or of their place of origin, sale, or manufacture.

There is said to be a general, if not unanimous, desire amongst those interested in the cotton classes that words should not be permitted to be registered as trade marks in Classes 23 and 24. If the desire be so general as is represented, we see no reason in principle why it should not be yielded to. But there appears to be a serious difficulty in the way of making such a change at present, owing to the International Convention which has been entered into. We understand that word marks are registered in the cotton classes in some of the countries which are parties to the Convention; and there would be an anomaly in permitting such marks to be registered here when first registered in those countries, whilst registration is denied them if first applied for in England.

27. By section 64, sub-section 2, there may be added to any one or more of the essential particulars "any letters, words, or figures, or combination of letters, words, or figures or of any of them." There is here, it will be seen, no limitation as to the letters, words, or figures, which may be combined with the essential part of a trade mark. By section 74, however, it is provided that nothing in the Act shall be construed to prevent the comptroller registering as an addition to any trade mark "any distinctive word, or combination of words, though the same is common to the trade in the goods with respect to which the application is made." But this section enacts, sub-section 2, that "The applicant for entry of any such common particular or particulars must however disclaim in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register." It has been said, and we think truly, that it is not easy to understand what is the exact status of the added matter provided for by section 64. Where the added words are not common to the trade in the goods with respect to which the application is desired, the right of exclusive use need not be disclaimed, yet it is presumed that the proprietor of the trade mark could not object to their use by any other person except in connection with the essential particular of his trade mark. What purpose then do they serve? Perhaps they may be useful in the case of a colourable imitation of the essential particular. If with such an imitation the same added words were used it would

assist the proprietor in establishing that his trade mark had been infringed. But the added matter may, it is assumed, be of so distinctive a character as to form an essential part of the trade mark, so that its use might be an infringement. We think it would clearly be desirable that the added matter, which the proprietor does not claim the exclusive use of, should be disclaimed so that the public may know exactly what is the trade mark registered. We think, too, that all disclaimers should appear in connexion with the mark in the Official Journal. Some misapprehension might perhaps arise if the person registering the mark were compelled to disclaim his own name or the foreign equivalent for it. We think, therefore, this might be excluded from the necessity of disclaimer, but it should be provided that the proprietor of the mark should not thereby acquire the right to prevent any other person *bonâ fide* using his own name in connexion with his goods.

\* \* \* \* \*

41. It has been suggested that there is a necessity for some statutory definition of the trade mark rights which are acquired in connexion with words used as the names of patented articles. Where a patent has been obtained for some article of commerce, and the patentee gives it a name which he registers as his trade mark, has he a right at the end of the term of his patent to prevent other people from selling it under that name? It is clear that he obtains the patent upon the condition that at the expiration of the term of his monopoly the public should have the right to manufacture and use it, and if the only name by which it is known is that which the proprietor has registered as a trade mark, it would certainly seem inconsistent with the right thus intended to be conferred on the public if every one except the original patentee were prevented from calling it, or from selling it, by that name which alone it bears. The authorities appear, however, to show that such a claim could not be maintained.

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## II.—DESIGNS.

\* \* \* \* \*

(Signed)

HERSCHELL.  
CRAWFORD.  
MACNAGHTEN.  
A. J. MUNDELLA.  
H. DE WORMS.  
JAMES F. HUTTON.

16th March, 1888.

## APPENDIX F.

### THE MERCHANDISE MARKS ACTS, 1887—1894, AND THE STATUTES, REGULATIONS AND ORDERS CONNECTED THEREWITH.

#### THE MERCHANDISE MARKS ACT, 1887.

50 & 51 VICT. c. 28.

*An Act to consolidate and amend the Law relating to Fraudulent Marks  
on Merchandise.* [23rd August, 1887.]

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

1. This Act may be cited as the Merchandise Marks Act, 1887 (*a*). Short title.

(*a*) It was held that it was not against the policy of the law for proceedings taken under the Merchandise Marks Act, 1862, now repealed by this Act, to be compromised: *Fisher v. Apollinaris Co.*, L. R. 10 Ch. 297.

2.—(1.) Every person (*a*) who—

(*a*.) forges (*b*) any trade mark (*c*); or

(*b*.) falsely applies (*d*) to goods (*e*) any trade mark (*c*) or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(*c*.) makes any die, block, machine, or other instrument (*f*) for the purpose of forging (*b*), or of being used for forging (*b*), a trade mark (*c*); or

(*d*.) applies any false trade description (*g*) to goods (*e*); or

(*e*.) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging (*b*) a trade mark (*c*); or

(*f*.) causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud (*h*), be guilty of an offence against this Act.

(2.) Every person who sells, or exposes for, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things

Offences as to  
trade marks  
and trade  
descriptions.

to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves— (i)

- (a.) That having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and
  - (b.) That on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things (j); or
  - (c.) That otherwise he had acted innocently (k);
- be guilty of an offence against this Act.

(3.) Every person guilty of an offence against this Act shall be liable—

- (i.) on conviction on indictment (l), to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and
- (ii.) on summary conviction (l) to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and
- (iii.) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(4.) The Court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the Court thinks fit.

(5.) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

(6.) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the Court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

42 & 43 Vict.  
c. 49.

- (a) Person includes any body of persons: see § 3 (1).
- (b) Forgery of a trade mark is defined by § 4.
- (c) Trade mark is defined by § 3 (1).
- (d) Application and false application of a trade mark are defined by § 5; and see § 6.
- (e) "Goods" is defined by § 3 (1).
- (f) As to making dies and blocks, see § 6.
- (g) Trade description and false trade description are defined by § 3 (1); and see also § 3 (2) and (3), and also § 6. Compare § 18.
- (h) In *Gridley v. Swinborne*, 5 Times L. R. 71, the Court appears to have enter-

tained the view that the burden was on the prosecutor to prove a *mens rea* on the part of the defendant; but an intent to defraud a purchaser is not a necessary ingredient in the offence: *Wood v. Burgess*, 24 Q. B. D. 162; and in *Starey v. Chilworth Gunpowder Co.*, 24 Q. B. D. 90, it was held, in proceedings taken by a trade society, that though the article supplied was of the quality contracted to be supplied, and had been accepted by the purchaser without objection, and no pecuniary loss or injury of any kind had been suffered by the purchaser, yet, inasmuch as the vendors were known as manufacturers only, and not as dealers, and they had placed their own name on the goods, without any notification that the goods had been obtained by them from elsewhere, they were not entitled to say that there was no intent to defraud.

(i) This Act renders the master or principal criminally liable for the acts of his agents and servants in all cases within § 2, sub-ss. 1 and 2, where the act constituting the offence is done by the servant or agent within the scope or in the course of his employment, subject to this, that the master or principal may be relieved from criminal responsibility where he can prove that he has acted in good faith, and has done all that it was reasonably possible to do to prevent the commission by his agents and servants of offences against the Act: *Coppen v. Moore* (2), (1898) 2 Q. B. 306; and it seems that *Budd v. Lucas*, (1891) 1 Q. B. 408, must be treated as overruled on this point.

(j) Under the present statute a person in possession of wrongfully marked goods for sale, &c., has to give information with respect to the persons from whom he obtained the goods, if he wishes to escape the penalties of the Act. By § 6 of the repealed Merchandise Marks Act, 1862, he was compellable to give the information under a special penalty.

(k) Clauses (a) and (b) of sub-s. 2 apply to cases where the goods in question are in the possession of the accused for sale, or are sold with the forged trade mark or false trade description already stamped upon them, and not to a case where the false trade description is applied upon the occasion and as part of the terms of the sale, in which case the accused must rely on Clause (c): *Coppen v. Moore* (2), (1898) 2 Q. B. 306.

(l) Whether a person charged with an offence under this Act is dealt with summarily or on indictment, the principles to be applied are the same: *per* Lord Coleridge, C. J., in *Gridley v. Swinborne*, 5 Times L. R. 71.

3.—(1.) For the purposes of this Act—

The expression “trade mark” means a trade mark registered in the register of trade marks, kept under the Patents, Designs, and Trade Marks Act, 1883, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of § 103 of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council (a), for the time being applicable:

Definitions.  
46 & 47 Vict.  
c. 57.

The expression “trade description” means any description, statement, or any other indication, direct or indirect (b),

(a.) as to the number, quantity, measure, gauge, or weight of any goods (c), or

(b.) as to the place or country in which any goods were made or produced (d), or

(c.) as to the mode of manufacturing or producing any goods, or

(d.) as to the material of which any goods are composed (e), or

(e.) as to any goods being the subject of an existing patent (f), privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act;

The expression “false trade description” means a trade description which is false in a material respect (g), as regards the goods to

which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act:

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise:

The expressions "person," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate:

The expression "name" includes any abbreviation of a name.

(2.) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3.) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression "false name or initials" means, as applied to any goods, any name or initials of a person which—

(a.) are not a trade mark, or part of a trade mark, and

(b.) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials (*h*), and

(c.) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods (*i*).

(a) See Table of Orders in Council in Appendix C.

(b) See § 18. The Act does not apply to verbal descriptions, but it is not necessary that there should be any physical connection between the description and the goods to which it is applied. The false trade description may be found in the invoice: *Coppen v. Moore* (2), (1898) 2 Q. B. 306; *Budd v. Lucas*, (1891) 1 Q. B. 408. The definition of "trade description" has been held in two cases in the Manchester Police Court to be wide enough to reach a somewhat complicated system of fraud practised in the cotton trade. Cotton yarn is reeled into certain lengths called hanks, each hank containing by the custom of the trade 840 yards. In this country the yarn is sold by weight, and is usually made up in bundles of 5 lbs. or 10 lbs. The price is regulated by what is called "the count" of the yarn, or, in other words, by the number of times a hank is contained in a pound weight of yarn, the greater number of hanks in the pound the finer the yarn and the higher the price. For example, yarn containing twelve hanks to the pound is spoken of as twelves, and would fetch a smaller price than yarn containing sixteen hanks to the pound called sixteens. It is possible for any one acquainted with the trade to tell at a glance, from the make-up of the bundles, how many hanks the yarn contains to the pound, that is to say, the make-up affords an indication of the count of the yarn. In the first case, *Reg. v. Ananiadi* (Manchester Police Court, July 30th, 1889), the defendant, for the purposes of his export trade, caused bundles of yarn containing forty-five hanks to the pound to be made up as yarn containing sixty hanks to the

pound. This was effected by a process technically known as "short reeling," by which the length of the hank was reduced below its proper number of yards so far as was necessary to increase the number of hanks per pound from forty-five to sixty. In addition to this, the number "50" was placed on the outside of each bundle to indicate the count of the yarn, though this was done without the express instructions of the defendant, and the numbers were subsequently removed by his orders. In this way a double fraud was committed, since the yarn was made to appear to be of a finer quality than it really was, and the hank, instead of containing its normal number of yards, viz., 840, contained only about 630 yards, and was, in fact, a spurious hank. Consequently there was a misrepresentation both as to the length and as to the fineness of the yarn. The magistrate held that the make-up of the bundles afforded a sufficient indication of the measure of the goods within the definition of "trade description" in § 3, and that it was immaterial whether or not the number of the count was affixed to the wrappers of the bundles, and he convicted the defendant. In the second case, *Reg. v. Manoukion* (Manchester Police Court, May 10th, 1898), the defendant was also convicted upon a similar state of facts.

(c) See *Reg. v. Ananiadi* (Manchester Police Court, July 30th, 1889); *Hooper v. Balfour*, 62 L. T. N. S. 646; *Budd v. Lucas*, (1891) 1 Q. B. 408; *Reg. v. Manoukion* (Manchester Police Court, May 10th, 1898); *R. v. Lipton*, 32 L. R. Ir. 115.

(d) See *Stacey v. Chilworth Gunpowder Co.*, 24 Q. B. D. 90; *R. v. Lipton*, 32 L. R. Ir. 115; *Birchop v. Toler*, 65 L. J. M. C. 1, where a man who prepared in England a substitute for butter mainly consisting of margarine manufactured in France was held properly convicted of an offence under the Act in having described the product as manufactured in France. A thing is considered to be manufactured at the place where it first becomes a finished article: *Ibid.* See also § 7 as to watches.

(e) In *Gridley v. Swinborne*, 5 Times L. R. 71, it was held by the Q. B. D. that it was not a false trade description to apply the term "isinglass" to a material which, though not in the most strictly scientific sense isinglass, was yet very similar to it and was frequently called by that name.

(f) See § 105 of the Patents Act, 1883. The difference between that section and this appears to be that under that section no offence is committed if there has ever been a patent, while under this an offence is committed if there is not a patent still actually in existence. In *Gridley v. Swinborne*, 5 Times L. R. 71, an article had been sold for upwards of forty years as "Swinborne's Patent Refined Isinglass," there having originally been a patent granted in 1847; and it was held that to continue to use the word "Patent," as had so long been done, was not to apply to the article a false trade description. It has been held that a person who himself wrongfully inserted or retained the word "Patent" in his trade mark could not avail himself of the Merchandise Marks Act, 1862: *Morgan v. McAdam*, 36 L. J. Ch. 228.

(g) There is nothing to show what is meant by "in a material respect," but it would appear that a trade description which is inaccurate is not false in a material respect unless the inaccuracy would have some effect on the mind of a purchaser. *Stacey v. Chilworth Gunpowder Co.*, 24 Q. B. D. 90, seems to show that a very stringent interpretation will be placed on the Act. In that case a firm of English gunpowder manufacturers, who usually sold gunpowder of their own make only, had entered into a contract with the Government for the supply of a quantity of powder, the contract containing no stipulation that the powder was to be of their own or of English manufacture. They were unable, in consequence of an accident, to supply the powder of their own make, and they consequently supplied German powder in barrels marked with their name, but without any statement where or by whom the powder was made; and it was held that although the quality was correctly stated, and the powder was as good as if it had been made by them, and the Government had accepted it without objection, yet, inasmuch as the expectation would be that a firm known only as manufacturers and not as dealers would supply only gunpowder of their own make, the use of their name, without a statement as to the foreign origin of the powder, was an application to the goods of a false trade description. Again, in *Kirshenboim v. Salmon & Gluckstein*, (1898) 2 Q. B. 19, where machine-made cigarettes were falsely described as hand-made, it was held no answer to the question of materiality that the thing supplied was as good in quality as that which was asked for.

(h) See *Wood v. Burgess*, 24 Q. B. D. 162.

(i) Clauses (b) and (c) of this sub-section are to be read disjunctively: *R. v. Lipton*, 32 L. R. Ir. 115. In that case a trader who sold inferior qualities of his



own goods under his foreman's name was held properly convicted under Clause (c), the accused not having set up the plea that he acted innocently within the proviso in sub-s. 2 of § 2, and not having claimed the benefit of § 18.

Forging  
trade mark.

4. A person shall be deemed to forge a trade mark who either—
- (a.) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or
  - (b.) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;
- and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

Applying  
marks and  
descriptions.

- 5.—(1.) A person shall be deemed to apply a trade mark or mark or trade description to goods who—
- (a.) applies it to the goods themselves; or
  - (b.) applies it to any covering (a), label, reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or
  - (c.) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or
  - (d.) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description (b).

(2.) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3.) A person shall be deemed to falsely apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

(a) For definition of "covering," see sub-s. (2) of this section.

(b) As to what is a false trade description, see *Budd v. Lucas*, (1891) 1 Q. B. 408; and *Coppen v. Moore* (2), (1898) 2 Q. B. 306; and notes to § 3.

Exemption of  
certain per-  
sons employed  
in ordinary  
course of  
business.

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade

description, or causing any of the things in this section mentioned to be done, and proves—

- (a.) That in the ordinary course of his business he is employed on behalf of other persons to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or, as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (b.) That he took reasonable precautions against committing the offence charged; and
- (c.) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- (d.) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied—

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

7. Where a watch-case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section, the expression "watch" means all that portion of a watch which is not the watch-case. Application of Act to watches.

8.—(1.) Every person who after the date fixed by Order in Council sends or brings a watch-case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch-case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch-case made in the United Kingdom), and in such a mode as may be from time to time directed by Order in Council (a). Mark on watch-case.

(2.) The declaration may be made before an officer of an assay office, appointed in that behalf by the office (which officer is hereby authorised to administer such a declaration), or before a justice of the peace, or a commissioner having power to administer oaths in the Supreme Court of Judicature in England or Ireland, or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council (a).

(3.) Every person who makes a false declaration for the purposes of

this section shall be liable, on conviction on indictment, to the penalties of perjury, and on summary conviction to a fine not exceeding twenty pounds for each offence.

(a) See Order in Council of Nov. 28th, 1887, p. 573, *infra*.

Trade mark,  
how described  
in pleading.

9. In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Rules as to  
evidence.

10. In any prosecution for an offence against this Act,—

(1.) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.

(2.) In the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced.

Punishment  
of accessories.

11. Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act, which, if committed in the United Kingdom, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanour had been there committed.

Search  
warrant.

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

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

person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

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

13. The Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanours," shall apply to any offence punishable on indictment under this Act, in like manner as if such offence were one of the offences specified in § 1 of that Act, but this section shall not apply to Scotland. Extension of 22 & 23 Vict. c. 17, to offences under this Act.

14. On any prosecution under this Act the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively. Costs of defence or prosecution.

15. No prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens. Limitation of prosecution.

16. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Act; be it therefore enacted as follows: Prohibition on importation.

(1.) All such goods (*a*), and also all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom (*b*), unless such name or trade mark is accompanied by a definite indication (*c*) of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in § 42 of the Customs Consolidation Act, 1876 (*d*).

39 & 40 Vict. c. 36.

(2.) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations (*e*) under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3.) The Commissioners of Customs may from time to time make, revoke and vary, regulations (*e*), either general or special, respecting the detention and forfeiture of goods, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite

for any of the purposes of this section, and the mode of verification of such evidence.

- (4.) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom (*f*), that name, unless accompanied by the name of the country in which such place is situate (*g*), shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.
- (5.) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
- (6.) The Commissioners of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Commissioners of Her Majesty's Treasury.
- (7.) The regulations may provide for the informant reimbursing the Commissioners of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.
- (8.) All regulations under this section shall be published in the London Gazette and in the Board of Trade Journal.
- (9.) This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.
- (10.) Section 2 of the Revenue Act, 1883, shall be repealed as from a day fixed by regulations under this section, not being later than the first day of January one thousand eight hundred and eighty-eight (*h*), without prejudice to anything done or suffered thereunder.

46 & 47 Vict.  
c. 55.

(a) The only goods which are prohibited by this section to be imported are, in addition to foreign goods bearing a real or spurious British name or trade mark, goods which, if sold, would be liable to forfeiture under this Act. The goods liable to forfeiture are the goods in relation to which an offence against the Act has been committed (§ 2 (3) (iii.)). Except, therefore, in the case of foreign goods with British marks, for goods to be seized it ought to be proved that an offence against the Act has been committed. But such an offence is not necessarily committed whenever the goods have on them a forged trade mark or a false trade description, and it would therefore appear that before goods bearing a forged trade mark or a false trade description are absolutely seized, it ought to be ascertained whether the owners can clear themselves of having committed an offence against the Act, under the provisions either of § 2 (1) or of § 2 (2), as may be applicable, since, if they can do so, the goods are not seizable even though they are improperly marked. See also § 12 (2) as to forfeiture.

(b) See 46 & 47 Vict. c. 55, § 2 (1) (a), also 39 & 40 Vict. c. 36, § 42, and 16 & 17 Vict. c. 107, § 44.

(c) See § 18.

(d) See p. 572. When goods have been wrongfully seized for an alleged offence, the owner's remedy is to bring an action against the officer who seized the goods. Such actions are now controlled by 39 & 40 Vict. c. 36, §§ 268—274, and 40 Vict. c. 13, §§ 4, 5. By §§ 268, 269 of the earlier Act one month's notice in writing is to be given before the action is commenced, and by § 270 the officer may tender amends within the month. By § 272 an action against an officer is to be commenced within one month (enlarged by 40 Vict. c. 13, § 4, to two months) after the day of seizure. After that time the only remedy appears to be to apply to the Commis-

sioners of Customs or to the Treasury, under sub-s. (6) of this section. In *Jacobson v. Blake*, 7 Scott, N. R. 772, the defendants, who were custom-house officers, took possession of and detained goods imported by the plaintiff, believing them to be subject to forfeiture; but the goods were never actually seized, and ultimately it turned out that the goods were not liable to forfeiture, and they were delivered over to the plaintiff. The latter thereupon commenced an action for trespass; but it was held that, the goods never having been actually seized, but having been only detained for examination, the action would not lie.

(c) See these Regulations at p. 575.

(f) See 46 & 47 Vict. c. 55, § 2 (1) (b), also 39 & 40 Vict. c. 36, § 42, and 35 & 36 Vict. c. 20, § 4.

(g) See 46 & 47 Vict. c. 55, § 2 (3), also 39 & 40 Vict. c. 36, § 42, and 35 & 36 Vict. c. 20, § 4.

(h) This is the date fixed by the Regulations, p. 578, *infra*.

17. On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Implied warranty on sale of marked goods.

18. Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods (a), the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Provisions of Act as to false description not to apply in certain cases.

(a) See *Marshall v. Ross*, L. R. 8 Eq. 651, "patent thread." In *Gridley v. Swinborne*, 5 Times L. R. 71, it was held that the defendant had a good defence under this section.

19.—(1.) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him. Savings.

(2.) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.

(3.) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who *bonâ fide* acts in obedience to the instructions of

such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

False representation as to Royal warrant.

20. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of Her Majesty, or any of the Royal Family, or any Government Department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds (a).

(a) See § 106 of the Patents Act, 1883, as to unauthorised use of the Royal Arms.

Application of Act to Scotland.

21. In the application of this Act to Scotland the following modifications shall be made:—

The expression "Summary Jurisdiction Acts" means the Summary Procedure Act, 1864, and any Acts amending the same.

The expression "justice" means sheriff.

The expression "court of summary jurisdiction" means the Sheriff Court, and all jurisdiction necessary for the purpose of this Act is hereby conferred on sheriffs.

Application of Act to Ireland.

22. In the application of this Act to Ireland, the following modifications shall be made:—

The expression "Summary Jurisdiction Acts" means, so far as respects the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace of such district, and as regards the rest of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

The expression "court of summary jurisdiction" means justices acting under those Acts.

14 & 15 Vict. c. 93.

Repeal of 25 & 26 Vict. c. 88.

23. The Merchandise Marks Act, 1862, is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this Act: provided that this repeal shall not affect—

(a.) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor

(b.) the institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Act; nor

(c.) any right, privilege, liability, or obligation acquired, accrued, or incurred under any enactment hereby repealed.

THE MERCHANDISE MARKS ACT, 1891.

54 VICT. c. 15.

*An Act to amend the Merchandise Marks Act, 1887.*

[11th May, 1891.]

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

1. The customs entry relating to imported goods shall, for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

Customs entry to be trade description.

2.—(1.) The Board of Trade may, with the concurrence of the Lord Chancellor, make regulations providing that in cases appearing to the Board to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution of offences under the Merchandise Marks Act, 1887, shall be undertaken by the Board of Trade, and prescribing the conditions on which such prosecutions are to be so undertaken. The expenses of prosecutions so undertaken shall be paid out of moneys provided by Parliament.

50 & 51 Vict. c. 28.

Official prosecutions.

(2.) All regulations made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act, and shall be published under the authority of Her Majesty's Stationery Office.

(3.) Nothing in this Act shall affect the power of any person or authority to undertake prosecutions otherwise than under the said regulations.

3. This Act may be cited as the Merchandise Marks Act, 1891, and the Merchandise Marks Act, 1887, and this Act may be cited together as the Merchandise Marks Acts, 1887 and 1891.

Short title.

THE MERCHANDISE MARKS (PROSECUTIONS) ACT, 1894.

57 & 58 VICT. c. 19.

*An Act for enabling the Board of Agriculture to undertake Prosecutions in certain cases under the Merchandise Marks Act, 1887.*

[20th July, 1894.]

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

1. The powers exercisable by the Board of Trade under the Merchandise Marks Act, 1891, with respect to the prosecution of offences under the Merchandise Marks Act, 1887, may in cases which appear

Power of Board of Agriculture to prosecute in certain cases.



to the Board of Agriculture to relate to agricultural or horticultural produce be exercised by that Board, and in such cases the former Act shall apply as if the Board of Agriculture were referred to therein instead of the Board of Trade.

Extent of Act. 2. This Act shall not extend to Ireland.

Short title. 3. This Act may be cited as the Merchandise Marks (Prosecutions) Act, 1894, and shall be read with the Merchandise Marks Acts, 1887 and 1891.

## CUSTOMS ACTS.

### 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).

\* \* \* \* \*

(a) This section was amended by 46 & 47 Vict. c. 55, now replaced by § 16 of the Merchandise Marks Act, 1887, and it has since been amended by 52 & 53 Vict. c. 42, 59 & 60 Vict. c. 28, and 60 & 61 Vict. c. 63.

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

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 (a).

(a) This is re-enacted from 16 & 17 Vict. c. 107, § 161.

### 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 (a).

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

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ORDER IN COUNCIL UNDER § 8 OF THE MERCHANDISE MARKS ACT, 1887.

At the Court at Windsor, the 28th day of November, 1887.

PRESENT,

The QUEEN'S Most Excellent Majesty in Council.

WHEREAS by the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), it is amongst other things, provided that—

- (1.) Every person who, after the date fixed by Order in Council, sends or brings a watch-case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch-case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch-case made in the United Kingdom) and in such a mode as may be from time to time directed by Order in Council.
- (2.) The declaration may be made before an officer of an assay office appointed in that behalf by the office (which officer is hereby authorised to administer such a declaration) or before a justice of the peace or a commissioner having power to administer oaths in the Supreme Court of Judicature in England or Ireland or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.
- (3.) Every person who makes a false declaration for the purposes of this section shall be liable on conviction on indictment to the penalties of perjury, and, on summary conviction, to a fine not exceeding twenty pounds for each offence.

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in exercise of the powers vested in Her by the above-recited provisions of the said Act, is pleased to order and declare, and doth hereby order and declare, that where it appears by such declaration that such watch-cases have been made in some country or place out of the United Kingdom, then the following authorities, that is to say:—

The Wardens and Commonalty of the Mystery of Goldsmiths of the City of London;

The Guardians of the Standard of Wrought Plate, Birmingham;

The Company of Goldsmiths of the City of Chester;

The Guardians of the Standard of Wrought Plate, Sheffield;

The Incorporation of Goldsmiths of the City of Edinburgh;  
 The Goldsmiths' Company of the City of Glasgow;  
 The Fraternity or Company of Goldsmiths of the City of Dublin;  
 shall respectively cause to be placed on such watch-cases the marks more particularly described and delineated in Schedule II. hereunto annexed, and no other mark or marks, and such marks are hereby authorised accordingly.

And it is hereby further ordered and declared that the declaration to be made shall be in the form set forth in Schedule I. hereunto annexed.

This order shall come into operation on the first day of January, one thousand eight hundred and eighty-eight.

C. L. PEEL.

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SCHEDULE I.

*Form of Declaration.*

I (a) do hereby declare that the  
 [watch-case] or [watch-cases] [brought] or  
 [sent] by me this day to the Assay Office at  
 in number and in a parcel marked  
 [was] [were] made in

Declared at this (b) day of 18 .  
 Before me (c)  
 Officer of the aforesaid Assay Office appointed in that behalf  
 , or, Justice of the Peace for , or, Commissioner  
 having power to administer oaths in the Supreme Court of Judicature  
 in England.

[Supreme Court of Judicature in Ireland].  
 [Court of Session in Scotland].

- (a) Here insert name and address of declarant.  
 (b) Signature of declarant.  
 (c) Signature and title of person before whom the declaration is made.

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SCHEDULE II. (a).

On a foreign gold case:—

Within a shield of the form of a Cross, and of the size shown in Figure I. of the Appendix hereto, the word "Foreign," over which a hall mark particular to each office shown in Figure III. and the carat value of the gold, and under which the decimal equivalent of the carat value of the gold together with the variable annual date letter.

On a foreign silver case:—

Within a shield of the form of a regular octagon and of the size shown in Figure II. of the Appendix hereto, the word "Foreign," over which a hall mark particular to each office shown in Figure III. and under which the variable annual date letter.

The particular hall mark above referred to for each of the seven assay offices at which foreign cases may be stamped is shown in Figure V. of the Appendix hereto.

(a) See a table of the marks prescribed by this Schedule in Appendix H., *infra*.

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REGULATIONS MADE BY THE COMMISSIONERS OF  
CUSTOMS UNDER § 16 OF THE MERCHANDISE  
MARKS ACT, 1887.

WHEREAS by the Merchandise Marks Act, 1887 (hereinafter called "the Act"),

After various provisions against the sale, or exposure for sale, or possession for sale, trade or manufacture, of goods with forged trade marks or false descriptions, or trade marks falsely applied to them:

And after defining (amongst other things) the expression "trade mark" in manner therein set forth, with reference to "The Patents, Designs, and Trade Marks Act, 1883," and the law of indicated British Possessions and Foreign States:

And after defining the expression "trade description" as any description, statement or other indication, direct or indirect, as to number, quantity, measure, gauge, or weight, of goods, as to place or country in which any goods were made or produced, as to the mode of manufacturing or producing any goods, or as to the material of which any goods are composed, or as to any goods being the subject of any existing patent, privilege, or copyright:

And after defining the expressions "false trade description" and "goods," "apply," and "falsely apply";

It is provided by § 16 that—

(i.) All such goods as above mentioned, and

(ii.) All goods of foreign manufacture, bearing any name or trade mark, being or purporting to be the name or trade mark of any manufacturer, dealer, or trader, in the United Kingdom, unless such name or mark be accompanied by definite indication of the country in which such goods were made or produced,

shall be prohibited to be imported, and, subject to the provisions of the said section, shall be included among goods prohibited to be imported, as if they were specified in § 42 of "The Customs Consolidation Act, 1876":

And whereas by § 18 of the Act, after authorising the continued use of trade descriptions lawfully and generally applied to goods of the particular class, or manufactured by a particular method, to indicate such class or method, it is provided that, where such trade description includes the name of a place or country calculated to mislead as to where the goods were actually made or produced, such goods not having been actually made or produced there, the said reciting section should not apply (and, consequently, goods so marked

would be prohibited), unless there be added to the trade description, immediately before or after the name of the place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there :

And whereas it is also provided, by the said § 16, that the Commissioners of Customs (hereinafter called "the Commissioners") may, from time to time, make, revoke and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited as hereinbefore mentioned, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of the said section, and the mode of verification of such evidence :

And it is further provided by the said last-mentioned section :—

That before detaining goods or taking proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners may require that such regulations as aforesaid shall be complied with, and satisfy themselves as to the liability of the goods to forfeiture :

That such regulations may apply to all goods, the importation of which is prohibited by the said section, or different regulations may be made respecting different classes of such goods :

And also that the regulations may provide for the informant reimbursing the Commissioners all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention :

And it is also provided, by the said section, that § 2 of the Revenue Act, 1883, shall be repealed from a day to be fixed by regulations under the said reciting sections, such day not being later than the first day of January, 1888, without prejudice to anything done or suffered thereunder :

And whereas § 2 of the Revenue Act, 1883, is the law under and by virtue of which goods of foreign manufacture infringing the proprietary rights of British subjects in names, addresses, and trade marks, or bearing or having upon them, under certain conditions, the name of a place in or a part of the United Kingdom, are, at the present time, detected and stopped by officers of customs acting on their own observation and responsibility, under directions laid down by the Commissioners, and without the requirement of previous information, security, or other conditions :

Now, therefore, the Commissioners under and by virtue of the hereinbefore recited power in that behalf, hereby make and require to be complied with the following regulations, viz. :

1. Goods prohibited to be imported as hereinbefore recited, having applied to them forged trade marks, false trade descriptions, or marks, names, or descriptions otherwise illegal, which, upon examination, are detected by the officers of customs, are to be detained by them without the requirement of previous information.

2. In giving information with a view to detention an informant must fulfil the following conditions, viz. :—

(i.) He must give to the collector or superintendent, or the chief

officer of customs of the port (or sub-port) of expected importation, notice in writing stating,

the number of packages expected, as far as he is able to state the same;

the description of the goods by marks or other particulars sufficient for their identification;

the name or other sufficient indication of the importing ship;

the manner in which the goods infringe the Act;

the expected day of the arrival of the ship.

(ii.) He must deposit with the collector or other officer as aforesaid a sum sufficient, in the opinion of that officer, to cover any additional expense which may be incurred in the examination required by reason of his notice.

3. If, upon arrival and examination of the goods, the officer of customs is satisfied that there is no ground for their detention, they will be delivered. If he is not so satisfied, he will decide either to detain the goods, as in a case of detention upon ordinary examination, or to require security from the informant, for reimbursing the Commissioners or their officers all expenses and damages incurred in respect of the detention made on his information, and of any proceedings consequent thereon.

4. The security thus required must be an immediate *ad valorem* deposit of ten pounds per cent. on the value of the goods, as fixed by the officer from the quantities of value shown by the entry; and, also, subsequently a bond to be completed within four days in double the value of the goods, with two approved sureties. The *ad valorem* deposit will be returned upon completion of the bond, and will not be required if, as an alternative where time permits, the informant prefers to give a like bond before examination, upon estimated value of the goods declared to by him under statutory declaration. If the security is not duly given as above required, there will be no further detention of the goods.

5. In the above regulations the words "officer of customs" mean an officer acting under the general or special direction of the Commissioners, and the words "value of the goods" mean value irrespective of duty.

6. The "notice" and "bond" required as above shall be in the forms contained in the Schedule to these regulations, or in such other forms as the Commissioners may from time to time order and direct.

7. The security taken under these regulations will be given up at the times following, that is to say:—

Where given before examination, and if no detention, forthwith.

Where given on detention:—

If the forfeiture is completed, either by lapse of time or ultimate condemnation by the Court of Justice, then on such completion of forfeiture.

If the forfeiture is not completed, then

If the goods are released by the Commissioners, and no action or suit has been commenced against them, or any of their officers, in respect of the detention, then at the expiration of three months from the time of detention; or, if the goods are

released for failure of proceedings taken for the forfeiture and condemnation thereof upon information under § 207 of "The Customs Consolidation Act, 1876," and no action or suit has been commenced against the Commissioners, or any of their officers, in respect of the detention, then at the expiration of three months from the trial of such information.

If within such periods as aforesaid any such action or suit as aforesaid has been commenced, then upon the ultimate conclusion of such action or suit, and the fulfilment of the purpose for which the security was given.

8. These regulations apply to transshipment and transit goods as well as to goods landed to be warehoused, or for home consumption.

9. The 1st day of January, 1888, is, by these "regulations," fixed as the day from which § 2 of the "Revenue Act, 1883," shall be repealed, subject to the terms of the recited Act; and these regulations will take effect from the date of such repeal.

CHARLES DU CANE	}	Commissioners of H. M. Customs.
H. MURRAY		
HORACE SEYMOUR		

Custom House, London,  
1st December, 1887.

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### SCHEDULE.

(Notice.)

#### THE MERCHANDISE MARKS ACT, 1887.

To the Collector, Superintendent, or  
Chief Officer of Customs at the  
Port [*or* Sub-Port] of

I hereby give you notice that the under-mentioned goods, that is to say, (a)

are about to be imported into your port on or about the  
day of                    next, in the (b)  
from

That such goods are liable to detention and forfeiture being (c)

---

(a) Describe the goods, number of packages, marks used, and any other particulars necessary for their identification.

(b) Describe the ship, and give name or indication.

(c) State how the goods infringe the Act, and if the infringement is one as to a forged trade mark protected in a British Possession or Foreign State, state the Possession or State, or if the infringement is one as to place or country of origin, state the name of the place or country falsely used.

That Mr. \_\_\_\_\_ of  
 and Mr. \_\_\_\_\_ of  
 are prepared to become my sureties in such bond as may be required  
 upon detention of the goods.

And I request that the said goods may be detained and dealt with  
 accordingly.

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

A. B.  
 (or Agent for)

NOTE.—Mr. \_\_\_\_\_ refers to  
 his Bankers (or) Solicitors, and Mr. \_\_\_\_\_  
 to \_\_\_\_\_ his Bankers (or) Solicitors as to his  
 sufficiency for the penalty of the bond.

(Bond.)

THE MERCHANDISE MARKS ACT, 1887.

KNOW ALL MEN BY THESE PRESENTS, THAT WE \_\_\_\_\_ A.B.  
 and

are firmly bound unto Our Sovereign Lady Victoria, by the  
 Grace of God, of the United Kingdom of Great Britain and  
 Ireland, Queen, Defender of the Faith, in the sum of  
 Pounds to be paid to our said Lady the Queen, her heirs or  
 successors. For which payment well and truly to be made we  
 bind ourselves, jointly and severally, our heirs, executors, and  
 administrators, firmly by these presents. Sealed with our Seals.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord  
 one thousand eight hundred and \_\_\_\_\_

WHEREAS the above named \_\_\_\_\_ A. B. \_\_\_\_\_ has by  
 a notice dated the \_\_\_\_\_ day of \_\_\_\_\_, informed the Collector  
 of Customs at \_\_\_\_\_ that the undermentioned goods, that is to  
 say,

were about to be imported into the port of \_\_\_\_\_ contrary to § 16  
 of the Merchandise Marks Act, 1887, and requested that the said goods  
 should be detained and dealt with accordingly. And whereas the  
 said goods duly arrived in the said port on the \_\_\_\_\_ day of  
 \_\_\_\_\_ last, and are now detained pursuant to the said notice. Now  
 the condition of this obligation is such that if the said \_\_\_\_\_ A. B.  
 his executors or administrators, shall well and effectually  
 indemnify, save harmless, and keep indemnified, Her Majesty, her  
 heirs and successors, and all her and their officers of customs, and  
 their executors or administrators, from and against all loss or damage,  
 payment or payments, and all costs and expenses which Her said  
 Majesty, her heirs or successors, and her and their officers of customs,  
 their executors or administrators, shall or may sustain or incur by



reason or on account of any detention of the said goods following upon the information contained in such notice and any proceedings consequent upon such detention, then this obligation shall be void, or otherwise shall be and remain in full force and virtue.

Signed, sealed, {  
and delivered {

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GENERAL ORDERS MADE BY THE COMMISSIONERS OF CUSTOMS FOR  
CARRYING INTO EFFECT THE MERCHANDISE MARKS ACT, 1887.

GENERAL ORDER  $\frac{81}{1887}$ .

CUSTOM HOUSE, LONDON,  
20th October, 1887.

SIR,

Herewith you will receive the usual number of copies of the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28).

You are carefully to note the meanings given by the Act to the following expressions, viz. :—

“Goods,” § 3.	}	§ 3.
“Applied,” § 5; sub-ss. 1 & 2.		
“Falsely applied,” § 5; sub-s. 3.		
“Trade Mark,”		
“Trade Description”		
“False Trade Description”		
“Person”		
“Manufacturer”		
“Dealer” or “Trader”		
“Proprietor”		
“Name”	}	§ 3.
“Name or Initials”		

You will also especially note, as applying to imported goods, the provisions of § 10, sub-s. (2), and § 18 of the Act.

You will observe that by § 5 of the Act the word “applies” in connection with goods is extended to “applying” the name or mark to any “covering, label, reel, or other thing.”

You will understand that, in future, as hitherto, this will not be held to extend to “coverings” or other such things, including boxes, bottles, or the like, imported alone and with the intention of using them as auxiliary means of carrying into the market goods really British or goods (such as wine) incapable of being mistaken as British goods, where the description applied to the coverings or such other things does not relate to *them*, but has reference to the goods which they are to cover to carry into the market.

There is, however, on this point one article to be specially noticed, viz., “Watch-cases;” and, as to this, your attention is called to § 7 of the Act, which lays down that, in the absence of a counter-description

of the watch itself, the description on the watch case shall be always held to describe the watch.

Under § 16 of the Act, regulations have been prepared by the Board which are now under the consideration of the Lords of the Treasury.

As soon as these regulations are finally approved, a copy will be sent to you, together with instructions as to the manner in which you are to carry them into effect.

These regulations will come into force on a date to be fixed under them, but not later than the first day of January next.

It is highly desirable, therefore, that in the meanwhile you should make yourself familiar with the general scope of the Act, and especially with the provisions contained in § 16 as to the importation of goods coming within its powers, and with the points to which your attention is now more particularly directed.

I am, Sir,

Your obedient Servant,

E. GOODWYN.

To the Collector.

GENERAL ORDER  $\frac{99}{1887}$ .

CUSTOM HOUSE, LONDON,  
22nd December, 1887.

SIR,

1. As a sequel to G. O. 81/1887 you will receive herewith a copy of the regulations made by the Board under § 16 of the Merchandise Marks Act, 1887, published in the London Gazette of the 2nd of December, 1887, and in the Board of Trade Journal for the present month.

2. You will observe that the regulations do two things :

Twofold  
object of  
regulations.

(i.) They direct that goods prohibited by the Act which are detected by the officers upon examination (that is to say, upon ordinary examination for revenue purposes), are to be detained without previous information.

(ii.) They provide what is to be done in cases where prohibited importation, and the ground of such prohibition, are matters not of detection, in the ordinary way, but of information by an informant.

3. You will require guidance as to what goods, in the opinion of the Board, the officers ought to detect as mentioned in sub-paragraph (i.); and as to the action to be taken by officers, after information, as mentioned in sub-paragraph (ii.).

General  
points on  
which guid-  
ance is ne-  
cessary.

4. The Act extends so largely the area of prohibited goods, for the benefit not only of British subjects, but also of the subjects and citizens of foreign states, that as to a considerable proportion of goods liable to prohibition on importation, the officers cannot be expected to act without some guidance by information. It must not be, however, held or worked so as in any way to diminish the care at present taken

As to the  
scope of the  
Act with  
reference to  
"British  
marks."

by the officers in respect to "British Marks," involving names of British places, or indications of British manufacture, and to this extent, at least, the officers must continue to act without previous information.

Reference to particular provisions as to place or country of origin.

5. You will observe that names or trade marks of British manufacturers, dealers, or traders on imported foreign goods (§ 16, sentence beginning "all goods of foreign manufacture") are to be only admissible if distinctly qualified, not merely, as heretofore, by words showing manufacture abroad, but by a definite indication of the country in which the goods were made or produced; and this same principle is contained, even more emphatically, in § 18 of the Act, as regards lawful and general "trade descriptions," which include the name of a place or country.

Classification of goods specially indicated for detection without information.

6. The goods, therefore, which the Board distinctly expect the officers themselves to detect upon ordinary examination, and without previous information, will be as follows, viz. :—

Class (a). Goods of foreign manufacture, by whomsoever imported, having applied to them, either,

A name or trade mark which is or purports to be the name or trade mark of a manufacturer, dealer, or trader in the United Kingdom; or

A trade description which indicates a particular class or method of manufacture, and includes the name of a place in, or a part of the United Kingdom, and is thereby calculated to mislead as to the place of the manufacture or production of goods which have not been manufactured or produced in the United Kingdom; unless such name, mark, or description is accompanied by a definite indication of the place or country in which the goods were made or produced, that is to say, an addition immediately before or after the said name, mark or description, in an equally conspicuous manner therewith, of the name of the place or country in which the goods were actually made or produced, with, in the case of a trade description including name of place, a statement that they were made or produced there.

Class (b). Goods of foreign manufacture, by whomsoever imported, having applied to them any description, figures, words, or marks, or arrangement or combination thereof, so as to constitute, by being or including, either expressly or by reference, the name of a place in or a part of the United Kingdom, or in any other way, a statement or other indication, direct or indirect, that the goods were made or produced in the United Kingdom.

7. On the above classification you will note this paragraph and the paragraphs to 10 inclusive.

As to the requirement of a definite indication of place or country of origin.

It will obviously not be in the power of the officers, nor are they expected, to decide whether goods falling within Class (a) were actually made or produced in the country from which they come; but, in practice, it will be sufficient if the officers satisfy themselves that the name of *some* foreign country, or of *some* place in *a* foreign country, is applied to the goods in a manner equally indelible or irremovable, and as equally conspicuous, as the name or trade mark itself, and in close proximity to it.

8. The word "purports," also in (a), is to be understood as referring to any name or names reasonably suggesting a British manufacturer, dealer, or trader, without regard to the fact of whether the name is or is not known to the officer; or as referring to a trade mark not being merely matter of decoration or ornament, which reasonably suggests itself as British by containing English wording, or national devices or figures distinctly indicating British manufacture.

As to the meaning of the word "purports."

9. The words "a trade description which indicates a particular class or method of manufacture, and includes the name of a place in or a part of the United Kingdom, and is thereby calculated to mislead" mean such terms as Kidderminster Carpets, Windsor Soap, "Balbriggan" on hosiery, or "Shetland" on shawls, and the like, which, although they might be held to be merely phrases descriptive of method of manufacture, are yet calculated to mislead as to place of origin.

As to "trade description," including name of place calculated to mislead.

10. Class (b) refers to and includes such inscriptions as "present from such and such a place," and the like; or, even without a name, any phrases, words, language or devices, which state or indicate, directly or indirectly, make or production in the United Kingdom; and the words "by reference" mean that "Irish," for instance, is equivalent to "of Ireland." Any goods bearing such marks will be detained, and you will refer the matter to the Board.

As to other, less definite, inscriptions indicating in any way make or production in the United Kingdom.

11. Passing from the goods thus specially mentioned, those generally prohibited by the Act to be imported may be summarised as follows:—

Classification, generally, of goods prohibited by the Act.

(Head i.). Goods, whether of foreign manufacture or British goods brought back, having a false trade description as to name or initials, or a forged trade mark applied to them.

(Head ii.). Like goods having applied to them a false trade description as to the place or country in which they were made or produced; or as to number, quantity, measure, gauge or weight, mode of manufacture or production, or material of which composed; or as to the goods being the subjects of any existing patent, privilege, or copyright.

A false trade description is a description or indication, whether original or by addition, effacement or otherwise, and whether by figures, words, or marks, or any arrangement or combination thereof, directly or indirectly false in a material respect.

12. With regard to Head (i.). This is the protection of a manufacturer, dealer, or trader against the fraudulent or unfair use of his name or trade mark by any other person. It would not be possible for officers to enter into examination of all names and marks in respect to their use as between various importers. At the same time, a manufacturer, dealer, or trader who has reason to believe that his name or trade mark is one not unlikely to be imitated, so as to constitute a false trade description, or forged trade mark, is entitled to ask that, without the requirement of special information, such description or mark may, upon any importation, be stopped.

Scope of Head (i).

13. For this purpose the Board sanction the system of registration of names or marks in a way similar to that which has hitherto existed; and a manufacturer, dealer, or trader may register his name or mark at such port or ports as he desires. In respect of names or marks so

Registration for this purpose.

registered, it will be the duty of the officers, at the particular port or ports, to prevent the delivery of goods to which such names or marks are applied, unless the delivery is authorised by the registered proprietor. Apart from names or marks as to which such registration exists, the officers are not expected to examine goods with reference to Head (i.).

Who may register, and on what terms.

See par. 32.

Registration to be subject to provisions mentioned in par. 6.

Notwithstanding classification in par. 6, any other infringement detected is to be followed by detention.

Indication as to where such detection may happen.

Directions as to question of place or country of origin.

14. Any manufacturer, dealer, or trader, whether British or foreign, may register his name or mark; but you may refuse registration to any name or mark which you consider to be of a character too indefinite or indistinct for officers to recognise, referring to the Board in any case of doubt. An applicant for registration must prove his proprietorship of the name or mark by declaration; and if, in order to avoid delay, he desires to do so, he may appoint an agent to give authority for delivery of his goods, and prove (also by declaration) the appointment of such agent.

15. You must understand, very distinctly, that the use by the British manufacturer, dealer, or trader of even his *own* name on foreign goods, and the use by *any* manufacturer, dealer, or trader, on like goods, of words, figures, or marks of any kind stating or indicating, directly or indirectly, make or production in the United Kingdom, are prohibited unless the qualifying conditions specified in paragraph 6 are complied with. You must, therefore, clearly explain to every person registering a name or mark which involves any such statement or indication, as will probably often be the case, that, while the name or mark will be guarded by such registration, it will not be rendered admissible unless duly qualified, as the law may require, in every case. The register at your port under the law now expiring will cease to be operative with the expiry of that law.

16. As regards Head (ii.); if (apart from the goods specially mentioned in paragraph 6, and notwithstanding that classification) the officers should in any case upon that ordinary examination for revenue purposes, detect anything constituting an infringement of any of the prohibitions of the Act as thus set forth, you will detain such goods and refer the matter to the Board.

17. Such detection by officers may happen, for instance, as to number, quantity, measure, gauge, or weight; while, on the other hand, as to mode or material of manufacture, as to any patent, privilege, or copyright,\* or foreign trade marks, the officers, upon ordinary examination, may probably, in the absence of special knowledge, fail in detecting false descriptions or forged trade marks.

18. False descriptions as to place of origin affecting the interests of "British Possessions" or "Foreign States" are matters which, unaided by information, officers will not generally be expected to trace; but wherever they observe goods conspicuously known as the usual product of a particular place or country, and marked with that name, shipped from a port in another country altogether—as, for instance, Wine marked "Xeres" or "Spanish" from Belgium, or Cigars marked "Havana" from Germany—such goods may, in the absence of proof

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\* As to copyright, this instruction in no way affects the practice under §§ 42 and 44 of the Customs Consolidation Act, 1876.

of make or produce at the place or in the country named on them, be properly detained.

19. Some directions (beyond what is shown in the Regulations) are desirable as to your action upon "information"; and you will observe that there are two stages of procedure in this: viz., one up to and including the arrival and examination or identification of the goods; and the other after the examination or identification.

Action upon information—two stages of such action.

20. With regard to the first stage—the two points for consideration are, whether any, and if so what, special examination of the goods should be made, and what deposit should be taken to cover the expense of such examination, if it is made.

As to special examination of goods in such case.

21. The character and extent of examination will require careful discretion on your part, and will depend on the manner in which the goods are alleged in the notice to infringe the Act. An indication has been given you above as to what the Board consider that officers can detect and what they cannot, upon ordinary examination; and this will furnish you with a guide as to what they may be able to trace upon fuller examination after information.

On what it will depend.

22. Wherever, in accordance with such indication, you are of opinion that the officers could not, even on fuller examination, discover whether the goods infringe the Act, you need not order a special examination, and consequently you will not require any deposit in respect of such examination, but you may at once order detention of the goods as if the officers had seen cause to detain them, and proceed to require security, in conformity with directions given in paragraph 29 of this Order.

Course where such examination would not be serviceable.

23. Wherever, on the other hand, you are of opinion that a fuller examination than that ordinarily directed for revenue purposes may reasonably enable the officers to discover whether or not there is the infringement alleged—as, for instance, by careful weighing, measuring, counting, or gauging—you will direct that such an examination shall take place, examining as to free goods, for this purpose, not less than twice the usual number of packages, and in the case of goods imported in bulk, such as machinery and the like, treating each piece imported as a package.

Course where such examination would be serviceable.

24. Assuming examination to be ordered by you in accordance with the lines above indicated, you will take, as a deposit to cover the additional expense of this examination, such sum as you may think necessary, having regard to the nature of the goods, and to the number of packages which, according to the informant's knowledge, will have been stated in the notice.

Deposit to cover such examination.

25. The case of false description as to place of origin affecting the interests of "British Possessions" or "Foreign States" is here again one for special mention. As above stated, it is one which, as a rule, officers cannot be expected to detect without information; but, for an officer examining upon information, the following rules may be laid down: viz., if it is ascertained that the name of the place or country complained of is not applied to the goods at all, or, if applied, is accompanied by a definite indication or addition, as contemplated by the Act, of make or production elsewhere, the officer may be satisfied that there is no ground existing to justify the notice received; but if the name complained of is found to be applied to the goods, and is the

Special rules in such examination in regard to place or country of origin as affecting British Possessions or foreign states.

name of a country, or of a place in a country, not the country of a port or shipment, the officer may, in the absence of proof of make or produce at the place or in the country named on them, be satisfied that the alleged infringement clearly exists.

As to British Possessions and foreign states to which the provisions in relation to forged trade marks apply.

26. In the case of a notice alleging the application of a forged trade mark where the mark is one protected in a British Possession or foreign state, such a notice will only be good, and need only be accepted by you, if it relates to possessions or states included in the definition of trade marks.

Up to the present time the British Possessions and foreign states so included are:

BRITISH POSSESSION ..	Queensland.
FOREIGN STATES IN EUROPE	Belgium.
	France.
	Italy.
	The Netherlands.
	Norway.
	Portugal.
	Servia.
	Spain.
	Sweden.
	Switzerland.
IN N. AND S. AMERICA AND THE W. INDIES	Brazil.
	Guatemala.
	Paraguay.
	San Domingo.
	The United States of America.
Uruguay.	
IN AFRICA .. ..	Tunis.

Transshipment and transit.

27. As to transshipment and transit goods; where information and "notice" relate to these goods you will deal with them exactly as if they were goods for home use. Apart from information you will not, as regards the ordinary examination of such goods for revenue purposes, examine more packages than at present; but the Board, in addition to the existing rules as to transshipment and transit goods, direct that, as to all such goods, no marks of any kind or description shall be allowed to be applied to them in this country, and you will see that this is strictly carried out in your port.

Rules as to special examination generally.

28. As to goods examined upon information generally, you will be guided by the following rules. If upon examination the officer is satisfied that there is no ground existing to justify the notice received, he will pass the goods; if he is satisfied that the alleged infringement clearly exists, he will detain the goods as in a case of detention upon ordinary examination; but in cases where the officer is not so satisfied, and in cases where you may have considered that official examination cannot test the point, you will order the detention of the goods at the risk of the informant, and thus arrive at the second stage of the procedure upon information—viz., the taking of security.

As to security where detention ordered.

29. You will observe that (except in cases where the informant prefers to give a bond, and where time allows such a step to be taken before the goods arrive and are examined), there are two things to be

done in taking security: first, to take an *ad valorem* money deposit to cover the possibility of the bond not being completed; and secondly, to see that the bond is completed, after which you will return the deposit. The amount of both the deposit and the bond will depend on the value of the goods.

30. The form of notice given in the Schedule to the regulations requires a statement of the names of persons proposed as sureties. As to the sufficiency of these you will make inquiries in the usual way, and have the bond completed as in other transactions. Inquiries as to sufficiency of sureties.

31. The security having once been taken, the goods will, without further special examination, remain in charge; and the regulations contain definite provisions as to when, in the various contingencies that may arise, the security will be delivered up. As to goods after security taken, and as to delivery up of security.

32. A form is annexed of the declaration mentioned in paragraph 14; and also of a bond, when it is preferred to give one before examination, as mentioned in paragraph 29. Supplies of these forms, and of those given in the Schedule to the regulations, can be obtained in the usual way. Supply of forms.

33. A General Order as to watch-cases and watches will shortly be issued; and further directions will be given, from time to time, as decisions are arrived at, under paragraphs 9 and 10, and paragraphs 16, 17, and 18 of this Order.

I am, Sir,

Your obedient Servant,

E. GOODWYN.

The Collector at

Merchandise Marks Act, 1887.

50 & 51 Vict. c. 28.

DECLARATION ON REGISTRATION UNDER PARAGRAPH 13 OF GENERAL  
ORDER  $\frac{99}{1887}$ .

Port of

I (a) hereby declare that (b)  
(c) the proprietor, of (d) viz. :—

which (e) expect to be applied to goods imported, from time to time, at this Port; and that (f) have appointed Mr. (g) of to be (h) agent, to give authority for the delivery of such goods.

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(a) Full name and address of declarant.  
 (b) "I" or "I and my partners, trading as Messrs. " or "such and such a Company, of which I am the representative official," or "so and so of such and such a place abroad, whom I represent in this country."  
 (c) "Is" or "are."  
 (d) "The following name as a trade description," or "the following trade mark," or "the following name as a trade description and trade mark."  
 (e) "I" or "we." (f) "I" or "we."  
 (g) This portion as to appointment of agent may be erased, where such appointment is not desired.  
 (h) "My" or "our."



## APPENDIX F.

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

Declared this                    day of                    Signed                    18   ,  
at

Before me

A Commissioner to administer Oaths, &c.

N.B.—Registration in pursuance of this declaration is subject to the provisions of the Act which forbid the importation, by a registered proprietor, even of his own goods which bear, in name or mark, any statement or indication, direct or indirect, of make or produce in the United Kingdom, unless qualified as the Act requires.

KNOW ALL MEN by these Presents that we

are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the sum of                    pounds to be paid to our said Lady the Queen, Her Heirs or Successors; for which payment well and truly to be made we bind ourselves jointly and severally, our heirs, executors and administrators, firmly by these Presents. Sealed with our seals. Dated this                    day of                    in the year of our Lord one thousand eight hundred and

WHEREAS the above-named                    has by a notice dated the                    day of                    informed the Collector of Customs at                    that the undermentioned goods, that is to say,

are about to be imported into the port of                    contrary to § 16 of the Merchandise Marks Act, 1887, and has requested that the said goods shall be detained and dealt with accordingly. Now the condition of this obligation is such that if the said                    , his executors or administrators, shall well and effectually indemnify, save harmless, and keep indemnified Her Majesty, Her Heirs and Successors, and all Her and Their Officers of Customs and their executors or administrators, from and against all loss or damage, payment or payments, and all costs and expenses which Her said Majesty, Her Heirs or Successors, and Her or Their Officers of Customs, their executors and administrators, shall or may sustain or incur by reason or on account of any detention or delay in the delivery of the said goods, following upon the information contained in such notice and any proceedings consequent upon such detention or delay, then this obligation shall be void, otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered }

GENERAL ORDER  $\frac{9}{1888}$ CUSTOM HOUSE, LONDON.  
18th January, 1888.

SIR,

In accordance with paragraph 33 of General Order 99/1887, I now transmit to you the directions of the Board, to enable you to deal with watch-cases and watches, under the Merchandise Marks Act; the latter term, watches, meaning as provided by § 7 of the Act, "all that portion of a watch which is not the watch-case."

Your attention has already, by G. O. 81/1887, been called to the position in which watch-cases, under this section, stand in relation to watches; and the consequent importance of the assay mark on watch-cases, which mark, by virtue of § 3 (1) of the Act, would be deemed a trade description as to place or country of origin.

You will note, in addition, that by § 8 (1) of the Act provision is made for preventing foreign-made watch-cases from obtaining the mark placed on a watch-case made in the United Kingdom: and it is enacted that a different mark shall be placed on foreign watch-cases of such pattern, and in such mode as directed by Order in Council.

An Order in Council to this effect, dated the 28th November last (a), was published in the London Gazette of 9th December last; and a copy of this order, together with sheets 1 and 2 of Appendix to Schedule II. therein referred to, which contain diagrams of the required new marks, are sent to you herewith.

You will carefully study these sheets, and note how the marks apply variously to the different assay offices in the United Kingdom.

The directions to be observed by you in applying this new law will relate to—

- (a.) Watch-cases with assay marks imported alone.
- (b.) Like watch-cases imported with the watches, that is to say, watches of foreign manufacture in them.

(a.) *Watch cases with Assay Marks imported alone.*

If the cases are wholly unmarked, or are duly marked in accordance with the Order in Council, or with a foreign assay mark, and there is not, in addition, any wording on any part of the case proper, or on the dome, indicating make or produce in the United Kingdom, the goods may be delivered. If, on the other hand, there is any such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with a British Hall Mark as placed on watch-cases made in the United Kingdom, you will detain the goods unless they are entered as "British goods brought back," in which case they may be admitted under the usual regulations.

(b.) *Watch-cases imported with the Watches in them.*

If the cases are wholly unmarked, or are marked either  
In accordance with the Order in Council, or  
With a foreign assay mark, or

---

(a) See p. 573, *supra*.

With a British assay mark as placed on a watch-case made in the United Kingdom, and with an equally conspicuous statement either above or below the assay mark, that the watch is of foreign make;

And if there is no wording either as an addition on the case or dome, or upon the watch itself, whether on the dial or the plate, or any part of the works, indicating make or produce in the United Kingdom, then the goods may be delivered.

If, on the other hand, there is any such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with a British assay mark as placed on a watch-case made in the United Kingdom, and with no statement of foreign make on the cases, as required above, you will detain them as a seizure, unless there is upon the dial of each watch and also on the top "plate" (where the watch is of that construction) or on the bottom "plate" (where the watch is of that construction) visibly, between the "bridges," an indelible and definite indication of the place or country in which the watches were made. Such an indication will be considered definite, if it is, or contains only the name of the place or country of origin; if in addition, it contains the name of a place in, or a part of the United Kingdom, as, for instance, "Geneva and London," or if there is anywhere on the watch an indication by figures, words, or otherwise, that the watch might be the make or produce of the United Kingdom, then, in addition to the name of place or country of origin, there must be a distinct statement that the watches were there made.

I am, Sir,  
Your obedient Servant,  
E. GOODWYN.

The Collector at

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GENERAL ORDER  $\frac{14}{1888}$ .

CUSTOM HOUSE, LONDON.  
4th February, 1888.

SIR,

With reference to paragraph (b) of § 5 of the Merchandise Marks Act, 1887, I am desired to acquaint you that a name of a port or place of destination applied to mere packing-cases, in which goods are clearly not intended to be sold, or exposed for sale, either wholesale or retail, will not render the goods liable to detention; but, where a package containing goods is not of this description, the port or place of destination should be accompanied by a definite indication of the country of origin.

I am, Sir,  
Your obedient Servant,  
E. GOODWYN.

To the Collector.

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GENERAL ORDER  $\frac{26}{1888}$ .

CUSTOM HOUSE, LONDON.

10th March, 1888.

SIR,

I am desired to acquaint you, for the information and guidance of yourself and of the officers under your survey, that, with reference to paragraph 6 (b) and to paragraph 10 of General Order 99/1887, the Board are of opinion that inscriptions applied to goods by means of labels or tickets, or applied to boxes, cartons, parcels, or other ultimate packages containing goods, manifestly only for the purpose of distinguishing the goods for the convenience of dealers and shopkeepers, and not specially intended to attract the eye of the consumer, should not be practically treated as trade descriptions, whenever the inscription consists simply of the bare name of the goods or indication of number, quantity, size, and the like.

For instance,—

on Hosiery,

“Hose”

“White Cotton—size 10”;

on Textile Fabrics,

“No.—Qual.—Colour—Dess.—Yards,”

or

“No.—Size—Quality—Shade”;

on Goloshes,

“1 Doz. pairs—Men’s 2nd Quality—No. 7.”

Goods bearing labels, tickets, &c., of this character only are not to be detained, whatever may be the language in which the inscriptions are printed or written.

You are to cause these directions to be carried into effect accordingly.

It is to be understood that this order does not apply to wording on the goods themselves, nor to any wording which includes the name of a place or country, the name of any trader, manufacturer or dealer, or a trade mark.

I am further to acquaint you that the last clause of General Order 14/1888 is not to be read as applying to the names of ports of unshipment, used for the mere purpose of indicating where the goods are to be unladen, as required frequently in bills of lading, whatever may be the description of package used. The officers are to exercise their discretion in distinguishing whether those names are used solely for the purpose specified above.

I am, Sir,

Your obedient Servant,

R. T. PROWSE.

To the Collector.

## APPENDIX F.

GENERAL ORDER  $\frac{33}{1888}$ .

CUSTOM HOUSE, LONDON.  
24th March, 1888.

SIR,

With reference to paragraph 33 of the General Order 99/1887, I am desired to acquaint you that Swedish iron bearing the words "Lancashire Swedish," or the abbreviation thereof, "Lancash. Swedish," is to be admitted into this country without question so far as the provisions of the Merchandise Marks Act, 1887, are concerned.

This arrangement is sanctioned upon the understanding that the words of the mark shall not be inverted, and that under no circumstances will Swedish iron marked "Lancashire" alone be admitted into this country.

I am, Sir,  
Your obedient Servant,  
R. T. PROWSE.

To the Collector.

GENERAL ORDER  $\frac{44}{1888}$ .

CUSTOM HOUSE, LONDON.  
9th April, 1888.

SIR,

With reference to § 33 of the General Order 99/1887, I am desired to acquaint you that packages used for the importation from any place of natural flowers, fresh fruit, vegetables and potatoes, and bearing upon them marks which the officers are satisfied are merely address marks, such as "Wm. Evans, Leeds," "Thos. Jones, London," are to be treated as packing cases to which the provisions of the General Orders 14/1888 and 26/1888 apply, and are not to be detained under the Merchandise Marks Act on account of such marks only.

Moreover, packages of the above description coming from the Channel Islands, Malta, Gozo, and Gibraltar, and bearing on them, in addition to address marks, any words in the English language describing the goods contained in the packages, are not to be detained on this account, provided such words do not constitute a trade mark, nor include the name of a place in the United Kingdom to which the General Orders quoted above do not apply.

I am, Sir,  
Your obedient Servant,  
R. T. PROWSE.

To the Collector.

BOARD'S ORDER ON No.  $\frac{37366}{1888}$ .

Merchandise Marks Act, 1887.

*Sardine Trade.*

Sardines from Spain and Portugal imported into *this country*, marked with names of French places or in the French language, but without the qualification required by the Merchandise Marks Act, 1887, may be delivered up to the 30th of June, 1889 (inclusive).

After that date Sardines which are not imported from France will not be admitted to this country, unless duly qualified, when they bear upon them the names of places in France, or descriptions in the French language other than the trade description "Sardines à l'huile," which will be admissible on Sardines from whatever part of the world they may be imported.

CUSTOM HOUSE, LONDON,  
18th December, 1888.

By Order,  
(Signed) E. GOODWYN.

GENERAL ORDER  $\frac{147}{1888}$ .

CUSTOM HOUSE, LONDON,  
31st December, 1888.

Merchandise Marks Act.

*Grain.*

The Board direct that grain, of a description which is grown in the United Kingdom, imported in sacks, be delivered without reference to the marks upon them, for a period of six months from the 1st proximo, provided such marks constitute correct descriptions and do not include the name of a place in the United Kingdom. The Board make this concession with the view of allowing importing merchants time in which to add to the marks on their sacks an indication that the grain is of foreign production.

The officers are informed that descriptions of grain which are not grown in this country, including linseed and rapeseed, do not require to have an indication merely of British origin qualified by an indication that the grain is of foreign production, nor are descriptions in the English language on grain from English-speaking countries, including India, to be considered open to objection, provided they are correct descriptions and do not include the name of a place in the United Kingdom.

The officers are also informed that on and after the 1st July next the name *and address* of a merchant in this country, on grain sacks, will be dealt with as an indication that the grain is of British origin.

The Board have directed that, in the case of grain imported in bulk and transferred into sacks on board the importing ship, the marking of the sacks need not be qualified with a statement of the foreign origin of the grain.

By Order,  
R. T. PROWSE.

GENERAL ORDER  $\frac{7}{1889}$ .CUSTOM HOUSE, LONDON,  
1st February, 1889.

## Merchandise Marks Act, 1887.

*Certain Discretionary Powers given to Officers.*

The importation sections of the Merchandise Marks Act, 1887, having now been in force for over twelve months, and its provisions having become familiar both to importers of goods and to the officers of customs, the Board have considered whether some discretionary power may not be given to the collectors, surveyors, or other superior officers in releasing goods which, although at first sight they appear to be liable to detention, yet on further explanation from the importer may properly be released, so far as the Merchandise Marks Act is concerned—such, for instance, as genuinely marked British returned goods, or private property in actual use.

The Board accordingly give to the collectors and surveyors at the Outports, and to the inspectors and surveyors in London, a discretionary power to deliver goods without a special order when they are satisfied that they come under any one of the following heads:—

(1.) Articles for private use.

(1.) Articles not dutiable, however marked, sent over to one individual as presents or for personal use, and not in any process of sale or purchase, on the officers satisfying themselves that the importer's statement in this respect is correct.

(2.) Used articles either private property or sent for repairs.

(2.) Articles which are not new and which are manifestly private property, such as clothing or other personal effects, and old, used, and damaged articles sent to this country for repairs and imported by or consigned to the persons whose names are on the goods. Under this head, however, such goods as old lace, old china, or old violins, and similar articles sent by dealers for sale as antiquities, are not included; goods of this kind are strictly merchandise. Wherever age, apparent or real, adds to the value of the goods, they are not to be delivered under this paragraph, unless they are private property, not in any process of sale or purchase, but the directions of the Board must be obtained.

(3.) British samples returned.

(3.) Samples of *no value*, made by competing firms in the United Kingdom, and sent to manufacturers in this country for the purposes of trade, may be delivered on a statement being made in writing by the importer that the articles are samples of no value, and that they are imported for trade purposes, as samples, and not for sale or use, provided the officers are satisfied that they are of British manufacture.

(4.) Foreign samples.

(4.) Foreign samples *not* bearing the names or trade marks of manufacturers or dealers in the United Kingdom, but bearing trade descriptions which are misleading in language as to the country from which they come, may be also admitted upon being duly qualified, and

on the officers being satisfied that they are imported for purposes of manufacture or comparison in this country. Foreign samples, however, bearing the names or trade marks of British manufacturers or dealers, or indirect indications of British manufacture, without qualification, sent for the purpose of soliciting orders for sale in this country, are to be placed under detention, and not delivered without the Board's sanction.

(5.) British returned goods, not dutiable, or in respect to which no drawback can have been received, may be released under § 6 of the Act 42 & 43 Vict. c. 21, without a special order of the Board, so far as the marks are concerned, either by a bill of store, or by declaration of the importer that the goods are within his knowledge British returned, so long as the collector or surveyor sees no reason to doubt its truth. (5.) British returned goods.

Should, however, the goods be admitted to entry as British under the second alternative allowed by the section, viz.: "by and with the consent in writing of the proprietor of such name, brand, or mark, or his legal representative," such consent in each case must be accompanied by a statement from the persons whose names appear upon the goods that the articles have been manufactured by them in this country.

Should the officer who examines the goods have any doubt as to the truth of the statement, the matter is to be reported to the Board.

The officers will not call for statutory declarations made under the Statutory Declarations Act, 1835, without the Board's sanction in each case.

(6.) In London, goods which have been placed under detention on account of illegal marks, and in respect of which no applications have been made by the importers or no steps taken to carry out the conditions imposed by the Board on their release, within two months from the date of the Board's order for their detention, are to be removed to the Queen's Warehouse, without special directions in each case, should the officers see no circumstances which call for exceptional treatment.

(7.) The officers are to take care that, in all cases where the Board allow qualifying words to be added before the delivery of goods, such words are applied in characters clear, conspicuous, and as indelible as the marks requiring qualification, and in close proximity to those marks.

By Order,  
E. GOODWYN.

To the Collector.



GENERAL ORDER  $\frac{8}{1890}$

CUSTOM HOUSE, LONDON,  
25th January, 1890.

Merchandise Marks Act.

*As to marking of imported Bales of Wool.*

The officers are informed that wool imported from New Zealand and the Australian and Cape Colonies, in bales marked with the names of the stations upon which the wool is grown, or the breed of sheep, such as "Bridgwater," "Cheviot," "Lincoln Slipes," &c., and which are often identical with the names of towns or districts in the United Kingdom, need not, until further orders, be detained for want of an accompanying indication of the country of origin.

By Order of the Board,  
R. T. PROWSE.

GENERAL ORDER  $\frac{50}{1893}$

CUSTOM HOUSE, LONDON,  
12th July, 1893.

Merchandise Marks Act, 1887.

*The Proprietor of a Registered Mark to be apprized, when Goods have been detained for an infringement of such Mark.*

With reference to the provisions contained in the regulations made by the Commissioners of Customs under § 16 of the Merchandise Marks Act of 1887, and to those of General Order 99/1887, the Board direct that, when goods are detained on account of names or marks which have been registered in this department, care be taken in every case that, in addition to the usual notice of seizure required under § 207 of the Customs Consolidation Act, information of the detention, and of the cause of such detention, be at once given in writing to the person who has so registered his name or mark, or to the representative appointed by him to authorize delivery of the goods, who is at the same time to be called upon to enter into the required security without delay, and informed that unless immediate attention is given to the matter the goods will be released.

If, at the end of four days, the collector (or other principal officer concerned) does not receive a reply he will release the goods; but collectors will observe that the limit to the time of detention here laid down does not apply in cases where the marks are such as to render the goods liable to detention irrespective of the question of registration; and in such cases the above clause intimating an early release of the goods in the absence of due attention being paid to the matter is to be omitted from the notice given to the owner of the mark or his representative.

By Order of the Board,  
JOHN COURROUX.

GENERAL ORDER  $\frac{68}{1893}$ .

CUSTOM HOUSE, LONDON,  
31st August, 1893.

Merchandise Marks Acts.

*Saumur Champagne.*

The Board, having had their attention recently called to the marks on French Sparkling Wines, hereby inform officers for their guidance, that on and after 1st October next, the words "Saumur Champagne," or the like words, when applied as a description to Sparkling Wines of Saumur, will not be admissible under the provisions of the Merchandise Marks Acts. Any such importations marked descriptively with expressions involving the word "Champagne," or otherwise than merely "Saumur," "Saumur Mousseux," "Sparkling Saumur," or the like, must therefore, on and after the date above named, be detained for the Board's directions.

By Order of the Board,  
JOHN COURROUX.

GENERAL ORDER  $\frac{4}{1895}$ .

CUSTOM HOUSE, LONDON,  
21st January, 1895.

Merchandise Marks Act, 1887.

*Amendment of General Order 44/1888.*

Officers are informed, with reference to General Orders 14/1888 and 44/1888, respecting marks on packages of imported goods, that the Board have directed that the latter order be amended by the insertion of the words "imported otherwise than in sacks" after the word "potatoes" in line 3, and the attention of the officers is again drawn to the fact that the concessions made in that order are subject to the limitation contained in General Order 14/1888 to those packing cases in which goods are clearly not intended to be sold, or exposed for sale, either wholesale or retail.

By Order of the Board,  
JOHN COURROUX.

## APPENDIX F.

GENERAL ORDER  $\frac{34}{1895}$ .

CUSTOM HOUSE, LONDON,  
17th May, 1895.

Merchandise Marks Act, 1887.

*Butter bearing Swedish Marks but imported viâ Denmark, not to be detained.*

With reference to the provisions of § 10 (2) of the Merchandise Marks Act, 1887, the Board direct that, in future, butter bearing indications of Swedish origin, but imported into the United Kingdom by way of Denmark, is not to be detained for proof of origin.

The officers concerned are to govern themselves accordingly.

By Order of the Board,  
FREDK. W. CHAPLIN.

GENERAL ORDER  $\frac{82}{1895}$ .

CUSTOM HOUSE, LONDON,  
12th November, 1895.

Merchandise Marks Acts, 1887 and 1891.

*Instructions as to Treatment of Samples and Patterns.*

The Board instruct officers not to detain in future, so far as the provisions of the Merchandise Marks Acts are concerned, samples or patterns, whether British returned or of foreign manufacture, provided such samples or patterns are valueless in themselves, do not form whole or complete articles, and can be readily distinguished by the officers as samples or patterns.

Circular Letter 1/1889 and General Order 7/1889 are to be noted accordingly.

By Order of the Board,  
JOHN COURBOUX.

GENERAL ORDER  $\frac{9}{1896}$ .CUSTOM HOUSE, LONDON,  
18th March, 1896.

Merchandise Marks Act, 1887.

*Further Discretionary Powers given to Officers.*

In addition to the powers conferred upon them by General Order 7/1889, the Board now give collectors and surveyors at the out-ports, and inspectors and surveyors in London, discretionary powers in the following cases:—

- (1.) They may deliver coverings, such as capsules, paper bags, &c., marked with indications of British origin, such as the Royal Arms, trade descriptions in the English language, &c., when they are satisfied that the coverings are to be used in connection with British goods, or with goods of a kind not produced in the United Kingdom, and that the indications on the coverings have reference to the goods with which the coverings are to be used, and not to the coverings themselves.

Coverings marked with the names of firms in the United Kingdom, with whose goods the coverings are to be used, and consigned directly to such firms, may be delivered. If not so consigned, the written consent of the firms whose names they bear must be produced before delivery is allowed.

- (2.) Immediate reports of detentions of goods under the Merchandise Marks Acts, required by General Order 39/1888, may be dispensed with when such detentions are made in consequence of the absence of evidence that the marks on the goods are correct, provided that the officers have reason to believe that such evidence will be forthcoming within a reasonable time. On production of the evidence, the officers, if satisfied therewith, will deliver the goods. This direction will include British returned goods bearing marks which would be open to objection on goods of foreign origin; also goods bearing marks indicative of origin in some country other than that from which the goods are imported, when such marks are believed to be authentic.
- (3.) Goods bearing a mark registered in this department under paragraphs 12—15 of General Order 99/1887, may be delivered by the officers without reference to the Board on receipt by them of the authority of the proprietor of the mark, or of his duly appointed agent, provided the mark be properly qualified.

By Order of the Board,  
R. T. PROWSE.

GENERAL ORDER  $\frac{63}{1897}$

CUSTOM HOUSE, LONDON,  
30th December, 1897.

Merchandise Marks Acts.

With reference to §§ 3 and 16 of the Merchandise Marks Act, 1887, issued with General Order 81/1887, the Board direct that TRADE DESCRIPTIONS IN THE ENGLISH LANGUAGE applied to foreign goods imported for home consumption from non-English speaking countries are not to be regarded as indirect indications that the goods are of British or Irish origin, unless the officers have good ground for considering that such trade descriptions are specially designed to convey, and do in fact convey, an impression of British or Irish origin for the goods.

General Order 99/1887 is to be noted accordingly.

Trade descriptions on imported goods in a FOREIGN language which is not that of the country from which the goods are imported are to continue to be dealt with as heretofore.

By Order of the Commissioners,  
JOHN COURROUX.

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MEMORANDUM

*Respecting Marks on Goods imported for Home Consumption.*

1. Foreign goods imported into the United Kingdom which do not bear any marks whatever, either on the goods themselves or on the packages or wrappers containing them, are not required to bear any qualifying statement or indication, such as "Made abroad," "Made in Germany," &c.

2. Foreign manufactured goods bearing a name or trade mark, being, or purporting to be, the name or trade mark of a manufacturer, &c., in the United Kingdom, must have that name or trade mark accompanied by a definite indication of the country of origin of the goods. The name of the country is a sufficient indication, without the words "made in," if a name or trade mark only appears, *e.g.*, "John Smith, Germany," would be satisfactory. If such a mark as "John Smith, Sheffield," is used, then the qualification must be "Made in Germany," or similar wording.

3. If foreign imported goods bear the name of a place identical with, or a colourable imitation of, the name of a place in the United Kingdom, the name should be accompanied by the name of the country in which the place is situated. Thus Boston, in Massachusetts, should be accompanied by the name "United States," or by the initials "U.S.A."

4. If a trade description includes the name of a place, and the goods on which it appears are not the produce of that place, or of the country in which it is situated, the trade description must be accompanied by a statement indicating the actual country of production. For instance, a wine, the produce of Germany, and described as "port" or "sherry" (which words include the names of the places Oporto and Xeres), should have that description accompanied by the statement "produced in Germany," or should be described as "German Port" or "German Sherry." An exception to this rule is made in cases where the name of a place in a trade description is indicative merely of the character of the goods, and is not calculated to mislead as to the country of origin. Thus such a description as "Brussels Carpet," or "Portland Cement," need not be accompanied by a statement of the country of actual production.

5. Trade descriptions in the English language applied to foreign goods imported for home consumption from non-English-speaking countries are not regarded as indirect indications that the goods are of British or Irish origin, unless the officers have good ground for considering that such trade descriptions are specially designed to convey, and do in fact convey, an impression of British or Irish origin for the goods.

Trade descriptions on imported goods in a foreign language, which is not that of the country from which the goods are imported, must be accompanied by a statement of the actual country of production of the goods, *e.g.*, "Made in Germany."

6. As regards watches, any mark on the case is deemed to extend to the watch. If, therefore, a watch case is made in this country, and bears any statement or indication of such origin (as, for instance, a British hall-mark), and the watch itself is made in Switzerland, then there must appear on the plate of the watch a statement or indication that it is of Swiss origin.

7. All qualifying statements or indications must be distinct, in equally conspicuous characters with, and in proximity to, the marks they are intended to qualify.

8. Marks on samples or patterns, whether of British or foreign manufacture, are not required to be accompanied by any qualification, provided such samples or patterns are valueless in themselves, do not form whole or complete articles, and can be readily distinguished as samples or patterns.

Custom House, London,

28th January, 1898.

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GENERAL ORDER  $\frac{45}{1898}$ .CUSTOM HOUSE, LONDON,  
6th July, 1898.*Revised Transhipment and Transit Regulations.*

\* \* \* \* \*

Application of  
Merchandise  
Marks Acts on  
information.

(3.) Transhipment goods are not to be specially examined for the purpose of scrutinising marks. If, however, information as to any such goods is given, under Regulations B of General Order 99/1887, that they infringe the provisions of the Merchandise Marks Acts in one or other of the following ways:—

- (a) By reason of their bearing marks which raise a clear and direct claim to British origin; or
- (b) By reason of their bearing the name or trade mark of a manufacturer, dealer, or trader in the United Kingdom without qualification; or
- (c) By reason of their bearing a trade mark specially registered at the Customs,

the goods are to be examined and, if found to be illegally marked, detained.

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GENERAL ORDER  $\frac{70}{1898}$ .CUSTOM HOUSE, LONDON,  
15th October, 1898.*Marks on imported Chinaware.*

Officers are informed that representations have reached the Board from persons interested in chinaware, to the effect that importations are made into this country of china bearing marks indicative of the manufacture of certain well-known factories abroad and in this country, such marks being spurious.

The marks which are most commonly used for the purpose are as follows, viz. :—

The Worcester Mandarin Mark (a grating) always printed in blue, slightly blurred, on the bottom of articles. It is the mark used by the Royal Worcester Porcelain Co. (a).

The Crown Derby Mark: always printed in red, and generally on the bottom of articles. It was a mark used by the Royal Crown Derby Porcelain Co. (b).

The Royal Chelsea Gold Anchor Mark: printed in gold, generally on the back, but sometimes on the side of articles. There is now no factory at Chelsea (c).

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(a) Illustrations of the marks referred to are included in the order. The Worcester mark is a grating with five bars.

(b) A crown surmounting a capital D in cursive type.

(c) An anchor.

(Similar to Worcester.) The Lowestoft Mark: printed always in red. There is now no factory at Lowestoft (*d*).

A Sèvres Mark: printed in very dark blue on vases, generally with ormolu mounts (*e*).

A Sèvres mark: printed in black (with two other changeable marks) on tea sets, plates, and small goods generally (*f*).

A Dresden (Meissen) Mark: printed in dark blue or green (*g*).

A Capo di Monte Mark: printed in gold (*h*).

It is further stated that it is frequently the custom to cover the mark on the Chinaware with a paper label, bearing the words "made in Germany," &c., printed on it.

Officers are accordingly instructed that such paper labels should be viewed with suspicion, and that china goods to which they are applied should occasionally be examined to see whether they bear other marks below the labels.

Where marks are found on the china itself under such circumstances, the goods should be detained, and instructions sought from the Board.

By Order of the Board,  
R. T. PROWSE.

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REGULATIONS, dated May 21st, 1892, made by the Board of Trade, with the concurrence of the Lord Chancellor, under § 2 of the Merchandise Marks Act, 1891, with regard to the prosecution of offences under the Merchandise Marks Act, 1887.

1. The prosecution of offences under the Merchandise Marks Act, 1887, shall, subject to the condition hereinafter prescribed, be undertaken by the Board of Trade in cases which appear to the Board to affect the general interests of the country, or of a section of the community, or of a trade.

2. Every application to the Board to undertake a prosecution shall be accompanied by the following documents:—

(a) A statement showing the nature and circumstances of the case and sufficient to enable the Board to form an opinion whether the case affects the general interests of the country, or of a section of the community, or of a trade.

(b) A statement showing the facts which, if the Board undertake the prosecution, will be capable of proof, and setting out the proofs and names of the witnesses available to prove such facts.

The Board may require the above statements to be supplemented or additional evidence to be furnished.

3. If, on the evidence, the Board is of opinion that there is no reasonable prospect of a conviction being obtained, the Board will not, unless it thinks fit, undertake the prosecution.

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(*d*) A grating with three bars.

(*e*) Two capital L's in cursive type, placed back to back.

(*f*) A crown surmounting two conjoint letters, placed back to back, each composed of a combination of P and L.

(*g*) Two swords crossed.

(*h*) A coronet surmounting a capital N.



4. If the Board is of opinion that the prosecution would be better or more properly conducted under some Act of Parliament other than the said Acts, the Board will not undertake the prosecution.

5. The Board may, before undertaking a prosecution, require the applicant to give security for costs on such terms and in such manner as it thinks proper.

6. For the purpose of carrying these regulations into effect the Board may, from time to time, prescribe the use of such forms and give such directions as it may deem expedient.

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

I concur,  
HALSBURY, C.

21st May, 1892.

REGULATIONS, dated October 27th, 1894, made by the Board of Agriculture, with the concurrence of the Lord Chancellor, pursuant to § 1 of the Merchandise Marks (Prosecutions) Act, 1894, with regard to the prosecution of offences under the Merchandise Marks Act, 1887, relating to agricultural or horticultural produce.

1894. No. 400.

1. The Board of Agriculture shall, where it appears to them from the statements hereinafter mentioned, that there is a reasonable prospect of a conviction being obtained, and subject to the other conditions in the next following regulation prescribed, undertake the prosecution of offences under the Merchandise Marks Act, 1887, in cases which appear to the Board to relate to agricultural or horticultural produce, and to affect the general interests of the country, or of a section of the community, or of a trade.

2.—(i.) Every application to the Board to undertake a prosecution shall be accompanied by the following documents:—

(a) A statement showing the nature and circumstances of the case, and sufficient to enable the Board to form an opinion whether the case relates to agricultural or horticultural produce, and affects the general interests of the country, or of a section of the community, or of a trade.

(b) A statement of the facts capable of proof, with the names and addresses of the witnesses available to prove such facts.

(ii.) The Board may require the above statements to be supplemented, or additional evidence to be furnished.

3. For the purpose of carrying the foregoing regulations into effect, the Board may, from time to time, prescribe the use of such forms and give such directions as they may deem expedient.

(Signed) T. H. ELLIOTT,  
Secretary to the Board of Agriculture.

I concur,

(Signed) HERSCHELL, C.

27th October, 1894.

## APPENDIX G.

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

#### WEIGHTS AND MEASURES.

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.

§ 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.

Stamping of verification on measures and weights.

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.

§ 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":

Lead or pewter weights.

Provided that nothing in this section shall prevent the insertion into a weight of such a plug of lead or pewter as is *bond 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.

§ 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.

Stamping of verification on weights for coin.

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.

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THE COAL MINES REGULATION ACT, 1887.

50 & 51 VICT. c. 58.

Application  
of 41 & 42  
Vict. c. 49, to  
weights, &c.,  
used in mines.

§ 15.—(1.) The Weights and Measures Act, 1878, shall apply to all weights, balances, scales, steelyards, and weighing machines used at any mine for determining the wages payable to any person employed in the mine according to the weight of the mineral gotten by him, in like manner as it applies to weights, balances, scales, steelyards, and weighing machines used for trade.

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THE WEIGHTS AND MEASURES ACT, 1889.

52 & 53 VICT. c. 21.

Verification  
of weighing  
instruments.

§ 1.—(1.) Every weighing instrument used for trade shall be verified and stamped by an inspector of weights and measures with a stamp of verification under this Act.

(2.) Every person who, after the expiration of twelve months from the commencement of this Act, uses or has in his possession for use for trade any weighing instrument not stamped as required by this Act, shall be liable to a fine not exceeding two pounds, or in the case of a second offence five pounds.

(4.) Section 32 of the principal Act<sup>(a)</sup> shall apply to weighing instruments in like manner as it applies to weights and measures.

(a) The principal Act is the Weights and Measures Act, 1878.

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

25 & 26 VICT. c. 76.\*

PART III.—PREVENTION OF FRAUDS.

Penalty on  
counterfeit-  
ing brand.

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

(1.) If he, with intent to defraud, counterfeit or procure to be counterfeited any brand or stamp used by or under the authority

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\* This Act was repealed in part by 41 & 42 Vict. c. 49.

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 *bond fide* application of an impression of any such genuine brand or stamp :
- (6.) Or knowingly weigh or caused 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 (a) :
- (7.) Or, with intent to defraud, alter any ticket specifying the weight of any such article :
- (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.

§ 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 pickie, 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 butter in casks.

§ 16. If any person shall wind or cause to be wound in any fleece any 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.

Penalty for fraudulently increasing weight of fleeces.

(a) This clause is repealed by the Statute Law Revision Act, 1893.

## THE EXHIBITION MEDALS ACT, 1863.

26 &amp; 27 VICT. c. 119.

Penalty on  
false repre-  
sentations.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:

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.

(*a*) Of 1851 or 1862. See § 3.

## REGISTERED DESIGNS.

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

46 &amp; 47 VICT. c. 57.

Marking  
registered  
designs.

§ 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 (*a*).

(*a*) Under the old Copyright of Designs Acts it was held that the copyright was lost by the sale of pattern pieces of wall paper containing the whole of the registered design, unmarked (*Heywood v. Potter*, 1 E. & B. 439); by the sale in France of lace bearing the design, unmarked (*Sarazin v. Hamel*, 32 Beav. 151); by the sale of a small number of articles bearing the design, unmarked (*Pierce v. Worth*, 18 L. T. N. S. 710); by the sale of one such article unmarked (*Hunt v. Stevens*, W. N. 1878, p. 79). But it was held that the copyright was not lost by the sale of a book containing patterns of registered designs, the book being unmarked (*De la Branchardière v. Elvery*, 4 Ex. 380); nor by the sale of a butter-dish with a cover, the dish being marked but the cover not (*Fielding v. Hawley*, 48 L. T. N. S. 639). And it seems that if the design were applied, but obscured in the process of manufacture, the same would have been the result (*ib.*; but see *Johnson v. Bailey*, 11 P. R. 21).

Under the present Act it has been held that where a manufacturer was instructed by his principal to place the right mark on the goods, but by mistake placed on them an old and incorrect mark, the proprietor's right was saved by the proviso in

the section, especially as each mark bore the abbreviation "R<sup>d</sup>" (*Wittman v. Oppenheim*, 27 Ch. D. 260). Also that where a narrow trimming was sold in lengths round each of which was placed a paper band bearing the proper mark, the marking was sufficient (*Blank v. Footman*, 39 Ch. D. 678). On the other hand, it has been held, following *Heywood v. Petter* (1 E. & B. 439), that where a design was registered for dusters, the marking of each piece containing a dozen dusters is not a compliance with the statute (*Hothersall v. Moore*, 9 P. R. 27). The right of a manufacturer who had registered a design for lace has been held to be lost by the sale of the article in an unfinished state unmarked to a finisher, under an arrangement by which the finisher was to mark the article before putting it on the market, notwithstanding that the mark on the unfinished article would be destroyed in the finishing, and that there was no retail trade in such article (*Woolley v. Broad*, 9 P. R. 429). The copyright is not lost by marking an article required by the Rules to be marked "R<sup>d</sup>" with the fuller abbreviation "R<sup>esd</sup>" (*Heinrichs v. Bastendorff*, 10 P. R. 160). It has been held in Scotland (*Johnson v. Bailey*, 11 P. R. 21), that it is not enough for the registered proprietor to give general instructions that the protected article shall be marked in compliance with the statute; he must see that adequate means are taken to carry out his instructions, and that every article is examined before being sent out; and where the marking was made from a mould, which was so far worn out that the mark had ceased to be legible, the rights of the proprietor were held to be forfeited (*ib.*; cf. *Fielding v. Hawley*, 48 L. T. N. S. 639); and it would appear that, under the present Act, as under the former, the sale of a single article unmarked may be a ground for depriving the registered proprietor of his right (*ib.*; see also *Wedekind v. General Electric Co.*, 14 P. R. 190).

The proprietor of a registered design is not deprived of his right to protection merely because he places on the articles which he sells, besides the registered number of his design, other registered numbers which ought not to be there; consequently, where a design was registered for a stove, and two other designs were registered for certain adjuncts of the stove, the placing by the proprietor of all three marks upon the stove, though improper, was held no bar to an action to restrain an infringement of the design for the stove (*Harper & Co. v. Wright & Butler Lamp Manufacturing Co.*, (1896) 1 Ch. 142). The proprietor of a design may so acquiesce in the public delivery on sale of the registered article unmarked as to deprive himself of his copyright, although no formal relationship of principal and agent exists between him and the person who delivers the goods on sale (*Wedekind v. General Electric Co.*, 14 P. R. 190). Where, owing to the mistake of a die-sinker employed by the proprietor, the wrong number was stamped on the registered article, a "5" being substituted for a "3," and the mistake was not discovered for two years, but was then immediately rectified; it was held by the House of Lords, affirming Kekewich, J., and the Court of Appeal, that the proprietor had taken all proper steps to ensure the marking of the article within the proviso (*In re Rollason*, (1898) A. C. 499; (1898) 1 Ch. 237). The object of the section being to give the public warning of the registration, a proprietor needs a much stronger case to escape the loss of his copyright where the article is not marked at all than where there is some error in the marking, if there be such compliance as plainly to denote that the design is a registered one (*ib.*, per Lord Herschell).

#### THE DESIGNS RULES, 1883.

32. 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 1 to 12 in the Third Schedule hereto, cause each such article to be marked with the abbreviation "R<sup>d</sup>." and the number appearing on the certificate of registration, and shall, if such article is included in the Classes 13 or 14 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.

## APPENDIX H.

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

#### OUTLERY.

59 *Geo. 3, c. 7* (1819). "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 the 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.

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

21 *Jac. 1, c. 31* (1623).

§ 1 (b). The cutlers living in Hallamshire, or within six miles distance therefrom, are incorporated under the corporate name of "The Master, Wardens, Searchers, Assistants and Commonalty of the Company of Cutlers in Hallamshire in the county of York."

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

(b) The remainder of this Act is repealed by 31 *Geo. 3, c. 58*.

31 *Geo. 3, 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. 3, 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. 3, c. 119* (1814), (Local).

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

§ 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

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

(b) And see § 6 of the Act of 1814.



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 Merchandise Marks Act, 1862 (*e*), § 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

(*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. Acts, 1883—1888, § 81.

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

(*e*) 25 & 26 *Vict. c. 88.*

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, and Rules 53—56 of the Trade Marks Rules, 1883, the Sheffield Cutlers' Register was re-organised. A new "Sheffield Register" was 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 Act of 1883. 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 marks 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 was closed after five years from the commencement of the Act (*i.e.*, after five years from December 31st, 1883). The net result is to make the Sheffield Register an exact duplicate of the general register, so far as that relates to marks used for the specified goods within the specified limits.

The provisions of § 81 were altered to some extent by § 20 of the Act of 1888, the principal alteration being the enlargement of the class of goods to which the section is made applicable. Such goods are now described by the term "metal goods," which is defined as meaning "all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal." The Sheffield Register is now governed by § 81 of the Act of 1883, as amended by the Act of 1888, and the Trade Mark Rules 56—59 of 1890.

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## GOLD AND SILVER PLATE.

## ENGLAND.

2 *Hen. 6, 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 *Will. 3, 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 *Will. 3, 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*).

§ 2. Goldsmiths, &c., of the cities of York, Exeter, Bristol, Chester,

(*a*) The earliest statute on the subject was 28 *Edw. 1, 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. 7, 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 re-

pealed 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. 1, 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. 2, c. 26, § 5*.

(*g*) Bristol never exercised the powers hereby conferred. York and Norwich have discontinued doing so.

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.* 1, 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.* 2, 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.

These marks of the Company of Goldsmiths in London, viz., the leopard's head, the lion passant (*e*), and a distinct variable mark or letter to denote the year. Or,

(*a*) See 12 *Geo.* 2, c. 26, § 5.

(*b*) The whole of this Act but §§ 1-3 and § 41 was repealed by the 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 the 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.* 2, c. 26, § 5.

(*d*) Repealed in part, 30 *Geo.* 3, c. 31, § 1; Statute Law Revision Acts, 1867 and 1887.

(*e*) By 38 *Geo.* 3, 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.

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% fine, or, in default, hard labour not exceeding six months (a).

§ 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% fine, and 10% more for using any other mark; in default, hard labour not exceeding six months.

13 *Geo. 3, c. 52* (1772), "An Act for appointing wardens and assay-masters for assaying wrought plate in the towns of Sheffield and Birmingham" (b).

§ 2. Incorporation of "The Guardians of the Standard of Wrought Plate for Birmingham" (c).

§ 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.

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. 3, sess. 2, c. 20* (1784), relates to Sheffield.

§ 2. Manufacturers of goods plated with silver, within Sheffield or

(a) See *Robinson v. Currey*, 6 Q. B. D. 21; 7 *ib.* 465.

(b) Repealed as to Birmingham by 5 *Geo. 4, c. lii.* (local). As to Sheffield,

see 24 *Geo. 3, sess. 2, c. 20.* The present Act only deals with silver.

(c) Or "Sheffield."

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. 3, 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—50l., 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. 3, c. 31 (1790).

This Act regulates the exemptions from marking.

38 Geo. 3, 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—10l.

§ 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 50l. 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. 3, c. 185 (1815) (a).

§ 7 (c). *Penalties for forging duty marks on plate, or selling or exporting plate so marked, or possessing dies, &c.*

5 Geo. 4, c. lii. (1824) (Local—Birmingham and thirty miles round).

§ 1. 13 Geo. 3, c. 52, repealed, so far as relates to Birmingham.

§ 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

(a) These Acts are now repealed by the Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8).

(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) Already before 53 & 54 Vict. c. 8, the greater part of this Act was repealed by 33 & 34 Vict. c. 99, and 36 & 37 Vict. c. 91.

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 authorizes 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).

18 & 19 *Vict. c.* 60 (1855) (d).

Gold wedding rings are to be assayed and marked in the same way as other gold plate.

(a) By 7 & 8 *Vict. c.* 22, § 15, a crown and 22.

(b) Repealed in part by the Customs and Inland Revenue Act, 1890 (53 & 54 *Vict. c.* 8). 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. (Journal)* 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. 4, 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 twenty 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 is not placed on plate of these qualities.

(d) Repealed in part by the Statute Law Revision Act, 1875.

ENGLISH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.					SILVER.	
	22 Carats. <u>22</u>	18 Carats. <u>18</u>	15 Carats. <u>15·625</u>	12 Carats. <u>12·5</u>	9 Carats. <u>9·375</u>	11 oz. 2 dwt. <u>None (b).</u>	11 oz. 10 dwt. <u>None.</u>
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 (c) .....	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.	Sovereign's head.
Assay Town Mark (d).....	On all qualities of gold and silver the special mark of the town.						

HALL MARKS.

(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 Will. 3, c. 4, were never exercised.

(b) Except at Newcastle, where the mark of a leopard's head crowned is used.

(c) Disused since 53 & 54 Vict. c. 8.

(d) 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. The marks for York and Norwich (now discontinued) were:—York, 5 lions on a cross; Norwich, a castle and a lion passant.



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. 3, c. 59* (1773) (e).

§ 2, which provided penalties for counterfeiting, &c., the marks for plate, is unrepealed in Scotland.

38 *Geo. 3, c. 69* (1798) (see p. 617, *supra*).

§ 7 (f), which provided penalties for counterfeiting, &c., the marks for plate, is unrepealed in Scotland.

6 & 7 *Will. 4, 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.*

§ 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.

(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) Repealed in part by 53 & 54 *Vict. c. 8*, § 36. 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. As to foreign watch-cases, see *Merchandise Marks Act, 1887*, § 8, and the order in council thereunder, also the table opposite.

(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.

HALL MARKS FOR IMPORTED FOREIGN WATCH-CASES (a).

	GOLD.						SILVER.
	22 Carats.	20 Carats.	18 Carats.	15 Carats.	12 Carats.	9 Carats.	
Quality Mark .....	22·917	20·833	18·75	15·625	12·5	9·375	None.
Date Mark .....	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Foreign Mark .....	"Foreign."	"Foreign."	"Foreign."	"Foreign."	"Foreign."	"Foreign."	"Foreign."
Shape of Shield .....	Cross.	Cross.	Cross.	Cross.	Cross.	Cross.	Octagon.
Assay Town Mark .....	On all qualities of gold and silver the special mark of the town.						

HALL MARKS.

The special marks for this purpose of the assay towns are as follows:—London, Phœbus; Birmingham, an equilateral triangle; Chester, an acorn and two leaves; Sheffield, four crossed arrows; Edinburgh, a St. Andrew's cross; Glasgow, a bishop's mitre; Dublin, a shamrock.

(a) Prescribed by the Order in Council of Nov. 28th, 1867, p. 575, *supra*.

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.* 1, c. 11; 24 *Geo.* 3, sess. 2, c. 53; 38 *Geo.* 3, 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.

#### IRELAND.

3 *Geo.* 2, 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.

23 & 24 *Geo.* 3, 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*l.*

§ 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 (c), 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.

(a) This Act was repealed as to gold by 23 & 24 *Geo.* 3, c. 23, § 1 (Irish). It fixed a standard of 22 carats for gold (§ 33).

(b) The figure of Hibernia was accord-

ingly appointed.

(c) This was a company of Geneva watchmakers, who established themselves in co. Waterford. They carried on operations only from about 1784 to 1790.

SCOTCH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.					SILVER.	
	22 Carats. <u>22</u>	18 Carats. <u>18</u>	15 Carats. <u>15</u>	12 Carats. <u>12</u>	9 Carats. <u>9</u>	11 oz. 2 dwt. <u>None.</u>	11 oz. 10 dwt. <u>Britannia.</u>
Quality Mark .....							
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 (b) .....	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.	Sovereign's head.
Assay Town Mark (c) .....	On all qualities of gold and silver the special mark of the town.						

HALL MARKS.

(a) Gold and silver of all these qualities are manufactured at Edinburgh and Glasgow.

(b) Disused since 53 & 54 Vict. c. 8.

(c) The special marks of the assay towns are:—Edinburgh, a castle; Glasgow, a tree, fish, and bell.

§ 6 contains exemptions.

§ 11 provides for the registration of new marks.

§ 28 provides penalties for counterfeiting, &c.

47 *Geo. 3, 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 (a).

§§ 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, 8th ed., London, 1896.

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## PRINTS AND ENGRAVINGS.

8 *Geo. 2, 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" (b). Penalties for Piracy.

(a) The figure of Elibernia continued to be used in addition.

(b) 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. Cocks*, 3 *Ad. & Ell.* 138; *Graves v. Ashford*, *L. R.* 2 *C. P.* 410; *Rock v. Lazarus*, *L. R.* 15 *Eq.* 104. The requirements of 8 *Geo. 2, 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: *Avanzo v. Mudie*, 10 *Ex.* 203.

IRISH HALL MARKS AT THE PRESENT DAY (a).

	GOLD.						SILVER.
	22 Carats. <u>22</u>	20 Carats. <u>20</u>	18 Carats. <u>18</u>	15 Carats. <u>15.625</u>	12 Carats. <u>12.5</u>	9 Carats. <u>9.375</u>	11 oz. 2 dwt. <u>None.</u>
Quality Mark .....	Harp crowned.	Plume of 3 feathers.	Unicorn's head.	None.	None.	None.	Harp crowned.
Standard Mark:.....	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.	Letter.
Date Mark .....	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.	Initials.
Maker's Mark .....	Sovereign's head.	Sovereign's head.	Sovereign's head.	None.	None.	None.	Sovereign's head.
Duty Mark (b) .....	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.	Hibernia.
Dublin Mark .....							

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.

(b) Disused since 53 & 54 Vict. c. 8.

7 *Geo. 3, c. 38* (1766).

The former Act extended in various respects, including an extension of the term to twenty-eight years.

17 *Geo. 3, c. 57* (1777).

The former Acts further extended in various respects.

6 & 7 *Will. 4, c. 59* (1836).

The former Acts extended to Ireland.

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## SCULPTURES.

54 *Geo. 3, c. 56* (1814) (*a*).

§ 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" (*b*).

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## CLOCKS AND WATCHES, &c.

39 & 40 *Vict. c. 36, § 42* (*c*), (1876).

Clocks and watches and other metal articles marked in imitation of British marks are forbidden to be imported into the United Kingdom (*d*).

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## METAL BUTTONS.

36 *Geo. 3, c. 60* (*e*) (1796).

§ 1 provides penalties for ordering metal buttons to be falsely marked in indication of quality, and for purchasing buttons so marked.

(*a*) The earlier Act, 38 *Geo. 3, c. 71* (1798), was repealed by the Statute Law Revision Act, 1861 (24 & 25 *Vict. c. 101*).

(*b*) 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. 3, 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*).

(*c*) This is a re-enactment, with some variations, of 16 & 17 *Vict. c. 107, § 44*.

(*d*) See p. 572. As to watches and watch-cases, see also §§ 7 and 8 of the Merchandise Marks Act, 1887, and the Order in Council thereunder, p. 573.

(*e*) Repealed in part, Statute Law Revision Act, 1871.

§ 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. 3, c. 115 (a)* (1813).

§ 4 incorporates "The Guardians, Trustees and Wardens of the Gun-Barrel Proof House of the Town of Birmingham."

§ 7 appoints Birmingham proof marks (*b*).

18 & 19 *Vict. c. cxlviii.* (1855) (Local), "The Gun-Barrel Proof Act, 1855" (*c*).

§ 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.

31 & 32 *Vict. c. cxiii.* (1868) (Local), "The Gun-Barrel Proof Act, 1868."

§ 9 repeals the Act of 1855.

§ 12 continues the incorporation of "the Guardians of the Birmingham Proof House." Many provisions follow for the regulation of the Birmingham Company.

§ 107. The London and Birmingham Companies to receive, prove, mark, and deliver barrels brought to them for proof.

§ 116. Barrels to be proved according to Rules, Regulations, and Scales in Schedule B to Act.

§ 117. Power given to the two companies, with approval of Secretary for War, to repeal or alter Rules, &c., and to make and alter any new Rules, &c.

§§ 121, 122. Penalties for offences with respect to proof marks.

Schedule B provides proof and other marks for the two companies.

(*a*) Repealed by 18 & 19 *Vict. c. cxlviii.*, § 9 (Local).

(*b*) 55 *Geo. 3, c. 59* (1815), further regulated the marking of gun-barrels,

but was also repealed by 18 & 19 *Vict. c. cxlviii.*, § 9 (Local).

(*c*) Repealed by 31 & 32 *Vict. c. cxiii.* (Local).



*Rules and Regulations of December 1887* made by the two companies, with the approval of the Secretary for War, under the authority of the Act of 1868. (See *London Gazette* for January 3rd, 1888, p. 16.)

These repeal the Rules, &c., in Schedule B to the Act, and contain new Rules, Regulations, and Scales for proving and marking gun-barrels, and provide proof marks, view marks, and provisional proof marks for the two companies.

### 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 inclosed 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.

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### HOPS.

54 *Geo. 3, 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 name 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.

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### LINEN.

17 *Geo. 2, c. 30 (c)* (1743).

§ 1. Penalties provided for stamping foreign linens in imitation of British or Irish, and for placing counterfeit stamps on British or Irish linens.

(*a*) This Act is repealed in part. The former Acts, now repealed, were 14 *Geo. 3, 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. 3, 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. 3, c. 134*, 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*l.*, the maximum penalty; 44*l.*, the value of the hops; and 10*l.* 10*s.* costs.

(*c*) Repealed as to Scotland by 4 *Geo. 4, c. 40, § 1*.

18 *Geo. 2, c. 24 (a)* (1744).

§ 1. Linens to be stamped must be sworn to be of the manufacture of [Scotland or] Ireland.

§ 2 (b). 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. 4, 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.

5 & 6 *Will. 4, 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.

(a) Repealed as to Scotland by 4 *Geo. 4, c. 40, § 1.*

(b) Repealed as to bounty by 6 *Geo. 4, c. 105.*

## 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 Will. 3, c. 41 (1697); this Act provided penalties for forging the King's marks, or having in possession goods so marked; 9 Geo. 1, c. 8 (1722); this Act modified the penalties contained in the former Act; 17 Geo. 2, 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. 3, 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. 3, c. 60 (1814); this extended the provisions of the former Acts to cordage wrought with worsted threads; 54 Geo. 3, c. 159, § 10 (1814); this provided a penalty for sweeping for lost anchors, cables, &c., belonging to the King's service; 55 Geo. 3, c. 127 (1815); this extended the previous Act 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 Will. 3, 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. —*, 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*, 3 Cox, 281; *R. v. Cohen*, 8 Cox, 41; *R. v. Sleep*, *ib.* 472. 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*, 8 Cox, 472. Although a specified certificate was required by 9 & 10 Will. 3, c. 41, to justify possession of marked goods, it was held that another form of certificate might be accepted (*R. v. Willmet*, 3 Cox, 281), or even the certificate be dispensed with altogether (*R. v. —*, Foster, Cr. Cas. 439; *R. v. Banks*, 1 Esp. 144), 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 Will. 3, 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.

## 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.	

# APPENDIX I.

## 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 (g), the names of the parties and their residences and place of business (h), who desire the protection of the trade mark.*

*Second—The class of merchandise (i) and the particular description of goods (k) 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 (l) with facsimiles thereof (m) and the mode in which it has been or is intended to be applied and used (n).*

*Fourth—The length of time, if any, during which the trade mark has been used (o).*

*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 (p).*

*Sixth—The compliance with such regulations as may be prescribed by the Commissioner of Patents (q).*

*Seventh—The filing of a declaration (r), 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 (s), and that the description and facsimiles 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 United States

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. Steffens*, 100 U. S. 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. S. v. Roche*, 1 McCrary, 385. And it has been held that registration of a mark under the invalid Act, even without re-registration under the Act of 1881, is sufficient to prevent registration of a similar mark under the new Act of 1881: *Ex parte Lyon, Dupuy & Co.*, 28 U. S. Pat. Gaz. 191. 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, 204) 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 & Ettlenger* (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 Waesferling*, 16 *ib.* 764; *Ex parte Brigham*, 20 *ib.* 891; *Ex parte Lutz*, 33 *ib.* 1389. 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 & Ettlenger* (2), 22 *ib.* 1291, the Commissioner again refused registration as labels to what he considered to be trade marks; and in *Ex parte Moodie*, 28 *ib.* 1271, and *Ex parte Wiesel*, 36 *ib.* 689, the Commissioner repeated this decision, and his course was, in the former case, upheld on appeal by the Supreme Court of Columbia in *Moodie v. Butterworth*, 28 *ib.* 1271. The Federal Courts have also held that a trade mark must be registered as such, and not copyrighted as a label: *Schumacher & Ettlenger v. Wogram*, 35 Fed. Rep. 210. It is for the Commissioner to decide whether what is presented to him is a trade mark or a label: *Moodie v. Butterworth*, 28 U. S. Pat. Gaz. 1271.

(b) See Act of 1881, §§ 1, 2.

(c) In *McElwce 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; and *Yale Cigar Manufacturing Co. v. Yale*, 30 *ib.* 1183.

(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; *Schumacher & Ettlenger v. Schwenke* (2), 36 U. S. Pat. Gaz. 457; but by § 7 of the Act of 1881 registration is *prima facie* evidence of ownership. It has been doubted whether the use of a registered trade mark can be restrained: *Decker v. Decker*, 52 How. Pr. 218; but in *Glen Cove Manufacturing Co. v. Ludeman*, 23 Bl. C. C. 46, an injunction was granted in such a case. See also *Schumacher & Ettlenger v. Schwenke* (2), 36 U. S. Pat. Gaz. 457. 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) In *Lucroix v. Escobal*, 37 La. Ann. 533, it was held that a French citizen, who had not deposited his mark in the U. S. Patent Office, as required by the Convention of 1869 between the United States and France, was not entitled to maintain an action for infringement. But see *Société, &c., de la Bénédicte v. Micalovitch*, 36 Alb. L. J. 364.

(h) 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.

(i) 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.

(k) 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. C. (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.

(l) The trade mark must be sufficiently described for it to be possible to clearly distinguish between the essential and non-essential elements: *In re Volta Bell Co.*, 8 U. S. Pat. Gaz. 144.

(m) The facsimile limits the verbal description of the mark: *Duke v. Green*, 16 U. S. Pat. Gaz. 1094.

(n) 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.

(o) See *Ex parte Consolidated Fruit Jar Co.*, 16 U. S. Pat. Gaz. 679.

(p) 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.

(q) See § 81, *infra*, and note thereto.

(r) 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.

(s) 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, 3.

(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 had jurisdiction under this Act in cases of infringement of trade mark, even when both parties were citizens of the same State: *Duwel v. Bohmer*, 14 U. S. Pat. Gaz. 270; but see *Leidersdorf v. Flint* (1), 8 Biss. 327, and §§ 7, 11 of the Act of 1881.

(d) As to the validity of the decisions of the acting commissioner, see *Simpson v. Wright* (2), 15 U. S. Pat. Gaz. 293.

(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. In *Ex parte King* (2), 46 *ib.* 119, the

decision in *In re Thomas*, 14 *ib.* 821, was followed, and the design of the badge adopted by the Grand Army of the Republic was allowed to be registered as a trade mark for writing paper by a person who had no connection with that society, and it was said that, that society not having used their badge as a mark on writing paper, they would be infringing the applicant's rights if they were to begin to do so. 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. Com. 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 Waeferling*, 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 three 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; *American Solid Leather Button Co. v. Anthony*, 15 R. I. 338; but not otherwise: *In re Eagle Pencil Co.*, 10 U. S. Pat. Gaz. 981. It has been held that a peculiarity in the form of a barrel is not registrable as a trade mark; *Moorman 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 specialty 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; and the use of a tin tag or ticket on the goods, irrespective of shape and design, is no trade mark; *Lorillard v. Pride*, 28 Fed. Rep. 434; though a tin tag of special shape, size and colour may be: *Lorillard v. Wight*, 15 Fed. Rep. 383. There is no trade mark in the shape of a plug of tobacco: *Liggett & Myers Tobacco Co. v. Hynes*, 20 Fed. Rep. 883; or of a box: *Sawyer v. Horn*, 4 Hughes, 239; *Ball v. Siegel*, 116 Ill. 137; or of sticks of chewing gum: *Adams v. Heisel*, 31 Fed. Rep. 279; or of the frame of a sewing machine originally made under a patent: *Wilcox & Gibbs' Sewing Machine Co. v. Gibbons' Frame*, 21 Bl. C. C. 431; *Brill v. Singer Manufacturing Co.*, 41 Ohio St. 127; nor in a manner of arranging in boxes cakes of soap wrapped in differently coloured paper wrappers: *Davis v. Davis*, 27 Fed. Rep. 490; nor in a

*nom de plume*: *Clemens v. Belford*, 11 Biss. 459. 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": *Merrison v. Case*, 9 Bl. C. 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 Rader & 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; *Ex parte Kuppenheimer*, 60 *ib.* 439; and in *Schneider v. Williams*, 44 N. J. Eq. 391; *Cigar Makers' Protective Union v. Conhaim*, 40 Minn. 243; 12 Am. St. Rep. 726; *McVey v. Brendel*, 144 Penn. 235; 27 Am. St. Rep. 625; *Weener v. Brayton*, 152 Mass. 101; *State v. Bishop*, 128 Missouri, 373; 49 Am. St. Rep. 569, the Court refused to protect such a mark at the instance of a member of the association. However, in *Strasser v. Moonelis*, 108 N. Y. 611; *People v. Fisher*, 57 N. Y. Sup. Ct. 552; *Allen v. Macarthy*, 37 Minn. 347; *Bloete v. Simon*, 19 Abb. N. C. 88; *Cohn v. People*, 149 Ill. 486; 41 Am. St. Rep. 304; *Carson v. Ury*, 49 U. S. Pat. Gaz. 411; *Gravel Roofers Exchange v. Turnbull*, 64 *ib.* 441, a different view was taken of the propriety of such a mark. 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 owner's consent, if living: *Ex parte Sullivan & Burke*, 16 *ib.* 765; *Ex parte Puce, Talbott & 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 U. S. Pat. Gaz. 789, in

which case registration was refused to a name which had been used as a trade mark for twenty 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-parteer, 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 re-opening 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. After the case of *U. S. v. Steffens*, 100 U. S. 82, it was 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 U. S. Pat. Gaz. 481; but see *Ex parte Strasburger & Co.*, 20 *ib.* 155, and *Jacoby & Co. v. Lopes & Co.*, 23 *ib.* 342); and in *Yale Cigar Manufacturing Co. v. Yale*, 30 *ib.* 1183, it was decided that a declaration of interference is authorized by § 3 of the Act of 1881. In such cases the only duty of the Office is to decide whether the opponent has or has not a better title than the applicant, not to decide any further question: *ib.* If, on an interference between an applicant and a registered proprietor with respect to the same mark, the right to registration is adjudged to the applicant, notwithstanding the opposition of the registered proprietor, the result is, while strictly giving the applicant merely the right to register, practically to displace the registered proprietor, though his mark is not removed from the register: *ib.*

§ 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. 603; *McElwee v. Blackwell*, 15 *ib.* 658; *Wright v. Simpson*, 15 *ib.* 968; *Yale Cigar Manufacturing Co. v. Yale*, 30 *ib.* 1183.

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#### ACT OF CONGRESS OF 1875.\*

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.

§ 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 (a).

(a) See the New York case of *People v. Fisher*, 57 N. Y. Sup. Ct. 552.

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\* 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. 82.

§ 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 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 (b) may obtain registration (c) 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 (d); a description of the trade mark itself, facsimiles thereof (e), 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 (f).

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.

(b) In *Ex parte Portland Cement Fabrik Germania H. Manske & Co.*, 64 U. S. Pat. Gaz. 858, registration of the word "Germania" was allowed to a German citizen, though not allowable by the law of Germany, it appearing that registration had been granted in Germany to citizens of the U. S. of marks not registrable in the case of German citizens.

(c) Registration is a mere record of a claim, and affords merely *prima facie* evidence of ownership. See § 7, *infra*, and *Yale Cigar Manufacturing Co. v. Yale*, 30 U. S. Pat. Gaz. 1183; *Brower v. Boulton*, 53 Fed. Rep. 389; 58 *ib.* 888; 20 U. S. App. 166; and it seems that registration will not of itself debar the proprietor from using another somewhat different device as a common law trade mark in domestic markets; but it may be evidence of what is claimed: *Kohler Manufacturing Co. v. Beeshore*, 53 Fed. Rep. 262; 59 *ib.* 573; *Richter v. Reynolds*, 59 *ib.* 577. A certificate of registration will not be granted to an assignee of the applicant even though the assignment has been previously recorded under § 12: *Ex parte Bassett*, 55 U. S. Pat. Gaz. 997. Under this section one of two joint owners cannot obtain registration independently of the other: *Ex parte Langdon*, 61 U. S. Pat. Gaz. 286.

(d) Where a trade mark has been used on several specified articles of the same class, one registration will cover all: *Ex parte Silvers*, 67 U. S. Pat. Gaz. 811.

(e) See *Adams v. Heisel*, 31 Fed. Rep. 279.

(f) This implies that a trade mark to be registrable must be attached to a vendible article; consequently registration was denied to a trade mark adopted on bill heads and circulars by a land jobbing company: *Ex parte Roy & Nourse*, 54 U. S. Pat. Gaz. 1267. The dates of adoption set forth in rival applications are not conclusive, but the question of priority must be tried by evidence in the usual way: *Stewart v. Einstein v. Sawhill*, 61 U. S. Pat. Gaz. 287. Where the prescribed use is proved after but not before the filing of the application, registration may be granted upon a supplemental application: *Stewart v. Einstein v. Sawhill* (2), 64 U. S. Pat. Gaz. 1333. In *Lacroix v. Escobal*, 37 La. Ann. 533, it was held that a French citizen who had not deposited his mark at the U. S. Patent Office, as required by the Convention of 1869 between the U. S. and France, was not entitled to maintain an action for infringement. But in *Société, &c. de la Bénédicte v. Micalovitch*, 36 Alb. L. J. 364, it was held that compliance with the terms of that Convention was not essential where the trade mark of a French company had been registered under this Act of Congress.

In California an exclusive right to the use of a trade mark or name cannot now be acquired without registration as required by the State Code: *Whittier v. Dietz*, 66 Cal. 78.

§ 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 facsimiles presented for registry truly represent the trade mark sought to be registered (c).

(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 that there has been such user is strictly insisted on: *Ex parte Strasburger & Co.*, 20 U. S. Pat. Gaz. 155.



(c) A word and a picture which are true alternatives and invariably express the same idea may be covered by one registration, but not a word and a picture capable of such a variety of modifications that two of such modifications might appear substantially different things to the ordinary observer: *Ex parte Roth Grocery Co.*, 62 U. S. Pat. Gaz. 315. Thus the word "Rosebud" and the representation of a rosebud have been allowed registration in one application (*Ex parte Kinney*, 72 *ib.* 1346), but not the word "crescent" and the representation of a crescent, inasmuch as the picture of a crescent might be the alternative of the word "Lune": *Ex parte Lazarus Schwarz & Lipper*, 64 *ib.* 1396.

§ 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 (d) 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 or mistake in the mind of the public, or to deceive purchasers (e). In an application for registration the Commissioner of Patents shall decide the presumptive lawfulness of claim to the alleged trade mark (f); 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 (g).

(a) See Act of 1870, §§ 80, 79.

(b) The right to trade marks and remedies for their protection exist independently of the Act, and the omission in § 3 to exclude descriptive words does not impliedly validate a trade mark consisting of such words: *Harris Drug Co. v. Stucky*, 46 Fed. Rep. 624. As to what may be lawfully used as a trade mark, see the cases cited in note (e) 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. 344); 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); nor "Famous" as a trade mark for stoves (*Ex parte Brand Stove Co., Ltd.*, 62 *ib.* 588); nor "Splendid" as a trade mark for flour (*Ex parte Stokes*, 64 *ib.* 437); but that "Invigorator" was not descriptive, but a good trade mark for spring bed-bottoms: *Ex parte Heyman*, 18 *ib.* 922. As a general rule geographical names will not be admitted to registration. In *Ex parte Headley*, 72 *ib.* 1654, geographical names were declared to be divisible into three classes: 1. Well-known names in common use; 2. Names in their primary sense not geographical; 3. Words primarily geographical though not well-known; and it was held that Class 2 alone was capable of registration, and accordingly registration was refused to "Cloverdale." So, also, registration has been refused to "Raleigh" (*Ex parte Oliver*, 18 *ib.* 92); to "Cromarty" (*Ex parte Procter*, 51 *ib.* 1785), and to "Trenton": *Ex parte American Saw Co.*, 58 *ib.* 521. On the other hand it has been granted to "Dover" (*Ex parte Dover Stamping Co.*, 51 U. S. Pat. Gaz. 1784); to "Florentine" (*Ex parte Mississippi Glass Co.*, 64 *ib.* 713); to "Germania" (*Ex parte Portland Cement Fabrik Germania H. Manske & Co.*, 64 *ib.* 858), and to "Waverley," when used in an arbitrary and fanciful sense (*Ex parte Indiana Bicycle Co.*, 72 *ib.* 1654); but it seems difficult to reconcile some of these decisions with the principles laid down in *Ex parte Headley*, 72 *ib.* 1654. Registration has been 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); but a mark which appears upon its face to be purely decorative in its character will not be registered: *Ex parte Peyser*, 62 *ib.* 588. And see *Hoeb v. Bishop*, 49 *ib.* 1845. Whether a device should be registered as a trade

mark or a label, see *Ex parte Palmer*, 58 *ib.* 383, and *Ex parte National U. S. Stamp Delivery Co.*, 60 *ib.* 893, and cases collected at p. 634. There is no trade mark in the colour of an article or of the packets containing it. Thus registration was refused to a red bag intended to contain flower seeds offered for sale: *Ex parte Landreth*, 31 *ib.* 1441. See *Fleischmann v. Starkey*, 25 Fed. Rep. 127. A trade mark of an inherently deceptive character cannot be registered: *Ex parte Bloch & Co.*, 40 U. S. Pat. Gaz. 443; *Ex parte Chichester Chemical Co.*, 52 *ib.* 1061; *Ex parte Zwack & Co.*, 76 *ib.* 1855, with which compare *Société, &c. de la Bénédicte v. Micalovitch*, 36 Alb. L. J. 364; nor a trade mark which is not distinctive (*Ex parte Kuppenheimer*, 60 U. S. Pat. Gaz. 439); nor one which is either deceptive or descriptive: *Ex parte Grove*, 67 *ib.* 1447 ("Bromo Quinine"); (with which, however, compare *Keasbey v. Brooklyn*, 142 N. Y. 467); *Ex parte Wolf*, 80 U. S. Pat. Gaz. 1271 ("Gyrator" sieves). That case also shows that a word formed by a combination of known words is not registrable if descriptive.

(c) This prohibition being so general, registration has been refused to a name which had been used for twenty 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. The prohibition applies equally to the name of a corporation: *Ex parte Creedmoor Cartridge Co.*, 56 *ib.* 1333. Whether initials can be registered when the full name cannot, *quere*: *Burt v. Smith*, 71 Fed. Rep. 161.

(d) These words have been held to prohibit the registration under this Act of a mark identical with or only colourably differing from a mark registered under the invalid Act of 1870, and not re-registered under this Act: *Ex parte Lyon, Dupuy & Co.*, 28 U. S. Pat. Gaz. 191. And the fact that the new applicant uses the mark in foreign or Indian commerce, and that it does not appear whether the registered mark was so used, makes no difference: *ib.* So, also, *Yale Cigar Manufacturing Co. v. Yale*, 30 *ib.* 1183. What the applicant has to show is: (1) that he has a right to use the mark, and that no one else has; (2) that it is not too similar to the registered or known mark of another; (3) that the applicant uses it in foreign or Indian commerce: *Ex parte Lyon, Dupuy & Co.*, 28 *ib.* 191.

(e) 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. Wherever a person has registered a trade mark for an article, and has announced his intention to use it on a similar article, an applicant to register a similar mark for such similar article must prove that the registrant has not used his mark thereon. The registration covers all merchandise of substantially the same descriptive properties: *Ex parte Kyle & Co.*, 57 *ib.* 274. Where a mark sought to be registered under the Act of 1881 has been anticipated by a mark registered under the Act of 1870, the proper course is to give notice of the application to the registrant to enable him to make an application under the Act of 1881 with a view to an interference: *Ex parte American Lead Pencil Co.*, 61 *ib.* 151. In *Ex parte Coon*, 58 *ib.* 946, the device of a shield with the words "shield brand" was held anticipated by two devices of a shield in combination with an eagle; in *Ex parte Corning & Co.*, 65 *ib.* 751, the words "Monarch Distilling Co." by "M. V. Monarch"; and in *Levon v. Ohio Coffee & Spice Co.*, 73 *ib.* 1136, "Capitol" by "Capital," notwithstanding differences in the details of the marks. On the other hand, it has been held that "Royal Vellum" as applied to paper was not anticipated by "Royal Irish Linen" (*Ex parte Hurd & Co.*, 59 *ib.* 1763); nor "Magico" by "Magic" (*Ex parte American Chemical Co.*, 62 *ib.* 588); nor "Electric Light" as applied to flour by "Electric"; but the words "Electric Light" accompanied by a representation of an electric lamp were held to be interfered with by the words without the symbol: *Kirby v. McLaughlin v. Johnson*, 72 *ib.* 1785.

(f) The Court cannot grant registration; that is for the commissioner alone: *Yale Cigar Manufacturing Co. v. Yale*, 30 U. S. Pat. Gaz. 1183. In determining the right of an applicant to registration, the decision of the commissioner goes to the questions—(1) Whether there has been any actual user of the prescribed character; (2) Whether the applicant has a right to the use of the trade mark at all? The commissioner must decide whether the mark is inherently capable of registration; whether it is anticipated; whether the applicant is the true owner; and whether the trade mark is lawfully used in actual commerce with foreign nations or with

the Indian tribes; and the refusal of the commissioner to register being an act done in the performance of a discretionary duty cannot be reviewed by mandamus: *South Carolina v. Seymour*, 66 *ib.* 1167, reversing 65 *ib.* 1221. In that case the commissioner had held that the State of South Carolina had no authorized trade in liquor, in respect of which registration was sought, beyond its own limits: *Ex parte South Carolina*, 64 *ib.* 1395. The question was finally taken to the Supreme Court of the U. S., but the appeal was dismissed for want of jurisdiction: *South Carolina v. Seymour*, 153 U. S. 353.

(g) Under this section the commissioner has power to declare an interference (*Yale Cigar Manufacturing Co. v. Yale*, 30 U. S. Pat. Gaz. 1183); and it makes no difference that the parties are partners, nor that one is a company and the other a member of it: *ib.* If the better title is with the applicant, he will be registered, notwithstanding that the same mark is on the register in the name of another person with an inferior title: *ib.* • As to interferences, see § 81 of Act of 1870, *supra*.

§ 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 (b). 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 (c).

(a) See Act of 1870, §§ 78, 79.

(b) The use of a trade mark which, though registered, is a colourable imitation of another, may consequently be restrained: *Glen Core Manufacturing Co. v. Ludeman*, 23 Bl. C. C. 46; *Schumacher & Ettliger v. Schwenke* (2), 36 U. S. Pat. Gaz. 457; determining the doubt suggested in *Decker v. Decker*, 52 How. Pr. 218. The registration of a mark does not deprive the public of the right to use a somewhat similar mark, which was of common right before the registration, e.g., where "La Normandi" had been registered, but "La Normanda" was already in common use, no injunction was granted to restrain the use of the latter: *Stachelberg v. Ponce*, 128 U. S. 86. See also *Köhler Manufacturing Co. v. Beeshore*, 53 Fed. Rep. 262; 59 *ib.* 577; *Richter v. Reynolds*, 59 *ib.* 577. As between applicant and registrant the burden of proof is on the applicant to overcome the *prima facie* evidence of ownership caused by the registration. The question is substantially the same as who would be entitled to an injunction: *Manitowoc Manufacturing Co. v. Dickerman*, 57 U. S. Pat. Gaz. 1720.

(c) See § 11, *infra*.

§ 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 (b), 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 (c).

(a) See Act of 1870, § 78.

(b) The Federal Courts have now no jurisdiction to try a trade mark action between citizens of the same state, unless the pleadings allege that the plaintiff uses the trade mark on goods intended for foreign or Indian commerce: *Ryder v. Holt*, 128 U. S. 525; *Luyties v. Hollender* (1), 22 Bl. C. C. 413; *Schumacher & Ettliger v. Schwenke* (1), 26 Fed. Rep. 818. The Federal Court is not limited in its jurisdiction to cases in which the defendant's profits have exceeded 500 dollars: *Symonds v. Greene*, 28 Fed. Rep. 834.

(c) Since under this Act the Federal Court cannot try a trade mark case between citizens of the same state unless the goods are intended for foreign or Indian commerce, there is no jurisdiction in such a case in respect of past wrongful acts: *Schumacher & Ettlenger v. Schwenke* (2), 36 U. S. Pat. Gaz. 457.

§ 12 (a). That the Commissioner of Patents is authorized 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. A contract enabling different parties to use the same trade mark in different forms is not a transfer within this section, and does not require recording in the Patent Office. *Waukesha Hygeia Mineral Springs Co. v. Hygeia Sparkling Distilled Water Co.*, 24 U. S. App. 162.

§ 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.

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### ACT OF CONGRESS OF 1882.

#### AN ACT RELATING TO THE REGISTRATION OF TRADE MARKS.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing contained in the law entitled "An Act to authorize the registration of trade marks and protect the same," approved March third, eighteen hundred and eighty-one, shall prevent the registry of any lawful trade mark rightfully used by the applicant in foreign commerce or commerce with Indian tribes at the time of the passage of said Act.

Approved, August 5, 1882.

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### RULES GOVERNING THE REGISTRATION OF TRADE MARKS UNDER THE ACT APPROVED MARCH 3, 1881.

UNITED STATES PATENT OFFICE,  
Washington, D. C., November 1, 1898.

The following Rules, designed to be in strict accordance with the provisions of the Act approved March 3, 1881, for the registration of trade marks, are published for gratuitous distribution.

Applicants for registration and their attorneys are advised that their business will be facilitated by the observance of the forms.

C. H. DUELL,  
Commissioner of Patents.

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## CORRESPONDENCE.

1. All business with the office should be transacted in writing. Unless by the consent of all parties, the action of the office will be based exclusively on the written record. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

2. Applicants and attorneys will be required to conduct their business with the office with decorum and courtesy. Papers presented in violation of this requirement will be returned. But all such papers will first be submitted to the Commissioner, and only returned by his direct order.

3. All letters should be addressed to "The Commissioner of Patents"; and all remittances by postal order, check, or draft should be to his order.

4. A separate letter should in every case be written in relation to each distinct subject of inquiry or application. A complaint against the examiner of trade marks, assignments for record, fees, and orders for copies or abstracts must be sent to the office in separate letters.

5. Letters relating to pending applications should refer to the name of the applicant and date of filing. Letters relating to registered trade marks should refer to the name of registrant, number or date of certificate, and the class of merchandise to which the trade mark is applied.

6. The personal attendance of applicants at the Patent Office is unnecessary. Their business can be transacted by correspondence.

7. When an attorney shall have filed his power of attorney duly executed, the correspondence will be held with him.

8. A double correspondence with an applicant and his attorney, or with two attorneys, cannot generally be allowed.

9. 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 is intended to be a courteous answer to all such inquiries.

10. Express charges, freight, postage, and all other charges on matter sent to the Patent Office must be prepaid in full; otherwise it will not be received.

## ATTORNEYS.

11. An applicant may prosecute his own case, but he is advised, unless familiar with such matters, to employ a competent attorney. The office cannot aid in the selection of any attorney. An applicant may be represented by any person who is registered under the provisions of Rule 17 of the Rules of Practice of the Patent Office to prosecute applications for patents.

12. Before any attorney, original or associate, will be allowed to inspect papers or take action of any kind, his power of attorney must be filed. But general powers given by a principal to an associate cannot be considered. In each application the written authorization

must be filed. A power of attorney purporting to have been given to a firm or co-partnership will not be recognized, either in favor of the firm or of any of its members, unless all its members shall be named in such power of attorney.

13. No power of attorney, either original or associate, will be recognized unless it has revenue stamps to the value of 25 cents affixed thereto and canceled as provided for by the "Act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, 1898.

14. Substitution or association can be made by an attorney upon the written authorization of his principal; but such authorization will not empower the second attorney to appoint a third.

15. Powers of attorney may be revoked at any stage in the proceedings of a case upon application to and approval by the Commissioner; and when so revoked the office will communicate directly with the applicant, or such other attorney as he may appoint. An attorney will be promptly notified by the docket clerk of the revocation of his power of attorney.

16. For gross misconduct the Commissioner may refuse to recognize any person as an attorney, either generally or in any particular case; but the reasons for such refusal will be duly recorded and be subject to the approval of the Secretary of the Interior.

#### WHO MAY REGISTER A TRADE MARK.

17. A trade mark may be registered by 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.

Also, by 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 upon the payment of the fee required by law and other due proceedings had.

(*a*) The United States acceded to the International Convention in 1887. See also the treaty with the United Kingdom, p. 663, *infra*.

18. 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, 16 O. G., 999), may register the same for the same goods, without fee. 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.

19. 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, must prepare their applications in conformity with the present law and 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 \$10 as a first fee are advised that the law does not provide for a division of the legal fee of \$25, and that the remainder of the entire fee is required before the application can be examined.

20. 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 between the United States and some foreign nation or Indian tribe, or is within the provisions of a treaty, convention, or declaration with a foreign power, or which is merely the name of the applicant, or 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, or which is merely descriptive in its nature.

#### THE APPLICATION.

21. An application for the registration of a trade mark must be made to the Commissioner of Patents and must be signed by the owner of the trade mark.

22. A complete application comprises:

(a) A brief letter of advice requesting registration, signed by the applicant. (See Form 1, *infra*.)

(b) A statement or specification which, in addition to the requirements of § 1 of the statute, must also discriminate between the essential and non-essential features of the trade mark, and if the applicant be a corporation it must set forth under the laws of what state or nation incorporated. (See Forms 2, 4, and 6, *infra*.)

(c) A declaration or oath complying with § 2 of the statute on p. 643. (See Forms 3, 5, and 7, *infra*.)

(d) A facsimile or drawing of the mark. (See Rules 27 and 28.)

(e) A fee of twenty-five dollars.

23. The letter of advice, the statement, and the declaration must be in the English language and written on one side of the paper only.

24. Pending applications are preserved in secrecy, and no information will be given without authority of the applicant respecting the filing of an application for the registration of a trade mark by any person, or the subject matter thereof, unless it shall, in the opinion of the Commissioner, be necessary to the proper conduct of business before the office.

#### DECLARATION OR OATH.

25. The declaration or oath may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, chargé d'affaires, consul, or commercial agent holding commission under the government of the United States, or before any notary public of the foreign country in which the applicant may be, who is authorized by the laws of said country to administer oaths, the oath being attested in all cases, in this and other countries, by the proper official seal of



the officer before whom the oath or affirmation is made. When the person before whom the oath or affirmation is made is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal.

26. The declaration cannot be amended. If that filed with the application is faulty or defective, a substitute declaration must be filed.

#### FACSIMILE OR DRAWING.

27. If for any reason a drawing does not constitute a satisfactory facsimile of the trade mark, two copies of the trade mark as actually used must be deposited in addition to the required drawing, to be preserved in the office for reference.

28.—(1) The drawing must be made upon pure white paper of a thickness corresponding to three-sheet Bristol board. The surface of the paper must be calendered and smooth. India ink alone must be used, to secure perfectly black and solid lines.

(2) The size of a sheet on which a drawing is made must be exactly ten by fifteen inches. One inch from its edges a single marginal line is to be drawn, leaving the "sight" precisely eight by thirteen inches. Within this margin all work and signatures must be included. One of the shorter sides of the sheet is regarded as its top, and, measuring downwardly from the marginal line, a space of not less than  $1\frac{1}{2}$  inches is to be left blank for the heading of title, name, number, and date.

(3) All drawings must be made with the pen only. Every line and letter, signatures included, must be absolutely black. This direction applies to all lines, however fine, and to shading. All lines must be clean, sharp, and solid, and they must not be too fine or crowded. Surface shading, when used, should be open.

(4) The signature of the proprietor of the trade mark must be placed at the lower right-hand corner of the sheet, and the signatures of the witnesses at the lower left-hand corner, all within the marginal line, but in no instance should they encroach upon the drawing.

(5) When the view is longer than the width of the sheet, the sheet should be turned on its side, and the heading will be placed at the right and the signatures at the left, occupying the same space and position as in an upright view, and being horizontal when the sheet is held in an upright position.

(6) Drawings should be rolled for transmission to the office—not folded.

An agent's or attorney's stamp, or advertisement, or written address will not be permitted upon the face of a drawing, within or without the marginal line (a).

(a) It was held under the former rules that the drawing must not contain foreign matter: *Ex parte Hudson*, 55 U. S. Pat. Gaz. 1401.

29. The office, at the request of applicants, will furnish the drawings at cost.

#### EXAMINATION OF APPLICATIONS.

30. All applications for registration are considered in the first instance by the trade mark examiner. Whenever on examination of an appli-

ation registration is refused for any reason whatever, the applicant will be notified thereof. The reasons for such rejection will be stated, and such information and references will be given as may be useful in aiding the applicant to judge of the propriety of prosecuting his application.

31. The examination of an application and the action thereon will be directed throughout to the merits; but in each letter the examiner shall state or refer to all his objections.

#### AMENDMENTS.

32. The statement may be amended to correct informalities or to avoid objections made by the office, or for other reasons arising in the course of examination; but no amendments will be admitted unless warranted by something in the statement or facsimile as originally filed.

33. In every amendment the exact word or words to be stricken out or inserted in the statement must be specified, and the precise point indicated where the erasure or insertion is to be made. (See Form 8, *infra*.) All such amendments must be on sheets of paper separate from the papers previously filed, and written on but one side of the paper.

Erasures, additions, insertions, or mutilations of the papers and records must not be made by the applicant.

34. When an amendatory clause is amended, it must be wholly rewritten, so that no interlineation or erasure shall appear in the clause as finally amended, when the application is passed to issue. If the number or nature of the amendment shall render it otherwise difficult to consider the case, or to arrange the papers for printing or copying, the examiner may require the entire statement to be rewritten.

35. Amendments will not be permitted after the notice of allowance of an application, and the examiner will exercise jurisdiction over such an application only by special authority from the Commissioner.

Amendments not affecting the merits may be made after the allowance of an application, if the case has not been printed, on the recommendation of the examiner, approved by the Commissioner, without withdrawing the case from issue.

36. After the completion of the application the office will not return the papers for any purpose whatever. If the applicant has not preserved copies of the papers which he wishes to amend, the office will furnish them on the usual terms.

#### INTERFERENCES.

37. 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 an opportunity to prove priority of use and the proceedings on such interference will follow, as nearly as practicable, the practice in interferences upon applications for patents (*a*).

(*a*) After *U. S. v. Steffens*, 100 U. S. 82, it was held that the U. S. Patent Office had 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. And it is now decided that there is such authority: *Yale Cigar Manufacturing Co. v. Yale*, 30 *ib.* 1183. And see notes to § 81 of the Act of 1870, and to § 3 of the Act of 1881, *supra*.

#### APPEALS OR PETITIONS.

38. From an adverse decision of the examiner of trade marks upon an applicant's right to register a trade mark, or upon any interlocutory matter, or from a decision of the examiner of interferences, the case will be reviewed by the Commissioner, on petition or appeal, without fee.

#### ISSUE, DATE, AND DURATION OF CERTIFICATE.

39. When the requirements of the law and the rules have been complied with, and the office has adjudged a 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 case made and provided. Attached to the certificate will be a facsimile of the trade mark and a printed copy of the statement and declaration.

40. Before a trade mark certificate will be delivered, the applicant must furnish a revenue stamp to the value of ten cents, to be affixed thereto and canceled as required by the "Act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, 1898.

41. The weekly issue closes on Thursday, and the certificates of registration of that issue bear date as of the third Tuesday thereafter.

42. 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.

#### ASSIGNMENTS.

43. The right to the use of any trade mark is assignable by an instrument in writing, and provision is made for recording such instrument in the Patent Office. But no such instrument or conveyance will be recorded unless it is in the English language, and unless an application for the registration of a trade mark shall have first been filed in the Patent Office, and such instrument must identify the application by serial number and date of filing, or, where the mark has been registered, by its certificate number and the date thereof. No particular form of instrument is prescribed.

COPIES AND PUBLICATIONS.

44. After a trade mark has been registered printed copies of the statement and declaration in each case, with a facsimile of the trade mark, can be furnished by the office upon the payment of the fee.

45. An order for a copy of an assignment must give the liber and page of the record, as well as the name of the proprietor; otherwise an extra charge will be made for the time consumed in making any search for such assignment.

46. The Official Gazette of the Patent Office will contain a list of all trade marks registered, with the name and address of the registrant in each case, an illustration of the trade mark, a brief statement of its essential features, and the particular description of goods to which it is applied.

FEEES.

47. On filing an application for registration of a trade mark	\$25.00
For abstracts of title :	
For the certificate of search - - - - -	1.00
For each brief from the digests of assignments -	.20
For copies of matter in any foreign language, for every	
100 words or fraction thereof - - - - -	.10
For translation, for every 100 words or fraction thereof -	.50
For recording every assignment, agreement, power of	
attorney, or other paper, of 300 words or less - -	1.00
For recording every assignment, agreement, power of	
attorney, or other paper of more than 300 words and	
less than 1,000 words - - - - -	2.00
For recording every assignment, agreement, power of	
attorney, or other paper of more than 1,000 words -	3.00
For assistance to attorneys and others in the examination	
of records, one hour or less - - - - -	.50
Each additional hour or fraction thereof - -	.50
For single printed copy of statement, declaration, and	
facsimile - - - - -	.05
If certified, for the certificate, additional - -	.25

48. The person ordering any such certificate as specified in Rule 46 must furnish a revenue stamp to the value of ten cents to be affixed to the certificate and canceled as provided for by the "Act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, 1898.

49. Money required for office fees may be paid to the Commissioner, or to the Treasurer, or any of the assistant treasurers of the United States, or to any of the depositaries, national banks, or receivers of public money designated by the Secretary of the Treasury for that purpose, who shall give the depositor a receipt or certificate of deposit therefor, which shall be transmitted to the Patent Office. When this cannot be done without inconvenience, the money may be remitted by mail, and in every such case the letter should state the exact amount inclosed. All money orders should be made payable to the "Commissioner of Patents."

50. All money sent by mail, either to or from the Patent Office, will be at the risk of the sender. All payments to the office must be made

in specie, Treasury notes, national-bank notes, certificates of deposit, post-office money orders, postal notes, or certified checks.

#### REPAYMENT OF MONEY.

51. Money paid by actual mistake, such as a payment in excess, or when not required by law, or by neglect or misinformation on the part of the office, will be refunded; but a mere change of purpose after the payment of money, as when a party desires to withdraw his application for the registration of a trade mark, will not entitle a party to demand such a return.

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#### FORMS.

The following forms illustrate the manner of preparing papers for applications for registration of trade marks. Applicants will find their business facilitated by following them closely:

##### (1) *Letter of Advice.*

*To the Commissioner of Patents :*

The undersigned presents herewith a facsimile 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.

Dated           , 18   .

A. B.

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##### (2) *Statement by an Individual.*

*To all whom it may concern :*

Be it known that I, A. B., a citizen [or subject, as the case may be] of the           , residing at           , and doing business at No.           , Street, in said city, have adopted for my use a trade mark for molasses, of which the following is a full, clear, and exact description. My trade mark consists of the word "Dove" and the representation of a dove. These have generally been arranged as shown in the accompanying facsimile, in which the dove is represented as flying, and above it are arranged, on a curved line, the words "The Dove Brand" in plain block letters. The position of the dove may be changed and different styles of letters used, and the words "The" and "Brand" may be omitted, without altering the character of the trade mark, the essential features of which are the word "Dove" and the representation of a dove. This trade mark has been continuously used in my business since           , 18   . The class of merchandise to which this trade mark is appropriated is groceries, and the particular description of goods comprised in said class upon which I use the said trade mark is molasses. It is usually displayed on heads of barrels or packages, and on cans containing the goods, by placing thereon a printed label on which the described trade mark is shown.

Witnesses :

C. D.

E. F.

A. B.

(3) *Declaration for an Individual.*

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 by him in commerce between the United States and foreign nations or Indian tribes, and particularly with [here name one or more foreign nations or Indian tribes, or both, as the case may be]; and that the description and facsimiles presented for record truly represent the trade mark sought to be registered.

A. B.

Sworn and subscribed before me, a \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

G. H.

(L. S.)

(4) *Statement by a Firm.*

*To all whom it may concern :*

Be it known that we, C. D. & Co., a firm domiciled in \_\_\_\_\_, county of \_\_\_\_\_, State of \_\_\_\_\_, and doing business at No. \_\_\_\_\_ street, in the said city, have adopted for our use a trade mark for molasses, of which the following is a full, clear, and exact description. Our trade mark consists of the word "Dove" and the representation of a dove. These have generally been arranged as shown in the accompanying facsimile, in which the dove is represented as flying, and above it are arranged, on a curved line, the words "The Dove Brand" in plain block letters. The position of the dove may be changed and different styles of letters used, and the words "The" and "Brand" may be omitted, without altering the character of the trade mark, the essential features of which are the word "Dove" and the representation of a dove. This trade mark has been continuously used in our business since \_\_\_\_\_, 18 \_\_\_\_ . The class of merchandise to which this trade mark is appropriated is groceries, and the particular description of goods comprised in said class upon which we use the said trade mark is molasses. It is usually displayed on heads of barrels or packages, and on cans containing the goods, by placing thereon a printed label on which the described trade mark is shown.

C. D. & Co.

By C. D.,

*A member of the firm.*

Witnesses :

E. F.

G. H.

(5) *Declaration for a Firm.*

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, ss :

C. D., being duly sworn, deposes and says that he is a member of the firm of C. D. & Co., the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that the said firm at this time has 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 the trade mark is used by the said firm in commerce between the United States and foreign nations or Indian tribes, and particularly with [here name one or more foreign nations or Indian tribes, or both, as the case may be]; and that the description and facsimiles presented for record truly represent the trade mark sought to be registered.

C. D.

Sworn and subscribed before me, a \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

(L. S.)

E. F.

(6) *Statement by a Corporation.**To all whom it may concern :*

Be it known that The E. & F. Company, a corporation duly organized under the laws of the State of \_\_\_\_\_, and located in the city of \_\_\_\_\_, county of \_\_\_\_\_, in said State, and doing business in said city of \_\_\_\_\_, has adopted for its use a trade mark for molasses, of which the following is a full, clear and exact description. The trade mark consists of the word "Dove" and the representation of a dove. These have generally been arranged as shown in the accompanying facsimile, in which the dove is represented as flying, and above it are arranged on a curved line the words "The Dove Brand" in plain block letters. The position of the dove may be changed and different styles of letters used, and the words "The" and "Brand" may be omitted, without altering the character of the trade mark, the essential features of which are the word "Dove" and the representation of a dove. This trade mark has been continuously used in the business of the said corporation since \_\_\_\_\_, 18 \_\_\_\_\_. The class of merchandise to which this trade mark is appropriated is groceries, and the particular description of goods comprised in said class upon which the said trade mark is used is molasses. It is usually displayed on heads of barrels or packages, and on cans containing the goods, by placing thereon a printed label on which the described trade mark is shown.

Witnesses :

I. J.

K. L.

THE E. & F. COMPANY,  
By G. H., *Secretary.*

(7) *Declaration for a Corporation.*

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, ss :

G. H., being duly sworn, deposes and says that he is secretary (or other officer) of the corporation The E. & F. Company, the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that the said corporation at this time has 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 the trade mark is used by the said corporation in commerce between the United States and foreign nations or Indian tribes, and particularly with [here name one or more foreign nations or Indian tribes, or both, as the case may be], and that the description and facsimiles presented for record truly represent the trade mark sought to be registered.

G. H., Secretary\* (or other officer).

Sworn and subscribed before me, a \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_ .  
 (L. S.) I. J.

\* If the corporation have a seal, it may be used to authenticate the signature of the officer.

(8) *Amendment.*

To the Commissioner of Patents :

In the matter of my application for the registration of trade mark for molasses, No. \_\_\_\_\_, filed \_\_\_\_\_, 18 \_\_\_\_, I hereby amend my statement as follows :

Page \_\_\_\_\_, line \_\_\_\_\_, cancel the words "The Dove Brand," and insert in place thereof the following: "*Dove*" and the representation of a dove.  
 Same page, line \_\_\_\_\_, erase the words "about ten years" and insert since \_\_\_\_\_, 18 \_\_\_\_ .

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

A. B.,  
 By J. K.,  
 His Attorney.



## CLASSIFICATION OF REGISTERED TRADE MARKS.

1. Agricultural implements. (See Titles 41, 73.)
2. Baking powder and yeast.
3. Beverages. (See Title 42.)
4. Blacking and leather dressing. (See Title 12.)
5. Boots, shoes, and lasts. (See Title 57.)
6. Brooms and brushes.
7. Buttons. (See Title 22.)
8. Canned goods. (See Titles 16, 26.)
9. Carpets, &c.
10. Cement, plaster, and bricks.
11. Cigars and cigarettes. (See Title 71.)
12. Cleaning and polishing preparations. (See Title 4.)
13. Coffee and tea.
14. Confectionery.
15. Corsets. (See Title 75.)
16. Cured meats. (See Titles 8, 26, 37.)
17. Cutlery and edge tools. (See Titles 68, 73.)
18. Dairy products.
19. Dentistry.
20. Drugs and Chemicals. (See Titles 44, 53, 72.)
21. Dry goods. (See Titles 22, 69.)
22. Fancy goods. (See Titles 7, 21, 30, 47.)
23. Fertilizers.
24. Fire-arms, ammunition, and explosives.
25. Flour.
26. Food and relishes. (See Titles 8, 16.)
27. Fuel.
28. Games and toys. (See Title 46.)
29. Glassware. (See Titles 32, 55.)
30. Gloves. (See Title 22.)
31. Head-wear.
32. Household articles. (See Titles 29, 35, 55.)
33. Inks. (See Title 65.)
34. Iron, steel, and manufactures. (See Titles 41, 73.)
35. Jewelry and plated ware. (See Titles 32, 70.)
36. Lamps, lanterns, &c. (See Title 29.)
37. Lard and tallow. (See Title 16.)
38. Laundry articles. (See Titles 61, 64.)
39. Leather and saddlery.
40. Locks and hardware. (See Titles 72, 73.)
41. Machines. (See Titles 1, 34, 73.)
42. Malt liquors. (See Title 3.)
43. Matches.
44. Medical compounds. (See Titles 20, 53, 72.)
45. Miscellaneous.
46. Musical instruments. (See Title 28.)
47. Needles and pins. (See Title 22.)
48. Oils and lubricants. (See Title 51.)
49. Optics and measuring instruments. (See Title 73.)
50. Packing. (Machinery.)

51. Paints and painters' supplies. (See Title 48.)
  52. Paper and envelopes. (See Title 65.)
  53. Poisons for animals. (See Titles 20, 44.)
  54. Publications.
  55. Receptacles. (See Titles 29, 32.)
  56. Rope, cord, and twine. (See Title 59.)
  57. Rubber goods. (See Titles 5, 69.)
  58. Sewing-machines and attachments. (See Titles 41, 73.)
  59. Sewing silk, cotton, and thread. (See Title 56.)
  60. Shirts, collars, and cuffs. (See Title 75.)
  61. Soap. (See Titles, 38, 72.)
  62. Spices, mustard, and salt. (See Title 26.)
  63. Spirituous liquors. (See Titles 42, 77.)
  64. Starch, corn-starch, and products. (See Titles 26, 38.)
  65. Stationery miscellany. (See Titles 33, 52.)
  66. Stoves and heaters.
  67. Sugar, sirup, and molasses.
  68. Surgical instruments and appliances. (See Title 17.)
  69. Tailoring and clothing. (See Titles 21, 57.)
  70. Time-keeping instruments. (See Title 35.)
  71. Tobacco and snuff. (See Title 11.)
  72. Toilet articles and preparations. (See Titles 20, 61.)
  73. Tools and devices.
  74. Umbrellas, parasols, and canes.
  75. Underwear and furnishings. (See Titles 15, 60.)
  76. Vehicles.
  77. Wines. (See Titles 3, 42, 63.)
-

## CIRCULAR AS TO MERCHANDISE MARKS (CUSTOMS).

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,  
Washington, D. C., August 3, 1897.

*To Officers of the Customs and others :*

The attention of officers of the customs and others is invited to the following provision of § 11 of the Act of July 24, 1897 :—

“§ 11. That no article of imported merchandise which shall copy or simulate the name or trade mark of any domestic manufacture or manufacturer, or which shall bear a name or mark which is calculated to induce the public to believe that the article is manufactured in the United States, shall be admitted to entry at any custom house of the United States. And in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer who has adopted trade marks may require his name and residence, and a description of his trade marks, to be recorded in books which shall be kept for that purpose in the department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the department facsimiles of such trade marks; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of the customs.”

Applications for the recording of names or trade marks in this department will state the name and residence of the domestic manufacturer, and furnish a description of the mark and the names of the ports to which the facsimiles should be sent. No such name or trade mark will be received unless accompanied by the proper proof of ownership and proof that the owner is a domestic manufacturer, which must consist of the affidavit of the owner or one of the owners, certified by a notary public, or other officer entitled to administer oaths, and having a seal.

On the receipt by a customs officer of any such facsimiles, with information from the department that they have been recorded therein, he will properly record and file them, and will exercise care to prevent the entry at the custom house of any article of foreign manufacture copying or simulating such mark.

No fees are charged for recording trade marks in the department and custom houses.

A sufficient number of facsimiles should be forwarded to enable the department to send one copy to each port named in the application, with ten additional copies for the files of the department.

Especial attention is invited to the provision in said section prohibiting the entry of articles “which shall bear a name or mark which is calculated to induce the public to believe that the article is manufactured in the United States,” and collectors and other officers of the customs are instructed to use due diligence to prevent violations of this provision.

W. B. HOWELL,  
*Assistant Secretary.*

## APPENDIX K.

### TREATY WITH THE UNITED STATES, 1877 (a).

#### 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.

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(a) The importance of this Treaty has not yet disappeared. See opinion of the Attorney-General of the United States (47 U. S. Pat. Gaz. 397) as to the necessity for legislation, not yet passed, for giving effect to the International Convention of 1883.

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