



# Trade Marks Act 1938

## 1938 CHAPTER 22

### REGISTRATION, INFRINGEMENT AND OTHER SUBSTANTIVE PROVISIONS.

#### *Rectification and correction of the register*

#### **32 General power to rectify entries in register**

- (1) Any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Court or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as the tribunal may think fit.
- (2) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.
- (3) In case of fraud in the registration, assignment or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section.
- (4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served in the prescribed manner on the Registrar, and the Registrar shall on receipt of the notice rectify the register accordingly.
- (5) The power to rectify the register conferred by this section shall include power to remove a registration in Part A of the register to Part B.

#### **33 Power to expunge or vary registration for breach of condition**

On application by any person aggrieved to the Court, or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, or on application by the Registrar to the Court, the tribunal may make such order as the tribunal may think fit for expunging or varying the registration of a trade mark on the ground of any contravention of, or failure to observe, a condition entered on the register in relation thereto.

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### **34 Correction of register**

- (1) The Registrar may, on request made in the prescribed manner by the registered proprietor,—
  - (a) correct any error in the name, address or description of the registered proprietor of a trade mark;
  - (b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;
  - (c) cancel the entry of a trade mark on the register;
  - (d) strike out any goods or classes of goods from those in respect of which a trade mark is registered; or
  - (e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.
- (2) The Registrar may, on request made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change, in the name, address or description of the registered user.
- (3) Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade, or to the Court, at the option of the appellant.

### **35 Alteration of registered trade mark**

- (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.
- (2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, " after hearing the parties if so required, decide the matter.
- (3) Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade, or to the Court, at the option of the appellant.
- (4) Where leave as aforesaid is granted, the trade mark as altered shall be advertised in the prescribed manner, unless it has already been advertised, in the form to which it has been altered, in an advertisement under subsection (2) of this section.

### **36 Adaptation of entries in register to amended or substituted classification of goods**

- (1) The Board of Trade may from time to time make such rules, prescribe such forms and generally do such things as they think expedient, for empowering the Registrar to amend the register, whether by making or expunging or varying entries therein, so far as may be requisite for the purpose of adapting the designation therein of the goods or classes of goods in respect of which trade marks are registered to any amended or substituted classification that may be prescribed.
- (2) The Registrar shall not, in exercise of any power conferred on him for the purpose aforesaid, make any amendment of the register that would have the effect of adding

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any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of any goods:

Provided that this subsection shall not have effect in relation to goods as to which the Registrar is satisfied that compliance with this subsection in relation thereto would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

- (3) A proposal for the amendment of the register for the purpose aforesaid shall be notified to the registered proprietor of the trade mark affected, shall be subject to appeal by the registered proprietor to the Board of Trade, or at his option to the Court, shall be advertised with any modifications, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of the last foregoing subsection, and the decision of the Registrar on any such opposition shall be subject to appeal to the Court.