

## SCHEDULES

### FIRST SCHEDULE

Section 37.

#### CERTIFICATION TRADE MARKS

- 1 (1) An application for the registration of a mark under section thirty-seven of this Act must be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof.
- (2) The provisions of subsection (2) and of subsections (4) to (7) of section seventeen of this Act shall have effect in relation to an application under the said section thirty-seven as they have effect in relation to an application under subsection (1) of the said section seventeen, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.
- (3) In dealing under the said provisions with an application under the said section thirty-seven the tribunal shall have regard to the like considerations, so far as relevant, as if the application were an application under section seventeen of this Act and to any other considerations (not being matters within the competence of the Board of Trade under sub-paragraph (5) of this paragraph) relevant to applications under the said section thirty-seven, including the desirability of securing that a certification trade mark shall comprise some indication that it is such a trade mark.
- (4) An applicant for the registration of a mark under the said section thirty-seven shall transmit to the Registrar draft regulations for governing the use thereof at such time before the decision of the Registrar on the application as he may require in order to enable him to consider the draft, and the Registrar shall report thereon to the Board of Trade.
- (5) When authorisation to proceed with an application has been given, the Board of Trade shall consider the application with regard to the following matters, that is to say :—
- (a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered;
  - (b) whether the draft regulations are satisfactory; and
  - (c) whether in all the circumstances the registration applied for would be to the public advantage;
- and may either—
- (i) direct that the application shall not be accepted; or
  - (ii) direct the Registrar to accept the application, and approve the regulations, either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modifications of the application or of the regulations, which they think requisite having regard to any of the matters aforesaid;
- but, except in the case of a direction for acceptance and approval without modification and unconditionally, the Board shall not decide the matter without giving to the applicant an opportunity of being heard :

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*Status: This is the original version (as it was originally enacted).*

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Provided that the Board may, at the request of the applicant made with the concurrence of the Registrar, consider the application with regard to any of the matters aforesaid before authorisation to proceed with the application has been given, so however that the Board shall be at liberty to reconsider any matter on which they have given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft regulations.

- 2 (1) When an application has been accepted, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner, and the provisions of subsections (2) to (11) of section eighteen of this Act shall have effect in relation to the registration of the mark as if the application had been an application under section seventeen of this Act:

Provided that, in deciding under the said provisions, the tribunal shall have regard only to the considerations referred to in sub-paragraph (3) of the last foregoing paragraph, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Board of Trade under sub-paragraph (2) of this paragraph of any opposition relating to any of the matters referred to in sub-paragraph (5) of the last foregoing paragraph.

- (2) When notice of opposition is given relating to any of the matters referred to in sub-paragraph (5) of the last foregoing paragraph, the Board of Trade shall, after hearing the parties, if so required, and considering any evidence, decide whether, and subject to what conditions or limitations, or amendments or modifications of the application or of the regulations, if any, registration is, having regard to those matters, to be permitted.
- 3 (1) The regulations deposited in respect of a certification trade mark may, on the application of the registered proprietor, be altered by the Registrar, with the consent of the Board of Trade.
- (2) The Board of Trade may cause an application for their consent to be advertised in any case where it appears to the Board that it is expedient so to do, and, where the Board cause an application to be advertised, if within the prescribed time from the date of the advertisement any person gives notice to the Board of opposition to the application, the Board shall not decide the matter without giving the parties an opportunity of being heard.
- 4 (1) The Board of Trade may, on the application in the prescribed manner of any person aggrieved, or on the application of the Registrar, make such order as they think fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on the ground—
- (a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the trade mark is registered, to certify those goods;
  - (b) that the proprietor has failed to observe a provision of the deposited regulations to be observed on his part;
  - (c) that it is no longer to the public advantage that the trade mark should be registered; or
  - (d) that it is requisite for the public advantage that, if the trade mark remains registered, the regulations should be varied;

and neither the Court nor the Registrar shall have any jurisdiction to make an order under section thirty-two of this Act on any of those grounds.

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- (2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for giving effect to an order made under the foregoing subparagraph.
- 5 Notwithstanding anything in section forty-four of this Act, the Registrar shall not have any jurisdiction to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the trade mark.
- 6 The following provisions of this Act shall not have effect in relation to a certification trade mark, that is to say, section four, section six, section nine, sections seventeen and eighteen (except as expressly applied by this Schedule), subsections (4) to (8) of section twenty-two, sections twenty-six to twenty-nine, section sixty-two, and any provisions the operation of which is limited by the terms thereof to registration in Part B of the Register.