



Trade Marks Act 1994

1994 CHAPTER 26

PART IV

MISCELLANEOUS AND GENERAL PROVISIONS

Miscellaneous

99 Unauthorised use of Royal arms, &c

- (1) A person shall not without the authority of Her Majesty use in connection with any business the Royal arms (or arms so closely resembling the Royal arms as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised to use the Royal arms.
- (2) A person shall not without the authority of Her Majesty or of a member of the Royal family use in connection with any business any device, emblem or title in such a manner as to be calculated to lead to the belief that he is employed by, or supplies goods or services to, Her Majesty or that member of the Royal family.
- (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (4) Contravention of subsection (1) or (2) may be restrained by injunction in proceedings brought by—
 - (a) any person who is authorised to use the arms, device, emblem or title in question, or
 - (b) any person authorised by the Lord Chamberlain to take such proceedings.
- (5) Nothing in this section affects any right of the proprietor of a trade mark containing any such arms, device, emblem or title to use that trade mark.

100 Burden of proving use of trade mark

If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.

101 Offences committed by partnerships and bodies corporate

- (1) Proceedings for an offence under this Act alleged to have been committed by a partnership shall be brought against the partnership in the name of the firm and not in that of the partners; but without prejudice to any liability of the partners under subsection (4) below.
- (2) The following provisions apply for the purposes of such proceedings as in relation to a body corporate—
 - (a) any rules of court relating to the service of documents;
 - (b) in England and Wales or Northern Ireland, Schedule 3 to the Magistrates' Courts Act 1980 or Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence).
- (3) A fine imposed on a partnership on its conviction in such proceedings shall be paid out of the partnership assets.
- (4) Where a partnership is guilty of an offence under this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

Interpretation

102 Adaptation of expressions for Scotland

In the application of this Act to Scotland—

- “account of profits” means accounting and payment of profits;
- “accounts” means count, reckoning and payment;
- “assignment” means assignation;
- “costs” means expenses;
- “declaration” means declarator;
- “defendant” means defender;
- “delivery up” means delivery;
- “injunction” means interdict;
- “interlocutory relief” means interim remedy; and
- “plaintiff” means pursuer.

103 Minor definitions

(1) In this Act—

“business” includes a trade or profession;

“director”, in relation to a body corporate whose affairs are managed by its members, means any member of the body;

“infringement proceedings”, in relation to a registered trade mark, includes proceedings under section 16 (order for delivery up of infringing goods, &c.);

“publish” means make available to the public, and references to publication—

(a) in relation to an application for registration, are to publication under section 38(1), and

(b) in relation to registration, are to publication under section 40(4);

“statutory provisions” includes provisions of subordinate legislation within the meaning of the Interpretation Act 1978;

“trade” includes any business or profession.

(2) References in this Act to use (or any particular description of use) of a trade mark, or of a sign identical with, similar to, or likely to be mistaken for a trade mark, include use (or that description of use) otherwise than by means of a graphic representation.

(3) References in this Act to a Community instrument include references to any instrument amending or replacing that instrument.

104 Index of defined expressions

In this Act the expressions listed below are defined by or otherwise fall to be construed in accordance with the provisions indicated—

account of profits and accounts (in Scotland)	section 102
appointed person (for purposes of section 76)	section 77
assignment (in Scotland)	section 102
business	section 103(1)
certification mark	section 50(1)
collective mark	section 49(1)
commencement (of this Act)	section 109(2)
Community trade mark	section 51
Community Trade Mark Regulation	section 51
Convention country	section 55(1)(b)
costs (in Scotland)	section 102
the court	section 75
date of application	section 33(2)
date of filing	section 33(1)

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

date of registration	section 40(3)
defendant (in Scotland)	section 102
delivery up (in Scotland)	section 102
director	section 103(1)
earlier right	section 5(4)
earlier trade mark	section 6
exclusive licence and licensee	section 29(1)
infringement (of registered trade mark)	sections 9(1) and (2) and 10
infringement proceedings	section 103(1)
infringing articles	section 17
infringing goods	section 17
infringing material	section 17
injunction (in Scotland)	section 102
interlocutory relief (in Scotland)	section 102
the International Bureau	section 53
international trade mark (UK)	section 53
Madrid Protocol	section 53
Paris Convention	section 55(1)(a)
plaintiff (in Scotland)	section 102
prescribed	section 78(1)(b)
protected under the Paris Convention	
—well-known trade marks	section 56(1)
—state emblems and official signs or hallmarks	section 57(1)
—emblems, &c. of international organisations	section 58(2)
publish and references to publication	section 103(1)
register, registered (and related expressions)	section 63(1)
registered trade mark agent	section 83(1)
registrable transaction	section 25(2)
the registrar	section 62
rules	section 78
statutory provisions	section 103(1)
trade	section 103(1)
trade mark	

—generally	section 1(1)
—includes collective mark or certification mark	section 1(2)
United Kingdom (references include Isle of Man)	section 108(2)
use (of trade mark or sign)	section 103(2)
well-known trade mark (under Paris Convention)	section 56(1)

Other general provisions

105 Transitional provisions

The provisions of Schedule 3 have effect with respect to transitional matters, including the treatment of marks registered under the Trade Marks Act 1938, and applications for registration and other proceedings pending under that Act, on the commencement of this Act.

106 Consequential amendments and repeals

- (1) The enactments specified in Schedule 4 are amended in accordance with that Schedule, the amendments being consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 5 are repealed to the extent specified.

107 Territorial waters and the continental shelf

- (1) For the purposes of this Act the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.
- (2) This Act applies to things done in the United Kingdom sector of the continental shelf on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as it applies to things done in the United Kingdom.
- (3) The United Kingdom sector of the continental shelf means the areas designated by order under section 1(7) of the Continental Shelf Act 1964.

108 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This Act also extends to the Isle of Man, subject to such exceptions and modifications as Her Majesty may specify by Order in Council; and subject to any such Order references in this Act to the United Kingdom shall be construed as including the Isle of Man.

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

109 Commencement

- (1) The provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument.

Different days may be appointed for different provisions and different purposes.

- (2) The references to the commencement of this Act in Schedules 3 and 4 (transitional provisions and consequential amendments) are to the commencement of the main substantive provisions of Parts I and III of this Act and the consequential repeal of the Trade Marks Act 1938.

Provision may be made by order under this section identifying the date of that commencement.

110 Short title

This Act may be cited as the Trade Marks Act 1994.