



Trade Marks Act 1938

1938 CHAPTER 22

GENERAL AND MISCELLANEOUS.

Powers and duties of Registrar

42 Preliminary advice by Registrar as to distinctiveness

- (1) The power to give to a person who proposes to apply for the registration of a trade mark in Part A or Part B of the register advice as to whether the trade mark appears to the Registrar prima facie to be inherently adapted to distinguish, or capable of distinguishing, as the case may be, shall be a function of the Registrar under this Act.
- (2) Any such person who is desirous of obtaining such advice must make application to the Registrar therefor in the prescribed manner.
- (3) If on an application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative, made within three months after the advice is given, the Registrar, after further investigation or consideration, gives notice to the applicant of objection on the ground that the trade mark is not adapted to distinguish, or capable of distinguishing, as the case may be, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the filing of the application.

43 Hearing before exercise of Registrar's discretion

Where any discretionary or other power is given to the Registrar by this Act or the rules, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving to the applicant or registered proprietor an opportunity of being heard.

44 Power of Registrar to award costs

In all proceedings before the Registrar under this Act, the Registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and

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by what parties they are to be paid, and any such order may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order of the Court to the same effect.

45 Annual reports of Registrar

The Comptroller-General of Patents, Designs and Trade Marks shall, in his annual report on the execution by or under him of the Patents and Designs Act, 1907, and Acts amending that Act, include a report respecting the execution by or under him of this Act as if it formed a part of or was included in those Acts.