



# Trade Marks Act 1938

## 1938 CHAPTER 22

### REGISTRATION, INFRINGEMENT AND OTHER SUBSTANTIVE PROVISIONS.

#### *Use and non-uses*

#### **26 Removal from register and imposition of limitations on ground of non-use**

- (1) Subject to the provisions of the next succeeding section, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered 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, on the ground either—
- (a) that the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods by him, and that there has in fact been no bona fide use of the trade mark in relation to those goods by any proprietor thereof for the time being up to the date one month before the date of the application; or
  - (b) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods by any proprietor thereof for the time being:

Provided that (except where the applicant has been permitted under subsection (2) of section twelve of this Act to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark) the tribunal may refuse an application made under paragraph (a) or (b) of this subsection in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, bona fide use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

- (2) Where in relation to any goods in respect of which a trade mark is registered—
- (a) the matters referred to in paragraph (b) of the foregoing subsection are shown so far as regards non-use of the trade mark in relation to goods to be sold, or

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*Status: This is the original version (as it was originally enacted).*

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otherwise traded in, in a particular place in the United Kingdom (otherwise than for export from the United Kingdom), or in relation to goods to be exported to a particular market outside the United Kingdom; and

- (b) a person has been permitted under subsection (2) of section twelve of this Act to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be sold, or otherwise traded in, in that place (otherwise than for export from the United Kingdom), or in relation to goods to be exported to that market, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark;

on application by that person 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, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as the tribunal thinks proper for securing that that registration shall cease to extend to such use as last aforesaid.

- (3) An applicant shall not be entitled to rely for the purposes of paragraph (b) of subsection (1), or for the purposes of subsection (2), of this section on any non-use of a trade mark that is shown to have been due to special circumstances in the trade and not to any intention not to use or to abandon the trade mark in relation to the goods to which the application relates.