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STATUTORY INSTRUMENTS

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**2004 No. 946**

**The Trade Marks (Proof of Use, etc.) Regulations 2004**

**Amendments to the Trade Marks Act 1994**

6. In section 47 (grounds for invalidity of registration), after subsection (2) there shall be inserted—

“(2A) But the registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless—

- (a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,
- (b) the registration procedure for the earlier trade mark was not completed before that date, or
- (c) the use conditions are met.

(2B) The use conditions are met if—

- (a) within the period of five years ending with the date of the application for the declaration the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) it has not been so used, but there are proper reasons for non-use.

(2C) For these purposes—

- (a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and
- (b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(2D) In relation to a Community trade mark, any reference in subsection (2B) or (2C) to the United Kingdom shall be construed as a reference to the European Community.

(2E) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”.