

## The Trade Marks Act

Act No. 4 of March 3, 1961, as amended by Act No. 9 of June 21, 1963,  
Act No. 33 of May 29, 1970, Act No. 47 of June 16, 1972, Act No. 79  
of June 21, 1985, and Act No. 113 of November 27, 1992.

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## Chapter 1 General Provisions

**1.** A registration made in accordance with the present Act confers upon a trader the exclusive right to use a trade mark as a distinctive sign for the goods or services of his undertaking.

A trade mark may consist of any sign which is capable of distinguishing the goods or services of one undertaking from those of other undertakings, and which is capable of being represented graphically, such as words or combinations of words, including slogans, names, figures and pictures, letters and numerals, and the shape of goods or of their packaging.

The subsequent provisions of this Act concerning goods shall also apply to services provided this not contrary to the context.

**2.** A trader shall have exclusive rights also to a non-registered trade mark provided the trade mark is well established.

A mark is considered to be well established when it is generally recognized on the home market as a distinctive sign for the goods originating from the proprietor.

**3.** Any person has the right to use, in the course of trade, his name or the name of his business as a sign for his goods provided this is not done in such a way that it is likely to be confused with the trade mark, name of business or name already protected for somebody else.

**4.** The right to a sign in accordance with Sections 1 to 3 has the effect that, in the course of trade, nobody except the proprietor may use this sign for his goods, or a sign so similar to it that there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the protected sign. This provision shall apply whether the sign is used on the goods, or their packaging, in advertising, in business documents or in any other way, including the verbal use thereof, whether the goods are intended for sale or offered in any other way in this country or abroad, or is imported into this country.

It shall also be regarded as unlawful use if anybody in selling or offering spare parts and accessories, etc. refers to a sign which is the property of somebody else in such a way as to give the wrongful impression that the goods offered originate from the proprietor of this sign or that he has consented to the use of the sign.

Where a sign as referred to in Sections 1 to 3 has been in legitimate use for a product and the product has subsequently been substantially altered by processing, repairs, etc. made by someone other than the proprietor of the sign, the sign may not, without the consent of the proprietor, be kept or used for the product if the product is subsequently imported, sold or offered in the course of trade, unless the alterations are clearly indicated or otherwise made apparent by the circumstances.

**5.** The right to a sign does not confer on the proprietor an exclusive right to such parts of the sign as mainly serve to make the goods or the packaging more serviceable or in any other way serve for any other purposes than being a sign.

The right to a trade mark does not entitle the proprietor to prohibit a third party from using, in the course of trade and in accordance with honest business practice, his own name or the name of his business or his address.

**6.** For the purposes of this Act signs shall only be considered to be likely to be confused if they relate to identical or similar goods.

The provision of the first paragraph shall however not apply to:

- (a) the name or name of business of a third party;
- (b) a sign which is particularly well established, where the sign is widely known in this country, and the use of a similar sign by a third party would take unfair advantage of, or be detrimental to the goodwill obtained by the sign;
- (c) a sign which is well established, where, due to the particular product concerned, it would be clearly detrimental to the repute of the sign if a similar sign were to be used for other products.

**7.** Where several independent parties claim exclusive rights to the same sign pursuant to Section 1 or 2 of the present Act, the earliest title to the claim shall have priority provided this is not contrary to the provisions of Section 8 or 9.

**8.** Even where a registered trade mark is liable to be confused with a sign which has an earlier right, it shall be allowed to exist validly side by side with the latter, provided the application for registration was made in good faith and the holder of the earlier right has knowingly tolerated the use of the later trade mark for five consecutive years from the date of registration.

**9.** A later right to a sign shall also be allowed to exist side by side with an earlier right provided:

- (a) the later right is acquired by use and the proprietor of the earlier right has taken no steps within reasonable time to prevent the use of the other sign; or
- (b) the rights to the signs are acquired by use in different parts of the country and it is presumed that both signs may continue to be used as before without any likelihood of confusion on the part of the public with regard to the traders from whom the goods originate.

**10.** In order to prevent any likelihood of confusion as referred to in Sections 3, 8 and 9, and where this is found reasonable, a court of law may decide that one or both signs in future may be used only for particular goods in a certain area or in a particular manner, such as in a certain shape or form or with reference to a geographical location or with the addition of the name of the proprietor or any other elucidating addition.

**11.** At the request of the proprietor of a registered trade mark, the author, chief editor and publisher of a dictionary, manual, textbook or similar non-fictional publication shall ensure that the trade mark is not reproduced in the publication unless it is clearly indicated that the mark so reproduced is protected by registration.

Anyone who fails to comply with a request made in due time and in accordance with the preceding paragraph shall be liable to defray the cost of a notice of rectification published in such manner and to such extent as is deemed reasonable.

## Chapter 2 Registration of Trade Marks

**12.** A Register of Trade Marks shall be kept for the whole country by the Patent Office.

**13.** In order for a trade mark to be registered it must be capable of distinguishing the goods of the proprietor from those of others. The mark may not exclusively or with no more than minor changes or additions, indicate the kind, quality, quantity, use, price or geographical origin of the goods, or the date of their production. In deciding whether a trade mark has a distinctive character, however, all factual circumstances shall be taken into consideration, in particular the length of time during which and the scale on which the mark has been in use.

Trade marks which consist exclusively of the shape of goods or their packaging may not be registered if the shape or the packaging result from the nature of the goods themselves, are necessary to obtain a technical result, or give substantial value to the goods.

**14.** A trade mark shall not be registered if:

- (1) it is contrary to law or public order or is liable to cause offence;
- (2) it is of such nature as to deceive the public;
- (3) unless consent has been given by the appropriate authorities, it includes official escutcheons, flags or other official emblems or badges, including official national or foreign certification or guarantee marks or stamps required for goods identical with or similar to those which the application concerns, or escutcheons, flags or other emblems, abbreviations or designations of intergovernmental organizations, or international marks, seals or signs the unauthorized use of which is forbidden by law. Nor shall the mark be registered if it includes anything liable to be confused with such emblems or badges, etc. as referred to in this paragraph. Foreign emblems or badges, etc., with the exception of flags of States, may nevertheless not prevent registration unless they have been published in a notice in the publication issued by the Patent Office;
- (4) it includes anything liable to be conceived as the name or name of business or portrayal of third party and which does not obviously refer to a person deceased a considerable time ago;
- (5) it includes anything liable to be conceived as the distinguishing title of a protected literary or artistic work of a third party, or infringes the copyright to such a work or the right to a photography or a design;
- (6) it is liable to be confused with the name or name of business of a third party or with a trade mark registered for a third party in accordance with an earlier application, or which is well established by a third party at the time when the application for registration is filed;
- (7) it is liable to be confused with a trade mark taken into use by a third party before the applicant files his application, and the applicant is aware of this use when he files his application.

Exemptions from the provisions of items (4), (5), (6) and (7) above may be granted provided the proprietor of the earlier right consents and there is no risk that the mark will be deceptive to the public.

**15.** The exclusive rights conferred upon the proprietor by registration of a trade mark, do not include such component of the mark as would be refused a separate registration.

Where the mark includes such a component, the Patent Office presumes that registration of the mark would create uncertainty as to the scope of the right, it may be clearly stated in the Register of Trade Marks that this component shall not enjoy legal protection.

Where it is later shown that the component of the mark which was excluded from legal protection may be permitted to be registered, a new separate registration of this component or of the entire mark without the previous reservation shall be granted.

**16.** A trade mark shall be registered for certain goods or classes of goods. Provisions regarding the classification of goods shall be laid down by the King.

**17.** An application for registration of a trade mark shall be made in writing to the Patent Office. The application shall state the name of the applicant or his business and specify the type of trade concerned, and it shall include a reproduction of the mark and a specification of the goods or classes of goods which the application for registration concerns. The application shall in other respects comply with Regulations laid down pursuant to Section 43 of the present Act and be accompanied by the prescribed fee.

**18.** Where the application for registration of a trade mark concerns a trade mark used for the first time by the applicant to cover goods exhibited at an international exhibition in this country and the application is filed within six months from the opening of the exhibition, the application, in relation to other signs for which an application for registration has been filed or which has been taken into use, shall be considered to have been filed on the day that the goods were first shown at the exhibition.

The King may, on condition of reciprocity, enter into agreements with foreign States making corresponding provisions applicable to international exhibitions there.

**19.** Where an application for registration of a trade mark does not comply with the provisions of this Act or Regulations laid down pursuant to this Act, or the conditions for registration are not complied with, the Patent Office shall notify the applicant of this. The applicant shall be allowed a reasonable time to reply and, where applicable, make the necessary corrections.

An application shall not be considered to have been filed as long as a reproduction of the mark has not been sent in. Where the application is deficient in any other respect, this shall not prevent it from being considered filed at the time when the reproduction of the mark arrives at the Patent Office, provided such deficiency is rectified within the time limit stipulated by the Patent Office.

Where a reply to the notification from the Patent Office has not been received within the stipulated time limit, the application shall be considered to have been withdrawn. However, within four months from the expiry of the time limit and upon payment of a special fee, the applicant may request that the application is resumed for further processing. A reply to the notification from the Patent Office must be made within the same time limit. Where the fee is not paid and no reply to the notification has been received within the expiry of the time limit, no request for resumption shall be considered to have been made. Only one request for resumption may be made during the processing of the application.

Where the applicant has replied to the notification from the Patent Office within the stipulated time limit and the Patent Office still finds the application deficient, the application shall be refused, unless the Patent Office finds that the applicant should receive a new notification stipulating a new time limit.

Where registration is refused, the applicant may, upon payment of a stipulated fee, appeal the decision to the Board of Appeals of the Patent Office. An appeal must be lodged within two months from the date on which the notification informing of the decision was sent from the Patent Office.

An action regarding a decision from the Board of Appeals refusing the registration of a trade mark may not be brought before a court of law later than two months after the applicant was notified of the decision. Information regarding the time limit for bringing an action shall be included in the notification.

No re-establishment of rights shall be granted for the failure to meet the time limits stipulated in the fifth and sixth paragraphs of this Section.

**20.** Where an application for registration of a trade mark complies with the provisions of the present Act and with Regulations laid down pursuant to the present Act, and no obstacle to prevent registration has been found, the application, usually together with all accompanying documents, shall be laid open to public inspection. A notice to this effect stating the main contents of the application shall be entered in the publication issued by the Patent Office. The notice shall state that anybody who wishes to oppose the registration of the mark must do so in a specified manner within two months from the date on which the notice is published.

Upon expiry of the time limit the Patent Office shall start further processing and examination of the application and thereafter decide whether the mark is to be registered.

The applicant and the opponent of a registration may appeal an unfavourable decision to the Board of Appeals in accordance with the provisions of Section 19, fifth paragraph. Where a registration is refused, the applicant may bring an action in accordance with the provisions of Section 19, sixth paragraph. No re-establishment of rights shall be granted for the failure to meet the time limits stipulated in the said provisions.

**21.** Where the Patent Office finally decides that the mark is to be registered, it shall be entered in the Register, a notice informing of the registration shall be entered in the publication issued by the Patent Office, and a letter of registration shall be sent to the applicant.

Where the claim has been laid open to public inspection in accordance with Section 20, a notice as referred to in the first paragraph shall also be published when a registration is refused or an application is withdrawn.

**22.** The registration shall be valid from the day the application was filed with the Patent Office in accordance with Section 17 of the present Act, cf. Section 19, or from the day it shall be considered to have been filed, cf. Section 18. It is valid for up to ten years from the date when a final decision on registration of the mark was taken (the registration date).

At the request of the proprietor the registration may be renewed for ten years at a time counted from the expire of the preceding period of registration.

**23.** An application for renewal shall be made in writing to the Patent Office not earlier than one year before and not later than six months after the date of expiry of the period of registration and it shall be accompanied by the stipulated fee. Where the application is filed after the expiry of the registration period, the applicant shall pay an additional fee.

Where an application for renewal has not been filed by the expiry of the registration period, the Patent Office shall notify the registered proprietor or his agent; however, the Patent Office shall be without liability if such notification is not given.

The provisions of Section 19, except for the first sentence of the second paragraph, and Section 21, the first paragraph, shall apply correspondingly to the processing of applications for renewal.

**24.** At the request of the proprietor and upon payment of the stipulated fee, minor alterations may be made in a registered trade mark provided this does not affect the impression of the mark as a whole. Section 21, first paragraph, shall apply correspondingly. The mark in its altered form shall be included in the notice.

### Chapter 3 Invalid Registrations

**25.** Where a trade mark has been registered contrary to the provisions of this Act, the registration may be declared invalid by a court decision, unless the mark may continue to be held in accordance with the provisions of Sections 8 to 10. The registration shall nevertheless not be declared invalid because the mark is liable to be confused with another trade mark where the provisions of Section 25a concerning conditions for declaring the registration of the latter trade mark invalid are met.

The registration may also be declared invalid where the proprietor of the mark is no longer engaged in trade, or where the mark since its registration has lost its distinctive character, has become deceptive or contrary to public order or is liable to cause offence.

**25a.** Where, within a period of five years from the date of registration, the proprietor of a registered trade mark has failed to put the mark into use in relation to the goods for which it has been registered, or the use has been suspended for an uninterrupted period of five years, the registration may be declared invalid by a court decision, unless there are proper reasons for nonuse. Use of the mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, or affixing of the trade mark to goods or the packaging thereof for export purposes shall also constitute use within the meaning of this Section. Use of the trade mark with the consent of the proprietor shall also be deemed to constitute use by the proprietor.

A registration may not be revoked where the trade mark is put to use or the use is resumed after the expiry of the five year period, but before an action regarding invalidity has been brought. The commencement or resumption of use within a period of three months preceding, an action shall, however, be disregarded where the preparations for the commencement or resumption of use occur only after the proprietor becomes aware that an action may be brought.

Where the trade mark has been used in relation to part only of the goods for which it is registered, the registration shall be declared invalid only for the goods in relation to which the mark has not been used.

**26.** Actions pursuant to Section 25 or 25a may be brought by anyone with a legal interest in doing so. Actions pursuant to Section 19, sixth paragraph, Section 20, third paragraph, Section 25 and Section 25a shall be brought before the Municipal Court of Oslo (Oslo byrett)

Anyone who brings an action, shall at the same time notify the Patent Office and also notify by registered post any licensee whose address is entered in the Register. Correspondingly, a licensee who wishes to bring an action relating to infringement of trade mark rights shall notify the proprietor of this.

Where the plaintiff fails to document that a notification as referred to in the second paragraph has been given, the court may stipulate a time limit for giving such notification. If this time limit is not complied with, the case shall be dismissed.

Actions based on the provisions of Section 13 or 14, items (1) to (3), or Section 25, the second paragraph, may also be brought by the Patent Office.

Where the owner of the mark as well as the party contesting his right agrees on this, the Board of Appeal may be requested to finally decide on the question of the validity of the mark. A stipulated fee shall be paid for this.

Where the Board of Appeal finds that the conditions for protection of the trade mark are not met or have ceased to be met, and the proprietor of the mark raises no objections, the Board of Appeal may finally decide that the registration is invalid. Any objection from the proprietor of the mark must reach the Patent Office not later than three months after the Board of Appeal notified him of its intention to take such decision and the reasons for doing so.

**27.** Where the registration of a trade mark is declared invalid by a final decision, this shall be entered in the Register and a notice published as prescribed in Section 21, first paragraph.

Where the registration is not renewed or the owner of the mark requests that the mark is to be deleted from the Register, the provision of the first paragraph shall apply correspondingly.

## **Chapter 4**

### **Special Provisions in Respect of Registration of the Trade Marks of Foreigners**

**28.** Where anyone who is not established as a trader in this country applies for registration of a trade mark, he shall prove that the mark has been registered by him in his domestic country for the goods which his application concerns.

This shall however not apply where the domestic country of the applicant concedes corresponding rights with regard to trade mark applications from traders in Norway.

**29.** Subject to reciprocity, the King may decide that on certain stipulated conditions a trade mark registered in a foreign State may be registered in this country such as it is validly registered in the foreign State. Where pursuant to this provision a mark is registered which would not otherwise have been able to obtain protection in this country, the protection shall not exceed the scope or duration of the protection in the foreign State.

**30.** Subject to reciprocity, the King may decide that a person who has filed an application for registration of a mark in a foreign State, within a certain time limit may file an application for registration of the mark in this country with the effect that, in relation to other trade mark applications or use of signs, the application shall be considered to have been filed at the same time as the application is filed in the foreign State.

**31.** A person not domiciled in this country may only file an application for registration or renewal, or assert the rights resulting from the registration, as long as he has an agent domiciled in this country and the Patent Office has been informed of this agent. The agent shall represent him in everything concerning the trade mark, including any civil action brought against him. The name and residence of the agent shall be entered in the Register of Trade Marks.

## Chapter 5 Transfers and Licences

**32.** The right to a trade mark may be transferred together with, or independently of, the undertaking in which it is used.

Where an undertaking changes proprietor, the right to the trade marks attached to the undertaking shall be transferred to the new proprietor, unless otherwise agreed.

**33.** Upon request from the new proprietor and subject to payment of a stipulated fee, the transfer of a registered trade mark shall be entered in the Register of Trade Marks and a notice published as referred to in Section 21. The provisions of Sections 28 and 31 shall apply correspondingly.

The Patent Office may refuse to register a transfer if it is not made in connection with a transfer of the undertaking to which the mark has been attached, and the Patent Office finds that the use of the mark by the new proprietor would be liable to be deceptive. The provisions of Section 19, the last two paragraphs, shall apply to appeals of such refusals. In actions concerning a registered trade mark, the person entered in the Register as the proprietor of the trade mark shall always be considered to be the proprietor, and notifications from the Patent Office shall be sent to him.

**34.** The proprietor of a trade mark may grant another person the right to use the trade mark in the course of trade (licence). A trade mark may be licenced for some or all of the goods for which it is protected and for the whole or part of the country. A licensee may not transfer his right to a third party unless this is agreed or must be considered agreed.

The proprietor of a trade mark may invoke the rights conferred by that trade mark against a licensee who contravenes any provision in his licensing contract with regard to duration, the form covered by the registration in which the trade mark may be used, the scope of goods for which the licence is granted, the territory in which the trade mark may be affixed, or of the quality of the goods manufactured by the licensee.

The entry in the Register of a licence of a registered trade mark and notice as referred to in Section 21 may be requested by the proprietor of the trade mark as well as the licensee. Where subsequently the licence is shown to have been terminated, this shall correspondingly be entered in the Register and a notice as referred to in Section 21 shall be published. The Patent Office may refuse to enter a licence where it finds that the use of the trade mark by the licensee would be liable to be deceptive. Section 19, fifth and sixth paragraphs, shall apply to appeals of such refusals.

35. The rights conferred by a trade mark may not be subject to attachment or any other enforcement action on the part of creditors.

## **Chapter 6**

### **Prohibition on the Use of Deceptive Signs**

36. Where a sign is put to use by a new proprietor or any other person who has the consent of the proprietor, and the sign as used by the new proprietor is liable to be deceptive, a decision by a court of law may prohibit him from using the sign in an unaltered form or order him to take such steps as the court finds required.

This provision shall apply correspondingly in other instances where a sign is deceptive or is used in a manner liable to cause deception.

Legal actions pursuant to this Section may be brought by the Patent Office or by anybody who has a legal interest in doing so.

## **Chapter 7**

### **Provisions in Respect of Legal Protection**

37. Anybody who intentionally uses a sign in violation of this Act, shall be punished by fines or imprisonment of up to three months. Prosecution shall take place only at the request of the plaintiff.

38. Anybody who intentionally or negligently uses a sign in violation of this Act, shall be liable to pay compensation for the damage caused.

Where such use has been made in good faith, the court may, to the extent found reasonable, order the user to pay compensation for the damage; however, the compensation shall not exceed the gains presumed made by the infringement.

39. In lawsuits concerning unlawful use of a registered trade mark, Section 37 shall only be applied where the use has taken place after the date of registration, Section 38 shall only be applied where the use has taken place after the publishing of a notice in accordance with Section 20, first paragraph, or if the use is intentional.

40. At the request of the injured party, anybody who has used a sign in violation of this Act shall be obliged to alter or remove the sign. Where the sign cannot be altered or removed without unreasonable cost to the person against whom judgment is entered or without damaging or ruining the goods, the objects on which they are found may be confiscated.

By agreement between the unsuccessful party and the injured party the confiscated goods may be transferred to the latter against a deduction in any claim for compensation he may have on the unsuccessful party in accordance with Section 38.

In actions concerning trade mark infringements the court may decide on other measures than those referred to above in order to prevent the unlawful use of a mark.

41. The court shall send the Patent Office transcripts of decisions given in civil disputes taken to court in accordance with the present Act.

## **Chapter 8**

### **Miscellaneous Provisions**

42. Anyone has a right to examine the Register of Trade Marks, to have certified extracts from it, and to have copies of trade mark applications with accompanying documents which have been laid open to public inspection after the marks have been registered or laid out in accordance with Section 20.



Upon a written request the Patent Office shall find out whether a given mark has been registered or an application for registration of the mark for specified goods or classes of goods has been filed, and, if so, the name of the person registered as the proprietor of the mark or as the applicant for its registration.

The stipulated fees shall be paid for transcripts and inquiries as referred to above, and also for entries into the Register of Trade Marks and publishing of notices informing of changes concerning the name of proprietor or concerning his agent. Requests for a time limit or extended time limit for rectifying deficiencies, preparing statements, providing further grounds, etc. shall be accompanied by the stipulated fee which shall be paid back if the time limit applied for is not granted.

**43.** The King may lay down further provisions concerning the procedure for submitting and processing of applications for registration of trade marks, concerning the stipulation of fees and concerning the further implementation of this Act.

**44.** This Act shall enter into force on the date decreed by the King. As from the same date the Trade Marks Act of July 2, 1910, as later amended, with the exception of Sections 26 and 27, shall be repealed.

References to the Act of July 2, 1910 made in other Acts shall refer to the corresponding provisions of this Act.

A trade mark registered prior to the entry into force of this Act, may only be declared invalid pursuant to Section 25, second paragraph, of this Act, or if it fails to comply with the requirements of the earlier Act.