

TRADE MARKS ACT

CHAPTER 78:42

Act
11 of 1887
Amended by
19 of 1939
12 of 1990

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SCHEDULE.

CHAPTER 78:42

TRADE MARKS ACT

AN ACT relating to trade marks.

1961 Ed.
Cap. 332.
II of 1887.

[31st December 1887]

Commencement.

1. This Act may be cited as the –

Short title.

TRADE MARKS ACT.

2. In this Act –

Interpretation.

“Court” means the High Court;

“prescribed” means prescribed by general rules under or within the meaning of this Act;

“Registrar” means the Registrar of the High Court.

PART I

REGISTRATION OF TRADE MARKS

3. (1) The Registrar may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark. Application for registration.

(2) The application must be made in the form set forth in the Schedule, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the trade marks office in the prescribed manner. Schedule.

(3) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connection with which the applicant desires the trade mark to be registered.

(4) The Registrar may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Court, and the Court shall have jurisdiction to hear and determine the appeal, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5) When an applicant for the registration of a trade mark, otherwise than under an international convention, is out of the State at the time of making the application, he shall give the Registrar an address for service in the State and, if he fails to do so, the application shall not be proceeded with until the address has been given.

Limit of time for proceeding with application.

4. Where registration of a trade mark has not been or is not completed within twelve months from the date of the application, by reason of default on the part of the applicant, the Registrar shall give notice of the non-completion to the agent (if any) employed on behalf of the applicant, and, if at the expiration of fourteen days from that notice the registration is not completed, shall give the like notice to the applicant (to be left at his address within the State, if he is out of the State), and if at the expiration of the latter fourteen days, or such further time as the Registrar may in special cases permit, the registration is not completed, the application shall be deemed to be abandoned.

Particulars of trade mark.

5. (1) For the purposes of this Act, a trade mark must consist of or contain, at least, one of the following essential particulars:

- (a) a name of an individual or firm printed, impressed or woven in some particular and distinctive manner;
- (b) a written signature, or copy of a written signature, of the individual or firm applying for registration thereof as a trade mark;
- (c) a distinctive device, mark, brand, heading, label or ticket;
- (d) an invented word or invented words; or
- (e) a word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in this section any letters, words or figures, or combination of letters, words or figures, or any of them; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register. A person need not, under this section, disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any

such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

6. A trade mark must be registered for particular goods or classes of goods.

Connection of trade mark with goods.

7. When a person claiming to be the proprietor of several trade marks, which, while resembling each other in the material particulars thereof, yet differ in respect of—

Registration of a series of marks.

- (a) the statement of the goods for which they are respectively used or proposed to be used;
- (b) statement of numbers;
- (c) statement of price;
- (d) statement of quality; or
- (e) statements of names of places,

seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

8. A trade mark may be registered in any colour or colours, and the registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour or colours.

Trade marks may be registered in any colour or colours.

9. Every application for registration of a trade mark under this Act shall, as soon as may be after its receipt, be advertised by the Registrar, unless the Registrar refuses to entertain the application.

Advertisement of application.

10. (1) Any person may within one month, or such further time, not exceeding three months, as the Registrar may allow, of the advertisement of the application give notice in duplicate at the trade marks office of opposition to registration of the trade mark, and the Registrar shall send one copy of the notice to the applicant.

Opposition to registration.

(2) Within one month after receipt of the notice, or such further time as the Registrar may allow, the applicant may send to the Registrar a counter statement in duplicate of the grounds on which he relies for

his application, and, if he does not do so, shall be deemed to have abandoned his application.

(3) If the applicant sends the counter statement, the Registrar shall furnish a copy thereof to the person who gave notice of opposition, and shall, after hearing the applicant and the opponent, if so required, decide whether the trade mark is to be registered, but his decision shall be subject to appeal to the Court, and the Court shall have jurisdiction to hear and determine the appeal, and shall hear the applicant and the opponent and the Registrar, and shall make an order determining whether, and subject to what conditions (if any), registration is to be permitted.

(4) If the applicant abandon his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the Registrar may determine to be reasonable.

(5) When the opponent is out of the State, he shall give the Registrar an address for service in the State.

Assignment and transmission of trade mark.

11. A trade mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Conflicting claims to registration.

12. Where each of several persons claims to be registered as proprietor of the same trade mark, the Registrar may refuse to register any of them until their rights have been determined according to law, and the Registrar may himself submit, or require the claimants to submit, their rights to the Court.

Restrictions on registration.

13. (1) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the Registrar shall not register in respect of the same goods, or description of goods, a trade mark identical with one already on the register with respect to such goods or description of goods.

(2) Except as mentioned before the Registrar shall not register, with respect to the same goods or description of goods, a trade mark having such resemblance to a trade mark already on the register with respect to such goods, or description of goods, as to be calculated to deceive.

14. It shall not be lawful to register as part of, or in combination with, a trade mark any scandalous design or any words, the use of which would, by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a Court of justice.

Further restriction on registration.

15. (1) Nothing in this Act shall be construed to prevent the Registrar entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark, any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made.

Saving for power to provide for entry on register of common marks as additions to trade marks.

(2) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register. A person need not, under this section, disclaim his own name or the foreign equivalent thereof, or his place of business; but no entry of any such name shall effect the right of any owner of the same name to use that name or the foreign equivalent thereof.

PART II

EFFECT OF REGISTRATION

16. Application for registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.

Effect of application.

17. The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.

Right of first proprietor to exclusive use of trade mark.

18. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark, unless, in the case of a trade mark capable of being registered under this Act, it has been registered in pursuance of this Act.

Restrictions on actions for infringement.

19. In an action for infringement of a registered trade mark, the Court or a Judge may certify that the right to the exclusive use of the trade mark came in question, and if the Court or a Judge so certifies, then, in any subsequent action for infringement, the plaintiff in that

Costs of action for infringement of trade mark.

action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or Judge trying the subsequent action certifies that he ought not to have the same.

PART III REGISTER OF TRADE MARKS

Register of trade marks.

20. There shall be kept at the trade marks office a book called the register of trade marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignments and transmissions of trade marks, and such other matter as may be from time to time prescribed.

Removal of trade mark after fourteen years unless fee paid.

21. (1) At a time not being less than two months, nor more than three months, before the expiration of fourteen years from the date of the registration of a trade mark, the Registrar shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the Registrar before the expiration of the fourteen years (naming the date at which the same will expire) the prescribed fee; and if the fee is not previously paid, he shall, at the expiration of one month from the date of the giving of the first notice, send a second notice to the same effect.

(2) If the fee is not paid before the expiration of the fourteen years, the Registrar may, after the end of three months from the expiration of the fourteen years, remove the mark from the register, and so, from time to time, at the expiration of every period of fourteen years.

(3) If, before the expiration of the three months, the registered proprietor pays the fee together with the additional prescribed fee, the Registrar may, without removing the trade mark from the register, accept the fee as if it had been paid before the expiration of the fourteen years.

(4) Where, after the three months, a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar may, if satisfied that it is just to do so, restore the trade mark to the register on payment of the prescribed additional fee.

(5) Where a trade mark has been removed from the register for non-payment of the fee or otherwise, the trade mark shall, nevertheless, for the purpose of any application for registration during one year next

after the date of the removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark.

PART IV FEES

22. There shall be paid in respect of applications for registration and other matters under this Act such fees as may be from time to time prescribed by the Minister.

Fees for
registration.*
D. 19/1939.

PART V GENERAL

23. (1) The Minister may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the trade marks office.

Trade marks
office.

(2) Until a new trade marks office is provided, the office of the Registrar of the High Court shall be the trade marks office within the meaning of this Act.

(3) The trade marks office shall be under the immediate control of the Registrar of the High Court, who shall act under the superintendence and direction of the Minister.

(4) Any act or thing directed to be done by or to the Registrar may, in his absence, be done by or to any officer for the time being in that behalf authorised by the Minister.

24. There shall not be entered in any register kept under this Act, or be receivable by the Registrar, any notice of any trust expressed, implied or constructive.

Trusts not to be
entered in
registers.

25. The Registrar may refuse to register a trade mark of which the use, in his opinion, would be contrary to law or morality.

Refusal to
register trade
mark in certain
cases.

*See *Gazette*, 1921, p. 266.

Entry of assignments and transmissions in register.

26. Where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark, the Registrar shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the trade mark in the register of trade marks. The person for the time being entered in the register of trade marks as proprietor of a trade mark shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the same, and to give effectual receipts for any consideration for the assignment, licence or dealings; and any equities in respect of the trade mark may be enforced in like manner as in respect to any other personal property.

Seal of trade marks office.

27. There shall be a seal for the trade marks office, and impressions thereof shall be judicially noticed and admitted in evidence.

Inspection of and extracts from registers.

28. Every register kept under this Act shall, at all convenient times, be open to the inspection of the public, subject to the provisions of this Act and to such Regulations as may be prescribed; and certified copies, sealed with the seal of the trade marks office, of any entry in any such register shall be given to any person requiring the same, on payment of the prescribed fee.

Sealed copies to be received in evidence.

29. Printed or written copies or extracts, purporting to be certified by the Registrar and sealed with the seal of the trade marks office, of or from the registers and other books kept there shall be admitted in evidence in all Courts of the State, and in all proceedings, without further proof or production of the originals.

Rectification of registers by Court.

30. (1) The Court may, on the application of any person aggrieved by the omission, without sufficient cause, of the name of any person, or of any other particulars, from any register kept under this Act, or by any entry made, without sufficient cause, in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit; or the Court may refuse the application; and, in either case, may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2) The Court may, in any proceeding under this section, decide any question that it may be necessary or expedient to decide for the rectification of a register; and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the Registrar.

31. The Registrar may, on request in writing accompanied by the prescribed fee –

Power to Registrar to correct clerical errors.

- (a) correct any clerical error in, or in connection with, an application for registration of a trade mark; or
- (b) correct any clerical error in the name, style or address of the registered proprietor of the trade mark; or
- (c) cancel the entry, or part of the entry, of a trade mark on the register; or
- (d) permit an applicant for registration of a trade mark to amend his application by omitting any particular goods or classes of goods, in connection with which he has desired the trade mark to be registered;

Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address and calling, and that he is the person whose name appears on the register as the proprietor of the trade mark.

32. (1) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter the mark in any particular, not being an essential particular within the meaning of this Act; and the Court may refuse or grant leave on such terms as it may think fit.

Alteration of registered trade mark.

(2) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant; and the Registrar shall be entitled to be heard on the application.

(3) If the Court grants leave, the Registrar shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

33. Any person who makes, or causes to be made, a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, is guilty of an offence.

Falsification of entries in registers.

Exercise of discretionary power by Registrar.

34. Where any discretionary power is by this Act given to the Registrar, he shall not exercise that power adversely to the applicant for the registration of the trade mark, without giving the applicant an opportunity of being heard personally or by his agent.

Registrar may apply to Solicitor General.

35. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Solicitor General for directions in the matter.

Certificate of Registrar to be evidence.

36. A certificate purporting to be under the hand of the Registrar, as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Applications and notices by post.

37. (1) Any application, notice or other document authorised or required to be left, made or given at the trade marks office, or to the Registrar, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left, made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2) In proving the service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Provision as to days for leaving documents at office.

38. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document, or paying any fee, at the trade marks office falls on a Saturday or a public holiday or any day observed as a day of public fast or general thanksgiving, herein referred to as excluded days, it shall be lawful to leave the document, or to pay the fee, on the day following the excluded day, or days, if two or more of them occur consecutively.

Declaration by infant, lunatic, etc.

39. If any person is, by reason of infancy, lunacy or other inability, incapable of making any declaration or of doing anything required or permitted by this Act, or by any Rules made under the authority of this Act, then the guardian or committee (if any) of the incapable person, or if there is none, any person appointed by any Court or Judge possessing jurisdiction in respect to the property of incapable persons, upon the petition of any person on behalf of the incapable person, or of any other person interested in the making of any such declaration or doing any such thing, may make the declaration, or a declaration as nearly

corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the incapable person, and all acts done by the substitute shall, for the purposes of this Act, be as effectual as if done by the person for whom he is substituted.

40. (1) The Minister may, from time to time, make such general rules and do such things as he thinks expedient, subject to the provisions of this Act –

- (a) for regulating the practice of registration under this Act;
- (b) for classifying goods for the purposes of trade marks;
- (c) for making or requiring duplicates of any documents;
- (d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the Minister may think fit, of any documents in the trade marks office;
- (e) for securing and regulating the making, printing, publishing and selling of indexes to, and abridgements of, any documents in the trade marks office; and for providing for the inspection of indexes and abridgements, and other documents;
- (f) generally for regulating the business of the trade marks office and all things by this Act placed under the direction or control of the Registrar, or of the Minister.

Power of Minister to make general rules for classifying goods and regulating business of trade marks office.*
[12 of 1990].

(2) The form in the Schedule may be altered or amended by rules made by the Minister.

* (3) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act; and shall (subject as is hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4) Rules made under this section shall be subject to negative resolution of the House of Assembly.

41. Any person authorised by any law in force in the State to take affidavits may take a declaration authorised or required to be made under this Act.

Authority for taking declarations.

*Rules. See *Gazettes* 1920, p. 99, and 1921, p. 266.

*Rules. See *Gazettes* of 1970, p. 99, and 1921, p. 266.

SCHEDULE

FORM A

FORM OF APPLICATION FOR REGISTRATION OF TRADE MARK.

(One representation to be fixed within this square, and two others on separate sheets of foolscap of same size.)

(Representations of a larger size may be folded, but must be mounted upon linen, and affixed hereto.)

You are hereby requested to register the accompanying trade mark (in class, iron in bars, sheets, and plates; in class, steam engines and boilers; and in class, warming apparatus) in the name of (a) who claims to be the proprietor thereof –

Registration fees enclosed \$.....

(Signed).....

To the Registrar,
Court House,
Roseau, Dominica.

Note – If the trade mark has been in use before, state length of user.

(a) Here insert legibly the name, address and business of the individual or firm.

SUBSIDIARY LEGISLATION

TRADE MARKS RULES

ARRANGEMENT OF RULES

RULE

1. Short title.

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REGISTRATION OF TRADE MARK

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SECOND SCHEDULE.

THIRD SCHEDULE.

SUBSIDIARY LEGISLATION

18/1937*

TRADE MARKS RULES

made under section 41

Commencement.

[6th August 1937]

Short title.

1. These Rules may be cited as the –
TRADE MARKS RULES.

PART I

PRELIMINARY

Classification of
goods.
First Schedule.

2. For the purposes of these Rules goods are classified in the manner appearing in the First Schedule.

Determination of
doubts as to
classes.

3. If any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the Registrar.

Fees.
Second
Schedule.

4. The fees to be charged in pursuance of these Rules are the fees specified in the Second Schedule.

Registration.
Second
Schedule.

5. A trade mark or trade marks may be registered in pursuance of the same application by the same person in respect of all or any goods, subject to payment of the additional fees specified in the Second Schedule in respect of the registration of different trade marks or the extension of the same trade mark to goods in different classes.

PART II

APPLICATION FOR REGISTRATION

Statement and
declaration on
application for
registration.

6. Any person whether a Commonwealth citizen or an alien, desiring to register a trade mark, shall employ an agent resident in the State for the purpose of making the application. The application shall be accompanied by a statement and a declaration as is hereinafter mentioned.

* These Rules have been amended by 42/1943; 19/1946; 20 of 1977; 12 of 1990.

7. The statement shall contain the following particulars:

Contents of
statement.

- (a) the name and address and calling of the applicant;
- (b) the description or reference to a description of the trade mark to be registered;
- (c) the class or classes of goods, being some one or more of the classes mentioned in the First Schedule, and the particular description or descriptions of goods in such class or classes, with respect to which he desires the trade mark to be registered; and
- (d) in the case of a trade mark already in use, a description of the goods in respect of which it has been used and the length of time during which it has been so used.

First Schedule.

8. The above statement must bear a date and be signed by the applicant. Subject to any other directions that may be given by the Registrar, the statement sent to the Registrar shall be upon foolscap paper, of a size of thirteen inches by eight inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half.

Other requisites
of statement.

9. Subject to any other directions that may be given by the Registrar, a description of a trade mark shall be given in writing and shall be accompanied, when practicable, by a drawing or other representation in duplicate, not less than three inches square, on foolscap paper of the size aforesaid, or by a specimen of the trade mark, pasted or otherwise fastened on the paper. When a drawing or other representation or specimen cannot be given in the manner aforesaid, a specimen or copy of the trade mark may be sent, either of full size, or on a reduced scale, and in such form as may be thought most convenient.

Description of
trade mark.

The Registrar may, if dissatisfied with the representation of a trade mark, require a fresh representation, either before he proceeds with the application, or before he registers the trade mark.

The Registrar may also, in exceptional cases, deposit in such place as the Minister shall direct a specimen or copy of a trade mark which cannot conveniently be placed on his register, and may refer thereto in his register in such manner as he thinks advisable.

10. The declaration must be on foolscap paper of the above-mentioned size and must verify the statement and declare that, to the best of the applicant's knowledge and belief, he is lawfully entitled to

Requisites of
declaration.

use the trade mark, and must be made and subscribed as hereinafter mentioned.

Application by a company.

11. Where an application for the registration of a trade mark is made by or on behalf of a corporate or quasi-corporate body of persons, the statement and declaration shall be made by the secretary or other principal officer of the body of persons; and the Registrar may require such proof as he thinks fit that the application made is duly authorised by such body of persons.

Acknowledgment of application. Form F.

12. On receipt of the application the Registrar shall send to the applicant an acknowledgment thereof which shall be in Form F in the Third Schedule.

PART III

ADVERTISEMENT OF APPLICATION AND NOTICE OF OPPOSITION

Advertisement of application.

13. (1) As soon as may be after the receipt of an application made as provided by these Rules, the Registrar shall forward the same or a copy thereof to the Minister for advertisement in as many issues of the *Gazette* (not exceeding three issues) as the Registrar shall think necessary.

(2) For the purposes of the advertisement the applicant may be required to furnish a wood-block or electrotype of the trade mark of such dimensions as may from time to time be directed by the Registrar, or such other information or means of advertising the trade mark as may be allowed by the Registrar.

Notice of opposition.

14. A notice of opposition may be given by sending to the Registrar, together with the prescribed fee, a written notice in duplicate, on foolscap paper of the size as aforesaid, stating the grounds of the opposition. The applicant's counter-statement in duplicate shall also be written on foolscap paper of the size as aforesaid.

PART IV

REGISTRATION OF TRADE MARK

Time for registration.

15. On the expiration of three months from the date of the first appearance of the advertisement in the *Gazette* the Registrar may, if he is satisfied that the applicant is entitled to registration, register the trade

mark in respect of the description of goods for which he may be entitled to be registered, and the applicant as the proprietor thereof, on payment of the prescribed fee.

16. Upon registering any trade mark the Registrar shall enter in the register the date on which the statement relating to the application for registration was received by the Registrar (which day shall be deemed to be the date of the registration) and such other particulars as he may think necessary including the name and address of the proprietor.

Entries to be made in register.

17. The Registrar shall send notice to the applicant of the registration of his trade mark.

Notice of registration.

PART V
REGISTRATION OF SUBSEQUENT PROPRIETORS

18. The person to whom any registered trade mark has been assigned or transmitted may apply to be registered as proprietor thereof.

Rights of assignee.

19. When the trade mark has been assigned, the person claiming as assignee to be registered shall send to the Registrar, with his application, an assignment by deed, executed by both the assignor and the assignee, and a declaration verifying the assignment.

Evidence of assignment.

20. Where a trade mark has been transmitted, the person applying as the transmittee to be registered shall send to the Registrar, together with his application, a statement of the manner in which the trade mark has been transmitted, and a declaration verifying the statement.

Evidence of transmission.
[12 of 1990].

Any transmittee may assign his interests in the mark, notwithstanding that he has not been registered as proprietor thereof.

When the person applying to be registered claims as the transmittee of any registered proprietor, or as the assignee of a transmittee, there shall be produced to the Registrar the following evidence:

- (a) if the business concerned in the goods with respect to which the trade mark is registered is carried on in the State or in a Commonwealth territory, then –
 - (i) if the transmission has taken place by the death of any person, there shall be produced the probate of the will of the deceased person, or the letters of

administration to his estate, or an official extract therefrom; and

(ii) if the transmission has taken place by the marriage of a female proprietor, there shall be produced a certified copy of the register of the marriage, or other legal evidence of the celebration thereof, and a declaration of the identity of the female proprietor; and

(iii) if the transmission has taken place by the bankruptcy of the registered proprietor, or otherwise by operation of law, there shall be produced to the Registrar such evidence as may for the time being be receivable as proof of the title of the applicant;

(b) where the business is not carried on in the State or in a Commonwealth territory there shall be produced similar evidence to that herein before prescribed, or such evidence as would be received as sufficient evidence in the courts of justice in the country or place at which the proprietor carried on business.

Declaration of assignee or transmittee.

21. Every declaration made by an assignee or transmittee shall state his name and address, and that he is entitled to the goodwill of the business concerned in the goods with respect to which the trade mark is registered, or to some part of the goodwill.

Joint proprietors.

22. Where two or more persons are registered as joint proprietors of the same registered trade mark, those proprietors, or the survivors or survivor of them, or their or his assignee or transmittee, shall alone be recognised by the Registrar as having any title to the trade mark.

Separate proprietors.

23. Where divers persons claim to be severally entitled to the goodwill of a business concerned in the goods with respect to which a trade mark has been registered, such persons, or any of them, may, if they all consent thereto, and on the production of the proper evidence, and on payment of the prescribed fee, be registered separately as separate proprietors of the trade mark.

If all such persons so entitled do not so consent, the Registrar shall not, without leave of the Court, register any of them as separate proprietors of the trade mark.

PART VI
ALTERATION AND RECTIFICATION
OF REGISTER

24. If the registered proprietor of a trade mark sends to the Registrar, through an agent resident in the State together with the prescribed fee, notice of an alteration in his address, the Registrar shall alter the register accordingly.

Alteration of address.

25. The Court may, on the application of any person aggrieved, remove any trade mark from the register on the ground, after the expiration of five years from the date of the registration thereof, that the registered proprietor is not engaged in any business concerned in the goods with respect to which the trade mark is registered.

Removal of trade mark from registry.

26. Any person may send, with the prescribed fee, notice to the Registrar through an agent resident in the State of his desire to oppose the registration of any assignee or transmittee, or any alteration of the register; and in every such case the proceedings shall be the same as in the case of a notice of opposition to the original registration of a trade mark.

Opposition to alteration of register.

27. Whenever the register is rectified or altered in any particular in respect of any trade mark, the Registrar shall, if he thinks that the rectification or alteration should be made public, at the expense of any person interested, published, by advertisement or otherwise and in such manner as he thinks fit, the circumstances attending the rectification.

Publication of alteration of register.

PART VII
INSPECTION OF REGISTER

28. On such days and during such hours as the Registrar may from time to time determine, not being less than three hours on three separate days in a week, any person may, on paying the prescribed fee, inspect the register of trade marks.

Inspection of register.
[12 of 1990].

PART VIII
APPLICATION TO THE COURT

29. An application to the Court under the Act and these Rules may, subject to Rules of Court under the Supreme Court (Dominica) Act, be

Application to Court.

made by motion or by application in Chambers, or in such other manner as the Court may direct.

Procedure in
contested claims.

30. When the Registrar refuses to comply with the claims of any persons, until their rights have been determined by the Court, the manner in which the rights of such claimants may be submitted by the Registrar or, if the Registrar so require, by the claimants, to the Court shall, unless the Court otherwise orders, be by a special case; and the special case shall be filed and proceeded with in like manner as any other special case submitted to the Court or in such other manner as the Court may direct.

Settlement of
special case.

31. The special case may be agreed to by the parties or, if they differ, may be settled by the Registrar.

PART IX

DECLARATIONS AND EVIDENCE

Form of
declaration.
[12 of 1990].

32. (1) The declarations required by these Rules shall be made and subscribed in the United Kingdom under the Statutory Declarations Act 1835 and may be made and subscribed before any Justice of the Peace, or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding.

(2) The declaration, when taken outside the United Kingdom, shall –

- (a) if made in any other part of the Commonwealth, be made and subscribed before any Court, Judge, Justice of the Peace, or any officer authorised by law to administer an oath there for the purpose of a legal proceeding; and
- (b) if made outside the Commonwealth, be made and subscribed before a Dominica diplomatic agent or a Dominica consular officer, or a notary public, or before a Judge or Magistrate.

(3) Any document purporting to have affixed, impressed or subscribed thereto or thereon the seal or signature of any person hereby authorised to take the declaration, in testimony of the declaration having been made and subscribed before him, may be admitted by the Registrar without proof of the genuineness of any such seal or signature or of the official character of the person or his authority to take the declaration.

33. In any case in which any person is required under the Act or these Rules to make a declaration on behalf of himself or of any body corporate, or any evidence is required to be produced to the Registrar, the Registrar, if satisfied that from any reasonable cause the person is unable to make the declaration or that the evidence may be dispensed with, may, upon the production of such other declaration or evidence, and subject to such terms as he may think fit, dispense with the declaration or evidence.

Substitutory
evidence.

34. Any application, statement, notice and document to be served or sent on or to the Registrar shall be deemed to be properly addressed, if addressed to the Registrar of Trade Marks at his office; and, if required to be served on or sent to the proprietor of any trade mark shall be deemed to be properly addressed, if addressed to the registered proprietor at his registered address.

Service of
documents.

35. The forms in the Third Schedule or such other forms as the Registrar may direct may be used in all cases to which they are applicable.

Forms.
Third Schedule.

FIRST SCHEDULE

Rule 2.

CLASSES OF GOODS

Class I

Chemical substances used in manufactures, photography or philosophical research, and anti-corrosives.

Class II

Chemical substances used for agricultural, horticultural, veterinary and sanitary purposes.

Class III

Chemical substances prepared for use in medicine and pharmacy.

Class IV

Raw or partly prepared vegetable, animal and mineral substances used in manufactures, not included in other classes.

Class V

Unwrought and partly wrought metals used in manufacture.

Class VI

Machinery of all kinds and parts of machinery, except agricultural and horticultural machines included in Class VII.

Class VII

Agricultural and horticultural machinery and parts of such machinery.

Class VIII

Philosophical instruments, scientific instruments and apparatus for useful purposes. Instruments and apparatus for teaching.

Class IX

Musical instruments.

Class X

Horological instruments.

Class XI

Instruments, apparatus and contrivances, not medicated, for surgical or curative purposes or in relation to the health of men or animals.

Class XII

Cutlery and edged tools.

Class XIII

Metal goods not included in other classes.

Class XIV

Goods of precious metals (including aluminium, nickel, Britannia metal, etc.), and jewellery and imitations of such goods and jewellery.

Class XV

Glass.

Class XVI

Porcelain and earthenware.

Class XVII

Manufactures from mineral and other substances for building or decoration.

Class XVIII

Engineering, architectural and building contrivances.

Class XIX

Arms, ammunition and stores not included in Class XX.

Class XX

Explosive substances.

Class XXI

Naval architectural contrivances and naval equipments not included in Classes XIX and XX.

Class XXII

Carriages.

Class XXIII

- (a) Cotton yarn and sewing cotton not on spools or reels.
- (b) Sewing cotton on spools or reels.

Class XXIV

Cotton piece goods of all kinds.

XXV

Cotton goods not included in Classes XXIII, XIV or XXXVIII.

Class XXVI

Linen and hemp yarn and thread.

Class XXVII

Linen and hemp piece goods.

Class XXVIII

Linen and hemp goods not included in Classes XXVI, XXVII and L.

Class XXIX

Jute yarns and tissues and other articles made of jute, not included in Class L.

Class XXX

Silk, spun, thrown or sewing.

Class XXXI

Silk piece goods.

Class XXXII

Other silk goods, not included in Classes XXX and XXXI.

Class XXXIII

Yarns of wool, worsted or hair.

Class XXXIV

Cloths and stuffs of wool, worsted or hair.

Class XXXV

Woollen, worsted and hair goods not included in Classes XXXIII and XXXIV.

Class XXXVI

Carpets, floor cloth and oilcloth.

Class XXXVII

Leather, skins unwrought and wrought, and articles made of leather, not included in other classes.

Class XXXVIII

Articles of clothing.

Class XXXIX

Paper (except paper hangings), stationery, bookbinding.

Class XL

Goods manufactured from india-rubber and gutta-percha, not included in other classes.

Class XLI

Furniture and upholstery.

Class XLII

Substances used as food or as ingredients in food.

Class XLIII

Fermented liquors and spirits.

Class XLIV

Mineral and aerated waters, natural and artificial, including ginger beer.

Class XLV

Tobacco, whether manufactured or unmanufactured.

Class XLVI

Seeds for agricultural and horticultural purposes.

Class XLVII

Candles, common soap, detergents; illuminating, heating or lubricating oils; matches and starch, blue and other preparations for laundry purposes.

Class XLVIII

Perfumery (including toilet articles, preparations for the teeth and hair and perfumed soap).

Class XLIX

Games of all kinds and sporting articles not included in other classes.

Class L

- (1) Goods manufactured from ivory, bone or wood, not included in other classes.
- (2) Goods manufactured from straw or grass, not included in other classes.
- (3) Goods manufactured from animal and vegetable substances, not included in other classes.
- (4) Tobacco pipes.
- (5) Umbrellas, walking-sticks, brushes and combs.
- (6) Furniture cream, plate powder.
- (7) Tarpaulins, tents, rick-cloths, rope, twine.
- (8) Buttons of all kinds other than of precious metal or imitations thereof.
- (9) Packing and hose of all kinds.
- (10) Goods not included in the foregoing classes.

SECOND SCHEDULE

Rule 4.
[20 of 1977].

The following fees shall be payable for the following purposes:

1. On application for registration\$75.00
2. Certificate of registration of one trade mark 37.50
3. For each additional trade mark after the first
granted upon the same application 15.00

4.	Where the certificate of registration is for a trade mark in respect of goods in different classes, for every class after the first an additional fee of	7.50
5.	Registering subsequent proprietor	37.50
6.	For altering address in register	7.50
7.	For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged.	15.00
8.	For every entry of renewal of registration of trade mark	37.50
9.	For altering address on the register.	24.00
10.	For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged	48.00
11.	For continuance of mark at expiration of fourteen years	192.00
12.	Additional fee where fee is paid within three months after expiration of fourteen years	96.00
13.	Additional fee for the restoration of trade mark, when removed for non-payment of fee	192.00
14.	For certificate	96.00
15.	For inspecting register, for every quarter of an hour	4.80
16.	For office copy of document, eight cents per folio, but never less than	4.80
17.	Settling a special case of Registrar	192.00

Note. – If a copy of a trade mark is required for any purpose, such copy will be supplied by or at the expense of the applicant.

Section 35.

THIRD SCHEDULE

FORM A

FORM OF STATEMENT ON APPLICATION FOR REGISTRATION OF ONE TRADE MARK

I, _____, of _____, apply to be registered as proprietor of trade mark and _____ which is represented in the paper annexed hereto.

I desire that the said trade mark may be registered in respect of the description of goods following, contained in Class _____, that is to say,

I have used the said trade mark in respect of the said goods for _____ years
before the date of this statement.

The _____ day of _____, 19 ____ .

.....
(Signature)

FORM B

FORM OF STATEMENT ON APPLICATION FOR REGISTRATION
OF MORE THAN ONE TRADE MARK

I, _____, of _____, apply to
be registered as proprietor of the following trade marks, numbered from "1"
to _____

The trade marks numbered are described as follows, that is to say,

No.1 is _____ and is represented on Paper 1 annexed hereto.

No. 2 is _____ and is represented on Paper 2 annexed hereto.

I desire that the said trade marks may be registered in respect of the descriptions
of goods following, that is to say,

As to No.1, in respect of the following goods contained in Class _____,
viz.—

As to No.2, in respect of the following goods contained in Class _____,
viz.—

I have used the trade marks numbered respectively _____ and _____ in
respect of the goods for which I desire them to be registered for _____ years
before the date of this statement.

The _____ day of _____, 19 ____ .

.....
(Signature)

FORM C

FORM OF DECLARATION TO ACCOMPANY STATEMENT ON
APPLICATION FOR REGISTRATION OF TRADE MARK

I, _____, of _____ do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows:

(1) The statement signed by me and dated the _____ day of _____ and marked with the letter "A" and shown to me at the time of making this declaration is true.

(2) The description of the trade mark in such statement is a true description of the trade mark for the registration of which I apply.

(3) I am lawfully entitled to the use of the trade mark of which the said description is a true description.

.....
(Signature)

Declared before me [etc.]

FORM D

FORM OF ASSIGNMENT OF TRADE MARK

Trade mark, Class _____ No. _____

Name _____

Place of business _____

I, _____, of _____ being registered proprietor of the trade mark above particularly described, in consideration of _____ dollars paid to me by _____ carrying on business at _____ in _____ under the firm of _____, hereby assign the said trade mark to the said _____ together with the goodwill of the business concerned in the goods with respect to which the trade mark is registered.

In witness whereof I have hereunto subscribed my name and affixed my seal, this _____ day of _____, 19 _____.

.....
(Signature and Seal)

Executed by the above-named
in the presence of

Executed by the above-named
in the presence of

FORM E

DECLARATION BY TRANSMITTEE APPLYING TO BE
REGISTERED AS PROPRIETOR

Trade mark. Class No.

Name of owner.

Firm.

Place of business.

(1) I, the undersigned, of , in the of
carrying on business at in the of
declare as follows:

I declare that the registered proprietor of the trade mark above
described, [died at in the of having
first made his will dated the day of , whereby
he appointed me executor, and I proved (or confirmed) his said will on
the day of in the Court of] [or died
at in the of on the day of , intestate
and letters of administration of his estate and effects were (confirmation as
executor of the said was) on the day of duly
granted to me by the Court of];

or

I declare that , the registered proprietor of the trade mark
above described, was, on the day of duly [adjudged a bankrupt],
and that I was on the day of , appointed trustee of the estate of
the said and I am by law entitled to be registered as proprietor
of the said trade mark in place of the said ;

or

I declare that on the _____ day of _____ I intermarried
 with and am now the husband of _____, the registered
 proprietor of the trade mark above described; and I declare that on such
 marriage the interest of the said _____ in the
 trade mark and in the goodwill of the business concerned in the goods in respect
 to which the trade mark is registered became by law vested in me, and that I am
 entitled to be registered as owner of the said trade mark in the place of the said
 _____; and I declare that _____ is the person referred
 to in the annexed certificate.

(2) I am lawfully entitled to the goodwill of the business concerned in the
 goods with respect to which the trade mark so transmitted to me is registered.

And I make this solemn declaration believing the same to be true.

.....
 (Signature)

Dated at _____ the _____ day of _____, 19 ____.

Made and subscribed by the above-named _____
 in the presence of me

(Signed)

.....
 [Name of Registrar
 or Justice of the Peace.]

FORM F

FORM OF ACKNOWLEDGMENT

COMMONWEALTH OF DOMINICA

In the matter of the Trade Marks Act

and

In the matter of an application by.....

I do hereby acknowledge that I have received at my office at Roseau, Dominica,

this day of 19 , an application by of for
the issue of a certificate of registration of Trade Mark No. in respect
of under the Trade Marks Act accompanied
by the following documents:

Dated this day of 19.....

.....
Registrar of Trade Marks.
