

**Trade Marks (Amendment) Act, 2001 — 16**

## TABLE OF CONTENTS

	<i>Article</i>
Short Title .....	1
Amendment of Cap. 319 .....	2
Deletion of Section 3 of Cap. 319 .....	3
Insertion of New Section 5 A in Cap. 319 .....	4
Amendment of Section 5 of Cap. 319 .....	5
Amendment of Section 8 of Cap. 319 .....	6
Amendment of Section 10 of Cap. 319 .....	7
Amendment of Section 12 of Cap. 319 .....	8
Amendment of Section 26 of Cap. 319 .....	9
Insertion of New Section 36 A in Cap. 319 .....	10
Insertion of New Sections 36 B and 36 C in Cap. 319 .....	11
Insertion of New Sections 49 A to 49 E in Cap. 319 .....	12
Insertion of New Sections 50 A to 50 E in Cap. 319 .....	13
Insertion of New Sections 53 A to 53 M in Cap. 319 .....	14

I assent

*C. Straughn Husbands*

Governor-General

26th July, 2001.

2001—16

*An Act to amend the Trade Marks Act.*

Commencement

(6th August, 2001).

*Enacted* by the Parliament of Barbados as follows:

*Short Title*

**1.** This Act may be cited as the *Trade Marks (Amendment) Act, 2001* .

*Amendment of Cap. 319*

**2.** Section 2 of the *Trade Marks Act* , in this Act referred to as the principal Act, is amended by inserting the following new definitions in their appropriate alphabetical order:

“‘designated downer” means the person identified as the importer of the goods on the entry made in relation to the goods under the *Customs Act* ;

Cap. 66



“Nice Agreement” means the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the registration of Marks, dated June 15, 1957, as revised from time to time;

“notified trademark” means a trademark in respect of which a notice under section 53A is in force;

“objector” means any person who has given a notice under section 53A;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property dated March 20, 1883, as revised from time to time;

“TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights.”.

*Deletion of Section 3 of Cap. 319*

3. The principal Act is amended by deleting section 3.

*Insertion of New Section 5A in Cap. 319*

4. The principal Act is amended by inserting the following new section immediately after section 5:

*“Special Requirements*

**5A** The use of a trademark in the course of trade shall not be unjustifiably encumbered by any special requirement, including use with another trademark, use in a special form, or use in a manner detrimental to the mark’s capability of distinguishing the goods or services of one enterprise from those of another enterprise.”.

*Amendment of Section 5 of Cap. 319*

5. Section 5 of the principal Act is amended by inserting immediately after subsection (1), the following new subsection:

“(1A) Where an identical sign is used for identical goods or services it shall be presumed that the public is likely to be misled.”.

*Amendment of Section 8 of Cap. 319*

6. Section 8(1) of the principal Act is amended by

(a) deleting paragraph (a) and substituting the following as paragraphs (a) and (b):

“(a) subject to subsection (2), a mark that resembles in such a way as to mislead the public, a mark registered under this Act by another person, or for which an application for registration by another person is pending under this Act;

(b) subject to subsection (2), a mark that resembles in such a way as to mislead the public, a mark sought to be registered under this Act in respect of the same goods or services by a person claiming priority under section 12;”;

(b) renumbering paragraphs (b) to (f) as paragraphs (c) to (g);

(c) deleting paragraph (d) and substituting the following:

“(d) subject to subsection (2), a mark that

(i) is identical with, confusingly similar to or constitutes a translation of a mark or trade name that is well-known in Barbados as being already the mark used by another enterprise for identical or similar goods or services; or

(ii) is well-known and registered in Barbados with respect to goods or services that are not identical or similar to those in respect of which registration is applied for, if that use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner of the well-known mark are likely to be damaged by such use;”.

*Amendment of Section 10 of Cap. 319*

**7.** Section 10 of the principal Act is amended by deleting paragraph (d) of subsection (2) and substituting the following:

“(d) a precise statement of the goods or services for which registration of the mark is requested, accompanied by an indication of the general class heading and the class number under the classification referred to in the Nice Agreement, corresponding to the goods or services to which the mark is to be applied.”.

*Amendment of Section 12 of Cap. 319*

**8.** Section 12 of the principal Act is amended

(a) in subsection (1)

(i) by inserting the words “or of the TRIPS Agreement” immediately after the words “Paris Convention”;

(ii) by deleting the words “and number” appearing in paragraph (a); and

(iii) by deleting paragraph (c);

(b) by inserting immediately after subsection (2) the following new subsection:

“(2A) An application referred to in subsection (2) that is in a language other than English, must be accompanied by a translation into the English language, certified as correct by someone in the other country competent to so certify.”; and

(c) by deleting subsection (3).



*Amendment of Section 26 of Cap. 319*

9. The principal Act is amended by deleting section 26 and substituting the following:

*“Application for Renewal*

26. An application for renewal of the registration of a mark must be in the prescribed form and signed by the applicant.”.

*Insertion of New Section 36A in Cap. 319*

10. The principal Act is amended by inserting immediately after section 36 the following new section:

“Licence-Contract

36A. A collective mark or an application therefor, shall not be applicable to the subject of a licence -contract.”.

*Insertion of New Sections 36B and 36C in Cap. 319*

11. The principal Act is amended by inserting the following new sections immediately after section 36A:

*“Evidence in Proceedings before Director*

36B.—(1) In any proceedings under this Act before the Director, the evidence may be given by statutory declaration or by affidavit.

(2) The Director, may in any particular case, take oral evidence in lieu of, or in addition to the evidence referred to in subsection (1), and shall, unless he otherwise directs, allow any witness to be cross-examined on his statutory declaration, affidavit or oral evidence.

(3) At any stage of any proceedings before the Director, he may direct that such documents, information or evidence as he may reasonably require, shall be filed within such period as he may specify.

(4) The Director shall in respect of requiring the attendance of witnesses, the examination of witnesses on oath, the discovery of documents and the production of documents, have all the powers of a judge of the High Court.

(5) The hearing before the Director of any dispute between two or more parties relating to any matter in connection with an application for the registration of a mark or a registered mark shall be in public unless the Director, after consultation with those parties who appear in person, or are represented at the hearing, otherwise directs.



*Costs in Respect of Proceedings before Director*

**36C.**—(1) The Director may, in any proceedings before him, by order, award to any party such costs as he may consider reasonable, and direct how and by what parties they are to be paid.

(2) The Director may require any person who is a party in any proceedings before him under this Act to give security for costs in relation to those proceedings; and he may require security for the costs of any appeal from his decision.

(3) Where security is not given under subsection (2), the party in default may be treated as having withdrawn his application, opposition, objection, answer or intervention, as the case may be.”.

*Insertion of News Sections 49A to 49B in Cap. 319*

**12.** The principal Act is amended by inserting the following new sections immediately after section 49:

*“Order of Erasure etc. of Offending Sign*

**49A.**—(1) Where a person is found to have infringed a registered trademark, the court may make an order requiring him

(a) to cause the offending sign to be erased, removed or obliterated from any infringing goods, material or articles in his possession, custody or control; or

(b) if it is not reasonably practicable for the offending sign to be erased, removed or obliterated, to secure the destruction of the infringing goods, material or articles.

(2) If an order under subsection (1) is not complied with, or it appears to the court likely that such an order would not be complied with, the court may order that the infringing goods, material or articles be delivered to such person as the court may direct for erasure, removal or obliteration of the sign, or for destruction, as the case may be.

*Order for Delivery up of Infringing Goods, Material or Articles*

**49B.**—(1) The registered owner of a trademark may apply to the court for an order for the delivery up to him, or such other person as the court may direct, of any infringing goods, material or articles which a person has in his possession, custody or control in the course of a business.

(2) An application shall not be made after the end of the period specified in section 49D, and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 49E.

(3) A person to whom any infringing goods, material or articles are delivered up in pursuance of an order under this section shall, if an order under section 49E is not made,

retain them pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section affects any other power of the court.

*Meaning of “Infringing Goods, Material or Articles”*

**49C.**—(1) In this Act the expressions “infringing goods”, “infringing material” and “infringing articles” shall be construed in accordance with this section.

(2) Goods are “infringing goods”, in relation to a registered trademark, if they or their packaging bear a sign identical or similar to that mark and,

(a) the application of the sign to the goods or their packaging was an infringement of the registered trademark; or

(b) the goods are proposed to be imported into Barbados and the application of the sign in Barbados to them or their packaging would be an infringement of the registered trademark; or

(c) the sign has otherwise been used in relation to the goods in such a way as to infringe the registered trademark.

(3) Material is “infringing material”, in relation to a registered trademark if it bears a sign identical or similar to that mark and either

(a) it is used for labelling or packaging goods, as a business paper, or for advertising goods or services, in such a way as to infringe the registered trademark; or

(b) it is intended to be so used and such use would infringe the registered trademark.

(4) “Infringing articles”, in relation to a registered trademark, means articles

(a) which are specifically designed or adapted for making copies of a sign identical or similar to that mark; and

(b) which a person has in his possession, custody or control, knowing or having reason to believe that they have been or are to be used to produce infringing goods or material.

*Period after Which Remedy of Delivery is not Available*

**49D.**—(1) Subject to subsection (2), an application for an order under section 49B may not be made after the end of the period of 6 years from

(a) in the case of infringing goods, the date on which the trademark was applied to the goods or their packaging;

(b) in the case of infringing material, the date on which the trademark was applied to the material; or

(c) in the case of infringing articles, the date on which they were made.



(2) If during the whole or part of the period referred to in subsection (1), the registered owner of a trademark

(a) is under a disability; or

(b) is prevented by fraud or concealment from discovering the facts entitling him to apply for an order,

an application may be made at any time before the end of the period of 6 years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

(3) In subsection (2) “disability” has the same meaning as in the *Limitation of Actions Act, 1997*.

Act 1997 — 11.

#### *Order as to Disposal of Infringing Goods, Material or Articles*

**49E.**—(1) Where infringing goods, material or articles have been delivered up in pursuance of an order under section 49B, an application may be made to the court

(a) for an order that they be destroyed or forfeited to such person as the court may think fit; or

(b) for a decision that no order under paragraph (a) should be made.

(2) In considering what orders should be made, the court shall consider whether other remedies available in an action for infringement of the registered trademark would be adequate to compensate the registered owner of a trademark, and any licensee, and protect their interests.

(3) A notice shall be served on any person who has an interest in the goods, material or articles and any such person is entitled

(a) to appear in proceedings for an order under this section, whether or not he was served with notice; and

(b) to appeal against any order made, whether or not he appeared;

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in the goods, material or articles, the court shall make such order as it thinks just.

(5) If the court decides that no orders should be made under this section, the person in whose possession, custody or control the goods, material or articles were, before being delivered up, is entitled to their return.”



*Insertion of New Sections 50A to 50E in Cap. 319*

13. The principal Act is amended by inserting the following new sections immediately after section 50:

*“Unauthorized Use of Trade Mark etc. in Relation to Goods*

**50A.**—(1) A person commits an offence who, with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the registered owner of a trademark,

(a) applies to goods or their packaging, a sign identical to, or likely to be mistaken for, a registered trademark;

(b) sells or lets for hire, offers or exposes for sale or hire, or distributes goods which bear, or the packaging of which bears, a sign referred to under paragraph (a); or

(c) has in his possession, custody or control in the course of a business, any goods referred to under paragraph (a) with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).

(2) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the registered owner of a trade mark

(a) applies a sign identical to, or likely to be mistaken for a registered trademark, to material intended

(i) to be used for labelling or packaging goods;

(ii) to be used as a business paper in relation to goods; or

(iii) to be used for advertising goods; or

(b) uses in the course of a business, material bearing a sign referred to in paragraph (a), for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods; or

(c) has in his possession, custody or control in the course of a business, any material referred to in paragraph (a), with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).

(3) A person commits an offence who, with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the registered owner of a trade mark

(a) makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trademark; or

(b) has an article referred to in paragraph (a) in his possession, custody or control, in the course of a business,





knowing or having reason to believe that it has been or is to be used to produce goods or produce material for labelling or packaging goods, or to be used as a business paper in relation to goods, or to be used for advertising goods.

(4) A person does not commit an offence under this section unless

(a) the goods are goods in respect of which the trademark is registered; or

(b) the trademark has a reputation in Barbados and the use of the sign takes or would take an unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trademark.

(5) It is a defence for a person charged with an offence under this section to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trademark.

(6) A person who commits an offence under this section is liable

(a) on summary conviction, to a fine of \$10 000 or to imprisonment for 6 months or to both;

(b) on conviction on indictment, to a fine of \$40 000 or to imprisonment for 10 years or to both.

*Falsification of Register, etc.*

**50B.**—(1) It is an offence for a person to make, or cause to be made, a false entry in the Register, knowing or having reason to believe that it is false.

(2) It is an offence for a person

(a) to make or cause to be made, anything falsely purporting to be a copy of an entry in the Register; or

(b) to produce or tender or cause to be produced or tendered in evidence anything referred to in paragraph (a),

knowing or having reason to believe that it is false.

(3) A person who commits an offence under this section is liable

(a) on summary conviction, to a fine of \$10 000 or to imprisonment for 6 months or to both;

(b) on conviction on indictment, to a fine of \$40 000 or to imprisonment for 10 years or to both.

*Falsely Representing Trade Marks Registered*

**50C.**—(1) It is an offence for a person

(a) falsely to represent that a mark is a registered trademark; or



(b) to make a false representation as to the goods or services for which a trademark is registered

knowing or having reason to believe that the representation is false.

(2) For the purposes of this section, the use in Barbados in relation to a trademark

(a) of the word “registered”; or

(b) of any other word or symbol importing a reference, express or implied, to registration,

shall be deemed to be a representation as to registration under this Act, unless it is shown that the reference is to registration elsewhere than in Barbados, and that the trademark is in fact so registered for the goods or services in question.

*Forfeiture of Counterfeit Goods, etc.*

**50D.**—(1) Where there has come into the possession of any person in connection with the investigation or prosecution of a relevant offence

(a) goods which, or the packaging of which, bears a sign identical to or likely to be mistaken for a registered trademark;

(b) material bearing a sign referred to in paragraph (a), and intended to be used for labelling or packaging goods to be used as a business paper in relation to goods, or to be used for advertising goods; or

(c) articles specifically designed or adapted for making copies of a sign referred to in paragraph (a),

that person may apply under this section for an order for the forfeiture of the goods, material or articles.

(2) An application under this section may be made

(a) where proceedings have been brought in any court for a relevant offence relating to some or all of the goods, material or articles, to that court;

(b) where no application for the forfeiture of the goods, material or articles has been made under paragraph (a), by way of complaint, to a magistrate’s court.

(3) On an application under this section, the court shall make an order for the forfeiture of any goods, material or articles only if it is satisfied that the relevant offence has been committed in relation to the goods, material or articles.

(4) A court may infer for the purposes of this section that an offence under this section has been committed in relation to any goods, material or articles, if it is satisfied that such an offence has been committed in relation to goods, material or articles which are representative of them, whether by reason of being of the same design or part of the same consignment or batch or otherwise.

(5) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of an appeal.

(6) Any person aggrieved by an order made under this section by a magistrate's court or by a decision of such a court not to make such an order, may appeal against that order or decision to the Court of Appeal.

(7) Subject to subsection (8), where any goods, material or articles are forfeited under this section, they shall be destroyed in accordance with such directions as the court may give.

(8) On making an order under this section, the court may, if it considers it appropriate to do so, direct that the goods, material or articles to which the order relates shall, instead of being destroyed, be released to such person as the court may specify, on condition that that person

(a) causes the offending sign to be erased, removed or obliterated; and

(b) complies with any order to pay costs which have been made against him in the proceedings for the order for forfeiture.

(9) For the purposes of this section, "relevant offence" means an offence under section 50A, an offence involving dishonesty or deception or such other offence as may be prescribed.

#### *Offences by Corporations*

**50E.**—(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate."

#### *Insertion of New Sections 53A to 53M in Cap. 319*

**14.** The principal Act is amended by inserting the following new sections immediately after section 53:

#### *"Notice of Objection to Importation*

**53A.**—(1) The registered owner of a trademark may give to the Comptroller of Customs a notice in the approved form objecting to the importation after the date of the notice, of goods that infringe the trademark, and the notice shall be given together with any prescribed document.

(2) Where

(a) the owner of the registered trademark has not given a notice under subsection (1);

or

(b) any notice given under subsection (1) is no longer in force,

any registered user of the trademark having power to give a notice under subsection (1), may ask the registered owner to give such a notice in respect of the trademark.

(3) A notice given by the owner of a registered trademark remains in force for 2 years from the day on which the notice is given, unless it is revoked before the end of that period, by notice in writing given to the Comptroller of Customs by the person who is then the registered owner of the registered trademark.

#### *Comptroller of Customs*

**53B.**—(1) This section applies to goods manufactured outside Barbados that

(a) are imported into Barbados; and

(b) are subject to the control of the Comptroller of Customs pursuant to the *Customs Act*.

Cap. 66.

(2) Where goods to which this section applies

(a) have been applied to them or in relation to them, a mark that, in the opinion of the Comptroller of Customs, is substantially identical with, or deceptively similar to, a notified trademark; and

(b) are goods in respect of which the notified trademark is registered or for similar or related goods for which the mark is registered,

the Comptroller of Customs shall detain the goods unless satisfied that there are no reasonable grounds for believing that the notified trademark is infringed by the importation of the goods.

(3) The Comptroller of Customs may from time to time require the objector who has given notice under section 53A, to give the Comptroller security or further security within such time and in such manner, whether by way of bond, deposit of a sum of money or otherwise, as the Comptroller may specify, against all actions, proceedings, claims and demands which may be taken or made against, or cost and expenses which may be incurred by, the Comptroller in consequence of the detention of goods to which the notice relates.

(4) The Comptroller of Customs may decide not to detain the goods if he has not been given by the objector, such security in accordance with subsection (3).

(5) Goods detained under this section shall be kept in a secure place as directed by the Comptroller of Customs.

### *Notice of Detention*

**53C.**—(1) The Comptroller of Customs shall, as soon as practicable

(a) give either personally or by post to the designated owner of any detained goods, a notice in the approved form identifying the goods and stating that they have been detained under section 53B; and

(b) give either personally or by post to the objector, or to each objector, a notice in the approved form

(i) identifying the goods and stating that they have been detained under section 53B;

(ii) giving the full name and address of the designated owner of the goods and any information that the Comptroller of Customs has and that he believes, on reasonable grounds, to be likely to help the objector to identify the importer of the goods; and

(iii) stating that the goods will be released to the designated owner unless an objector brings an action for infringement of the notified trademark in respect of the goods, and gives to the Comptroller of Customs notice in writing of the action, within the period of 10 working days after he has been given the notice, or, if the Comptroller of Customs extends that period under section 53F, within the extended period.

(2) Where the Comptroller of Customs gives notice under subsection (1), the Comptroller shall allow the designated owner and the objectors sufficient opportunity to inspect the detained goods for the purposes of substantiating any claim.

### *Forfeiture of Goods*

**53D.**—(1) The designated owner of any detained goods may, at any time before an objector starts an action for infringement of a notified trademark in respect of the goods, consent to the goods being forfeited to the Crown, by giving notice in the approved form to that effect to the Comptroller of Customs.

(2) Where the designated owner gives a notice referred to under subsection (1), the goods are forfeited to the Crown.

### *Release of Goods to Owner, no Action for Infringement*

**53E.**—(1) The Comptroller of Customs shall release the detained goods to their designated owner, if within the action period, the objector has not, or none of the objectors has

(a) brought an action for infringement of the notified trademark in respect of the goods; and

(b) given to the Comptroller of Customs notice of the action in the approved form.

(2) The Comptroller of Customs shall also release the detained goods to their designated owner if,

(a) before the end of the action period, the objector or each of the objectors has, by notice in the approved form to the Comptroller of Customs, consented to the release of the goods; and

(b) at that time,

(i) the objector has not, or none of the objectors has, brought an action for infringement of the notified trademark in respect of the goods; or

(ii) any action brought by an objector has been withdrawn.

(3) The Comptroller of Customs may release the detained goods to their designated owner at any time before the end of the action period if

(a) the Comptroller of Customs, having regard to information that has come to his knowledge after the goods were detained, is satisfied that there are no reasonable grounds for believing that the notified trademark has been infringed by the importation of the goods; and

(b) the objector has not, or none of the objectors has, brought an action for infringement of the notified trademark in respect of the goods.

(4) In this section, “action period”, in relation to detained goods, means

(a) if there is only one objector to the importation of the goods, the period within which the objector may bring an action for infringement of the registered trademark in respect of goods under section 53F; or

(b) if there is more than one objector to the importation of the goods, the period beginning on the earliest day on which an objector may bring an action for infringement of the registered trademark in respect of the goods under section 53F and ending at the end of the last day on which an objector may bring such an action under section 53F.

#### *Action for Infringement*

**53F.**—(1) An objector may bring an action for infringement of a notified trademark in respect of detained goods and give notice of it in the approved form to the Comptroller of Customs

(a) where paragraph (b) does not apply, within the notified period of 10 working days specified in the notice given to the objector in respect of the goods under section 53C; or

(b) where

(i) the objector has, before the end of the notified period, applied in writing to the Comptroller of Customs for an extension of the notified period; and

(ii) the Comptroller of Customs being satisfied that in the circumstances of the case it is fair and reasonable to do so, has extended the notified period for a number of working days not exceeding 10,

within that period as so extended by the Comptroller of Customs.



(2) The court hearing the action

(a) may, on the application of a person, allow the person to be joined as a defendant to the action; and

(b) shall allow the Comptroller of Customs to appear and be heard.

(3) In addition to any relief that the court may grant apart from this section, the court may

(a) at any time, if it thinks it just, order that the detained goods be released to their designated owner, subject to any conditions that the court considers fit to impose; or

(b) order that the detained goods be forfeited to the Crown.

(4) Where

(a) the court decides that the trademark was not infringed by the importation of the goods; and

(b) the designated owner of the goods, or any other defendant, satisfies the court that he has suffered loss or damage because the goods were detained,

the court may order the objector to pay to the designated owner or other defendant, compensation in the amount determined by the court, for any part of that loss or damage that is attributable to any period beginning on or after the day on which the action was brought.

(5) Where, after 3 weeks from the day on which the action was brought, there is not in force at any time, an order of the court preventing the goods from being released, the Comptroller of Customs shall release the goods to their designated owner.

(6) Where the court orders that the goods be released, the Comptroller of Customs shall, subject to section 53J, comply with the order.

#### *“Approved Form*

**53G.** For the purposes of sections 53A, 53C, 53D, 53E and 53F, “approved form” means such form as is approved by the Comptroller of Customs.

#### *Manner of Disposal of Forfeited Goods*

**53H.** Where

(a) goods are forfeited to the Crown under section 53D; or

(b) the court orders under section 53F that goods be forfeited to the Crown,

the goods are to be destroyed or otherwise disposed of as the Comptroller of Customs directs, except that in the case of counterfeit goods, the Comptroller shall not permit the re-exportation of those goods in an unaltered state other than in exceptional circumstances.



*Power of Comptroller to Retain Control of Goods*

**53I.** The Comptroller of Customs

(a) shall not release, or dispose of, any detained goods; or

(b) shall not take any action in relation to the goods to give effect to any order of a court under section 53F,

if the Comptroller is required or allowed to retain control of the goods under any other law of Barbados.

*Insufficient Security*

**53J.** If security given under section 53B(3) by the objector who gave notice under section 53A in respect of a trademark is not sufficient to meet the expenses incurred by the Crown, as a result of the action taken by the Comptroller of Customs under this Act by reason of the notice, the amount of the difference between those expenses and the amount of security

(a) is a debt due by the objector, or by the objectors jointly or each of them separately, to the Crown; and

(b) may be recovered by an action taken in a court of competent jurisdiction.

*Immunity in Respect of Official Acts*

**53K.** The Crown is not liable for any loss or damages suffered by a person

(a) because the Comptroller of Customs detained, or failed to detain goods under this Act; or

(b) because of the release of any detained goods.

*Power to Require Information*

**53L.**—(1) Where

(a) goods that may be detained under this Act are imported into Barbados; and

(b) the Comptroller of Customs relying on information received, is satisfied on reasonable grounds that the use of a trademark applied to or in relation to those goods is fraudulent,

the Comptroller of Customs may ask the importer of the goods

(c) to produce any document in his or her possession relating to the goods; and

(d) to give information about

(i) the name and address of the person by whom the goods were consigned to Barbados; and





(ii) the name and address of the person in Barbados to whom the goods were consigned.

(2) Where the importer intentionally or recklessly fails to comply with the request within the prescribed period, the importer is guilty of an offence, and is liable on conviction on indictment to a fine of \$40,000 or imprisonment for 6 months or to both.

*Importation for Personal Use*

**53M** Notwithstanding the provisions of sections 53A to 53L, the importation by an individual for his own personal use, of not more than 5 of the same items bearing a registered trademark in respect of which a notice has been given in accordance with section 53A shall be permitted, but the Comptroller of Customs may permit the importation of a greater number of items if he is satisfied that they are for the personal use of that individual.”