

# The Trade Marks Act<sup>\*</sup>

Consolidate Act No. 162 of February 21, 1997<sup>\*\*</sup>

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<sup>\*</sup> *Danish title:* Bekendtgørelse af Varemærkeloven.

<sup>\*\*</sup> Trademarks Act No. 341 of June 6, 1991, as amended by Act No. 1201 of December 27, 1996.

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## **Part I General Provisions**

*Sec. 1.* Pursuant to the provisions of this Act persons and enterprises may obtain an exclusive right to trade marks (trade marks right). Trade marks mean distinctive signs for goods or services being used or intended to be used by a commercial enterprise.

### **Signs of Which a Trade Mark May Consist**

*Sec. 2.—*(1) A trade mark may consist of any sign capable of distinguishing the goods or services of one enterprise from those of other enterprises and capable of being represented graphically, in particular:

- (i) words and word combinations, including slogans, personal names, company names or names of real property;
- (ii) letters and numerals;
- (iii) pictures and designs; or
- (iv) the shape, equipment or packaging of the goods.

(2) A trade mark right shall not be acquired for signs which consist exclusively of a shape which is dictated by the goods themselves, a shape of goods which is necessary to obtain a technical result or a shape which gives substantial value to the goods.

### **Establishing a Trade Mark Right**

*Sec. 3.—*(1) A trade mark right may be established either:

- (i) by registration of a trade mark in accordance with the rules of this Act for the goods or services comprised by the registration; or
- (ii) by commencement of use of a trade mark in this country for the goods or services for which the trade mark has commenced to be used and for which it is continuously used.

(2) Use of a trade mark which according to its nature is excluded from registration shall not establish any trade mark right.

(3) If the trade mark is devoid of the required distinctive character on commencement of use, the right shall not be established until a distinctive character is created by use of the mark.

### **Contents of the Trade Mark Right**

*Sec. 4.*—(1) The proprietor of a trade mark right shall be entitled to prohibit all persons not having his consent from using in the course of trade any sign if:

- (i) the sign is identical with the trade mark, and the goods or services for which the sign is used are identical with the goods or services for which the trade mark is protected or
- (ii) the sign is identical with or similar to the trade mark, and the goods or services are identical with or similar to those covered by the trade mark, if there is a likelihood of confusion, including the likelihood of association with the trade mark.

(2) Irrespective of the limitation in [subsection \(1\)](#) to goods or services identical with or similar to those covered by the trade mark, the proprietor of the trade mark shall be entitled to prohibit the use of the trade mark also in relation to goods or services which are not identical or similar where the trade mark is well known in this country and the use would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the trade mark.

(3) Use in the course of trade means in particular:

- (i) affixing the sign to the goods or to the packaging thereof;
- (ii) offering the goods for sale, putting them on the market or stocking them for that purpose or offering or supplying services under the sign in question;
- (iii) importing or exporting the goods under the sign in question; or
- (iv) using the sign on business papers and in advertising.

## **Limitations to the Rights of the Proprietor**

*Sec. 5.* The proprietor of a trade mark right shall not be entitled to prohibit others from using, in the course of trade and in accordance with honest practices in industrial or commercial matters:

- (i) his own name and address;
- (ii) indications concerning the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of rendering the services or other characteristics of the goods or services; or
- (iii) the trade mark when it is necessary for the indication of the intended purpose of the goods or services, in particular as accessories or spare parts.

## **Exhaustion**

*Sec. 6.*—(1) The proprietor of a trade mark shall not be entitled to prohibit the use of the trade mark in relation to goods which have been put on the market in the European Community under that trade mark by the proprietor himself or with his consent.

(2) [Subsection \(1\)](#) shall not apply if there are legitimate reasons for the proprietor to oppose further commercialization of the goods, especially where the condition of the goods has been changed or impaired after they have been put on the market.

## **Conflicting Rights**

*Sec. 7.* If two or more parties individually claim a trade mark right in the same or similar signs, the right which has arisen first shall have priority, unless otherwise provided for in the following sections. A registered right shall be deemed to have arisen on the date of filing of the application for registration, cf. [section 12](#), or on the date from which priority is claimed pursuant to the rules of [sections 18](#) or [19](#).

*Sec. 8.* A later right in a registered trade mark may coexist with an earlier right in a confusingly similar trade mark provided that the registration was applied for in good faith and that the proprietor of the earlier right has been aware of and tolerated the use in this country of the later right for a period of five successive years.

*Sec. 9.* A later right in a trade mark may also coexist with an earlier right in a confusingly similar trade mark, if the proprietor of the earlier right has not, within a reasonable time, taken the necessary steps to prevent the use of the later mark.

*Sec. 10.—(1)* In the cases referred to in [sections 8](#) and [9](#), the proprietor of a later trade mark shall not be entitled to oppose the use of an earlier trade mark even if the proprietor of the earlier trade mark may no longer invoke his right against the later trade mark.

(2) In the cases referred to in [section 9](#), it may be decided, if it is deemed reasonable, that one or both of the trade marks shall only be used in a special manner, for example in a particular shape or with the addition of an indication of locality.

## **Reproduction of a Trade Mark in Dictionaries, etc.**

*Sec. 11.—(1)* In encyclopaedias, handbooks, textbooks or similar publications of a professional nature the author, editor and publisher shall, at the request of the proprietor of a registered trade mark, ensure that the trade mark is not reproduced without indication to the effect that it is a registered trade mark.

(2) If any party fails to comply with the provision of [subsection \(1\)](#), he shall be liable to pay the costs of publishing a correcting notice in the manner deemed reasonable.

## **Part II**

### **Registration of Trade Marks**

*Sec. 12.—(1)* An application for the registration of a trade mark shall be filed in writing with the Patent Office. The application shall contain a reproduction of the trade mark and state the applicant's name or company. Furthermore, the goods or services for which registration of the trade mark is applied for shall be stated.

(2) The application shall be drawn up in accordance with the provisions laid down pursuant to [section 48](#). The prescribed fee shall accompany the application.

(3) The Patent Office shall keep a register of trade marks. The Office shall publish registrations, etc.

## Grounds for Refusal

*Sec. 13.*—(1) For a trade mark to be registered it shall be of the nature referred to in [section 2](#), including a distinctive character.

(2) The following trade marks shall not be registered:

- (i) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering the services or other characteristics of the goods or services;
- (ii) trade marks which consist exclusively of signs or indications which are customarily used to designate the goods or services in the current language or in the established practices of the trade.

(3) Irrespective of the provisions of [subsections \(1\)](#) and [\(2\)](#) a trade mark may be registered if, before the filing of the application in consequence of the use which has been made thereof, it has acquired a distinctive character.

*Sec. 14.* Furthermore, the following shall not be registered:

- (i) trade marks which are contrary to law, public order or morality;
- (ii) trade marks which are liable to mislead the public, for instance as to the nature, quality or geographical origin of the goods or services;
- (iii) trade marks which have not been authorized by the competent authorities and are to be refused pursuant to **Article 6<sup>ter</sup> of the Paris Convention** for the Protection of Industrial Property, and trade marks which include badges, emblems, and escutcheons which are of public interest, unless the consent of the appropriate authority to their registration has been given;
- (iv) trade marks which without permission consist of or contain an element which can be construed as a personal name or company name to which another party has a legal title, or as a portrayal provided allusion is not made to persons long dead, or which without permission contain a distinctive name of or a picture of the real property of another party;
- (v) trade marks which without permission consist of or contain an element which can be construed as a distinctive title of the protected literary or artistic work of another party or which infringe the copyright in such works or the right to a photograph of another party or the industrial property rights of another party.

*Sec. 15.*—(1) A trade mark shall not be registered if

- (i) it is identical with an earlier trade mark, and the goods or services for which the trade mark is sought registered are identical with the goods or services for which the earlier trade mark is protected; or

(ii) there exists a likelihood of confusion, including a likelihood of association, with the earlier trade mark because the later trade mark is identical with or similar to the earlier trade mark and the goods or services are identical or similar.

(2) For the purpose of [subsection \(1\)](#), earlier trade marks mean:

(i) marks of the following categories in respect of which the date of application for registration is earlier than the date of application for registration of the trade mark, taking account, where appropriate, of the priorities claimed in respect of those marks:

(a) Community trade marks;

(b) trade marks registered in this country; or

(c) trade marks registered under international agreements and having effect in this country;

(ii) Community trade marks which claim seniority, in accordance with the Regulation on the Community trade mark, in relation to a trade mark referred to under (i)(b) and (c), even if the latter trade mark has been surrendered or has lapsed;

(iii) applications for trade marks referred to under (i) and (ii), subject to their registration;

(iv) trade marks which, on the date of application for registration of the trade mark, or, where appropriate, of the priority claimed in respect of the application for registration of the trade mark, are well known in this country, in the sense in which the words “well known” are used in [Article 6<sup>bis</sup> of the Paris Convention](#).

(3) A trade mark shall, furthermore, not be registered if

(i) it is identical with or similar to an earlier Community trade mark, cf. [subsection \(2\)](#) and is sought to be registered for goods or services which are not similar to those for which the earlier Community trade mark is registered, provided that the earlier Community trade mark is well known in the European Union and the use of the later trade mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier Community trade mark;

(ii) it is identical with or similar to a “well known” trade mark, cf. [subsection \(2\)\(iv\)](#), and is sought registered for goods or services which are not similar to those for which the earlier trade mark is well known, provided that the use of the later trade mark may lead to a likelihood of association between the marks, and the use will take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark, or

(iii) it is identical with or only insignificantly distinct from a trade mark, which at the date of filing of the application for registration or, where appropriate, of

the priority claimed in respect of the application for registration, has commenced to be used in another country and is still in use there for goods or services which are identical with or similar to those for which the later trade mark is sought registered, and the applicant at the date of the filing had, or should have had, knowledge of the foreign trade mark.

(4) A trade mark shall, moreover, not be registered if:

- i) the trade mark is identical with or similar to an earlier Danish trade mark within the meaning of [subsection \(2\)](#) and is sought registered for goods or services which are not similar to those for which the earlier trade mark is registered, where the earlier trade mark is well known in this country and where the use of the later trade mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark; or
- (ii) in consequence of use in this country a right has been acquired to an identical or confusingly similar trade mark or to another identical or confusingly similar sign used in the course of trade prior to the date of filing of the application for registration of the later trade mark, or, where appropriate, of the priority claimed in respect of the application for registration of the later trade mark, if the proprietor of the earlier right can prohibit the use of the later trade mark.

(5) A trade mark shall not be excluded from registration pursuant to the provisions of [subsections \(1\) to \(4\)](#) where the proprietor of the earlier trade mark or other earlier rights consents to the registration of the later trade mark.

## **Disclaimers**

*Sec. 16.*—(1) A trade mark right acquired by registration shall not include such elements of the trade mark as cannot be registered separately.

(2) If a trade mark contains such elements, and there is special reason to assume that registration of the trade mark may cause doubt as to the scope of the trade mark right, such elements may on registration be explicitly excepted from the protection.

(3) If elements of the trade mark which have been excepted from the protection appear later on to have become registrable, a new registration may be made of these elements or of the actual trade mark without the limitation referred to in [subsection \(2\)](#).

## **Classes of Goods**

*Sec. 17.* trade marks shall be registered in one or more classes of goods or services. The Minister of Business and Industry shall lay down provisions concerning the division into classes.

## **Convention Priority**



*Sec. 18.*—(1) If an application for the registration of a trade mark is filed in this country within six months after the filing of the first application for the registration of the trade mark in a country party to the Paris Convention for the Protection of Industrial Property, or a Member of the World Trade Organisation (WTO), the application shall on request receive priority from the first filing date. The priority implies that the application in relation to later occurring circumstances, such as other parties' applications for or use of the trade mark, shall be considered filed at the same time as the filing of the application in the foreign State.

(2) Subject to reciprocity, [subsection \(1\)](#) shall apply *mutatis mutandis* to trade marks applied for the first time in a country which is not a party to the Paris Convention or a Member of the World Trade Organisation.

### **Exhibition Priority**

*Sec. 19.* If an application for the registration of a trade mark is filed in this country within six months after the trade mark has been used for the first time for goods displayed at an official, or officially recognized, international exhibition, the application shall on request receive priority from that date. The priority implies that the application in relation to later occurring circumstances such as other parties' applications for or use of the trade mark, shall be considered filed at the same time as its use at the exhibition. The exhibitions referred to are such exhibitions as are defined in the Convention on International Exhibitions signed on 22nd November 1928, as subsequently revised.

### **Processing of Applications**

*Sec. 20.*—(1) If the application does not comply with this Act or the provisions laid down pursuant to this Act, or if the Patent Office has other objections to the acceptance of the application, the Patent Office shall notify the applicant accordingly and invite him to file his observations within a specified time limit.

(2) On the expiry of the time limit the Patent Office shall decide on the application unless the applicant is invited again to file his observations.

### **Claiming a Right to a Trade Mark**

*Sec. 21.*—(1) If anybody claims to be entitled to a trade mark for which registration has been applied for or to a registered trade mark, the Patent Office may, if it finds the question doubtful, invite him to bring it before the courts within a time limit to be specified. If the invitation is not complied with, the claim may be disregarded. Information to that effect shall be given in the invitation.

(2) If legal proceedings have been instituted concerning the right to a trade mark, the processing of the application by the Patent Office may be suspended until a final decision has been given in the legal proceedings.

### **Registration**

*Sec. 22.* When the application has been accepted, the trade mark shall be registered, and the registration shall be published.

## **Opposition**

*Sec. 23.*<sup>1</sup>—(1) When the registration has been published, opposition may be filed against the validity of the registration. The opposition, which shall be reasoned, shall be filed with the Patent Office within two months from the date of publication. A fee, the amount of which shall be fixed by the Minister of Business and Industry, shall accompany the opposition.

(2) If opposition has been filed, the Patent Office shall examine the registration in accordance with [section 20](#). [Section 28\(5\)](#) shall also apply during the examination. The proprietor of the registered right shall be notified of the opposition and be given an opportunity to submit his observations.

(3) If the registration is maintained, the person having filed the opposition and the proprietor of the right shall be given notice hereof.

(4) If the registration is declared void in part or in full, the decision to that effect shall be published when it is final.

## **Amendment of Trade Marks**

*Sec. 24.*—(1) At the request of the proprietor insignificant amendments of a registered trade mark may be made, provided that the general impression of the trade mark is not influenced by the amendment.

(2) Amendments of registered trade marks shall be entered in the register and published.

(3) At the request of the proprietor insignificant amendments may also be made of a filed trade mark.

## **Requirement of Use**

*Sec. 25.*—(1) If, within a period of five years following the date of the completion of the registration procedure, the proprietor of a registered trade mark has not put the trade mark to genuine use in this country in connection with the goods or services in respect of which it is registered, or if such use has been suspended during an uninterrupted period of five years, the registration may be revoked, cf. [section 28](#), unless there are proper reasons for non-use.

(2) The following shall also constitute use within the meaning of [subsection \(1\)](#):

- (i) use of the trade mark in a form which does not significantly differ from the form in which it was registered;

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<sup>1</sup> Section 23, in the version of Section 1(vii) of Act No. 1201 of December 27, 1996, shall apply to registrations published after entry into force of the said Act (*Editor's note*).

(ii) affixing the trade mark to goods or to the packaging thereof in this country solely for export purposes.

(3) Use of the trade mark with the consent of the proprietor shall be deemed to constitute use by the proprietor.

### **Duration of the Registration**

*Sec. 26.*—(1) The right obtained by registration of a trade mark shall be effective from the date on which the application is filed pursuant to [section 12](#), and shall continue to be effective for 10 years from the date of registration.

(2) The registration may be renewed for periods of 10 years from the expiry of the period of registration concerned.

### **Renewal**

*Sec. 27.*—(1) Application for renewal shall be made by payment to the Patent Office of the prescribed fee not earlier than six months before and not later than six months after the expiry of the registration period.

(2) If the application is accepted, the renewal shall be entered in the register.

(3) The Patent Office shall collect renewal fees from the proprietor of the trade mark or his agent, but shall not be held responsible for any loss of right as a consequence of non-collection.

(4) If the application does not comply with the provisions laid down, the Patent Office shall notify the applicant accordingly and prescribe a time limit for the applicant to file his observations.

(5) On the expiry of the time limit the Patent Office shall decide on the application, unless the applicant is invited again to file his observations.

## **Part III**

### **Termination of the Registration**

*Sec. 28.*—(1) If a trade mark is registered contrary to the provisions of this Act, the registration may be revoked, cf., however, [sections 8](#) and [9](#). If the grounds for revocation are a lack of distinctive character or the like, cf. [section 13](#), the use which has taken place after the registration, cf. [section 13\(3\)](#), shall also be taken into account.

(2) A registration may also be revoked if the trade mark:

(i) has not been used in accordance with [section 25](#)

(ii) in consequence of the activity or inactivity of a proprietor, has become the common name in the trade for the product or service in respect of which it is registered; or

(iii) in consequence of the use made of it by the proprietor or with his consent in respect of the goods or services for which it is registered, is liable to mislead

the public, particularly as to the nature, quality or geographical origin of the goods or services.

(3) Revocation of a trade mark under [subsection \(2\)\(i\)](#) may not be claimed where, in the interval between the expiry of the five-year period and the filing of the application for revocation, genuine use of the trade mark has been commenced or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor has become aware that an application for revocation may be filed.

(4) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark has been registered, the revocation shall cover those goods or services only.

(5) If the ground for revocation is an earlier colliding trade mark, claim for revocation may only be made if the person having claimed the revocation at the request of the other party can prove that the earlier trade mark has been used in accordance with [section 25](#). If an earlier registered trade mark has only been used for some of the goods or services for which it is registered, it shall only be considered registered for those goods or services. Any of the parties may at any time bring an action against the other party with respect to matters which are brought up in the case, irrespective of the Patent Office having made a decision on the case or not.

## **Revocation by Court Decision**

*Sec. 29.* Revocation of a registration under [section 28](#) shall be made by a court decision, cf., however, [section 30](#) Proceedings shall be instituted against the proprietor and may be instituted by anybody with a legal interest therein. Proceedings pursuant to the provisions of [section 13](#) and [section 14\(i\) to \(iii\)](#) may also be instituted by the Patent Office.

## **Administrative Revocation**

*Sec. 30.—*(1) After the termination of the registration procedure, any person may submit to the Patent Office a claim that a trade mark registration be revoked if the conditions of revocation in [section 28](#) are complied with. A fee, the amount of which shall be fixed by the Minister of Business and Industry, shall accompany the claim.

(2) The proprietor of the registered right shall be notified of the claim and shall be given an opportunity to submit his observations.

(3) If the registration is revoked in part or in full, the decision to that effect shall be published when it is final.

(4) The decision of the Patent Office may be brought before the Patent Board of Appeal and the courts in accordance with [section 46](#). However, any of the parties may at any time bring an action against the other party with respect to matters which are brought up in the case, irrespective of the Patent Office having made a decision on the case or not.

*Sec. 31.*—(1) If there is reasoned doubt as to the existence of a proprietor of a trade mark or if his address is unknown, any person with a legal interest therein may request that the trade mark be deleted from the register.

(2) Prior to any deletion, the Patent Office shall request the proprietor to come forward within a time limit fixed by the Patent Office. Notification of the time limit shall be given by registered letter or a similar, satisfactory method. If the address of the proprietor is unknown, the time limit shall be communicated by public notification. If thereafter the proprietor has not come forward, the trade mark shall be deleted from the register.

## **Cancellation**

*Sec. 32.* If a registration of a trade mark, a renewal of a trade mark registration or an entry of an amendment in the register has been made by an obvious mistake, the Patent Office may within three months from the date of registration or the date of the entry cancel the registration, the renewal or the entry.

## **Deletion**

*Sec. 33.* Deletion from the register shall be made if:

- (i) the registration is not renewed;
- (ii) the proprietor of the trade mark requests deletion of the trade mark;
- (iii) the registration is declared void pursuant to [section 23](#); or
- (iv) a decision is made or a judgment is given concerning revocation pursuant to [sections 29, 30, 31](#) or [37\(2\)](#).

*Sec. 34.* Office copies of any court decision concerning the registration of a trade mark or the application for a trade mark shall be communicated to the Patent Office by the relevant court.

## **Part IV**

### **Special Provisions Relating to the Registration of Foreign Trade Marks Domestic Registration**

*Sec. 35.*—(1) An applicant who does not conduct business in this country and who is not a resident of a State which is a party to the Paris Convention for the Protection of Industrial Property or a Member of the World Trade Organisation (WTO), shall prove that a similar trade mark is registered for him in his home country in respect of the same goods or services as comprised by the application.

(2) Subject to reciprocity, the Minister of Business and Industry may direct that [subsection \(1\)](#) shall not apply.

*Sec. 36.* Subject to reciprocity, the Minister of Business and Industry may direct that trade marks which would not otherwise be registrable in this country, but which are

registered in a foreign State, may be registered in this country such as they are registered in the foreign State. Such a registration shall not extend further than in the foreign State.

## **Agents**

*Sec. 37.*—(1) A proprietor of a trade mark who is not a resident of this country shall have an agent residing in this country to receive summonses and all other communications concerning the trade mark on his behalf with binding effect on the proprietor. The name and address of the agent shall be entered in the register of trade marks.

(2) If no appropriate agent is recorded, the proprietor of the trade mark shall take steps to correct this matter within a time limit fixed by the Patent Office. Notification of the time limit shall be given by registered letter or a similar, satisfactory method. If the address of the proprietor of a trade mark is unknown, the time limit shall be communicated by publication. If an agent has not been appointed prior to the expiry of the time limit, the trade mark shall be deleted from the register.

## **Part V**

### **Transfer and Licensing, etc.**

*Sec. 38.*—(1) The right to a trade mark may be transferred in or without connection with the enterprise in which it is used.

(2) If anybody transfers his enterprise, the right to the trade marks of the enterprise shall pass to the transferee unless otherwise has been or is deemed to have been agreed.

*Sec. 39.*—(1) The transfer of the right to a registered trade mark shall on request be entered in the register of trade marks.

(2) Until the transfer has been communicated to the Patent Office, the proprietor of the trade mark shall be deemed to be the latest person who is entered in the register.

## **Licensing**

*Sec. 40.*—(1) A trade mark may be licensed for some or all of the goods or services for which it is registered and for the whole or part of the country. A licence may be exclusive or non-exclusive.

(2) At the request of the proprietor or the licensee the licence shall be entered in the register of trade marks. It shall also be entered in the register when it is later established that the licence has terminated.

(3) The proprietor of a trade mark may invoke the rights conferred by the trade mark against a licensee who contravenes any stipulation in the licensing contract with regard to its duration, the form in which the trade mark may be used according to the registration, the nature of the goods or services for which the licence is granted, the geographical area in which the trade mark may be affixed to the goods, or the quality of the goods manufactured or the services rendered by the licensee.

## Mortgage and Execution

*Sec. 41.* If the right to a registered trade mark has been mortgaged or a writ of *feri facias* has been executed therein, the Patent Office shall at the request of the proprietor, the mortgagee or the execution creditor enter a note to that effect in the register of trade marks.

## Part VI Provisions Concerning the Legal Protection

*Sec. 42.*—(1) Intentional infringement of a trade mark right established by registration or use shall be punished by a fine. Under aggravating circumstances, including in particular if the purpose of the violation is a significant and obviously unlawful profit, punishment may increase to ordinary imprisonment of not more than one year.

(2) Proceedings in respect of violations comprised by [subsection \(1\)](#), first sentence, shall be instituted by the injured party. Proceedings in respect of other violations shall be instituted by the State at the request of the injured party. The cases shall be treated as proceedings instituted by the police. The remedies of **Part LXXIII** of the Administration of Justice Act concerning search may be used to the same extent as in proceedings instituted by the Public Prosecutor.

(3) Companies etc. (legal persons) may be subject to criminal liability in accordance with the rules laid down in [Part V](#) of the Penal Code.

*Sec. 43.*—(1) Anybody who intentionally or negligently infringes the trade mark right of another person shall be liable to pay a reasonable compensation for the exploitation of the trade mark as well as damages for the further injury which the infringement may have caused.

(2) If anybody commits infringement which is not intentional or due to negligence, he shall be liable to pay compensation and damages under the provisions of [subsection \(1\)](#) to the extent it is found reasonable.

(3) If the trade mark right is established by registration, the rules of [subsection \(1\)](#) shall also apply in the interval between the date of filing of the application and the date of registration of the trade mark, if the infringer knew or ought to know that the application had been filed.

(4) Civil cases for the outcome of which the application of this Act is significant shall be brought before the Maritime and Commercial Court in Copenhagen, unless the parties agree otherwise.

*Sec. 43a.* The Maritime and Commercial Court in Copenhagen shall be the Community Trade Marks Court as the court of first instance, and the Supreme Court as the court of second instance in accordance with **article 91 of the Community Trade Mark Regulation**.

*Sec. 43b.*—(1) Injunctions in accordance with **article 99(1) of the Community Trade Mark Regulation** shall be issued by the enforcement court.

(2) The provisions in **Part LVII** of the Administration of Justice Act shall apply *mutatis mutandis*.

*Sec. 43c.*—(1) Injunctions having binding effect in the area of any **Member State**, cf. **article 99(2) of the Community Trade Mark Regulation**, shall be issued by the Maritime and Commercial Court in Copenhagen.

(2) The decisions of the Maritime and Commercial Court pursuant to [subsection \(1\)](#) may be appealed against to the Eastern High Court.

(3) Moreover, the provisions in **Part LVII** of the Administration of Justice Act shall apply *mutatis mutandis*. The enforcement court shall upon request provide legal assistance to the Maritime and Commercial Court for the performance of the functions mentioned in **section 645** of the Administration of Justice Act.

*Sec. 43d.* Injunctions pertaining to a national trade mark as well as a Community trade mark shall be issued by the Maritime and Commercial Court in Copenhagen, if the injunction pertaining to the Community trade mark shall have effect in the area of any Member State, cf. **article 99(2)** of the Community Trade Mark Regulation. [Section 43c\(2\)](#) and [\(3\)](#) shall apply *mutatis mutandis*.

*Sec. 44.* In cases of infringement of a trade mark right, the court may decide on measures to prevent the abuse of the trade mark. In that respect it may *inter alia* be decided that the illegally affixed trade marks shall be removed from the goods which are in the possession of the party concerned or are otherwise at that party's disposal or, if necessary, that the goods shall be destroyed or surrendered to the injured party in return for or without compensation.

*Sec. 45.*—(1) If a licence has been granted to use of a trade mark, the licensor as well as the licensee shall be deemed to be entitled to institute proceedings in cases of infringement of the trade mark right, unless otherwise has been agreed.

(2) A licensee who wishes to institute proceedings shall inform the licensor thereof.

## **Part VII**

### **Miscellaneous Provisions**

*Sec. 46.*—(1) The decisions of the Patent Office under this Act may be brought before the Patent Board of Appeal (Board of Appeal for Industrial Property) not later than two months after the date on which the party concerned was notified of the decision. The fee for appeal shall be paid within the same time limit. If payment is not made, the appeal shall be rejected as inadmissible. Filing of appeals with the Patent Board of Appeal shall have suspensive effect.

(2) The decisions of the Patent Board of Appeal may not be brought before any higher administrative authority.

(3) Proceedings for the trial of decisions of the Patent Office which may be appealed against to the Patent Board of Appeal may not be brought before the courts until the decision of the Patent Board of Appeal has been given. Proceedings for the trial of decisions by the Patent Board of Appeal shall be brought within two months after the



date on which the party concerned was notified of the decision. The proceedings shall have suspensive effect.

*Sec. 47.*—(1) The Patent Office may on request undertake the solution of special tasks concerning trade marks and trade mark rights.

(2) The Minister of Business and Industry shall lay down rules concerning the payment therefore.

*Sec. 48.*—(1) The Minister of Business and Industry shall lay down further provisions regarding trade mark applications and their processing. It may thereunder decide to what extent the Patent Office of its own motion shall ensure if the conditions of registration of the trade mark are fulfilled. The Minister of Business and Industry shall furthermore lay down provisions regarding division of applications and registrations, examination of oppositions and administrative revocation, claims of priority, cf. [sections 18](#) and [19](#), registration and deletion of trade marks, and handling of cases, notifications, extracts from the register, etc.

(2) The Minister of Business and Industry shall lay down further provisions concerning the arrangement and keeping of the register, concerning which information may be entered in the register and concerning the publication of registrations, etc.

(3) The Minister of Business and Industry may prescribe fees for the division of applications and registrations, for handling of cases, notifications, extracts, etc. Moreover, the Minister of Business and Industry may lay down provisions concerning the repayment etc. of the fees in question.

(4) The Minister of Business and Industry shall lay down the provisions necessary for the application of the Community Trade Mark Regulation, including provisions concerning the conversion of a Community trade mark applications and registrations to national applications, concerning handling of cases, notifications, etc. and fees therefore.

(5) The Minister of Business and Industry may lay down specific rules concerning the days on which the Patent Office shall be closed.

*Sec. 49.* If the Minister of Business and Industry transfers his authority under this Act to the Patent Office, the Minister may lay down rules concerning the right of appeal including rules to the effect that appeals shall not be brought before any higher administrative authority.

## **Part VIII**

### **International Trade Mark Registration**

*Sec. 50.* An international trade mark registration means a registration under the agreement adopted in Madrid on 14th April 1891 concerning the international registration of marks as subsequently revised (the Madrid Agreement) or under the protocol relating to the Madrid Agreement (the Protocol) adopted in Madrid on 27th June 1989.

#### **Effects of an International Registration**

*Sec. 51.* From the date of registration or from the date of a subsequent designation an international trade mark registration designating Denmark shall have the same legal effect as if the trade mark was registered in Denmark.

## **Refusal**

*Sec. 52.* If the trade mark does not comply with the conditions of registration under this Act or if an opposition is filed, the Patent Office may within the time limit laid down in the Madrid Agreement or the Protocol notify the International Bureau that the protection of the trade mark is fully or partially refused in Denmark.

## **Lapse and Proceeding Under Danish Law**

*Sec. 53.—*(1) If the international trade mark registration is invalidated, its validity shall also lapse in Denmark from the date of the lapse of the international registration.

(2) If the international registration under the Protocol is cancelled upon request from the office of origin or as a consequence of a contracting party withdrawing from the Protocol, the proprietor may file a Danish trade mark application with the same effect as if the application had been filed on the filing date of the application for the international registration or the date of a subsequent designation, provided that:

- (i) the application is filed within three months after the date of deletion;
- (ii) the application does not comprise other goods or services than the international trade mark registration; and
- (iii) the application, moreover, complies with the requirements of a Danish trade mark application and the applicant pays the prescribed fees.

## **Prohibition Against Double Protection**

*Sec. 54.—*(1) In the cases where, at the initiative of the proprietor of the trade mark, a trade mark registered in Denmark is also the object of an international trade mark registration, the international trade mark registration shall replace the Danish registration if:

- (i) Denmark is designated either originally or subsequently;
- (ii) the goods or services comprised by the Danish registration are also comprised by the international registration; and
- (iii) Denmark is designated at a later date than the date of application for the Danish registration.

(2) The Patent Office shall on request enter in its register the existence of an international trade mark registration.

## **Application for International Trade Mark Registration on the Basis of an Application or Registration in Denmark**

*Sec. 55.* An international trade mark application may be filed by Danish citizens and natural or legal persons residing in Denmark or being owners of a regular industrial or commercial enterprise in Denmark.

*Sec. 56.* International trade mark applications on the basis of an application or registration in Denmark shall be filed with the Patent Office in accordance with the provisions laid down by the Minister of Business and Industry, cf. [section 60](#).

*Sec. 57.* An international application shall only comprise the goods or services comprised by the Danish application or registration.

*Sec. 58.* On filing an international trade mark application priority may be claimed pursuant to the Paris Convention.

### **Renewal, etc.**

*Sec. 59.* The rules laid down in the Madrid Agreement and the Protocol shall apply to renewal.

*Sec. 60.* The Minister of Business and Industry shall lay down further rules for the implementation of the provisions of this Part of the Act. Special rules may be laid down concerning the publication of the internationally registered trade marks, cf. [section 51](#), and concerning the filing of oppositions thereagainst, cf. [section 52](#). The Minister of Business and Industry may, furthermore, lay down rules concerning fees for the examination of cases in connection therewith.

## **Part IX**

### **Provisions as to Entry into Force and Transitional Provisions**

*Sec. 61.—*(1) This Act shall enter into force on 1st January 1992 and at the same time the Consolidated Trade Marks Act No. 249 of 17th April 1989 shall be repealed.

(2) [Transitional provision, not reproduced]

(3) For trade marks which are registered prior to 31st December 1991, the five-year period under [section 25](#) shall not commence until 1st January 1992.

(4) [Transitional provision, not reproduced]

*Sec. 62.* Applications which at the entry into force of this Act have not been published in accordance with the previous provisions shall be processed pursuant to the provisions of this Act.

*Sec. 63.* This Act shall not apply to the Faroe Islands and Greenland but may by Royal Decree be put into force for the Faroe Islands and Greenland with the deviations deemed appropriate considering the special Faroese and Greenland conditions.<sup>2</sup>

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<sup>2</sup> By Royal Ordinance of 16th December 1991 the Trade Marks Act No. 341 of 6th June 1991 has entered into force on 1st January 1992 in Greenland; by Royal Ordinance of 4th May 1994 the Trade Marks Act No. 341 of 6th June 1991 has entered into force on 1st June 1994 on the Faroe Islands.

(This text replaces the one previously published under the same code number.)