

Chapter:	362F	TRADE MARK (BORDER MEASURES) RULES	Gazette Number	Version Date
		Empowering section		30/06/1997

(Cap 362 section 30K)

[20 December 1996] *L.N. 547 of 1996*

(Originally L.N. 483 of 1996)

Section:	1	(Omitted as spent)		30/06/1997
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PART I

PRELIMINARY

(Omitted as spent)

(Enacted 1996)

Section:	2	Interpretation	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

In these Rules-

"Court" (法院) means the Court of First Instance; (25 of 1998 s. 2)

"judge" (法官) means a judge of the Court.

Section:	3	Application of Rules of High Court, etc.	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

Subject to these Rules, the Rules of the High Court (Cap 4 sub. leg. A) and any other rules made under the High Court Ordinance (Cap 4) shall apply to proceedings under Part IIIA of the Ordinance, with such modifications as are necessary for the purpose.

(25 of 1998 s. 2)

Section:	4	Effect of non-compliance with Rules		30/06/1997
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Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceeding void unless the Court so directs, but such proceedings may be set aside, either wholly or in part, as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Court may think fit.

(Enacted 1996)

Section:	5	Proceedings may be disposed of in chambers, etc.		30/06/1997
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PART II

PROCEEDINGS UNDER PART IIIA OF THE ORDINANCE

(1) Proceedings under sections 30B, 30C, 30D, 30E and 30F of the Ordinance may be disposed of in chambers.

(2) The jurisdiction of the Court under sections 30B, 30C, 30D, 30E and 30F of the Ordinance shall be exercised by a judge.

(Enacted 1996)

Section:	6	Application for detention order	L.N. 31 of 2003	04/04/2003
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(1) An application for an order under section 30C(1) of the Ordinance may be made by ex parte originating summons.

(2) The ex parte originating summons shall be in Form No. 11 in Appendix A of the Rules of the High Court (Cap 4 sub. leg. A) and shall include the address of the owner in Hong Kong, or the name and address of his representative in Hong Kong, to which notice shall be directed and for service of documents. (25 of 1998 s. 2)

(3) In addition to the matters required by section 30B(3) of the Ordinance, the affidavit in support of the application must include the following particulars, to the extent that they are within the owner's knowledge or are available to him, namely- (35 of 2000 s. 98)

- (a) the name and address in Hong Kong of the consignor of the goods in question, or the name and address of his representative in Hong Kong;
- (b) the name and address in Hong Kong of the distributor of the goods, or the name and address of his representative in Hong Kong;
- (c) the name of the country of origin or manufacture of the goods; and
- (d) the name and address of the manufacturer and of his representative in Hong Kong, if any.

(4) The affidavit in support of the application must set forth all facts relied upon in support of the application and must also-

- (a) state that, to the best of the owner's information and belief, the goods in question are not goods in transit;
- (b) state that, to the best of the owner's information and belief, the goods in question are not being imported by a person for his private and domestic use; and
- (c) exhibit a sample of the goods in question if one is available to the owner.

(5) An owner who makes an application for an order under section 30C(1) of the Ordinance shall serve a copy of the ex parte originating summons and the affidavit in support of the application on the Commissioner as soon as possible before the hearing of the application.

(35 of 2000 s. 98)

Section:	7	Application for directions	L.N. 31 of 2003	04/04/2003
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(1) An application under section 30D(4) of the Ordinance for directions in carrying out a detention order may be made by summons.

(2) The Commissioner shall serve a copy of the summons on the owner not less than 2 days before the day fixed for the hearing of the application. (35 of 2000 s. 98)

(Enacted 1996)

Section:	8	Application to extend period of detention	L.N. 31 of 2003	04/04/2003
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(1) An application under section 30D(7) of the Ordinance to extend the period referred to in section 30D(6) of the Ordinance may be made by summons.

(2) An owner who makes an application under section 30D(7) of the Ordinance shall, not less than 2 days before the day fixed for the hearing of the application, serve a copy of the summons on-

- (a) the Commissioner;
- (b) the importer; and
- (c) any other person to whom notice of the seizure or detention is required to be given by the terms of the detention order.

(Enacted 1996)

Section:	9	Application to vary or set aside detention order		30/06/1997
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An application under section 30E(1) or (2) of the Ordinance to vary or set aside a detention order may be made by summons.

(Enacted 1996)

Section:	10	Application for disclosure order		30/06/1997
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An application for an order under section 30F(2) of the Ordinance requiring the Commissioner to disclose information or a document may be made by originating motion.

(Enacted 1996)

Section:	11	Application for compensation		30/06/1997
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An application under section 30J(1) or (2) of the Ordinance for compensation for any loss or damage suffered by reason of the seizure or detention may be made by originating summons.

(Enacted 1996)

Section:	12	Provision of security, etc.	L.N. 31 of 2003	04/04/2003
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Where an order is made under section 30C(2) or 30D(8) of the Ordinance requiring an owner to provide security or an equivalent assurance, the owner shall provide it in such manner, at such time and on such terms (if any) as the Court may direct.

(Enacted 1996. 35 of 2000 s. 98)

Section:	13	Service of documents on Commissioner	L.N. 31 of 2003	04/04/2003
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(1) Any notice or other document required to be served on the Commissioner under Part IIIA of the Ordinance or these Rules, including a notice under section 30D(6) of the Ordinance that an action for infringement has been brought under the Trade Marks Ordinance (Cap 559), shall be served by delivering the document personally to the duty officer, the Customs and Excise Department, at the address from time to time specified by the Commissioner by notice in the Gazette. (35 of 2000 s. 98)

(2) Service is effected at the time of delivery of the notice or other document in accordance with subrule (1).

(Enacted 1996)

Section:	14	Service of documents by Commissioner or authorized officers	L.N. 31 of 2003	04/04/2003
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(1) Any notice or other document required to be served by the Commissioner or an authorized officer under section 30D(5) of the Ordinance or these Rules shall be deemed to have been duly served on the person concerned if it is-

- (a) in the case of the owner- (35 of 2000 s. 98)
 - (i) delivered to him personally; or
 - (ii) addressed to him and left at the address for service given in the ex parte originating summons referred to in rule 6; and
- (b) in the case of any other person-
 - (i) delivered to him personally; or
 - (ii) addressed to him and left at his usual or last known place of abode or business.

(2) Where a document cannot be served on a person in accordance with subrule (1), it shall be deemed to have been duly served on the person if it is exhibited, for a period of not less than 4 days, in such public places as the Commissioner may from time to time specify by notice in the Gazette.

(Enacted 1996)