

TRADE MARKS (EMERGENCY) RULES

CONTENTS

Rule

1. Citation
2. Interpretation
3. Fees
4. Forms
5. Documents
6. Agency
7. Applications under the Ordinance
8. Evidence and statement of applicant's request
9. Copies to accompany application
10. Opposition
11. Grant of registration of trade mark under section 4 where registration fee has not been paid

First Schedule Fees

Second Schedule Forms

TRADE MARKS (EMERGENCY) RULES

(Cap. 263, section 8)

[19 April 1940]

1. Citation

These rules may be cited as the Trade Marks (Emergency) Rules.

[*cf. R. 1*]*

2. Interpretation

(1) In these rules, unless the context otherwise requires—

“Ordinance” means the Trade Marks (Emergency) Ordinance (Cap. 263);

“person” includes any Government Department;

“Registry” means the Trade Marks Registry, Hong Kong.

(2) The Interpretation and General Clauses Ordinance (Cap. 1) shall apply to the interpretation of these rules as it applies to the interpretation of an Ordinance.

[*cf. R. 2*]

3. Fees

The fees to be paid on applications and oppositions under these rules shall be those specified in the First Schedule.

[*cf. R. 3*]

4. Forms

The Forms hereinafter referred to are those contained in the Second Schedule.

[*cf. R. 4*]

* Note: The references, to “R1”, etc., are to the English Patents, Designs, Copyright and Trade Marks (Emergency) Rules 1939.

5. Documents

(1) All documents and copies of documents sent to or left at the Registry or otherwise furnished to the Registrar shall conform to the requirements of rule 95 of the Trade Marks Rules (Cap. 43 sub. leg.). [*cf. R. 5(1)*]

(2) Any application, notice or other documents authorized or required to be left, made, or given at the Registry, or to the Registrar, or to any other person under the Ordinance or these rules, may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given at the time when the letter containing the same would be delivered in the ordinary course of post. In proving such sending, it shall be sufficient to prove that the letter was properly addressed and put into the post. [*cf. R. 5(2)*]

(3) Any written communication addressed to the registered proprietor of a trade mark or other person at his address for service in Hong Kong furnished in connexion with the registration or at his address in non-enemy territory as it appears on the register of trade marks, or to any applicant or opponent in any proceedings under the Ordinance or these rules at the address appearing on the application or notice of opposition or given for service as hereinafter provided, shall be deemed to be properly addressed.

6. Agency

(1) All communications to the Registrar under the Ordinance and these rules (except the applications set out in rule 7) may be signed by, and all attendances upon the Registrar may be made by or through, an agent duly authorized to the satisfaction of the Registrar, and resident or having a place of business in Hong Kong. Service upon such an agent of any document relating to the proceeding or matter in which he is authorized shall be deemed to be service upon the person so appointing him, and all communications directed to be made to such person in respect of the proceeding or matter may be addressed to such agent. In any particular case the Registrar may, if he thinks fit, require the personal signature or presence of an applicant, opponent, or other person.

(2) The Registrar shall not be bound to recognize as such agent, or to receive communications in respect of any business under the Ordinance from, any person whom he is not bound to recognize as an agent under rule 102 of the Trade Marks Rules (Cap. 43 sub. leg.).

[*cf. R. 6*]

7. Applications under the Ordinance

(1) An application under section 3 of the Ordinance for an order for the suspension of rights in connexion with a trade mark shall be made on and in accordance with Form 1.

(2) An application for the revocation or variation of an order suspending rights in connexion with a trade mark under section 3 shall be made on and in accordance with Form 2, and shall state the applicant's reasons for his request.

[*cf. R. 7(3)*]

8. Evidence and statement of applicant's request

An application made as prescribed in rule 7 shall, where necessary, be accompanied by evidence, in the form of or covered by a statutory declaration, showing that any conditions laid down by, or requirements of, the Ordinance in connexion with the application in question are satisfied. Where a licence, or the variation of a licence, is asked for, the application shall be accompanied by a statement setting out the principal conditions upon which the applicant desires a licence to be granted, or the variations which he desires shall be made in any conditions of the licence, as the case may be.

[*cf. R. 8*]

9. Copies to accompany application

An application as aforesaid shall be accompanied by a copy thereof and by a copy of any evidence or statement accompanying it. A copy of the application and of any such evidence or statement shall, unless, having regard to the circumstances, the Registrar considers it inexpedient (as to the whole or a part of those documents) or impossible, be sent by the Registrar to the registered proprietor of the trade mark at his address for service in Hong Kong, or at any other address that may appear to the Registrar to be proper, to any other person whose name, with an address in Hong Kong, appears upon the relevant Registrar to indicate that he has an interest in the trade mark in question, and to any other person who may appear to the Registrar to be sufficiently interested in the matter.

(*G.N. 1346 of 1941*)

[*cf. R. 9*]

10. Opposition

If any person to whom copies are sent under rule 9, or any other person who may be considered by the Registrar to be sufficiently interested in the matter, intends to oppose the application, he shall, within 14 days of the dispatch of such copies, or such further time, not exceeding 14 days or in exceptional circumstances 28 days, as the Registrar may, on good reason being shown, and whether or not the time extended had expired before the request for extension was made, allow, give notice of his opposition on and in accordance with Form 3, setting out the grounds upon which he opposes the application.

[Subsidiary]

Such notice shall be accompanied by a copy thereof, and there may be filed therewith, in duplicate, any relevant evidence that the opponent desires to furnish. A copy of the notice and of any evidence accompanying it shall be sent by the Registrar to the applicant. No further evidence shall be filed by any party except by leave, or on requisition, of the Registrar. After such last-mentioned copies have been so sent, or if no notice of opposition is given, the Registrar shall in due course appoint a hearing unless, having regard to the circumstances, he considers it inexpedient or impossible so to do, or the parties have stated that they do not desire to be heard. The Registrar shall give all the parties at least 10 days' notice of such hearing unless in any case the parties agree to accept shorter notice or the Registrar for any special reason otherwise directs. At any such hearing, the applicant, and any person who has given notice of opposition as aforesaid, may appear and be heard:

Provided that, in any case in which it is proved to the satisfaction of the Registrar that it is desirable in the public interest that any order to be made upon an application as aforesaid should be made at an early date, he may consider the application and, if he decides to make an order thereon, make the order as soon as may be, without giving opportunity for the filing of a notice of opposition to the application and without considering any such notice that may have been filed or hearing any person who may have filed such a notice.

[*cf. R. 10*]

11. Grant of registration of trade mark under section 4 where registration fee has not been paid

Where an application has been made for the registration of a trade mark which, if granted, would satisfy the conditions of section 3(1) of the Ordinance as regards the name of the person in which the trade mark would be registered, or as to its proprietorship, and the application is in order for the registration of the trade mark except that the registration fee has not been paid, then, any person who proposes to apply under section 3 of the Ordinance for the suspension of rights in connexion with the trade mark when registered, may pay the registration fee, and the Registrar may thereupon register the trade mark in accordance with section 4 of the Ordinance.

[*cf. R. 11*]

FIRST SCHEDULE

[r. 3]

LIST OF FEES

Matter or proceeding	Amount	Corresponding Form
1. On application under section 3 for an order for the suspension of rights in connexion with a trade mark—in respect of each registration	\$30.00	Form 1

[Subsidiary]

Matter or proceeding	Amount	Corresponding Form
2. On application for the revocation or variation of an order suspending rights in connexion with a trade mark under section 3—in respect of each trade mark registration	\$30.00	Form 2
3. On notice of opposition under rule 10 to an application—in respect of each trade mark registration	\$30.00	Form 3

SECOND SCHEDULE

[r. 4]

FORM 1

TRADE MARKS (EMERGENCY) ORDINANCE
(Chapter 263)

(To be accompanied by a copy and (where necessary) by evidence and a statement, as in rules 8 and 9, and copies thereof)

Application for suspension of rights in connexion with a Trade Mark

(a) I (or We) (a) Here insert (in full) name, address, calling and nationality of person or persons applying.

hereby apply under section 3 of the Ordinance for an order that the rights in connexion with the trade mark registered in Class under No. and standing in the name of of be suspended for years to the following extent—(b)

(b) Here insert particulars of the suspension desired.

(c) I (or We) propose to deal in the course of trade with under the description or reference

(c) Here insert particulars of the article or substance with which the applicant proposes to deal and the description or reference which he proposes to use in connexion with it.

My (or Our) address for service in Hong Kong is—

Dated this day of 19.....

(d) (d) To be signed by the applicant or applicants.

To the REGISTRAR OF TRADE MARKS,
Trade Marks Registry, Hong Kong.

[Subsidiary]

FORM 2

TRADE MARKS (EMERGENCY) ORDINANCE
(Chapter 263)

Application for revocation or variation of Registrar's Order

(a) I (or We)
.....
hereby request that the Order of the Registrar dated the
day of 19..... made under section 3 of the Ordinance
suspending rights in connexion with Registered Trade Mark No. (b)
.....
in favour of
may be revoked (c) (or may be varied in the following manner—.....
.....)

(a) Here insert
(in full) name,
address, calling
and nationality
of person or
persons
applying.

(b) Here insert
number of trade
mark.

(c) Cancel the
words not
applicable.

My (or Our) reasons for making this request are as follows—
.....
.....
.....
.....
.....

My (or Our) address for service in Hong Kong is—
.....

Dated this day of 19.....
(d).....

To the REGISTRAR OF TRADE MARKS,
Trade Marks Registry, Hong Kong.

(d) To be signed
by the applicant
or applicants for
revocation or
variation.

FORM 3

TRADE MARKS (EMERGENCY) ORDINANCE
(Chapter 263)

(To be accompanied by a copy and (where necessary) by evidence in duplicate as in rule 10)

Opposition to Application

(a) I (or We)
.....
.....
.....
.....

(a) Here insert
(in full) name,
address, calling
and nationality
of the opponent
or opponents.

[Subsidiary]

hereby give Notice of Opposition to the Application made by
..... of
..... on the day
of 19..... for (b)

upon the grounds (c)
.....
.....
.....

(b) Here insert particulars of the Application opposed.
(c) Here state the grounds upon which the Application is opposed.

My (or Our) address for service in Hong Kong is—
.....

Dated this day of 19.....

(d)

(d) To be signed by the opponent or opponents, or his or their duly authorized agent.

To the REGISTRAR OF TRADE MARKS,
Trade Marks Registry, Hong Kong.