

## An Act to amend the Trade Mark Act 1953

1987, No. 156  
[10 July 1987]

### ANALYSIS

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BE IT ENACTED by the Parliament of New Zealand as follows:

#### **1. Short Title and commencement—**

- (1) This Act may be cited as the Trade Marks Amendment Act 1987, and shall be read together with and deemed part of the Trade Marks Act 1953 (hereinafter referred to as the principal Act).
- (2) This Act shall come into force on the 1st day of May 1988.

(3) Notwithstanding subsection (2) of this section, an application for the registration of a trade mark in respect of services may be made at any time after the 1st day of February 1988 and before the coming into force of this Act as if this Act had come into force on the 1st day of February 1988, but every such application shall be treated as having been made immediately after the into force of this Act.

## **2. Interpretation—**

(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “limitations”, and substituting the following definition:

“ ‘Limitations’ means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to—

- “(a) Mode of use:
- “(b) Use in relation to goods to be sold or otherwise traded in, in any place within New Zealand:
- “(c) Use in relation to goods to be exported to any market outside New Zealand:
- “(d) Use in relation to services to be provided within New Zealand:”.

(2) Section 2 (1) of the principal Act is hereby further amended by inserting in the definition of the term “trade mark”, after the word “goods” in each place where it occurs, the words “or services”.

(3) Section 2 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) In this Act—

- “(a) References to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark:
- “(b) References to the use of a mark in relation to goods shall be construed as references to the use of the mark upon, or in physical or other relation to, goods:
- “(c) References to the use of a mark in relation to services shall be construed as references to the use of the mark in relation to the provision of services.”

## **3. No action for infringement of unregistered trade mark—**

Section 6 of the principal Act is hereby amended by omitting the words “as the goods”, and substituting the words “or services as the goods or services”.

## **4. Registration to be in respect of particular goods or services—**

The principal Act is hereby amended by repealing section 7, and substituting the following section:

“7. A trade mark must be registered in respect of particular goods or services or classes of goods or services, and any question arising as to the class within which any goods or services fall shall be determined by the Commissioner, whose decision shall be final.”

## **5. Right given by registration in Part A, and infringement thereof—**

(1) Section 8 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) Subject to the provisions of this section, and of sections 11 and 12 of this Act, the registration (whether before or after the commencement of this Act) of a person in Part A of the register as proprietor of a trade mark (other than a certification trade mark) in respect of any goods or services shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods or services.

“(1a) Without limiting subsection (1) of this section, the right conferred by that subsection shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user of it using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade, in relation to any goods or services in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken—

- “(a) As being use as a trade mark; or

“(b) In a case in which the use is use upon goods or in physical relation to goods or in an advertising circular or other advertisement issued to the public relating to goods, as importing a reference to some person having the right either as proprietor or as registered user to use the trade mark or to goods with which such a person is connected in the course of trade; or

“(c) In a case in which the use is in relation to services or in an advertising circular or other advertisement issued to the public relating to services, as importing a reference to some person having the right either as proprietor or as registered user to use the trade mark or to services with which such a person is connected in the course of trade.”

(2) Sections 8 (2) of the principal Act is hereby amended by inserting, after the words “any market”, the words “in relation to services to be provided”.

#### **6. Right given by registration in Part B, and infringement thereof—**

(1) Section 9 (1) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

(2) Section 9 (2) of the principal Act is hereby amended by inserting, after the word “goods”, the words “or services”.

#### **7. Saving for vested rights—**

Section 11 of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

#### **8. Saving for use of name, address, or description of goods or services—**

(1) The principal Act is hereby amended by repealing section 12 (as amended by section 2 of the Trade Marks Amendment Act 1985), and substituting the following section:

“12. No registration of a trade mark shall interfere with—

“(a) Any bona fide use by a person of that person’s own name or of the name of that person’s place of business, or of the name, or of the name of the place of business, of any of that person’s predecessors in business; or

“(b) The use by any person of any bona fide description of the character or quality of that person’s goods or services, not being a description that would be likely to be taken as importing any such reference as is mentioned in paragraph (b) or paragraph (c) of subsection (1a) of section 8 of this Act or paragraph (b) or paragraph (c) of subsection (3a) of section 47 of this Act.”

(2) The Trade Marks Amendment Act 1985 is hereby consequentially repealed.

#### **9. Distinctiveness requisite for registration in Part A—**

(1) Section 14 (1) (d) of the principal Act is hereby amended by inserting, after the word “goods”, the words “or services”.

(2) Section 14 (2) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

#### **10. Capability of distinguishing requisite for registration in Part B—**

Section 15 (1) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

#### **11. Prohibition of registration of identical and resembling trade marks—**

The principal Act is hereby amended by repealing section 17, and substituting the following section:

“17.—

(1) Subject to subsection (3) of this section, no trade mark shall be registered in respect of any goods if it is identical to a trade mark belonging to a different proprietor and already on the register in respect of the same goods, goods of the same description or services that are closely related to such goods, or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion.

“(2) Subject to subsection (3) of this section, no trade mark shall be registered in respect of any services if it is identical to a trade mark belonging to a different proprietor and already on the register in respect of the same services, services of the same description or goods that are closely related to such services, or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion.

“(3) In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Commissioner make it proper so to do, the Court or the Commissioner may permit the registration of trade marks that are identical or nearly resemble each other as aforesaid by more than one proprietor subject to such conditions and limitations, if any, as the Court or the Commissioner, as the case may be, may think it right to impose.

“(4) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks that are identical or nearly resemble each other as aforesaid the Commissioner may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by the Commissioner or on an appeal to the Court.”

### **12. Marks in respect of a class or large variety of goods or services—**

The principal Act is hereby amended by repealing section 20, and substituting the following section:

“20. In the case of an application for registration in respect of all the goods or services included in a class or of a large variety goods or services, the Commissioner may refuse to accept the application unless the Commissioner is satisfied that the specification is justified by the use of the mark that the applicant has made, or intends to make if and when it is registered.

### **13. Words used as name or description of article, substance, or service—**

The principal Act is hereby amended by repealing section 24, and substituting the following section:

“24.

(1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use, after the date of the registration, of a word or words which the trade mark contains, or of which it consists, as the name or description of an article, substance or service:

“Provided that, if it is proved either—

“(a) That there is a well known and established use of the word or words as the name or description of the article, substance or service by a person or persons carrying on a trade therein, not being use in relation to goods or services connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods or services certified by the proprietor; or

“(b) That the article or substance was formerly manufactured under a patent or the service was formerly a patented process, that a period of 2 years or more after the cessor of the patent has elapsed, and that the word or words is or are the only practicable name or description of the article, substance or service,—

the provisions of subsection (2) of this section shall have effect.

“(2) Where the facts mentioned in paragraph (a) or paragraph (b) of the proviso to subsection (1) of this section are proved with respect to any word or words, then—

“(a) If the trade mark consists solely of that word or those words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description or of the services or of any services of the same description, as the case may be, shall be deemed for the purposes of section 41 of this Act to be an entry wrongly remaining on the register; and

“(b) If the trade mark contains that word or those words and other matter, the Court or the Commissioner, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description or of the services or of any services of the same description, as the case may be, may, in the case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description or to the service or to any services of the same description, as the case may be, of that word or those words, so, however, that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made; and

“(c) For the purposes of any other legal proceedings relating to the trade mark,—

“(i) If the trade mark consists solely of that word or those words, all rights of the proprietor, whether under the common law or by registration, to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description or to the services or to any services of the same description, as the case may be; or

“(ii) If the trade mark contains that word or those words and other matter, all such rights of the proprietor to the exclusive use of that word or those words in such relation as aforesaid,— shall be deemed to have ceased on the date at which the use mentioned in paragraph (a) of the proviso to subsection (1) of this section first became well known and established, or at the expiration of the period of 2 years mentioned in paragraph (b) of that proviso.

“(3) No word that is the commonly used and accepted name of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration in force at the commencement of this Act or thereafter shall, notwithstanding anything in section 22 of this Act, be deemed for the purposes of section 41 of this Act to be an entry made in the register without sufficient cause, or an entry wrongly remaining on the register, as the circumstances may require:

“Provided that the foregoing provisions of this subsection shall not have effect in relation to a word that is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.”

#### **14. Registration of parts of trade marks and of trade marks as a series—**

Section 30 (2) of the principal Act is hereby amended—

- (a) By inserting, after the words “description of goods”, the words “or the same services or description of services, as the case may be”:
- (b) By inserting in paragraph (a), after the word “goods”, the words “or services”.

#### **15. Powers of, and restrictions on, assignment and transmission.—**

(1) Section 31 (2) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

(2) Section 31 (3) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

(3) Section 31 of the principal Act is hereby amended by repealing subsection (4) (including the proviso thereto), and substituting the following subsections:

“(4) Notwithstanding anything in the foregoing provisions of this section, a trade mark shall not be, or be deemed to have been, assignable or transmissible in a case in which as a result of an assignment or transmission there would in the circumstances subsist or have subsisted, whether under the common law or by registration,—

“(a) In the case of a trade mark relating to goods, exclusive rights in more than one of the persons concerned to the use in relation to the same goods, goods of the same description or services that are closely related to such goods, of trade marks nearly resembling each other, or of identical trade marks, if having regard to the similarity of the goods and services and of the trade mark, the use of the trade marks in exercise of those rights would be, or have been, likely to deceive or cause confusion:

“(b) In the case of a trade mark relating to services, exclusive rights in more than one of the persons concerned to the use in relation to the same services, services of the same description or goods that are closely related to such services, of trade marks nearly resembling each other, or of identical trade marks, if having regard to the similarity of the goods and services and of the trade mark, the use of the trade marks in the exercise of those rights would be, or have been, likely to deceive or cause confusion.

“(4a) Where a trade mark is, or has been, assigned or transmitted in such a case as aforesaid, the assignment or transmission shall not be deemed to be, or to have been, invalid under subsection (4) of this section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, or were, having regard to limitations imposed thereon, such as not to be exercisable by 2 or more of those persons in relation to goods to be sold, or otherwise traded in, within New Zealand (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside New Zealand or in relation to services to be provided in New Zealand.”

(4) Section 31 (5) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

(5) Section 31 of the principal Act is hereby amended by repealing subsection (6) (including the proviso thereto), and substituting the following subsections:

“(6) Notwithstanding anything in subsections (1) to (3) of this section, a trade mark shall not, after the 1st day of January 1940, be or have been assignable or transmissible in a case in which as a result of an assignment or transmission thereof, there would in the circumstances subsist or have subsisted, whether under the common law or by registration,—

“(a) In the case of a trade mark relating to goods, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold or otherwise traded in, in a place or places in New Zealand, and an exclusive right in another of those persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods, goods of the same description or services that are closely related to such goods limited to use in relation to goods to be sold, or otherwise traded in, or services to be provided in another place or other places in New Zealand:

“(b) In the case of a trade mark relating to services, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to services to be provided in a place or places in New Zealand, and an exclusive right in another of those persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same services, services of the same description or goods that are closely related to such services limited to use in relation to services to be provided or goods to be sold or otherwise traded in, in another place or other places in New Zealand.

“(6a) Notwithstanding subsection (6) of this section, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or of a person who claims that a trade mark has been transmitted to that person or to a predecessor in title of that person after the 1st day of January 1940, in any such case, the Commissioner, if the Commissioner is satisfied that in all the circumstances the use of the trade marks in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not be deemed to be, or to have been, invalid under that subsection or under subsection (4) of this section, so, however, that in the case of a registered trade mark this provision shall not have effect unless application for the registration under

section 34 of this Act of the title of the person becoming entitled is made within 6 months from the date on which the approval is given or, in the case of a transmission, was made before that date.”

(6) Section 31 (7) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

**16. Certain trade marks to be associated so as to be assignable and transmissible as a whole only—**

(1) Section 32 (2) of the principal Act is hereby amended by omitting the words “description of goods”, and substituting the words “goods of the same description or of services that are closely related to those goods”.

(2) Section 32 of the principal Act is hereby amended by inserting, after subsection (2) (as amended by subsection (1) of this section), the following subsection:

“(2A) Where a trade mark that is registered, or is the subject of an application for registration, in respect of any services is identical with another trade mark that is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same services or services of the same description or of goods that are closely related to those services, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Commissioner may at any time require that the trade marks shall be entered on the register as associated trade marks.”

(3) Section 32 (5) of the principal Act is hereby amended by inserting, after the word “goods”, the words “or services”.

**17. Registration of assignments and transmissions—**

Section 34 (1) of the principal Act is hereby amended by inserting, after the word “goods”, the words “or services”.

**18. Removal from register and imposition of limitations on ground of non-use—**

(1) Section 35 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) Subject to the provisions of section 36 of this Act, a registered trade mark may be taken off the register in respect of any of the goods or services in respect of which it is registered on application by any person aggrieved to the Court or, at the option of the applicant and subject to the provisions of section 67 of this Act, to the Commissioner, on the ground either—

“(a) That the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods or services by that applicant, and that there has in fact been no bona fide use of the trade mark in relation to those goods or services by any proprietor thereof for the time being up to the date one month before the date of the application; or

“(b) That up to the date one month before the date of the application a continuous period of 5 years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods or services by any proprietor thereof for the time being.

“(1a) Except where the applicant has been permitted under section 17 of this Act to register an identical or nearly resembling trade mark in respect of the goods or services to which the application relates or where the Court or the Commissioner is of the opinion that the applicant might properly be permitted to register such a trade mark, the Court or the Commissioner, as the case may be, may refuse an application made under subsection (1) of this section in relation to any goods or services, if there has been, before the relevant date or during the relevant period, as the case may be,—

“(a) Where the application relates to goods, bona fide use of the trade mark by any proprietor thereof for the time being in relation to goods or services in respect of which the trade mark is registered, being goods of the same description as those goods or services that are closely related to those goods:

“(b) Where the application relates to services, bona fide use of the trade mark by any proprietor thereof for the time being in relation to goods or services in respect of which the trade mark is

registered, being services of the same description as those services or goods that are closely related to those services.”

(2) Section 35 (2) of the principal Act is hereby amended by omitting the words “such use as last aforesaid”, and substituting the words “use of the trade mark in relation to goods to be sold, or otherwise traded in, in that place (otherwise than for export from New Zealand), or in relation to goods to be exported to that market”.

(3) Section 35 of the principal Act is hereby amended by inserting, after subsection (2) (as amended by subsection (2) of this section), the following subsection:

“(2a) Where in relation to any services in respect of which a trade mark is registered—

“(a) The matters referred to in paragraph (b) of subsection (1) of this section are shown so far as regards non-use of the trade mark in relation to services provided in a particular place in New Zealand; and

“(b) A person has been permitted under section 17 of this Act to register an identical or nearly resembling trade mark in respect of those services under a registration extending to use in relation to services provided in that place or the Court or the Commissioner, as the case may be, is of opinion that a person might properly be permitted so to register such a trade mark,—

on application by that person to the Court or, at the option of the applicant and subject to the provisions of section 67 of this Act, to the Commissioner, the Court or the Commissioner, as the case may be, may impose on the registration of the first-mentioned trade mark such limitations as the Court or the Commissioner thinks proper for securing that that registration shall cease to extend to use of the trade mark in relation to services provided in that place.”

(4) Section 35 (3) of the principal Act is hereby amended by inserting in paragraph (a), after the word “goods”, the words “or services”.

#### **19. Defensive registration of well-known trade marks—**

(1) Section 36 (1) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

(2) Section 36 (2) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

(3) Section 36 (3) of the principal Act is hereby amended by omitting the words “in respect of different goods”, and substituting the words “not registrations in respect of the same goods or services”.

(4) Section 36 (4) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

#### **20. Registered users—**

(1) Section 37 (1) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

(2) Section 37 (4) of the principal Act is hereby amended—

(a) By inserting in paragraph (b), after the word “goods”, the words “or services”:

(b) By inserting in paragraph (c), after the word “goods”, the words “or services”.

(3) Section 37 (5) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

(4) Section 37 (8) of the principal Act is hereby amended by inserting in paragraph (a), after the word “goods”, the words “or services”.

(5) Section 37 (10) of the principal Act is hereby amended by inserting, after the word “goods”, the words or services.

#### **21. Proposed use of trade mark by corporation to be constituted, etc.—**

(1) Section 38 (1) of the principal Act is hereby amended—

(a) By inserting, after the word “goods”, the words “or services”:

(b) By inserting in paragraph (a), after the word “goods”, the words “or services”:



(c) By inserting in paragraph (b), after the word “goods”, the words “or services”.

(2) Section 38 (4) of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

#### **22. Entries in register—**

Section 43 (1) of the principal Act is hereby amended by inserting in paragraph (c), after the word “goods” in each place where it occurs, the words “or services”.

#### **23. Adaptation of entries in register to amended or substituted clarification of goods or services—**

The principal Act is hereby amended by repealing section 46, and substituting the following section:

“46.

(1) Subject to any regulations under this Act, the Commissioner may from time to time amend the register, whether by making or expunging or varying entries therein, so far as may be necessary for the purpose of adapting the designation therein of the goods, classes of goods, services, or classes of services in respect of which trade marks are registered to any amended or substituted classification that may be prescribed.

“(2) The Commissioner shall not, in exercise of any power conferred on the Commissioner for the purpose aforesaid, make any amendment of the register that would have the effect of adding any goods, classes of goods, services or classes of services to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of any goods or services:

“Provided that this subsection shall not have effect in relation to goods as to which the Commissioner is satisfied that compliance with this subsection in relation thereto would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

“(3) A proposal for the amendment of the register for the purpose aforesaid shall be notified to the registered proprietor of the trade mark affected, shall be subject to appeal by the registered proprietor to the Court, shall be advertised with any modifications, and may be opposed before the Commissioner by any person aggrieved on the ground that the proposed amendment contravenes the provisions of subsection (2) of this section, and the decision of the Commissioner on any such opposition shall be subject to appeal to the Court.”

#### **24. Certification trade marks—**

(1) Section 47 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) A mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, from goods not so certified shall be registrable as a certification trade mark in Part A of the register in respect of those goods in the name, as proprietor thereof, of that person.

“(1a) A mark shall not be registrable pursuant to subsection (1) of this section in the name of a person who carries on a trade in goods of the kind certified.

“(1b) A mark adapted in relation to any services to distinguish in the course of trade services certified by any person in respect of quality, accuracy, performance or other characteristic, from services not so certified shall be registrable as a certification trade mark in Part A of the register in respect of those services in the name, as proprietor thereof, of that person.

“(1c) A mark shall not be registrable pursuant to subsection (1b) of this section in the name of a person who carries on a trade in services of the kind certified.”

(2) Section 47 (2) of the principal Act is hereby amended—

(a) By inserting in paragraph (a), after the word “goods”, the words “or services”:

(b) By inserting in paragraph (b), after the word “goods”, the words “or services”.

(3) Section 47 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsections:

“(3) Subject to subsections (4) to (6) of this section, and sections 11 and 12 of this Act, the registration of a person as proprietor of a certification trade mark in respect of any goods or services shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods or services.

“(3a) Without limiting subsection (3) of this section, the right conferred by that subsection shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a person authorised by the proprietor under the regulations in that behalf using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade, in relation to any goods or services in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken—

“(a) As being use as a trade mark; or

“(b) In a case in which the use is use upon goods or in physical relation to goods or in an advertising circular or other advertisement issued to the public relating to goods, as importing a reference to some person having the right either as proprietor or by his authorisation under the relevant regulations to use the trade mark or to goods certified by the proprietor; or

“(c) In a case in which the use is in relation to services or in an advertising circular or other advertisement issued to the public relating to services, as importing a reference to some person having the right either as proprietor or by the proprietor’s authorisation under the relevant regulations to use the trade mark or to services certified by the proprietor.”

(4) Section 47 (4) of the principal Act is hereby amended by inserting, after the word “market”, the word “in relation to services to be provided”.

#### **25. Regulations in respect of certification trade marks—**

Section 48 of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

#### **26. Applications for registration of certification trade marks—**

Section 49 (5) of the principal Act is hereby amended by inserting in paragraph (a), after the word “goods”, the words “or services”.

#### **27. Cancellation or variation of registration of certification trade mark—**

Section 52 (1) of the principal Act is hereby amended by inserting in paragraph (a), after the word “goods” in each place where it occurs, the words “or services”.

#### **28. No costs on appeal against refusal to certify goods or services—**

The principal Act is hereby amended by repealing section 53, and substituting the following section:

“53. Notwithstanding anything in section 62 of this Act, the Commissioner shall not have any jurisdiction to award costs to or against any party on an appeal to the Commissioner against a refusal of the proprietor of a certification trade mark to certify goods or services or to authorise the use of the trade mark.”

#### **29. False representation of trade mark as registered—**

Section 71 (1) of the principal Act is hereby amended by inserting in paragraph (c), after the word “goods”, the words “or services”.

#### **30. Change of form of trade connection not to be deemed to cause deception—**

Section 78 of the principal Act is hereby amended by inserting, after the word “goods” in each place where it occurs, the words “or services”.

#### **31. Jointly owned trade marks—**

Section 79 (1) of the principal Act is hereby amended by omitting from paragraph (a) the words “an article”, and substituting the words “goods or services”.

### 32. Regulations—

Section 85 (2) of the principal Act is hereby amended by inserting in paragraph (b), after the word “goods”, the words “or services”.

### 33. Amendment to Fair Trading Act 1986—

(1) Section 16 of the Fair Trading Act 1986 is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) No person shall, in trade,—

“(a) Forge any trade mark: or

“(b) Falsely apply to any goods any trade mark or mark so nearly resembling a trade mark as to be likely to mislead or deceive; or

“(c) Falsely use in relation to the provision of services any trade mark or mark so nearly resembling a trade mark as to be likely to mislead or deceive.”

(2) Section 16 (3) of the Fair Trading Act 1986 is hereby amended by inserting in the definition of the term “certification trade mark”, after the word “goods”, the words “or services”.

(3) Section 16 (3) of the Fair Trading Act 1986 is hereby further amended by omitting the definition of the term “trade mark”, and substituting the following definition:

“Trade mark”—

“(a) Means any trade mark within the meaning of the Trade Marks Act 1953; and

“(b) Includes—

“(i) A certification trade mark; and

“(ii) In the case of goods, any mark that is used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with, or offering to supply; and

“(iii) In the case of services, any mark that is used in connection with the provision of the services for the purposes of indicating that they are the services of the proprietor of the mark.”

This Act is administered in the Department of Justice.

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