

THE TRADE MARKS (BORDER PROTECTION AND TRANSITIONAL APPLICATIONS) REGULATIONS 1994

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 19th day of December 1994

Present:

THE HON. DOUG KIDD PRESIDING IN COUNCIL

PURSUANT to the Trade Marks Act 1953, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. Title and commencement—

(1) These regulations may be cited as the Trade Marks (Border Protection and Transitional Applications) Regulations 1994.

(2) These regulations shall come into force on the 1st day of January 1995.

2. Interpretation—

In these regulations, “the Act” means the Trade Marks Act 1953.

Border Protection

3. Form of notice under section 54B—

Every notice under section 54B of the Act shall be in the form set out in the First Schedule to these regulations.

4. Evidence in support of claim—

(1) Every person who gives a notice under section 54B of the Act shall furnish to the Comptroller evidence in support of the claim that goods are goods upon or in physical relation to which an infringing sign is used.

(2) The Comptroller may direct that such evidence be furnished at the time the notice is given or at any subsequent time.

5. Notice of assignment, transmission, and other matters—

Every person who has given a notice under section 54B of the Act in relation to a trade mark must inform the Comptroller, in writing, of—

(a) Any assignment or transmission of the trade mark to any person:

(b) Any change in the particulars contained in the notice or in any evidence or information given to the Comptroller in support of the request contained in the notice.

6. Security and indemnity—



(1) Every person who gives a notice under section 54B of the Act shall give security or an indemnity or both security and an indemnity to such persons, of such amount, and on such terms and conditions as may be determined by the Comptroller.

(2) The Comptroller may direct that security or an indemnity or both security and an indemnity be given at the time the notice is given or at any subsequent time.

(3) Every person to whom goods are to be or have been released from detention under section 54F (1) of the Act shall give security or an indemnity or both security and an indemnity to such persons, of such amount, and on such terms and conditions as may be determined by the Comptroller.

7. Disposal of forfeited goods—

(1) Subject to subclause (2) of this regulation, goods that are forfeited to the Crown under section 54H or section 54I of the Act shall be sold or destroyed or otherwise disposed of in such manner as the Comptroller may direct.

(2) Before determining that any goods that are forfeited to the Crown should be sold or destroyed or otherwise disposed of, and before determining the manner of any such sale or destruction or other disposition, the Comptroller shall have regard to the need to ensure that the sale or destruction or other disposition, and the manner thereof, would not adversely affect the registered proprietor or registered user of the trade mark.

Determination of Certain Applications

8. Form of notice under section 23 (2) of Trade Marks Amendment Act 1994—

Every notice under section 23 (2) of the Trade Marks Amendment Act 1994 requesting that an application for the registration of a trade mark be determined in accordance with the Act as amended by the Trade Marks Amendment Act 1994 shall be in the form set out in the Second Schedule to these regulations.

9. Fee—

(1) The fee payable on the giving of a notice under section 23 (2) of the Trade Marks Amendment Act 1994 shall be \$50.

(2) The fee prescribed under subclause (1) of this regulation is exclusive of goods and services tax under the Goods and Services Tax Act 1985.

SCHEDULES

FIRST SCHEDULE

Reg. 3

**FORM OF NOTICE UNDER SECTION 54B
OF TRADE MARKS ACT 1953**

The Trade Marks Act 1953

NOTICE REQUESTING DETENTION OF GOODS INFRINGING REGISTERED TRADE MARK

To: The Comptroller of Customs:

(a)....., of..... is (b)..... of trade mark No. in Class

A copy of the registration of the trade mark is attached to this notice.

It is hereby requested that the Comptroller of Customs detain any goods, upon or in physical relation to which any infringing sign is used, that are in, or at any time come into, the control of Customs.



This notice shall be in force for the period (c)

The business/residential address, postal address, and facsimile number of (d) for the service of notices are:

Business/residential address

Postal address

Facsimile No.

Dated this day of 19

(e)

- (a) Insert full name and address of registered proprietor or registered user of trade mark.
- (b) Insert whether registered proprietor or registered user.
- (c) Insert period that is not longer than 5 years from the date of the notice or, if the registration of the trade mark will expire within 5 years from the date of the notice, not longer than the period for which the registration will last.
- (d) Insert name of registered proprietor or registered user or authorised agent.
- (e) Signature.

Reg. 8

SECOND SCHEDULE

FORM OF NOTICE UNDER SECTION 23 (2) OF TRADE MARKS AMENDMENT ACT 1994

The Trade Marks Act 1953

In the matter of an Application No. (a) by (b) for Registration of Trade Mark

NOTICE REQUESTING APPLICATION FOR REGISTRATION OF TRADE MARK TO BE DETERMINED UNDER TRADE MARKS ACT 1953 AS AMENDED BY TRADE MARKS AMENDMENT ACT 1994

NOTICE is hereby given by (c), of, the applicant for registration of the above trade mark, requesting that the application be determined in accordance with the Trade Marks Act 1953 as amended by the Trade Marks Amendment Act 1994.

Dated this day of 19

(d)

To the Commissioner of Trade Marks,
Lower Hutt, New Zealand.

- (a) Insert official number accorded the proceedings.
- (b) Insert full name of applicant.
- (c) Insert full name and address of applicant.
- (d) Signature.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE



This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 January 1995, deal with 2 matters. The first relates to the detention by Customs, under the Trade Marks Act 1953, of goods that infringe registered trade marks. The second relates to the determination of applications for registration of trade marks in cases where such applications have not been advertised before the coming into force of the Trade Marks Amendment Act 1994.

Regulation 3 prescribes the form of notice, under section 54B of the Trade Marks Act 1953, to be given by a registered proprietor or registered user of a trade mark requesting Customs to detain infringing goods.

Regulation 4 relates to evidence that must be given by a claimant in support of a claim.

Regulation 5 requires notice to be given to the Comptroller of Customs of any assignment or transmission of the trade mark to which a notice relates and of certain other matters.

Regulation 6 requires persons giving notice under section 54B and persons to whom any goods are to be, or have been, released from detention under section 54F to give security and an indemnity.

Regulation 7 relates to the disposal of infringing goods that are forfeited to the Crown.

Regulation 8 prescribes the form of notice, under section 23 (2) of the Trade Marks Amendment Act 1994, to be given by an applicant for the registration of a trade mark where the applicant requests that the application be determined under the principal Act as amended by the Trade Marks Amendment Act 1994. Section 23 (2) provides that where an application has not been advertised before the coming into force of the Trade Marks Amendment Act 1994, the application must be determined in accordance with the principal Act as amended by the Trade Marks Amendment Act 1994 if the applicant gives notice requesting that it be so determined.

Regulation 9 prescribes the fee payable on the giving of a notice under section 23 (2) of the Trade Marks Amendment Act 1994.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 21 December 1994.

These regulations are administered in the Ministry of Commerce.

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