

**Reprint
as at 7 October 2011**



Trade Marks Regulations 2003
(SR 2003/187)

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 4th day of August 2003

Present:

Her Excellency the Governor-General in Council

Pursuant to section 199 of the Trade Marks Act 2002, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Ministry of Economic Development.

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Regulations

1 Title

These regulations are the Trade Marks Regulations 2003.

2 Commencement

These regulations come into force on 20 August 2003.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Trade Marks Act 2002

address for service means—

- (a) a business or residential address in New Zealand; or
- (b) a post office box in New Zealand; or
- (c) a document exchange box in New Zealand

agent has the meaning set out in regulation 19

business or residential address means a physical street address, whether in or outside New Zealand; and does not include—

- (a) an electronic address;
- (b) a post office box;
- (c) a document exchange box

class means a class of goods or services according to the Nice Classification

Commissioner means the Commissioner of Trade Marks; and includes an Assistant Commissioner of Trade Marks

communication address means any address in or outside New Zealand; and includes an electronic address

filing date means the date when a document is received at the Patent Office or an office approved by the Commissioner, as the case may be

hearing has the meaning set out in regulation 122

Nice Classification has the meaning given to it in section 5(1) of the Act

proceeding includes an application, request, or hearing in accordance with these regulations

register means the register of trade marks kept under section 181 of the Act.

Regulation 3 **Nice Classification**: substituted, on 16 September 2011, by section 28(2) of the Trade Marks Amendment Act 2011 (2011 No 71).

Part 1

Applications, notices, and requests to Commissioner

Documents

4 Documents must be in English or Māori

- (1) Subject to subclause (3), all documents filed with the Commissioner must be in English or Māori.
- (2) The Commissioner may require a person who files a document in Māori to provide the Commissioner with a verified translation into English within the time that the Commissioner specifies.
- (3) A person may, if it is necessary to do so, file a document that is not in English or Māori (for example, a convention document), but the document must be accompanied by a verified translation.

5 Form of documents filed in proceeding

A document, including written evidence, or bundle of documents filed with the Commissioner in a proceeding under the Act or these regulations must contain the following information:

- (a) the name and address for service of the person filing the document:
- (b) if that person has an agent, the agent's name:

- (c) the number of the trade mark application or registration that is the subject of the proceeding.

6 Signatures

- (1) In the following cases, a document must be signed for the purposes of these regulations as follows:
 - (a) in the case of a partnership, the document must—
 - (i) contain the full names of all partners, unless a list of the current members of the partnership has been filed with the Commissioner; and
 - (ii) be signed by a qualified partner or any other person who has, to the Commissioner's satisfaction, authority to sign:
 - (b) in the case of a body corporate, the document must be signed by a director or other principal officer, or any other person who has, to the satisfaction of the Commissioner, authority to sign:
 - (c) in the case of an unincorporated association, the document may be signed by any person who appears to the Commissioner to be duly qualified.
- (2) A document may be signed in accordance with section 22 of the Electronic Transactions Act 2002 as if that Act were in force.
- (3) An application made in accordance with these regulations by 2 or more joint applicants, and any document required to be signed that is part of the application, must be signed by each applicant.

7 Electronic documents

- (1) Any requirement in these regulations that a document must be in writing is satisfied if the document complies with section 18 of the Electronic Transactions Act 2002 as if that Act were in force.
- (2) Any requirement in these regulations that a document must be filed, served, or sent is satisfied if the document is given in accordance with section 20 of the Electronic Transactions Act 2002 as if that Act were in force.

*Filing documents***8 Place where documents may be filed**

A document that must be filed with the Commissioner may be filed at—

- (a) the Patent Office; or
- (b) other offices approved by the Commissioner.

9 Document filed when received in proper form

- (1) A document is filed with the Commissioner when it is received in proper form.
- (2) A document is in proper form only if—
 - (a) it is legible; and
 - (b) it complies with the requirements of these regulations; and
 - (c) it is accompanied by the prescribed fee.
- (3) A document that is filed electronically is received according to the rules contained in sections 11 and 13 of the Electronic Transactions Act 2002 as if that Act were in force.

10 Filing date

If a document is received on a day that is not a working day, or on the day that is the anniversary day for Wellington, the filing date of the document is the next working day.

*Amendment of documents***11 Request to amend documents**

- (1) A request under section 194 of the Act to amend an application, notice, or document must—
 - (a) be in writing; and
 - (b) contain the information specified in subclause (2); and
 - (c) be signed by the person making it.
- (2) The request must contain the following information:
 - (a) the name and address for service of the person requesting the amendment;
 - (b) if that person has an agent, the agent's name;
 - (c) details of the application, notice, or document to be amended;
 - (d) details of the amendment.

Notice of application to court

12 Notice to Commissioner of application to court

- (1) A person who applies to the court under the following sections of the Act must, as soon as practicable, serve the application on the Commissioner:
 - (a) section 62:
 - (b) section 65:
 - (c) section 73:
 - (d) section 76.
- (2) As soon as practicable after the court has decided the application, the party who made the application must notify the Commissioner of the result, and, if an order has been sealed, provide the Commissioner with a copy of the order.
- (3) The Commissioner may, if the Commissioner thinks it appropriate, publish any order made by the court on an application or an appeal under the Act.

Part 2
Addresses

13 Notification of address for service

The following persons must file a notice of address for service with the Commissioner:

- (a) an applicant in an application made in accordance with these regulations:
- (b) the owner of a trade mark registered under the Act:
- (c) the licensee of a trade mark registered under the Act:
- (d) any party to a proceeding under these regulations.

14 Notification of business or residential address

The following persons must file a notice of a business or residential address with the Commissioner:

- (a) an applicant in an application made in accordance with these regulations:
- (b) the owner of a trade mark registered under the Act:
- (c) the licensee of a trade mark registered under the Act:
- (d) an agent.

15 Notification of communication address

A person may file a notice of a communication address with the Commissioner for the purpose of receiving general correspondence.

16 Change of address

A person who has filed a notice of an address for service, business or residential address, or communication address must, if the address has changed, as soon as practicable, file a notice of change of address.

17 Notice of address or change of address

A notice of address or a notice of change of address must—

- (a) be in writing; and
- (b) contain the name and the new address of the person giving the notice; and
- (c) if a trade mark will be affected by a change of address, the number of that trade mark.

18 Sufficiency of address

An address that is notified to the Commissioner under these regulations must be sufficiently detailed to enable the Commissioner to contact the addressee at that address.

Part 3 Agents

19 Definition of agent

In these regulations, unless the context otherwise requires, **agent** means a person—

- (a) who is authorised by the agent's principal (X) to act for X in any proceeding in accordance with these regulations or to take any step on X's behalf under these regulations; and
- (b) for whom recognition has not been refused by the Commissioner under regulation 23.

20 Agent may act on behalf of principal for purposes of regulations

- (1) Subject to the scope of the agent's authority, an agent may act for the agent's principal (**X**) in any proceeding in accordance with these regulations or take any step (including signature of documents) on **X**'s behalf under these regulations.
- (2) However, the Commissioner may in any case require that a document that must be signed for the purposes of these regulations be signed by the principal and not by the agent.

21 Commissioner may serve and give notices to agent

- (1) The Commissioner satisfies any requirement under these regulations of service on, notice to, or correspondence with a person by serving on, giving notice to, or corresponding with that person's agent.
- (2) Subclause (1) does not apply to the extent that any written authority filed with the Commissioner by the agent's principal expressly excludes the authority of the agent for any of the matters specified in subclause (1).

22 Principal of agent must file authority with Commissioner in certain cases

- (1) The principal (**X**) of an agent (**A**) must file with the Commissioner—
 - (a) a written authority in respect of **A** if the Commissioner requires it, within the time specified by Commissioner:
 - (b) if **X** appoints a new agent in place of **A**, a written authority in respect of the new agent, as soon as practicable after the new agent is appointed.
- (2) The authority must—
 - (a) be signed by **X**, and not by any agent; and
 - (b) contain the information set out in subclause (3).
- (3) The authority must contain the following information:
 - (a) **X**'s name and address for service;
 - (b) **A**'s name;
 - (c) if **A** is authorised to act in respect of a particular trade mark, the number of the trade mark:

- (d) a statement of any limitation on the authority of the agent to act for X.

23 Commissioner may refuse to recognise person as agent

The Commissioner may refuse to recognise a person as an agent—

- (a) who is suspended from practice before the Patent Office; or
- (b) whose name has been removed from the register of patent attorneys under section 102 of the Patents Act 1953, and has not been restored to the register; or
- (c) whose name has been removed from or struck off the roll of barristers and solicitors under the provisions of the Law Practitioners Act 1982, and has not been restored to the roll; or
- (d) who is suspended from practice as a barrister or solicitor; or
- (e) who has been convicted of an offence specified in Part 10 (except sections 293 to 305) of the Crimes Act 1961 or who has been convicted of an equivalent offence in another country.

24 Commissioner must notify refusal to recognise

If the Commissioner refuses to recognise a person as an agent, the Commissioner must, as soon as practicable, notify that person and that person's principal in writing.

25 Notice to Commissioner of revocation or alteration of authority

- (1) A principal (X) must, as soon as practicable, give written notice to the Commissioner of the revocation or alteration of the authority of X's agent (A).
- (2) The notice must—
 - (a) be signed by X, and not by an agent; and
 - (b) contain the information set out in subclause (3).
- (3) The notice must contain the following information:
 - (a) X's name and address for service;
 - (b) A's name:

- (c) if A is authorised to act in respect of a particular trade mark, the number of that trade mark:
 - (d) if A's authority is revoked, a statement to that effect:
 - (e) if A's authority is altered, a statement setting out—
 - (i) the alteration in authority; and
 - (ii) the matters for which A continues to have authority.
- (4) Notice to the Commissioner of the revocation or alteration of the authority of an agent is effective—
- (a) if it complies with this regulation; and
 - (b) when it is received by the Commissioner.

Part 4

Commissioner's control of proceedings

Case management

26 Commissioner may require parties to attend case management conference

- (1) At any stage in a proceeding the Commissioner may require the parties to attend a conference to review the proceeding and the steps that have been or must still be taken.
- (2) The Commissioner must give each party notice of the conference at least 10 working days before the conference.
- (3) The parties may attend in person or by a telecommunication link that is acceptable to the Commissioner.

27 Commissioner may give directions

In the course of a case management conference, the Commissioner may give directions for the future conduct of the proceeding that are consistent with the Act and these regulations.

Halt in proceedings

28 Commissioner may halt proceeding

- (1) The Commissioner may halt a proceeding, if the Commissioner thinks it appropriate, on the application of a party or on the Commissioner's own initiative.
- (2) The Commissioner may halt the proceeding for the period and on the terms and conditions that the Commissioner thinks ap-

propriate, but must not halt the proceeding for more than 6 months.

- (3) The Commissioner may halt the proceeding for further periods, but on each occasion for no more than 6 months.
- (4) The Commissioner may at any stage, while the proceeding is halted, recommence the proceeding.

Parties

29 Substitution of parties

- (1) A notice to the Commissioner by a person (**S**) claiming to be substituted as an applicant under section 192 of the Act or an opponent under section 193, as the case may be, must include the following information:
 - (a) S's name and address for service;
 - (b) if S has an agent, the agent's name;
 - (c) the nature of the application or notice of opposition to which the claim for substitution relates;
 - (d) a description or representation (including the number or numbers) of the trade mark or marks to which the application or opposition relates;
 - (e) a statement describing how the right or interest on which S relies for substitution is vested in S.
- (2) The notice must be signed by S.

30 Intervention by third party

- (1) The Commissioner may allow a third party (**T**) who is not the owner of the trade mark in question, and who satisfies the Commissioner that T has a sufficient interest, to intervene in a proceeding for—
 - (a) rectification; or
 - (b) revocation; or
 - (c) a declaration of invalidity; or
 - (d) cancellation.
- (2) T must apply to intervene by filing with the Commissioner a notice that contains the following information:
 - (a) T's name and address for service;
 - (b) if T has an agent, the agent's name;

- (c) the nature of the application to which T's claim for intervention relates:
 - (d) a description or representation (including the number or numbers) of the trade mark or marks to which the claim for intervention relates:
 - (e) a statement describing T's interest in the proceeding.
- (3) The notice must be signed by T.
 - (4) The Commissioner may allow T to intervene on the terms and conditions (including an undertaking as to costs) that the Commissioner thinks appropriate.

Production of documents

31 Commissioner may require production of documents

- (1) At any stage in a proceeding under the Act or these regulations, the Commissioner may require a party by notice in writing or by direction made at a case management conference to—
 - (a) file copies of documents with the Commissioner:
 - (b) provide other parties to the proceeding with copies of documents.
- (2) The Commissioner may give a notice or make a direction under subclause (1) on the Commissioner's own initiative or on the application of any party to the proceeding.

Extension of time

32 Commissioner may extend time

- (1) The Commissioner may, if satisfied in a particular case that there are genuine and exceptional circumstances that justify an extension of time, extend the time specified by these regulations for a step to be taken, except where these regulations stipulate that time must not be extended.
- (2) In extending the time for a step to be taken, the Commissioner may stipulate the terms and conditions on which the extension is granted.

*Evidence***33 Party filing evidence must copy evidence to opposite party**

A party who files evidence with the Commissioner under the Act or these regulations must, as soon as practicable, send a copy of the evidence to the opposite party and any party intervening.

34 Evidence out of time

(1) This regulation and regulation 35 apply to the following proceedings:

- (a) an opposition to registration of a trade mark;
- (b) an application for rectification of the register;
- (c) an application for revocation of the registration of a trade mark;
- (d) an application for a declaration of the invalidity of the registration of a trade mark.

(2) A party to a proceeding may not file evidence after the evidence in reply has been filed, unless that party has applied to the Commissioner for permission to file it and the Commissioner allows it.

(3) The Commissioner must allow the evidence to be filed only if—

- (a) the Commissioner considers that there are genuine and exceptional circumstances that justify filing the evidence; or
- (b) the evidence could not have been filed earlier.

35 Application for permission to file evidence out of time

(1) The application for permission to file evidence out of time must—

- (a) be in writing; and
- (b) be signed by the party applying for permission (**P**); and
- (c) contain the information in subclause (2).

(2) The application must contain the following information:

- (a) P's name and address for service;
- (b) if P has an agent, the agent's name;
- (c) the nature of the evidence:

- (d) an explanation why the evidence could not have been filed earlier;
- (e) any other ground or grounds for making the application.
- (3) The Commissioner must notify the opposite party of the application, and the opposite party may make submissions to the Commissioner within the time specified by the Commissioner.
- (4) The Commissioner must notify the parties of the decision that the Commissioner intends to make on the application.
- (5) The notification must—
 - (a) specify the ground or grounds on which the Commissioner intends to reject or accept the application; and
 - (b) advise the parties that either party may require a hearing; and
 - (c) specify a period of not less than 1 month after the date of notification for a party to require a hearing; and
 - (d) advise the parties that the Commissioner will decide the application at the end of that period if a party has not required a hearing.
- (6) The Commissioner must, as soon as practicable, hold a hearing if a party requires it, and in that case must decide the application only after holding a hearing.

Vexatious applications

36 Vexatious applications

- (1) This regulation applies to the following applications:
 - (a) an application for revocation of the registration of a trade mark;
 - (b) an application for a declaration of the invalidity of the registration of a trade mark.
- (2) If the Commissioner considers that the application is vexatious, the Commissioner must, as soon as practicable, notify the applicant that the Commissioner intends to refuse the application as vexatious.
- (3) The notification must—
 - (a) specify the grounds on which the Commissioner considers that the application is vexatious; and
 - (b) advise the applicant that the applicant may require a hearing; and

- (c) specify a period of not less than 10 working days after the applicant has received the notification for the applicant to require a hearing; and
 - (d) advise the applicant that the Commissioner will refuse the application at the end of that period if the applicant has not required a hearing.
- (4) The Commissioner must, as soon as practicable, hold a hearing if the applicant requires it.

Part 5

Application for preliminary advice or for search of register

37 Application for preliminary advice or for search of register

An application for preliminary advice under section 16 of the Act or for search of the register must—

- (a) be in writing; and
- (b) be accompanied by the prescribed fee; and
- (c) contain the information specified in regulation 38.

38 Information required for application for preliminary advice or search of register

An application for preliminary advice or a search of the register must contain the following information:

- (a) the applicant's name and communication address;
- (b) a clear representation of the trade mark;
- (c) a statement of the goods or services for which it is proposed to register the trade mark;
- (d) a transliteration of any foreign characters in the trade mark;
- (e) a translation of any foreign words in the trade mark.

39 Application for preliminary advice or search of register for goods and services in more than 1 class

An applicant may apply in the same application for preliminary advice or a search of the register for a trade mark for goods and services in more than 1 class, but in that case a separate fee is payable for each class.

40 Refund of fee if identical or similar trade mark subsequently identified

An applicant for registration of a trade mark is entitled to a refund of the application fee paid if—

- (a) the applicant, relying on the result of a search, applied for registration of a trade mark within 3 months of receiving the search result; and
- (b) a subsequent notification of non-compliance discloses an identical or similar mark on the register that should have been identified in the search result; and
- (c) the applicant withdraws the application for registration.

Part 6

Application for registration of trade mark

Requirements for application

41 Mandatory requirements for application for registration

- (1) An application for registration of a trade mark that is submitted for filing must—
 - (a) be accompanied by the prescribed fee (or in the case of a multi-class application, the prescribed fee for each class); and
 - (b) contain the information specified in regulation 42.
- (2) An application that does not comply with subclause (1) is invalid and must not be given a filing date.
- (3) An application that complies with subclause (1) must be given a filing date and may be examined.

42 Information required in application for registration on filing

The application must contain the following information when it is filed:

- (a) the applicant's name and address for service or, in the case of joint applicants, the name of each applicant and an address for service;
- (b) a clear representation of the trade mark;
- (c) if the application is for registration of a series of trade marks, a clear representation of each trade mark in the series:

- (d) the goods and services for which registration is required.

43 Additional classes may be added after filing

- (1) An applicant for registration of a trade mark may apply to the Commissioner for a class or classes to be added after the application has been filed.
- (2) The Commissioner may allow the addition of a class if—
 - (a) the application for addition is made within 1 month after the application for registration is filed; and
 - (b) the application is accompanied by the fee prescribed for an application to register in 1 class; and
 - (c) the goods or services to which the additional class or classes relate are within the original specification.
- (3) The Commissioner must not allow an application for addition if the applicant has previously deleted the goods or services to which the additional class relates from the application for registration.
- (4) The Commissioner must not extend the deadline in subclause (2)(a).

44 Information that must be supplied before acceptance of application

An applicant must supply the following information before the application can be accepted, and may supply it after filing the application:

- (a) the applicant's business or residential address, if this is different from the address for service; and
- (b) whether the application is for a certification or a collective trade mark; and
- (c) the class or classes of the edition of the Nice Classification in effect at the time of the application in which registration is sought; and
- (d) in the case of a certification trade mark, the regulations governing the use of the trade mark approved by the Commissioner; and
- (e) a transliteration of any foreign characters in the trade mark; and
- (f) a translation of any foreign words in the trade mark; and

- (g) if the trade mark is a colour or colours, a description acceptable to the Commissioner of the colour or colours; and
- (h) if the trade mark is limited as to colour, a description acceptable to the Commissioner of the colour or colours in the trade mark; and
- (i) if the applicant has made a claim for convention priority, the information specified in regulation 47; and
- (j) a statement by the applicant that the trade mark is being used or is proposed to be used.

Regulation 44(c): substituted, on 16 September 2011, by section 28(3) of the Trade Marks Amendment Act 2011 (2011 No 71).

45 Commissioner may request further information

The Commissioner may request further information from an applicant that will assist in the examination of the application.

Claim for convention priority

46 Claim for convention priority must be made when application filed

- (1) A claim for convention priority on the basis of an application for registration in a convention country must be made within 2 working days after the application for registration in New Zealand is filed.
- (2) The Commissioner must not extend the time for making a claim for convention priority.
- (3) A claim for convention priority made more than 2 working days after the application is filed must not be accepted.

47 Information required for claim for convention priority

- (1) A claim for convention priority must include the following information:
 - (a) the date of the application from which priority is claimed;
 - (b) the country in which the application was made;
 - (c) the goods and services to which the claim relates;
 - (d) if the application in New Zealand is an application for registration of a series of trade marks, a statement spe-

cifying to which of the marks in the series the claim for convention priority relates.

- (2) The Commissioner may require an applicant to file, within the time specified by the Commissioner, a certified copy of the convention document.
- (3) The Commissioner may refuse an applicant convention priority if the applicant does not comply with a request by the Commissioner under subclause (2).

*Registration of trade mark including name or
description that may vary in use*

48 Registration of trade mark including name or description that may vary in use

- (1) The Commissioner may register a trade mark that includes the name or description of goods and services for those and other goods and services, if the name or description may vary in use.
- (2) The Commissioner must require the applicant to undertake that the name or description will be varied if used for goods and services covered by the specification that are not the named or described goods and services.
- (3) The undertaking must be entered on the register.
- (4) If the applicant does not give an undertaking as required, the Commissioner may refuse to register the trade mark for goods and services that are not the named or described goods and services.

Division

49 Division of trade mark application

An applicant for registration of a trade mark may apply for division from the application of—

- (a) part of a series of trade marks, in the case of a series application; or
- (b) classes within an application; or
- (c) specific goods or services within an application.

50 Application for division

An application for division must—

- (a) be in writing; and
- (b) contain the information set out in regulation 51.

51 Information required for application for division

An application for division must contain the following information:

- (a) the applicant's name and address;
- (b) if the applicant has an agent, the agent's name;
- (c) the initial application number of the application for registration;
- (d) in the case of division of a series of marks, the part of the series to be divided out;
- (e) in the case of division of classes, a list of the classes to be divided out;
- (f) in the case of division of goods or services, a list of the goods or services to be divided out;
- (g) if a notice of opposition to the application for registration has been filed with the Commissioner, a statement that the opponent has consented to the application for division.

52 Effect of division

If the Commissioner allows an application for division, the part that is divided out—

- (a) is independent of the original application for registration;
- (b) retains the filing date of the original application for registration.

53 Division instead of striking out

An applicant for registration of a trade mark may, instead of striking out items from the specification, apply for division in respect of those items, provided that there is no outstanding application fee for the class or classes in which the items divided out are to be included.

*Merger***54 When merger is allowed**

- (1) An applicant for registration of a trade mark, or an owner of a trade mark, as the case may be, may apply for the merger of—
 - (a) 2 or more applications; or
 - (b) 2 or more registrations.
- (2) The Commissioner may merge the applications or registrations if they—
 - (a) are for the same trade mark; and
 - (b) have the same filing dates and, if applicable, same convention priority dates; and
 - (c) have the same status, for example, accepted for registration, or registered; and
 - (d) are in the name of the same applicant or owner; and
 - (e) are classified according to—
 - (i) the same schedule of the Trade Marks Regulations 1954; or
 - (ii) the Nice Classification; or
 - (iii) the same previous edition of the Nice Classification, as the case may be.

55 Application for merger

An application for merger must—

- (a) be in writing; and
- (b) contain the information specified in regulation 56.

56 Information required for application for merger

An application for merger must contain the following information:

- (a) the applicant's name and address for service;
- (b) if the applicant has an agent, the agent's name;
- (c) the number of each application or registration sought to be merged.

*Application for registration of certification
trade mark*

57 Requirements for certification trade mark application

- (1) An application for registration of a certification trade mark must comply with the requirements of regulations 41, 42, and 44.
- (2) Within 6 months after the application is filed, the applicant must file, in a form acceptable to the Commissioner, draft regulations governing the use of the trade mark.

58 Applicant may modify documents

After the documents referred to in regulation 57(2) have been filed, and within 12 months after the application for registration was filed, the applicant may modify the documents in response to any advice the Commissioner may give as to their suitability.

*Application for registration of collective trade
mark*

59 Requirements for collective trade mark application

An application for registration of a collective trade mark must—

- (a) comply with the requirements of regulations 41, 42, and 44; and
- (b) contain a declaration that the applicant is a collective association as defined in section 5(1) of the Act.

*Application for registration when owner or
applicant dies*

60 Application for registration without production of letters of administration or probate

- (1) An application under section 52(1) (which in this regulation is called the **section 52 application**) of the Act must—
 - (a) be in writing; and
 - (b) contain the information specified in subclause (2); and
 - (c) be signed by the applicant.
- (2) The section 52 application must contain the following information:

- (a) the name and communication address of the applicant;
 - (b) if the applicant has an agent, the agent's name and address for service;
 - (c) the name of the deceased owner or deceased applicant for registration;
 - (d) if that person had an agent, the agent's name and address for service;
 - (e) a representation or description of each trade mark to which the section 52 application relates;
 - (f) in the case of a registered trade mark, the registration number of each trade mark to which the section 52 application relates;
 - (g) in the case of an application for registration of a trade mark by a deceased applicant, the number of the application;
 - (h) a statutory declaration by the applicant that—
 - (i) the owner or applicant for registration is dead; and
 - (ii) the applicant is a qualified person.
- (3) Before registering the applicant as the owner of the trade mark, the Commissioner may require the applicant to provide further evidence that the Commissioner considers necessary.

Part 7

Procedure after application for registration filed

Non-compliance

- 61 Deadline for response to notice of non-compliance**
- (1) In a notice of non-compliance issued under section 41 of the Act, the Commissioner may specify a deadline of not less than 12 months after the application for registration was filed for—
 - (a) responding to the notice; or
 - (b) amending the application.
 - (2) After each response or amendment by the applicant, the Commissioner may issue a further notice if the application still does not comply with the requirements of the Act, and on each occasion may extend the deadline specified under subclause (1).

62 Applicant may request extension of time to comply

- (1) Before the deadline for a response to a notice of non-compliance has expired, the applicant for registration may apply to the Commissioner for an extension.
- (2) The Commissioner may allow an extension, in the Commissioner's discretion, and may allow subsequent extensions.
- (3) The Commissioner must not allow an extension if the application for extension is made after the deadline has expired.
- (4) A request by an applicant for a hearing if the Commissioner refuses an extension must be made within 10 working days after the Commissioner notifies the applicant of the refusal.

63 Applicant must notify Commissioner of related proceeding

- (1) An applicant for registration of a trade mark who has been issued with a notice of non-compliance must notify the Commissioner if the application is awaiting the outcome of—
 - (a) an opposition proceeding in respect of a prior application; or
 - (b) cancellation, revocation, or invalidity proceedings in respect of a prior registration.
- (2) The applicant must notify the Commissioner before the expiry of the date specified in the notice of non-compliance.

64 Applicant must notify Commissioner of outcome of related proceeding

- (1) An applicant for registration of a trade mark who has notified the Commissioner under regulation 63 must, as soon as practicable, notify the Commissioner of the outcome of the proceeding.
- (2) On notice of the outcome of the proceeding, the Commissioner must extend the deadline for compliance by a period that the Commissioner considers reasonable.

Withdrawal of application for registration

65 Notification of withdrawal of application for registration

- (1) An applicant for registration of a trade mark may withdraw the application by notifying the Commissioner in writing.

- (2) The notification of withdrawal must contain the following information:
 - (a) the applicant's name;
 - (b) if the applicant has an agent, the agent's name;
 - (c) a description or representation of the trade mark;
 - (d) the application number.
- (3) The notification must be signed by the applicant.

Alteration of application for registration

66 Request for alteration of application

- (1) A request under section 37 of the Act by an applicant for the registration of a trade mark for the alteration of the application must—
 - (a) be in writing; and
 - (b) contain the information set out in subclause (2).
 - (c) be signed by the applicant.
- (2) The request for alteration must contain the following information:
 - (a) the applicant's name;
 - (b) if the applicant has an agent, the agent's name;
 - (c) a description or representation of the trade mark;
 - (d) the application number;
 - (e) the correction to be made to the application.

67 Commissioner must notify applicant of intention to reject alteration

- (1) The Commissioner must notify the applicant if the Commissioner intends to reject the request for alteration on the ground that, in the Commissioner's opinion, the alteration materially alters the meaning or scope of the application.
- (2) The notification must—
 - (a) specify the ground or grounds for the Commissioner's opinion; and
 - (b) advise the applicant that the applicant may require a hearing; and
 - (c) specify a period of not less than 1 month after the date of the notification for the applicant to require a hearing; and

- (d) advise the applicant that the Commissioner will reject the request at the end of that period if the applicant has not required a hearing.

68 Commissioner must hold hearing if required

The Commissioner must, as soon as practicable, hold a hearing if the applicant requires it, and in that case must decide whether to reject the request for alteration only after hearing the applicant.

Rejection of application for registration

69 Commissioner must notify applicant of intention to reject application

- (1) The Commissioner must notify the applicant for registration of a trade mark if the Commissioner proposes to reject the application under section 43 of the Act.
- (2) The notification must—
 - (a) specify the ground or grounds for rejection; and
 - (b) advise the applicant that the applicant may require a hearing; and
 - (c) specify a period of not less than 1 month after the applicant has received the notification for the applicant to require a hearing; and
 - (d) advise the applicant that the Commissioner will reject the application at the end of that period if the applicant has not required a hearing.

70 Commissioner must hold hearing if required

The Commissioner must, as soon as practicable, hold a hearing if the applicant requires it, and in that case must decide whether to reject the application for registration only after hearing the applicant.

*Revocation of acceptance***71 Commissioner must notify applicant of intention to revoke acceptance**

- (1) The Commissioner must notify the applicant for registration of a trade mark if the Commissioner proposes to revoke acceptance of the application under section 42 of the Act.
- (2) The notification must—
 - (a) specify the ground or grounds for revocation; and
 - (b) advise the applicant that the applicant may require a hearing; and
 - (c) specify a period of not less than 1 month after the applicant has received the notification for the applicant to require a hearing; and
 - (d) advise the applicant that the Commissioner will revoke acceptance at the end of that period if the applicant has not required a hearing.

72 Commissioner must hold hearing if required

The Commissioner must, as soon as practicable, hold a hearing if the applicant requires it, and in that case must decide whether to revoke acceptance of the application only after hearing the applicant.

Part 8**Opposition to application for registration***Notice of opposition***73 Requirements for notice of opposition**

A notice of opposition to an application for registration of a trade mark under section 47 of the Act must—

- (a) be in writing; and
- (b) be accompanied by the prescribed fee; and
- (c) contain the information specified in regulation 74; and
- (d) be signed by the opponent.

74 Information required in notice of opposition

A notice of opposition to an application for registration of a trade mark must contain the following information:

- (a) the name and address for service of the opponent:
- (b) if the opponent has an agent, the agent's name:
- (c) a description or representation of the trade mark:
- (d) the number of the application:
- (e) the class or classes, or the goods or services, to which the opposition relates:
- (f) the ground or grounds of opposition.

75 Time for filing notice of opposition

- (1) A party who opposes an application for registration of a trade mark must file a notice of opposition with the Commissioner within 3 months after the date when acceptance of registration was first advertised.
- (2) The Commissioner may, if requested, extend the deadline for filing a notice of opposition—
 - (a) by up to 1 month, without the applicant's consent; and
 - (b) by up to 2 months, with the applicant's consent.
- (3) The Commissioner must not extend the deadline after the deadline has expired.

76 Notice of opposition sent in time if all parties agree

A notice of opposition that has been sent to the Commissioner within 6 months after the application for registration in question was filed is deemed to have been sent within the time for sending the notice if the applicant and the opponent each consent.

77 Commissioner must send copy of notice to applicant for registration

The Commissioner must, as soon as practicable after a notice of opposition is filed, send a copy of the notice to the applicant for registration.

78 Commissioner must notify each opponent that notice of opposition filed

If an application for registration is opposed by more than 1 opponent, the Commissioner must, as soon as practicable after

each notice of opposition is filed, notify each opponent that the notice has been filed.

Counter-statement

79 Time for sending counter-statement

An applicant for registration to whom a notice of opposition has been sent must file a counter-statement to the notice with the Commissioner within 2 months after the applicant received the notice.

80 Information required in counter-statement

- (1) A counter-statement must contain the following information:
 - (a) the applicant's name and address for service;
 - (b) if the applicant has an agent, the agent's name;
 - (c) a response to the opponent's grounds of opposition, by admitting, denying, or claiming lack of knowledge of, each assertion made in the grounds of opposition;
 - (d) a brief statement of the grounds on which the applicant relies in support of the application for registration.
- (2) The counter-statement must be signed by the applicant.

81 Commissioner must send copy of counter-statement to opponent

The Commissioner must, as soon as practicable after a counter-statement is filed, send a copy of the counter-statement to the opponent.

Evidence

82 Opponent must file evidence

- (1) Within 2 months after the opponent (O) has received a copy of the counter-statement, O must—
 - (a) file evidence in support of the opposition; or
 - (b) notify the Commissioner that O does not intend to file evidence; or
 - (c) notify the Commissioner that O withdraws the application.

- (2) The Commissioner must notify the applicant as soon as practicable after O has taken one of the steps under subclause (1)(b) or (c).

83 Discontinuance of opposition

An opponent (O) discontinues opposition if—

- (a) O does not within the applicable deadline file evidence or notify the Commissioner that O does not intend to file evidence; or
(b) O notifies the Commissioner that O withdraws the opposition.

84 Applicant may file evidence

The applicant may file evidence in support of the application within 2 months after receiving a copy of—

- (a) the evidence of the opponent (O); or
(b) O's notice to the Commissioner that O does not intend to file evidence in support of O's opposition.

85 Evidence in reply

An opponent to an application for registration may, if the applicant has filed evidence, file evidence strictly in reply within 1 month after the opponent has received a copy of the applicant's evidence.

**Part 9
Rectification**

86 Application for rectification by Commissioner

- (1) An application to the Commissioner for rectification of the register under section 76 of the Act must—
(a) be in writing; and
(b) contain the information specified in regulation 87; and
(c) be signed by the applicant.
- (2) The Commissioner must, as soon as practicable, send a copy to the owner of the registered trade mark of an application by another person for rectification.

87 Information required for application for rectification

An application for rectification must contain the following information:

- (a) the applicant's name and address for service:
- (b) if the applicant has an agent, the agent's name:
- (c) a description or representation of the trade mark to which the application relates:
- (d) the number of the registration of the trade mark to which the application for rectification relates:
- (e) the class or classes to which the application relates:
- (f) the extent to which rectification is sought:
- (g) the grounds for rectification:
- (h) in the case of an application by a person who is not the owner of the trade mark, a statement of the basis on which the applicant claims to be a person who has an interest for the purposes of section 76(1) of the Act.

*Opposition to rectification***88 Owner may oppose rectification**

- (1) The owner of a trade mark in respect of which another person has applied for rectification may oppose the application by filing a counter-statement with the Commissioner within 2 months after receiving a copy of the application.
- (2) If the owner does not file a counter-statement within 2 months, the Commissioner must determine the application on the documents filed by the applicant.

89 Requirements for counter-statement to application for rectification

- (1) A counter-statement to an application for rectification must include the following information:
 - (a) the owner's name and address for service:
 - (b) if the owner has an agent, the agent's name:
 - (c) a response to the applicant's grounds for rectification, by admitting, denying or claiming lack of knowledge of, each assertion made in the grounds for rectification:
 - (d) a brief statement of the facts on which the owner relies in support of the registration.

- (2) The counter-statement must be signed by the owner.
- (3) The Commissioner must, as soon as practicable, send a copy of the counter-statement to the applicant.

Evidence

90 Applicant for rectification must file evidence

- (1) Within 2 months after receiving a copy of the counter-statement, the applicant (A) must—
 - (a) file evidence in support of the application; or
 - (b) notify the Commissioner that A does not intend to file evidence; or
 - (c) notify the Commissioner that A withdraws the application.
- (2) The Commissioner must notify the owner as soon as practicable after A has taken one of the steps under subclause (1)(b) or (c).

91 Discontinuance of application

The applicant (A) discontinues the application if—

- (a) A does not within the applicable deadline file evidence or notify the Commissioner that A does not intend to file evidence; or
- (b) A notifies the Commissioner that A withdraws the application.

92 Owner may file evidence

The owner may file evidence within 2 months after receiving a copy of—

- (a) the applicant's evidence; or
- (b) the applicant's notice to the Commissioner that the applicant does not intend to file evidence in support of the application.

93 Applicant's evidence in reply

An applicant for rectification may, if the owner has filed evidence, file evidence strictly in reply within 1 month after the applicant has received a copy of the owner's evidence.

Part 10

Revocation

Application to Commissioner for revocation

94 Application to Commissioner for revocation

- (1) An application to the Commissioner for revocation of the registration of a trade mark must—
 - (a) be in writing; and
 - (b) contain the information specified in regulation 95; and
 - (c) be signed by the applicant.
- (2) The Commissioner must, as soon as practicable, send a copy of the application to the owner of the trade mark.

95 Information required for application for revocation

An application for revocation must contain the following information:

- (a) the applicant's name and address for service;
- (b) if the applicant has an agent, the agent's name;
- (c) a description or representation of the trade mark to which the application relates;
- (d) the number of the registration of the trade mark to which the application for revocation relates;
- (e) the class or classes of goods or services to which the application relates;
- (f) the grounds for revocation;
- (g) a statement of the basis on which the applicant claims to be a person aggrieved for the purposes of section 65(1) of the Act.

Opposition to application for revocation for non-use

96 Owner or licensee may oppose revocation by filing counter-statement and evidence of use

- (1) The owner or licensee of a trade mark that is the subject of an application for revocation for non-use may oppose the application by filing the following documents within 2 months after the owner or licensee received the application:
 - (a) a counter-statement that complies with regulation 97; and

- (b) evidence of—
 - (i) the use of the mark; or
 - (ii) special circumstances of the kind referred to in section 66(2) of the Act.
- (2) If the owner or licensee does not, within the period specified, file the counter-statement and, if applicable, evidence of use of the mark, the Commissioner must determine the application on the documents filed by the applicant.
- (3) The Commissioner must, as soon as practicable, send a copy of the counter-statement and any supporting documents to the applicant.

97 Requirements for counter-statement to application for revocation for non-use

- (1) A counter-statement to an application for revocation of a trade mark on grounds of non-use must contain the following information:
 - (a) the name and address for service of the owner or licensee opposing the application;
 - (b) if the owner or licensee has an agent, the agent's name;
 - (c) a response to the applicant's grounds for revocation, by admitting, denying, or claiming lack of knowledge of, each assertion made in the grounds for revocation;
 - (d) a brief statement of the facts on which the owner or licensee relies in support of continued registration;
 - (e) if non-use is due to special circumstances of the kind referred to in section 66(2) of the Act, a statement of those special circumstances.
- (2) The notice must be signed by the owner or licensee opposing the application.

Evidence

98 Applicant for revocation for non-use must file evidence

- (1) Within 2 months after receiving a copy of the counter-statement and the evidence, if any, of use of the trade mark or special circumstances of the kind referred to in section 66(2) of the Act, the applicant (A) must—
 - (a) file evidence in support of the application; or

- (b) notify the Commissioner that A does not intend to file evidence; or
 - (c) notify the Commissioner that A withdraws the application.
- (2) The Commissioner must notify the owner or licensee opposing the application as soon as practicable after A has taken one of the steps under subclause (1)(b) or (c).
- (3) A discontinues the application if—
 - (a) A does not within the applicable deadline file evidence or notify the Commissioner that A does not intend to file evidence; or
 - (b) A notifies the Commissioner that A withdraws the application.

99 Owner or licensee may file evidence

The owner or licensee opposing an application for revocation for non-use may, if the applicant has filed evidence in support of the application, file evidence in support of the registration within 2 months after the owner or licensee has received a copy of the applicant's evidence.

100 Applicant may file evidence in reply

The applicant for revocation for non-use may, if the owner or licensee has filed evidence in support of the registration, file evidence strictly in reply within 1 month after the applicant has received a copy of the evidence in support of the owner or licensee.

*Opposition to application for revocation on
grounds other than non-use*

101 Owner or licensee may oppose revocation by filing counter-statement

- (1) The owner or licensee of a trade mark that is the subject of an application for revocation on grounds other than non-use may oppose the application by filing, within 2 months after the owner or licensee received the application, a counter-statement that complies with regulation 102.

- (2) The Commissioner must, as soon as practicable, send a copy of the counter-statement to the applicant.
- (3) If the owner or licensee does not, within 2 months after the owner or licensee received the application, file the counter-statement the Commissioner must determine the application on the documents filed by the applicant.

102 Requirements for counter-statement to application for revocation on grounds other than non-use

- (1) A counter-statement to an application for revocation of a trade mark on grounds other than non-use must contain the following information:
 - (a) the name and address for service of the owner or licensee opposing the application;
 - (b) if the owner or licensee has an agent, the agent's name;
 - (c) a response to the applicant's grounds for revocation, by admitting, denying, or claiming lack of knowledge of, each assertion made in the grounds for revocation;
 - (d) a brief statement of the facts on which the owner or licensee relies in support of continued registration.
- (2) The notice must be signed by the owner or licensee opposing the application.

Evidence

103 Applicant for revocation on grounds other than non-use must file evidence

- (1) Within 2 months after receiving a copy of the counter-statement, the applicant (A) must—
 - (a) file evidence in support of the application; or
 - (b) notify the Commissioner that A does not intend to file evidence; or
 - (c) notify the Commissioner that A withdraws the application.
- (2) The Commissioner must notify the owner or licensee opposing the application as soon as practicable after A has taken one of the steps under subclause (1)(b) or (c).
- (3) A discontinues the application if—

- (a) A does not within the applicable deadline file evidence or notify the Commissioner that A does not intend to file evidence; or
- (b) A notifies the Commissioner that A withdraws the application.

104 Person opposing may file evidence in support of registration

The owner or licensee opposing an application for revocation on grounds other than non-use may, if the applicant has filed evidence in support of the application, file evidence in support of registration within 2 months after the owner or licensee has received a copy of the applicant's evidence.

105 Applicant may file evidence in reply

The applicant for revocation on grounds other than non-use may, if the owner or licensee opposing has filed evidence in reply, file evidence strictly in reply within 1 month after the applicant has received a copy of the evidence in support of the owner or licensee.

**Part 11
Invalidity**

*Application to Commissioner for declaration
for invalidity*

106 Application to Commissioner for declaration of invalidity

- (1) An application to the Commissioner for a declaration that the registration of a trade mark is invalid must—
 - (a) be in writing; and
 - (b) be accompanied by the prescribed fee; and
 - (c) contain the information specified in regulation 107; and
 - (d) be signed by the applicant.
- (2) The Commissioner must, as soon as practicable, send a copy of the application to the owner of the trade mark.

107 Information required for application for declaration of invalidity

An application for a declaration of invalidity must contain the following information:

- (a) the applicant's name and address for service:
- (b) if the applicant has an agent, the agent's name:
- (c) a description or representation of the trade mark to which the application relates:
- (d) the number of the registration of the trade mark to which the application for a declaration of invalidity relates:
- (e) the class or classes or goods or services to which the application relates:
- (f) the grounds for a declaration of invalidity:
- (g) a statement of the basis on which the applicant claims to be a person aggrieved for the purposes of section 73(1) of the Act.

Opposition to application for declaration of invalidity

108 Owner may oppose application for declaration of invalidity by filing counter-statement

- (1) The owner of a trade mark that is the subject of an application to the Commissioner for a declaration of invalidity may oppose the application by filing, within 2 months after the owner received the application, a counter-statement that complies with regulation 109.
- (2) If the owner does not, within the period specified, file the counter-statement, the Commissioner must determine the application on the documents filed by the applicant.
- (3) The Commissioner must, as soon as practicable, send a copy of the counter-statement to the applicant.

109 Requirements for counter-statement to application for declaration of invalidity

- (1) A counter-statement to an application to the Commissioner for a declaration of invalidity must contain the following information:

- (a) the name and address for service of the owner of the trade mark;
 - (b) if the owner opposing has an agent, the agent's name;
 - (c) a response to the applicant's grounds for a declaration of invalidity, by admitting, denying, or claiming lack of knowledge of, each assertion made in the grounds for a declaration of invalidity;
 - (d) a brief statement of the facts on which the owner relies in support of continued registration.
- (2) The counter-statement must be signed by the owner.

Evidence

110 Applicant for declaration of invalidity must file evidence

- (1) Within 2 months after receiving a copy of the counter-statement, the applicant (**A**) must—
- (a) file evidence in support of the application; or
 - (b) notify the Commissioner that A does not intend to file evidence; or
 - (c) notify the Commissioner that A withdraws the application.
- (2) The Commissioner must notify the owner opposing the application as soon as practicable after A has taken one of the steps under subclause (1)(b) or (c).
- (3) A discontinues the application if—
- (a) A does not within the applicable deadline file evidence or notify the Commissioner that A does not intend to file evidence; or
 - (b) A notifies the Commissioner that A withdraws the application.

111 Owner may file evidence

The owner opposing an application for a declaration of invalidity may file evidence in support of the registration within 2 months after receiving a copy of—

- (a) the evidence of the applicant (**A**); or
- (b) A's notice to the Commissioner that A does not intend to file evidence in support of A's application.

112 Applicant may file evidence in reply

An applicant for a declaration of invalidity may, if the owner has filed evidence in support of the registration, file evidence strictly in reply within 1 month after the applicant has received a copy of the owner's evidence.

Part 12
Cancellation or alteration

Voluntary cancellation

113 Voluntary cancellation

- (1) The owner of a trade mark who voluntarily cancels registration under section 61 of the Act must give notice of the cancellation to the Commissioner.
- (2) The notice must—
 - (a) be in writing; and
 - (b) be signed by the owner; and
 - (c) contain the following information:
 - (i) the trade mark's registration number;
 - (ii) a representation or description of the trade mark;
 - (iii) the owner's name;
 - (iv) if the owner has an agent, the agent's name;
 - (v) if registration is cancelled in part only, a list of the goods, services, or classes for which registration is to be cancelled;
 - (vi) if registration is cancelled in part, a copy of the amended specification.

*Application by aggrieved person for
cancellation or alteration of registration*

114 Application by aggrieved person for cancellation or alteration

- (1) An application to the Commissioner for cancellation or alteration of registration under section 62, section 63, or section 64 of the Act must—
 - (a) be in writing; and
 - (b) contain the information specified in regulation 115; and
 - (c) be signed by the applicant.

- (2) The Commissioner must, as soon as practicable, send a copy of the application to the owner.

115 Information required for application for cancellation or alteration

An application for cancellation or alteration of registration under section 62, section 63, or section 64 of the Act must contain the following information:

- (a) the applicant's name and address for service:
- (b) if the applicant has an agent, the agent's name:
- (c) a description or representation of the trade mark to which the application relates:
- (d) the number of the registration of the trade mark to which the application relates:
- (e) the class or classes or goods or services to which the application relates:
- (f) the extent to which cancellation or alteration is sought:
- (g) the grounds for cancellation or alteration:
- (h) a statement of the basis on which the applicant claims to be an aggrieved person.

Opposition to cancellation or alteration

116 Owner may oppose cancellation or alteration

- (1) The owner of a trade mark in respect of which another person has applied for cancellation or alteration of registration under section 62, section 63, or section 64 of the Act may oppose the application by filing a counter-statement with the Commissioner within 2 months after receiving a copy of the application.
- (2) If the owner does not file a counter-statement within 2 months, the Commissioner must determine the application on the documents filed by the applicant.

117 Requirements for counter-statement to application for cancellation or alteration

- (1) A counter-statement to an application for cancellation or alteration of registration must include the following information:
- (a) the owner's name and address for service:

- (b) if the owner has an agent, the agent's name;
 - (c) a response to the applicant's grounds for cancellation or alteration, by admitting, denying, or claiming lack of knowledge of, each assertion made in the grounds for cancellation or alteration;
 - (d) a brief statement of the facts on which the owner relies in support of registration.
- (2) The counter-statement must be signed by the owner.
 - (3) The Commissioner must, as soon as practicable, send a copy of the counter-statement to the applicant.

Evidence

118 Applicant for cancellation or alteration must file evidence

- (1) Within 2 months after receiving a copy of the counter-statement, the applicant (A) must—
 - (a) file evidence in support of the application; or
 - (b) notify the Commissioner that A does not intend to file evidence; or
 - (c) notify the Commissioner that A withdraws the application.
- (2) The Commissioner must notify the owner opposing the application as soon as practicable after A has taken one of the steps under subclause (1)(b) or (c).

119 Discontinuance of application

The applicant (A) discontinues the application if—

- (a) A does not within the applicable deadline file evidence or notify the Commissioner that A does not intend to file evidence; or
- (b) A notifies the Commissioner that A withdraws the application.

120 Owner may file evidence

The owner may file evidence within 2 months after receiving a copy of—

- (a) the applicant's evidence; or

- (b) the applicant's notice to the Commissioner that the applicant does not intend filing evidence in support of the application.

121 Applicant's evidence in reply

An applicant for cancellation or alteration may, if the owner has filed evidence, file evidence strictly in reply within 1 month after the applicant has received a copy of the owner's evidence.

Part 13 Hearings

122 Form of hearing

- (1) A hearing may be—
 - (a) a hearing by appearance, that is, the appearance of a party before the Commissioner, whether in person or by telecommunication link acceptable to the Commissioner; or
 - (b) a hearing by submissions, that is, the consideration by the Commissioner of written submissions made by a party without an appearance.
- (2) A party may elect whether to be heard by appearance or submissions.

123 Hearing before exercise of Commissioner's discretion

- (1) A person (Y) who claims that the proposed exercise by the Commissioner of a power under the Act or the regulations will adversely affect Y must, if Y requires an opportunity to be heard before the power is exercised, file with the Commissioner a notice of a requirement to be heard.
- (2) The notice must—
 - (a) contain Y's name and address for service, and, if Y has an agent, the agent's name;
 - (b) state the matter in respect of which a hearing is required;
 - (c) be signed by Y.
- (3) Y must file the notice within 10 working days of the receipt by Y of notification by the Commissioner of the decision that the Commissioner proposes to make.

- (4) This regulation does not apply to—
 - (a) a proceeding to which regulation 124 applies:
 - (b) a proceeding if these regulations make provision for a hearing in that proceeding.

124 Hearing in certain proceedings

- (1) This regulation applies to the following proceedings:
 - (a) an application for the registration of a trade mark to which a notice of opposition has been filed:
 - (b) an application for the rectification of the register:
 - (c) an application for the revocation of the registration of a trade mark:
 - (d) an application for a declaration that the registration of a trade mark is invalid:
 - (e) an application for cancellation or alteration of registration.
- (2) After all the evidence has been filed, the Commissioner may, by correspondence or by holding a pre-hearing conference of the parties, determine—
 - (a) whether a hearing is required:
 - (b) the form of the hearing:
 - (c) the time for filing submissions:
 - (d) the venue of the hearing:
 - (e) any other matter necessary for arranging a hearing.

125 Notice of hearing by appearance

- (1) The Commissioner must give each party to a hearing by appearance notice of the date and venue of the hearing not less than 1 month before the date of the hearing.
- (2) Subclause (1) does not apply if—
 - (a) the date and venue have been determined at a prehearing conference; or
 - (b) the parties waive compliance with subclause (1); or
 - (c) in the Commissioner's opinion, notice of 1 month is not practicable for reasons of urgency.

126 Hearing fee

- (1) Each party who wishes to be heard at a hearing must pay a hearing fee.

- (2) The fee must be paid,—
 - (a) in the case of a hearing by appearance, not less than 10 working days before the date set for the hearing;
 - (b) in the case of a hearing by submissions, when the party files the submissions with the Commissioner.
- (3) The Commissioner must refund a hearing fee paid by a party who withdraws from the hearing if the Commissioner receives notice of withdrawal not less than 5 working days before the date set for the hearing.

127 Venue for hearing by appearance

- (1) If 1 party is in Wellington, the hearing must be held in Wellington or the place agreed by all the parties as the venue for the hearing.
- (2) If no party is in Wellington, the Commissioner must determine where the hearing will be held.
- (3) The Commissioner may require the party or parties concerned to pay the Commissioner's costs in holding the hearing at a venue outside Wellington.

128 Conduct of hearing by appearance

- (1) The Commissioner must determine how a hearing by appearance must be conducted.
- (2) Members of the public may attend a hearing by appearance, unless the Commissioner decides that it is not appropriate.

Part 14 Registration

General

129 Additional contents of the register

The following matters, additional to the matters specified in section 182(a) to (f) of the Act, must be entered on the register for each trade mark:

- (a) the number that the Commissioner has assigned to the trade mark;
- (b) the specification of goods or services in each class for which the trade mark is registered:

- (c) the edition of the Nice Classification or a previous edition of the Nice Classification or the schedule under the Trade Marks Regulations 1954 that has been used for classification of the specifications:
- (d) if the registration is made with the consent of the owner of another registered trade mark or an applicant for registration,—
 - (i) an entry of “By consent”; and
 - (ii) the registration number of the other trade mark or the application for registration, as the case may be:
- (e) where applicable, a statement that the trade mark was registered on the basis of evidence of use or distinctiveness:
- (f) the date when the registration is due to expire:
- (g) any undertaking that must be entered on the register under these regulations:
- (h) the date of conversion of a specification, if applicable.

130 Certificate of registration

- (1) The certificate of registration of a trade mark issued by the Commissioner must contain the following information:
 - (a) the number that the Commissioner has assigned to the trade mark:
 - (b) a representation of the trade mark:
 - (c) the actual and deemed date of registration:
 - (d) the class or classes in which the trade mark is registered:
 - (e) the goods and services for which the trade mark is registered.
- (2) The certificate of registration may contain any other information that the Commissioner thinks appropriate.

131 Certified copy of entry in register

- (1) The Commissioner must, on the request of any person, provide that person with any of the following documents:
 - (a) a certified copy of any entry in the register of trade marks:

- (b) a certified copy of, or an extract from, any register, public document, or record that must be kept under the Act or these regulations.
- (2) A request for a document referred to in subclause (1) must—
 - (a) be in writing; and
 - (b) contain the name and communication address of the person making the request; and
 - (c) be accompanied by the prescribed fee.

Renewal of registration

132 Notice of expiry

- (1) In this regulation, **notice** means the notice that the Commissioner must send to the owner of a trade mark under section 59(2) of the Act.
- (2) The Commissioner must send the notice—
 - (a) to the owner's address for service;
 - (b) not later than 2 months before the expiry of registration.
- (3) In addition to the matters specified in section 59(2) of the Act, the notice must state the following:
 - (a) registration will expire if it is not renewed;
 - (b) the last day when it can be renewed;
 - (c) the amount of the renewal fee, and how and where it may be paid.

133 Application for renewal

- (1) An application for the renewal of the registration of a trade mark must be—
 - (a) in writing; and
 - (b) filed with the Commissioner before the date of expiry, but not earlier than 1 year before that date; and
 - (c) accompanied by the prescribed fee.
- (2) The application must contain the following information:
 - (a) the trade mark's registration number;
 - (b) a representation or description of the trade mark;
 - (c) the owner's name and address for service;
 - (d) if the owner has an agent, the agent's name;
 - (e) the name and communication address of the person paying the renewal fee:

- (f) if the trade mark is registered in more than 1 class, details of the class or classes for which registration is to be renewed.

Restoration to register

134 Commissioner may specify conditions for restoration to register

- (1) For restoration of a trade mark to the register, the owner of the trade mark must, within 12 months after it has been removed from the register, comply with any conditions specified by the Commissioner under section 59(2)(c) of the Act.
- (2) The Commissioner must not extend the period of 12 months referred to in subclause (1).

Alteration of register

135 Request for alteration of owner's name or address

A request under section 78(a) of the Act for the alteration of the name or address of the owner of a trade mark must—

- (a) be in writing; and
- (b) be signed by the owner; and
- (c) contain the following information:
 - (i) the trade mark's registration number;
 - (ii) a representation or description of the trade mark;
 - (iii) the owner's name;
 - (iv) if the owner has an agent, the agent's name;
 - (v) the new name or address to be entered on the register.

Regulation 135: substituted, on 16 September 2011, by section 28(4) of the Trade Marks Amendment Act 2011 (2011 No 71).

136 Request to strike out goods or services, or classes of goods or services

A request under section 78(b) of the Act that the Commissioner strike out goods or services, or classes of goods or services, must—

- (a) be in writing; and
- (b) be signed by the owner; and
- (c) contain the following information:

- (i) the trade mark's registration number:
- (ii) a representation or description of the trade mark:
- (iii) the owner's name:
- (iv) if the owner has an agent, the agent's name:
- (v) a list of the goods, services, or classes to be struck out:
- (vi) if part of a class is to be struck out, a copy of the amended specification.

137 Request for entry, alteration, or removal of memorandum on register

A request under section 78(c) of the Act for the entry, alteration, or removal of a memorandum on the register must—

- (a) be in writing; and
- (b) be signed by the owner; and
- (c) contain the following information:
 - (i) the trade mark's registration number:
 - (ii) a representation or description of the trade mark:
 - (iii) the owner's name:
 - (iv) if the owner has an agent, the agent's name:
 - (v) the memorandum to be entered, the alteration to be made to a memorandum, or the memorandum to be removed (as the case may be).

Regulation 137 heading: amended, on 16 September 2011, by section 28(5) of the Trade Marks Amendment Act 2011 (2011 No 71).

Regulation 137: amended, on 16 September 2011, by section 28(6) of the Trade Marks Amendment Act 2011 (2011 No 71).

Regulation 137(c)(v): substituted, on 16 September 2011, by section 28(7) of the Trade Marks Amendment Act 2011 (2011 No 71).

Voluntary disclaimer

138 Notice of voluntary disclaimer of trade mark by owner

- (1) The owner of a trade mark who voluntarily disclaims a right under section 69 of the Act must notify the Commissioner of the disclaimer in writing.
- (2) The notice of disclaimer must contain the following information:
 - (a) the owner's name:
 - (b) if the owner has an agent, the agent's name:

- (c) a description or representation of the trade mark to which the disclaimer relates:
 - (d) the application number or registration number of the trade mark to which the disclaimer relates:
 - (e) if the owner disclaims, a description of that part of the trade mark that is disclaimed.
- (3) The notice must be signed by the owner.

Part 15

Application for conversion of specification

139 Application for conversion of specification

The owner of a trade mark registered with a specification classified under Schedule 3 or Schedule 4 of the Trade Marks Regulations 1954 or any previous edition of the Nice Classification may apply for conversion of the specification to a classification under the Nice Classification.

140 Information required for application for conversion

An application for conversion must contain the following information:

- (a) the owner's name and address for service:
- (b) if the owner has an agent, the agent's name:
- (c) the registration number of the trade mark.

141 Applicant may nominate registration in additional classes

An applicant for conversion may nominate registration in additional classes if goods or services classified in a single class under Schedule 3 or Schedule 4 of the Trade Marks Regulations 1954 or any previous edition of the Nice Classification fall into additional classes under the Nice Classification.

142 Proposed form of conversion

- (1) The Commissioner must notify an applicant for conversion of the proposed form of the conversion.
- (2) The applicant may apply for a hearing in relation to the Commissioner's decision as to the proposed form within 1 month after notification.

- (3) If the applicant does not apply for a hearing within 1 month of notification, the Commissioner must—
- (a) convert the specification in the proposed form; and
 - (b) enter the date of the conversion in the register.

Part 16

Assignment or transmission

Commissioner's certificate

143 Request for Commissioner's certificate

[Revoked]

Regulation 143: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

144 Information that must be contained in request for certificate

[Revoked]

Regulation 144: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

145 Application to register title to trade mark

- (1) This regulation applies to an application under section 82(2) of the Act for registration of title to a trade mark or to change the name of the applicant on an application for registration, as the case may be.
- (2) The application must—
 - (a) be in writing; and
 - (b) contain the information specified in regulation 146.

146 Information required for application to register title to trade mark

- (1) An application under section 82(2) of the Act must contain the following information:
 - (a) the name of the person (**C**) who assigned or transmitted the trade mark;
 - (b) if C has an agent, the agent's name;
 - (c) the name, address for service, and business or residential address of the person (**D**) to whom C assigned or transmitted the trade mark;

- (d) if D has an agent, the agent's name:
 - (e) a description or representation of the trade mark that has been assigned or transmitted:
 - (f) whether the assignment or transmission was full or partial:
 - (g) the date on which the assignment or transmission became effective:
 - (h) the class or classes that were assigned or transmitted:
 - (i) in the case of the assignment or transmission of some only of the goods or services within a classification, a statement of the goods or services assigned or transmitted:
 - (j) the application or registration number of the trade mark:
 - (k) a copy of the document of assignment or transmission or other documents acceptable to the Commissioner that are proof of D's title to the trade mark:
 - (l) if the assignment or transmission has resulted in the cancellation or amendment of the registration of a licensee, a statement that the licensee has been notified of the assignment or transmission.
- (2) The Commissioner may require an applicant under section 82(2) of the Act to provide any additional information and documents that the Commissioner considers necessary.

Part 16A

Enforcement officers

Part 16A: inserted, on 7 October 2011, by regulation 4 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

146A Form of warrant of appointment of enforcement officer

A warrant of appointment issued to an enforcement officer under section 134B of the Act must be in form 1 of Schedule 1A.

Regulation 146A: inserted, on 7 October 2011, by regulation 4 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

146B Form of warrant to search place or thing

A search warrant issued under section 134F of the Act must be in form 2 of Schedule 1A.

Regulation 146B: inserted, on 7 October 2011, by regulation 4 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

146C Form of order to produce documents under section 134Y of Act

An order to produce documents under section 134Y of the Act must be in form 3 of Schedule 1A.

Regulation 146C: inserted, on 7 October 2011, by regulation 4 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

**Part 17
Licensees**

[Revoked]

Part 17: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

Registration of licensees
[Revoked]

Heading: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

147 Application for registration of licensee
[Revoked]

Regulation 147: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

148 Information required for application for registration of licensee
[Revoked]

Regulation 148: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

Alteration of registration of licensee
[Revoked]

Heading: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

149 Application for alteration of registration of licensee

[Revoked]

Regulation 149: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

150 Information required for application for alteration of registration of licensee

[Revoked]

Regulation 150: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

Cancellation of registration of licensee

[Revoked]

Heading: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

151 Application for cancellation of registration of licensee

[Revoked]

Regulation 151: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

152 Information required for application for cancellation of registration of licensee

[Revoked]

Regulation 152: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

153 Owner must send licensee copy of application to cancel

[Revoked]

Regulation 153: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

154 Intervention by owner or licensee

[Revoked]

Regulation 154: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

155 Commissioner's powers on application for cancellation or alteration of registration of licensee

[Revoked]

Regulation 155: revoked, on 16 September 2011, by section 28(8) of the Trade Marks Amendment Act 2011 (2011 No 71).

Part 18**Border protection measures****156 Form of section 137 notice**

A notice under section 137 of the Act must be in the form set out in Schedule 2.

157 Evidence in support of claim

- (1) A person who gives a notice under section 137 must provide evidence to the chief executive in support of the claim that an infringing sign is used on, or in physical relation to, the goods that are specified in the notice.
- (2) The chief executive may direct that the evidence must be provided when the notice is given or at any later time.

158 Notice of assignment, transmission, and other matters

A person who has given a notice under section 137 of the Act must give the chief executive written notice of—

- (a) any assignment or transmission of the trade mark;
- (b) any change in the particulars contained in the notice or in any evidence or other information given to the chief executive in support of the request made in the notice.

159 Security and indemnity

- (1) A person who gives notice under section 137 of the Act must, if required by the chief executive, give security or an indemnity or both security and an indemnity for the amount and on the terms and conditions that the chief executive may decide.
- (2) The chief executive may direct that the security or indemnity or both must be given when the notice is given or at any later time.
- (3) A person to whom goods are to be, or have been, released under section 150 of the Act must, if required by the chief

executive, give security or an indemnity or both security and an indemnity for the amount and on the terms and conditions that the chief executive may decide.

160 Disposal of forfeited goods

- (1) Goods forfeited to the Crown under section 151 or section 154 of the Act must be sold, destroyed, or otherwise disposed of in the manner that the chief executive directs.
- (2) However, the chief executive must not direct a step to be taken under subclause (1) without first having regard to the need to ensure that the step to be taken does not adversely affect the owner or the licensee of the trade mark.

Regulation 160(1): amended, on 16 September 2011, by section 28(9) of the Trade Marks Amendment Act 2011 (2011 No 71).

160A Form of notice to produce documents concerning goods in control of Customs

A notice under section 155B of the Act requiring a person to produce documents concerning goods in the control of Customs must be in form 1 of Schedule 3.

Regulation 160A: inserted, on 7 October 2011, by regulation 5 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

160B Form of notice to appear and answer questions concerning goods in control of Customs

A notice under section 155C of the Act requiring a person to appear and answer questions concerning goods in the control of Customs must be in form 1 of Schedule 3.

Regulation 160B: inserted, on 7 October 2011, by regulation 5 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

160C Form of application by Customs officer for order to produce documents

An application by a Customs officer under section 155D of the Act for an order to produce documents under section 155E of the Act must be in form 2 of Schedule 3.

Regulation 160C: inserted, on 7 October 2011, by regulation 5 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

160D Form of order to produce documents under section 155E of Act

An order to produce documents under section 155E of the Act must be in form 3 of Schedule 3.

Regulation 160D: inserted, on 7 October 2011, by regulation 5 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

160E Form of application by Customs officer for search warrant

An application by a Customs officer under section 155G of the Act for a search warrant to be issued under that section must be in form 4 of Schedule 3.

Regulation 160E: inserted, on 7 October 2011, by regulation 5 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

160F Form of warrant to Customs officer to search place or thing

A search warrant issued to a Customs officer under section 155G of the Act must be in form 5 of Schedule 3.

Regulation 160F: inserted, on 7 October 2011, by regulation 5 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Part 19 Miscellaneous

161 Advertisement by Commissioner

The Commissioner must advertise information that is required by the Act to be advertised in the format, manner, and frequency that the Commissioner thinks appropriate.

162 Commissioner must notify decision

- (1) The Commissioner must,—
 - (a) in the case of a decision by the Commissioner at the conclusion of a proceeding, notify all the parties to the proceeding in writing;
 - (b) in the case of the Commissioner's exercise of any other discretionary power under the Act or the regulations, notify the party or parties affected in writing.
- (2) For the purpose of an appeal under section 170 of the Act, a decision is given—

- (a) when the notice of the decision is sent by the Commissioner; or
- (b) if a person to whom the notice has been sent requires the Commissioner to notify the reasons for the decision, when the reasons for the decision are sent by the Commissioner.

163 Commissioner must give reasons for decision if required

- (1) A person to whom a notice is sent under regulation 162 may require the Commissioner to notify that person of the reasons for the decision, if the Commissioner has not already done so.
- (2) Notice that a person requires the reasons for a decision must be sent to the Commissioner within the time for appealing against the decision.

164 Commissioner may waive requirement for information

The Commissioner may waive a requirement in these regulations for information to be provided in any proceeding or document if the Commissioner is satisfied that the information is unnecessary.

Part 20

Revocation of regulations

165 Trade Marks Regulations 1954 revoked

- (1) The Trade Marks Regulations 1954 are revoked.
- (2) Despite revocation, the Trade Marks Regulations 1954 continue in force and apply in respect of the matters to which the Trade Marks Act 1953 continues to apply under section 203 of the Act.

166 Trade Marks (Border Protection and Transitional Applications) Regulations 1994 revoked

The Trade Marks (Border Protection and Transitional Applications) Regulations 1994 are revoked.

Part 21

Fees

167 Amount of fees

- (1) The amount of each fee that must be paid under these regulations is set out in Schedule 1.
- (2) The fees prescribed by these regulations are exclusive of goods and services tax.

168 Commissioner may refuse to take step before fee paid

- (1) The Commissioner may refuse to take any step under the Act or regulations in respect of which a fee is payable unless the fee is first paid.
- (2) The Commissioner may refuse to accept any application, notice, or request under the Act or these regulations in respect of which a fee is payable unless the fee is first paid.

169 Requirement that prescribed fee accompany document to be filed

Subject to the provisions of the Act, a requirement in these regulations that the prescribed fee must accompany a document to be filed with the Commissioner is satisfied if the party filing the document has, before filing the document, made an arrangement acceptable to the Commissioner for payment of the fee.

170 Form of payment

- (1) A fee payable under the Act or these regulations must be paid in a form that is acceptable to the Commissioner.
- (2) The Commissioner must, from time to time, publish a statement of acceptable forms of payment.

171 Currency

All fees must be paid in New Zealand currency.

Schedule 1
Fees

r 167

Activity	Fee (\$)
Request for search advice per class	20.00
Request for preliminary advice per class	20.00
Application to register a trade mark in 1 class	100.00
Renewal of registration of a trade mark in 1 class	250.00
Notice of opposition to registration of a trade mark	300.00
Hearing by Commissioner for each party	750.00
Certificates, certified copies, or extracts from register	30.00
Photocopying — per page (by office)	0.89
Photocopying — per page (self-service)	0.18
Application for declaration of invalidity of registration	300.00

Schedule 1A

rr 146A–146C

Forms relating to enforcement officers

Schedule 1A: inserted, on 7 October 2011, by regulation 6 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Form 1

r 146A

Warrant of appointment of enforcement officer*Section 134B, Trade Marks Act 2002*

(Front of warrant)

Enforcement officer*Warrant of appointment*

Full name:

Identification number:

[Photo of warrant holder]

Signature:

(Back of warrant)

Warrant of appointment issued under section 134B of the Trade Marks Act 2002

This is to certify that the person whose name, photograph, and signature appear on this warrant—

- is an enforcement officer appointed under section 134A of the Trade Marks Act 2002; and
- may enter and examine a place described in section 134D of that Act without a search warrant; and
- may exercise the other powers conferred on enforcement officers by that Act.

Date:

Signature:

Chief executive, Ministry of Economic Development

Schedule 1A form 1: inserted, on 7 October 2011, by regulation 6 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Form 2

r 146B

Search warrant to enter and search place or thing

Section 134F, Trade Marks Act 2002

To every enforcement officer appointed under section 134A of the Trade Marks Act 2002 and every member of the Police

1 I am satisfied, on an application made in accordance with sections 134G and 134H of the Trade Marks Act 2002 by [*full name of applicant*], that, in relation to [*specify address or description of place or thing that may be entered and searched*], there are reasonable grounds for believing that—

- ***(a)** an offence against the Trade Marks Act 2002, namely [*specify offence provision*], has been, or is being, committed at that place/committed involving that thing*:
- ***(b)** there is at, in, on, over, or under that place/that thing* some thing that is evidence of an offence against [*specify offence provision*] of the Trade Marks Act 2002:
- ***(c)** there is at, in, on, over, or under that place/that thing* some thing that is intended to be used for the purposes of committing an offence against [*specify offence provision*] of the Trade Marks Act 2002.

*Select those that apply.

2 This warrant authorises you, pursuant to section 134F of the Trade Marks Act 2002, to—

- (a)** enter and search [*address or description of place or thing*] at any time that is reasonable in the circumstances; and
- (b)** use any assistance that is reasonable in the circumstances; and
- (c)** use any force that is reasonable in the circumstances to enter or break open or access any place being searched, or any area within that place, or any thing being searched or thing found; and
- (d)** seize [*describe, in reasonable detail, what may be seized*]; and
- (e)** bring and use in or on the place/thing* searched any equipment, to use any equipment found on the place/thing*, and to extract any electricity from the place/thing* to operate the equipment that is reasonable

Form 2—*continued*

to use in the circumstances, for the purpose of carrying out the entry and search; and

- (f) copy any document, or part of any document, that may lawfully be seized; and
- (g) take photographs or sound or video recordings of the place/thing* and of any thing found in that place if you have reasonable grounds to believe that the photographs or sound recordings may be relevant in any proceedings related to the entry and search; and
- (h) do the following in a manner and for a duration that is reasonable for the purposes of carrying out the search:
 - (i) secure the place/thing* searched, any area within that place/thing*, or any thing found within that place/thing*:
 - (ii) exclude any person from that place/thing*, or from any area within the place/thing*, or give any other reasonable direction to that person if you have reasonable grounds to believe that the person will obstruct or hinder the exercise of your powers under this warrant.

*Select one.

3 A person assisting you (other than a member of the Police) is subject to your control and has the power to do any of the following:

- (a) enter the place/thing* to be searched:
- (b) while in your company and under your direction, use reasonable force in respect of any property for the purposes of carrying out the entry and search:
- (c) search areas within the place/thing* that you determine may lawfully be searched:
- (d) seize any thing that you determine may lawfully be seized:
- (e) take photographs and sound and video recordings of the place/thing* and things found in the place/thing* if you determine that those things may lawfully be done:
- (f) bring in or on to the place/thing* and use any equipment, make use of equipment found on the place/thing*,

Form 2—*continued*

or extract electricity from the place/thing* for the purposes of operating the equipment that you determine may lawfully be used:

- (g) copy any document, or part of a document, that you determine may lawfully be copied.

*Select one.

- 4 This warrant may be executed [*specify period in accordance with section 134I(4)(g) of the Trade Marks Act 2002*] from the date of issue of the warrant.
- 5 This warrant is subject to the following conditions: [*specify any conditions*].
- 6 This warrant may be executed on 1 occasion/[*specify number*] occasions*.

*Select one.

Date:

Signature:

Name of issuing officer:

(District Court Judge/Justice of the Peace/Community Magistrate/Registrar of a District Court*)

*Select one.

Schedule 1A form 2: inserted, on 7 October 2011, by regulation 6 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Form 3

r 146C

Order to produce documents

Section 134Y, Trade Marks Act 2002

To [*name (full name if known) of person required to produce document(s)*]

- 1 An application under section 134X of the Trade Marks Act 2002 for an order requiring you to produce documents under section 134Y of that Act was made to me by [*full name of applicant*], enforcement officer, on [*date*].
- 2 I am satisfied that there are reasonable grounds for believing that you [*name (full name if known)*] have possession, custody, or control of a document that is/documents that are* evidence of, or may be of significant relevance to the investigation of, an offence against section(s) [*specify relevant section(s) between 120 and 124*] of the Trade Marks Act 2002.
- 3 You are required by this order to produce to the enforcement officer named in paragraph 4 the following document that is/documents that are* in your possession, custody, or control: [*specify the document or documents to be produced*].
- 4 The document/documents* must be produced to [*full name*], enforcement officer, at [*time*] on [*day, date*] at [*place*].
- 5 This order is subject to the following conditions: [*specify any conditions*].
- 6 This order to produce documents is made under section 134Y of the Trade Marks Act 2002.

*Select one.

Date:

Signature:

(District Court Judge)

Note

- 1 Under section 5(1) of the Trade Marks Act 2002, a **document** means—
 - (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and

Form 3—*continued*

figures), images, or sounds, or from which symbols, images, or sounds can be derived, and includes—

- (i) a label, marking, or other writing that identifies or describes a thing of which it forms a part, or to which it is attached:
 - (ii) a book, map, plan, graph, or drawing:
 - (iii) a photograph, film, or negative; and
 - (b) information electronically recorded or stored, and information derived from that information.
- 2 The enforcement officer to whom you produce any document for inspection under this order may, under section 134Z of the Trade Marks Act 2002, do 1 or more of the following:
- (a) inspect the document:
 - (b) take extracts from the document:
 - (c) make copies of the document.

- 3 It is an offence against section 134ZA of the Trade Marks Act 2002 to fail, without reasonable excuse, to comply with an order to produce documents made under section 134Y of that Act.

An individual who commits an offence against section 134ZA of the Trade Marks Act 2002 is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000.

A body corporate that commits an offence against section 134ZA of the Trade Marks Act 2002 is liable to a fine not exceeding \$50,000.

Schedule 1A form 3: inserted, on 7 October 2011, by regulation 6 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Schedule 2

r 156

**Form of notice under section 137 of Trade
Marks Act 2002**Notice requesting detention of goods infringing
registered trade mark**To** the Chief Executive of the New Zealand Customs Service*[Insert full name and address of registered owner or registered licensee of trade mark], of is [insert whether registered owner or registered licensee] of trade mark No in Class*

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

The Chief Executive of the New Zealand Customs Service is requested to detain any goods on, or in physical relation to, which an infringing sign is used that are in, or at any time come into, the control of the New Zealand Customs Service.

This notice is in force for the period *[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]*.

Details of the person and business or residential address for the service of any notice are:

Name:

Business/residential address:

Postal Address:

Telephone No:

Facsimile No:

Email:

Dated this day of 20

[signature]

Schedule 3

rr 160A–160F

Forms relating to Customs officers

Schedule 3: added, on 7 October 2011, by regulation 7 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Form 1

rr 160A, 160B

Notice to produce documents/to appear and
answer questions/to produce documents and
appear and answer questions* concerning goods
in control of Customs

Section 155B/Section 155C/Sections 155B and 155C,
Trade Marks Act 2002*

*Select one.

To [*name (full name if known) of person required to produce documents/appear and answer questions*]

- 1 A Customs officer believes on reasonable grounds that—
 - (a) the goods in the control of Customs specified in paragraph 2 have been imported in breach of section 124(a) of the Trade Marks Act 2002; and
 - (b) you imported the specified goods or acted as agent of the person who imported those goods.
- 2 The goods in the control of Customs are: [*set out particulars of the goods to which this notice relates*].
- 3 You are required, at [*time*] on [*day, date*] at [*place*],—
 - * (a) to produce to [*full name of Customs officer*], Customs officer, the following document that is/documents that are* in your possession or control that the Customs officer considers relevant to determining whether the goods should be seized under section 155A of the Trade Marks Act 2002 or released: [*specify and, if more than 1, number (a), (b) etc, the document(s) to be produced*];
 - * (b) to appear and answer questions that [*full name of Customs officer*], Customs officer, considers relevant to determining whether the goods should be seized under section 155A of the Trade Marks Act 2002 or released.

*Select those that apply.

Form 1—*continued*

4 This notice is given under section 155B/section 155C/sections 155B and 155C* of the Trade Marks Act 2002.

*Select one.

Date:

Signature:

Chief executive, New Zealand Customs Service

Note

*1 Under section 5(1) of the Trade Marks Act 2002, a **document** means—

- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds, or from which symbols, images, or sounds can be derived, and includes—
 - (i) a label, marking, or other writing that identifies or describes a thing of which it forms a part, or to which it is attached;
 - (ii) a book, map, plan, graph, or drawing;
 - (iii) a photograph, film, or negative; and
- (b) information electronically recorded or stored, and information derived from that information.

*Delete if not applicable.

*2 The Customs officer to whom you produce any document for inspection under this notice may, under section 155F of the Trade Marks Act 2002, do 1 or more of the following:

- (a) inspect the document;
- (b) take extracts from the document;
- (c) copy the document.

* Delete if not applicable.

3 It is an offence against section 155J(4) of the Trade Marks Act 2002—

Form 1—*continued*

- (a) to refuse or fail, without reasonable excuse, to comply with a notice to produce documents given under section 155B of that Act; or
- (b) for a person who is required by a notice given under section 155C of that Act to appear before a Customs officer and to answer questions—
 - (i) to refuse or fail, without reasonable excuse, to appear before a Customs officer in accordance with the notice; or
 - (ii) to refuse, without reasonable excuse, to answer any question.

An individual who commits an offence against section 155J(4) of the Trade Marks Act 2002 is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000.

A body corporate that commits an offence against section 155J(4) of the Trade Marks Act 2002 is liable to a fine not exceeding \$50,000.

Schedule 3 form 1: added, on 7 October 2011, by regulation 7 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Form 2
Application by Customs officer for order to
produce documents

r 160C

Section 155D, Trade Marks Act 2002

To a District Court Judge

- 1 I, *[full name of applicant]*, Customs officer, by this document apply on oath for an order under section 155E of the Trade Marks Act 2002 that *[name (full name if known)]* be required to produce for inspection by a Customs officer in accordance with paragraph 2 the following document that is/documents that are* in that person's possession, custody, or control: *[specify and, if more than 1, number (a), (b), etc, the document(s) sought]*.
- 2 The document is/documents are* to be produced to *[full name of Customs officer]*, Customs officer, at *[time]* on *[day, date]* at *[place]*.
- 3 The ground on which the order is sought is that I have reasonable grounds to believe that *[name (full name if known)]* has possession, custody, or control of a document that is/documents that are* evidence of, or may be of significant relevance to the investigation of, an offence against section(s) *[specify relevant section(s) between 120 and 124]* of the Trade Marks Act 2002 in respect of imported goods.
- 4 The evidence relied on for the purpose of this application is as follows: *[set out in reasonable detail, in numbered paragraphs, all relevant information in support of the ground stated in paragraph 3]*.

*Select one.

Sworn/Affirmed* at *[place, date]*

Before me: *[full name, signature]*

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of a District/the High* Court *or* Justice of the Peace*)

*Select one.

Schedule 3 form 2: added, on 7 October 2011, by regulation 7 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Form 3

r 160D

Order to produce documents

Section 155E, Trade Marks Act 2002

To *[name (full name if known) of person required to produce document(s)]*

- 1 An application under section 155D of the Trade Marks Act 2002 for an order requiring you to produce documents under section 155E of that Act was made to me by *[full name of applicant]*, Customs officer, on *[date]*.
- 2 I am satisfied that there are reasonable grounds for believing that you *[name (full name if known)]* have possession, custody, or control of a document that is/documents that are* evidence of, or may be of significant relevance to the investigation of, an offence against section(s) *[specify relevant section(s) between 120 and 124]* of the Trade Marks Act 2002 in respect of imported goods.
- 3 You are required by this order to produce to the Customs officer named in paragraph 4 the following document that is/documents that are* in your possession, custody, or control: *[specify the document or documents to be produced]*.
- 4 The document/documents* must be produced for inspection to *[full name of Customs officer]*, Customs officer, at *[time]* on *[day, date]* at *[place]*.
- 5 This order is subject to the following conditions: *[specify any conditions]*.
- 6 This order to produce documents is made under section 155E of the Trade Marks Act 2002.

*Select one.

Date:

Signature:

(District Court Judge)

Note

- 1 Under section 5(1) of the Trade Marks Act 2002, a **document** means—

Form 3—*continued*

- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds, or from which symbols, images, or sounds can be derived, and includes—
 - (i) a label, marking, or other writing that identifies or describes a thing of which it forms a part, or to which it is attached:
 - (ii) a book, map, plan, graph, or drawing:
 - (iii) a photograph, film, or negative; and
 - (b) information electronically recorded or stored, and information derived from that information.
- 2 The Customs officer to whom you produce any document for inspection under this order may, under section 155F of the Trade Marks Act 2002, do 1 or more of the following:
- (a) inspect the document:
 - (b) take extracts from the document:
 - (c) make copies of the document.
- 3 It is an offence against section 155J(4) of the Trade Marks Act 2002 to fail, without reasonable excuse, to comply with an order to produce documents made under section 155E of that Act.
- An individual who commits an offence against section 155J(4) of the Trade Marks Act 2002 is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000.
- A body corporate that commits an offence against section 155J(4) of the Trade Marks Act 2002 is liable to a fine not exceeding \$50,000.

Schedule 3 form 3: added, on 7 October 2011, by regulation 7 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Form 4
Application by Customs officer for search
warrant

r 160E

Section 155G, Trade Marks Act 2002

- 1 I [*full name of applicant*], Customs officer, apply under section 155G of the Trade Marks Act 2002 for a search warrant to be issued authorising every Customs officer to enter and search [*specify address or description of place or thing*] at any time that is reasonable in the circumstances.
- 2 The ground on which the application is made is that there are reasonable grounds for believing that there is/there are* in, on, over, or under that place/that thing* a thing that is/things that are* evidence of, or of significant relevance to the investigation of, an offence against [*specify relevant section(s) between 120 and 124 of the Trade Marks Act 2002*] in respect of imported goods, namely [*describe as specifically as possible the item or items believed to be in, on, over, or under the place or thing*].
- 3 I rely on the following in support of this application: [*set out in reasonable detail all relevant information in support of the ground referred to in paragraph 2*].
- 4 The period of time, in accordance with section 134I(4)(g) of the Trade Marks Act 2002, for which the warrant is sought is: [*specify*].
- 5 The number of occasions on which the warrant is sought to be exercised is 1/[*specify number*]*.
- 6 *Omit this paragraph if it does not apply*
The grounds on which the execution of the warrant on more than 1 occasion is believed to be necessary are: [*set out in reasonable detail all relevant information concerning the grounds on which execution of the warrant more than once is believed to be necessary*].
- 7 Within the 3 months immediately preceding this application, in respect of [*address or description of place or thing to be searched*], the following application(s) for a search warrant has/have* been made: [*set out the details of any other relevant application(s) for a search warrant, including the result of that application/those applications*].

Form 4—*continued*

or

Having made reasonable inquiries within the agency in which I am employed/engaged*, I am not aware of any other application for a search warrant in respect of [*address or description of place or thing to be searched*] being made within the 3 months immediately preceding this application.*

*Select one.

Date:

Signature:

(Customs officer)

Schedule 3 form 4: added, on 7 October 2011, by regulation 7 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Form 5

r 160F

Search warrant to enter and search place or thing

Section 155G, Trade Marks Act 2002

To every Customs officer

- 1 I am satisfied on an application made in accordance with section 155G of the Trade Marks Act 2002 by [*full name of applicant*], Customs Officer, that, in relation to [*specify address or description of place or thing that may be entered or searched*], there are reasonable grounds to believe that there is in, on, over, or under that place/that thing* some thing that is evidence of, or of significant relevance to the investigation of, an offence against [*specify relevant section(s) between 120 and 124 of the Trade Marks Act 2002*] in respect of imported goods.
- 2 This warrant authorises you, pursuant to section 155G of the Trade Marks Act 2002, to—
 - (a) enter and search [*address or description of place or thing*] at any time that is reasonable in the circumstances; and
 - (b) use any assistance that is reasonable in the circumstances; and
 - (c) use any force that is reasonable in the circumstances to enter or break open or access any place being searched, or any area within that place, or any thing being searched or thing found; and
 - (d) seize [*describe, in reasonable detail, what may be seized*]; and
 - (e) bring and use in or on the place/thing* searched any equipment, to use any equipment found on the place/thing*, and to extract any electricity from the place/thing* to operate the equipment that is reasonable to use in the circumstances, for the purpose of carrying out the entry and search; and
 - (f) copy any document, or part of any document, that may lawfully be seized; and
 - (g) take photographs or sound or video recordings of the place/thing* and of any thing found in that place if you have reasonable grounds to believe that the photographs or sound or video recordings may be relevant in any proceedings related to the entry and search; and

Form 5—*continued*

- (h) do the following in a manner and for a duration that is reasonable for the purposes of carrying out the search:
 - (i) secure the place/thing* searched, or any area within that place/thing*, or any thing found within that place/thing*:
 - (ii) exclude any person from that place/thing*, or from any area within the place/thing*, or give any other reasonable direction to that person if you have reasonable grounds to believe that the person will obstruct or hinder the exercise of your powers under this warrant.
- 3 A person assisting you is subject to your control and has the power to do any of the following:
- (a) enter the place/thing* to be searched:
 - (b) while in your company and under your direction, use reasonable force in respect of any property for the purposes of carrying out the entry and search:
 - (c) search areas within the place/thing* that you determine may lawfully be searched:
 - (d) seize any thing that you determine may lawfully be seized:
 - (e) take photographs and sound and video recordings of the place/thing* and things found in the place/thing* if you determine that those things may lawfully be done:
 - (f) bring in or on to the place/thing* and use any equipment, make use of equipment found on the place/thing*, or extract electricity from the place/thing* for the purposes of operating the equipment that you determine may lawfully be used:
 - (g) copy any document, or part of a document, that you determine may lawfully be copied.
- 4 This warrant may be executed [*specify period in accordance with section 134I(4)(g) of the Trade Marks Act 2002*] from the date of issue of the warrant.
- 5 This warrant is subject to the following conditions: [*specify any conditions*].

Form 5—*continued*

6 This warrant may be executed on 1 occasion/[*specify number*]
occasions*.

*Select one.

Date:

Signature:

Name of issuing officer:

(District Court Judge/Justice of the Peace/Community Magistrate/Registrar of a District Court*)

*Select one.

Schedule 3 form 5: added, on 7 October 2011, by regulation 7 of the Trade Marks Amendment Regulations 2011 (SR 2011/342).

Marie Shroff,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 7 August 2003.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes**1 General**

This is a reprint of the Trade Marks Regulations 2003. The reprint incorporates all the amendments to the regulations as at 7 October 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint (most recent first)*

Trade Marks Amendment Regulations 2011 (SR 2011/342)

Trade Marks Amendment Act 2011 (2011 No 71): section 28
