



TRADE MARKS ACT CHAPTER 82:81

Act

11 of 1955

Amended by

45 of 1979

46 of 1979

Current Authorised Pages

Pages (inclusive)	Authorised by L.R.O.
1-130	1/1980

L.R.O. 1/1980

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Note on Adaptation

1. Certain fees in this Chapter were increased by the Commission under **paragraph 4 of the Second Schedule** to the Law Revision Act (Ch. 3:03). Where this occurs, a marginal reference in the form normally indicating an amendment is made to L.N. 51/1980 (the Legal Notice by which the President’s approval was signified).

2. Under **paragraph 6 of the Second Schedule** to the Law Revision Act (Ch. 3:03) the Commission amended certain references to public officers in this Chapter. The Minister’s approval of the amendments was signified by L.N. 52/1980, but no marginal reference is made to this Notice where any such amendment is made in the text.

Note on Revision Date

As this Chapter (both Act and Subsidiary Legislation) was amended by the Law Revision (Miscellaneous Amendments) (No. 1) Act 1979 (Act 45 of 1979) and the Law Revision (Miscellaneous Amendments) (No. 2) Act 1979 (Act 46 of 1979), this Chapter has been revised up to 31st December 1979, instead of the normal revision date 31st December 1977).

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SCHEDULE

CHAPTER 82:81 TRADE MARKS ACT

11 of 1955. **An Act to make provision with respect to the law relating to Trade Marks.**

Commencement. 178/1956.

[2ND JANUARY 1957]

Short title.

1. This Act may be cited as the Trade Marks Act.
- 2.(1) In this Act—

Interpretation. [46 of 1979].

“assignment” means assignment by act of the parties concerned;

“associated trade marks” means trade marks that are registered as, or that are deemed by virtue of this Act to be, associated trade marks;

“Convention” means the Paris Convention for the Protection of Industrial Property made on the 20th March 1883 and any amendments and revisions thereof to which Trinidad and Tobago is a party;

“the Court” means the High Court;

“Judge” means a Judge of the Court;

“limitations” means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to the mode of use, as to use in relation to goods to be sold, or otherwise traded in, in any place within Trinidad and Tobago, or as to use in relation to goods to be exported to any market outside Trinidad and Tobago;

“mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof;

“prescribed” means, in relation to proceedings before the Court, prescribed by rules of court, and, in other cases, prescribed by this Act or the Rules;

“the register” means the register of trade marks kept under this Act;

“registered trade mark” means a trade mark that is actually on the register;

“registered user” means a person who is for the time being registered as such under [section 37](#);

“the Registrar” means the Registrar General and includes any Deputy Registrar General or person acting under the authority of the Registrar General;

“the rules” means rules made under [section 51](#);

“trade mark” means, except in relation to a certification trade mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under [section 50](#);

“transmission” means transmission by operation of law, devolution on the personal representative of a deceased person, and any other mode of transfer not being assignment;

“permitted use” means the use of a trade mark by a registered user of it in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references therein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in physical or other relation to, goods.

The Register

Register of Trade Marks.

3.(1) There shall be kept by the Registrar General at his office a record called the Register of Trade Marks, in which shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of all registered users, disclaimers, conditions, limitations and such other matters as may be prescribed.

(2) The Register of Trade Marks shall be divided into two parts called respectively **Part A** and **Part B**.

Effect of Registration and the Action for Infringement

No action for infringement of unregistered trade mark.

4. No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark, but nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

Rights given by registration in Part A and infringement thereof.

5.(1) Subject to this section and to [sections 8](#) and [12](#), the registration of a person in **Part A** of the Register as proprietor of a trade mark other than a certification trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

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

(2) The right to the use of a trade mark given by registration as mentioned above shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as mentioned above in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(3) The right to the use of a trade mark given by registration as mentioned above shall not be deemed to be infringed by the use of any such mark as mentioned above by any person—

- (a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or
- (b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as mentioned above or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(4) The use of a registered trade mark, being one of two or more registered trade marks that are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as mentioned above, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

Rights given by registration in Part B and infringement thereof.

6.(1) Except as provided by [subsection \(2\)](#), the registration of a person in **Part B** of the register as proprietor of a trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the like right in relation to those goods as if the registration had been in **Part A** of the Register, and the provisions of [section 5](#) shall have effect in like manner in relation to a trade mark registered in **Part B** of the Register as they have effect in relation to a trade mark registered in **Part A** of the Register.

(2) In any action for infringement of the right to the use of a trade mark given by registration as mentioned above in **Part B** of the Register, otherwise than by an act that is deemed to be an infringement by virtue of [section 7](#), no injunction or other relief shall be granted to the plaintiff if the defendant establishes to the satisfaction of the Court that the use of which the plaintiff complains is not likely to deceive or cause confusion or to be taken as indicating a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the trade mark.

Infringement by breach of certain restrictions.

7.(1) Where, by a contract in writing made with the proprietor or a registered user of a registered trade mark, a purchaser or owner of goods enters into an obligation to the effect that he will not do, in relation to the goods, an act to which this section applies, any person who, being the owner for the time being of the goods and having notice of the obligation, does that act, or authorises it to be done, in relation to the goods, in the course of trade or with a view to any dealing therewith in the course of trade, shall be deemed thereby to infringe the right to the use of the trade mark given by the registration thereof, unless that person became the owner of the goods by purchase for money or money's worth in good faith before receiving notice of the obligation or by virtue of a title derived through another who so became the owner thereof.

(2) The acts to which this section applies are—

- (a) the application of the trade mark upon the goods after they have suffered alteration in any manner specified in the contract as respects their state or condition, get-up or packing;

- (b) in a case in which the trade mark is upon the goods, the alteration, part removal or part obliteration thereof;
- (c) in a case in which the trade mark is upon the goods, and there is also thereon other matter, being matter indicating a connection in the course of trade between the proprietor or registered user and the goods, the removal or obliteration, whether wholly or partly, of the trade mark unless that other matter is wholly removed or obliterated;
- (d) in a case in which the trade mark is upon the goods, the application of any other trade mark to the goods;
- (e) in a case in which the trade mark is upon the goods, the addition to the goods of any other matter in writing that is likely to injure the reputation of the trade mark.

(3) In this section references in relation to any goods to the proprietor, to a registered user, and to the registration, of a trade mark shall be construed, respectively, as references to the proprietor in whose name the trade mark is registered, to a registered user who is registered, and to the registration of the trade mark, in respect of those goods, and the expression “upon” includes in relation to any goods a reference to physical relation thereto.

Saving for vested rights.

8. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date anterior—

- (a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his; or
- (b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his,

whichever is the earlier, or to object (on such use being proved) to that person being put on the Register for that identical or nearly resembling trade mark in respect of those goods under [section 14\(2\)](#).

Registration to be in respect of particular goods.

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

Registrability and Validity of Registration

Distinctiveness requisite for registration in Part A.

10.(1) In order to be registrable in **Part A** of the register a trade mark other than a certification trade mark must contain or consist of at least one of the following essential particulars—

- (a) the name of a company, individual, or firm, represented in a special or particular manner;
- (b) the signature of the applicant for registration or some predecessor in his business;
- (c) an invented word or invented words;

- (d) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;
- (e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in [paragraphs \(a\), \(b\), \(c\) and \(d\)](#) shall not be registrable under this paragraph except upon evidence of its distinctiveness.

(2) For the purposes of this section “distinctive” means adapted, in relation to the goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid the Registrar may have regard to the extent to which—

- (a) the trade mark is inherently adapted to distinguish as aforesaid; and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish as aforesaid.

Capability of distinguishing requisite for registration in Part B.

11. (1) In order to be registrable in **Part B** of the Register a trade mark must be capable, in relation to the goods in respect of which it is registered or proposed to be registered, of distinguishing goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(2) In determining whether a trade mark is capable of distinguishing as mentioned above the Registrar may have regard to the extent to which—

- (a) the trade mark is inherently capable of distinguishing as mentioned above; and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact capable of distinguishing as mentioned above.

(3) A trade mark may be registered in **Part B** notwithstanding any registration in **Part A** in the name of the same proprietor of the same trade mark or any part or parts thereof.

Saving for use of name, address or description of goods.

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

- (a) any *bona fide* use by a person of his own name or of the name of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business; or
- (b) the use by any person of any *bona fide* description of the character or quality of his goods.

Prohibition of registration of deceptive, etc., matter.

13. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be

disentitled to protection in a court of justice or would be contrary to law or morality, or any scandalous design.

Prohibition of registration of identical and resembling trade marks.

14. (1) Subject to [subsection \(2\)](#), no trade marks shall be registered in respect of any goods or description of goods that is identical with a trade mark belonging to a different proprietor and already on the Register in respect of the same goods or description of goods, or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion.

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

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks that are identical or nearly resemble each other in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by the Court.

Registration in Part A to be conclusive as to validity after seven years.

15. (1) In all legal proceedings relating to a trade mark registered in **Part A** of the Register (including applications under [section 46](#)) the original registration in **Part A** of the Register of the trade mark shall, after the expiration of seven years from the date of that registration, be taken to be valid in all respects, unless—

- (a) that registration was obtained by fraud; or
- (b) the trade mark offends against [section 13](#).

(2) Nothing in [section 6\(1\)](#) shall be construed as making applicable to a trade mark, as being a trade mark registered in **Part B** of the Register, the foregoing provisions of this section relating to a trade mark registered in **Part A** of the Register.

Registration subject to disclaimer.

16. If a trade mark—

(a) contains any part not separately registered by the proprietor as a trade mark; or
(b) contains matter common to the trade or otherwise of a non-distinctive character,
the Registrar or the Court, in deciding whether the trade mark shall be entered or shall remain on the register, may require, as a condition of its being on the register—

- (i) that the proprietor shall disclaim any right to the exclusive use of any part of the trade mark, or to the exclusive use of all or any portion of any such matter as mentioned above, to the exclusive use of which the Registrar or the Court holds him not to be entitled; or
- (ii) that the proprietor shall make such other disclaimer as the Registrar or the Court may consider necessary for the purpose of defining his rights under the registration, but no disclaimer on the Register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Words used as name or description of an article or substance.

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

(2) If, however, it is proved either—

- (a) that there is a well-known and established use of the word or words as the name or description of the article or substance by a person or persons carrying on a trade therein, not being use in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods certified by the proprietor; or
- (b) that the article or substance was formerly manufactured under a patent (being a patent in force on, or granted after the date of, the commencement of this Act) that a period of two years or more after the cesser of the patent has elapsed, and that the word or words is or are the only practicable name or description of the article or substance,

the provisions of [subsection \(3\)](#) shall have effect.

(3) Where the facts mentioned in [subsection \(2\)\(a\)](#) or [\(b\)](#) are proved with respect to any word or words, then—

- (a) if the trade mark consists solely of that word or those words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed for the purposes of [section 46](#) to be an entry wrongly remaining on the Register;
- (b) if the trade mark contains that word or those words and other matter, the Court or the Registrar, in deciding whether the trade mark shall remain on the Register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may in case of a decision in favour of its remaining on the Register require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description of that word or those words, so, however, that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made; and
- (c) for the purposes of any other legal proceedings relating to the trade mark—
 - (i) if the trade mark consists solely of that word or those words, all rights of the proprietor, whether under the common law or by registration, to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description; or
 - (ii) if the trade mark contains that word or those words and other matter, all such rights of the proprietor to the exclusive use of that word or those words in such relation as mentioned above,

shall be deemed to have ceased on the date at which the use mentioned in [subsection \(2\)\(a\)](#) first became well-known and established, or at the expiration of the period of two years mentioned in [subsection \(2\)\(b\)](#).

(4) No word which is the commonly used and accepted name of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration in force at the

commencement of this Act or thereafter shall, notwithstanding anything in [section 15](#), be deemed for the purposes of [section 46](#) to be an entry made in the Register without sufficient cause, or an entry wrongly remaining on the Register, as the circumstances may require. However, the foregoing provisions of this subsection shall not have effect in relation to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

Effect of limitation as to colours.

18. A trade mark may be limited in whole or in part to one or more specified colours and in any such case the Registrar or the Court shall have regard to the fact that it is so limited when considering the distinctive character of the trade mark. If a trade mark is registered without limitations of colour it shall be deemed to be registered for all colours.

Procedure for and Duration of Registration

Application for registration.

19.(1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it must apply in writing to the Registrar in the prescribed manner for registration either in **Part A** or in **Part B** of the Register.

(2) Subject to this Act, the Registrar may refuse the application, or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think right.

(3) In the case of an application for registration of a trade mark (other than a certification trade mark) in **Part A** of the register, the Registrar may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in **Part B** and deal with the application accordingly.

(4) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat and the decision shall be subject to appeal to a Judge in Chambers.

(5) On an appeal under this section the Judge shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what amendments, modifications, conditions or limitations, if any, the application is to be accepted.

(6) Appeals under this section shall be heard on the materials stated as mentioned above by the Registrar, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those so stated as mentioned above by him, except by leave of the Judge hearing the appeal. Where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(7) The Registrar or a Judge as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as the Registrar or the Judge, as the case may be, may think fit.

Advertisement of application.

20. Every application for registration of a trade mark under this Act shall, as soon as may be after its acceptance be advertised by the Registrar in the *Gazette* and the advertisement shall set forth all conditions and limitations subject to which the application has been accepted. However, the Registrar may cause an application to be advertised before acceptance if it is made under [section 10\(1\)\(e\)](#), or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances to do so, and where an application has been so advertised, the Registrar may, if he thinks fit, advertise it again when it has been accepted but shall not be bound to do so.

Opposition to registration.

21.(1) Any person may, within three months of the advertisement of the application, give notice in duplicate to the Registrar of opposition to the registration of the trade mark. The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition. The Registrar shall send the duplicate of such notice to the applicant.

(2) Within one month after the receipt of such duplicate or such further time as the Registrar may allow, the applicant shall send to the Registrar, in the prescribed manner, a counter statement in duplicate of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

Conflicting claims to registration.

22.(1) On receipt of a counter statement as mentioned in [section 21\(2\)](#) the Registrar shall send one copy to the person or persons giving notice of opposition and shall, after hearing the parties if so required and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted. The decision of the Registrar shall be subject to appeal to a Judge in Chambers.

(2) On an appeal under this section the Judge shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(3) On the hearing of an appeal under this section any party may, either in the manner prescribed or by special leave of the Judge, bring forward further material for the consideration of the Judge.

(4) On an appeal under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar, other than those so stated as mentioned above by the opponent, except by leave of the Judge. Where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(5) On an appeal under this section the Judge may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity thereof, but in any such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(6) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such a notice, or an appellant, neither resides nor carries on business in Trinidad and Tobago, the Judge or the Registrar may require him to give security for costs of the proceedings relative to the opposition or to the appeal, as the case may be, and in default of such security being duly given may treat the opposition or application, or the appeal, as the case may be, as abandoned.

Registration.

23.(1) When an application for registration of a trade mark in **Part A** or in **Part B** of the Register has been accepted and has not been opposed and the time for notice of opposition has expired or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall unless the application has been accepted in error register the trade mark in **Part A** or **Part B**, as the case may be, and the trade mark, when registered, shall be registered as of the date of the application for registration, and that date shall be deemed for the purpose of this Act to be the date of registration. However, the foregoing provisions of this section, relating to the date as of which a trade mark shall be registered and to the date to be deemed to be the date of registration, shall, as respects a trade mark registered under this Act with the benefit of any written law relating to international or commonwealth arrangements, have effect subject to the provisions of that written law.

(2) On the registration of a trade mark, the Registrar shall issue to the applicant, on payment by him of the prescribed fee, a certificate in the prescribed form of the registration sealed with the seal of the Registrar General.

Limit of time for completing registration.

24. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in the notice.

Duration and renewal of registration.

25.(1) The registration of a trade mark shall be for a period of fourteen years but may be renewed by the registered proprietor on payment of the prescribed fee before the expiration of the period of fourteen years and so from time to time before expiration of each period of fourteen years.

(2) The Registrar shall give due notice of such approaching expiration to the proprietor of such trade mark three months at least before the expiration of the period of registration.

(3) If no renewal fee has been paid before the expiration of fourteen years from the date of registration the Registrar shall remove the trade mark from the Register, subject to such conditions, if any, as to its restoration to the Register, as may be prescribed.

(4) Where a trade mark has been removed from the register for non-payment of the renewal fee, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no *bona fide* user of such trade mark during the two years immediately preceding such removal, or that no deception or confusion would be likely to arise from the use of the trade mark that is the subject of the application for registration by reason of any previous use of the trade mark that has been removed.

Registration of parts of trade marks and of trade marks as a series.

26.(1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and any such part as separate trade marks.

(2) Each such separate trade mark must satisfy all the conditions of an independent trade mark and shall, subject to [section 32\(2\)](#) and [section 44\(2\)](#), have all the incidents of an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks, in respect of the same goods or description of goods, which while resembling each other in the material particulars thereof, yet differ in respect of—

- (a) statements of the goods in relation to which they are respectively used or proposed to be used; or
- (b) statements of number, price, quality or names of places; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
- (d) colour,

seeks to register those trade marks, they may be registered as a series in one registration.

Assignment, Transmission and Associated Marks

Powers of and restrictions on assignment and transmission.

27.(1) Notwithstanding any rule of law or equity to the contrary, a registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible either in connection with the goodwill of a business or not.

(2) A registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible in respect either of all the goods in respect of which it is registered or was registered, as the case may be, or of some (but not all) of those goods.

Powers of assignment and transmission of unregistered mark.

28. [Section 27](#) has effect in the case of an unregistered trade mark used in relation to any goods as it has effect in the case of a registered trade mark registered in respect of any goods, if at the time of the assignment or transmission of the unregistered trade mark it is or was used in the same business as a registered trade mark, and if it is or was assigned or transmitted at the same time and to the same person as that registered trade mark and in respect of goods all of which are goods in relation to which the unregistered trade mark is or was used in that business and in respect of which that registered trade mark is or was assigned or transmitted.

Restrictions on assignment or transmission where exclusive rights would subsist in different persons.

29.(1) Notwithstanding anything in [sections 27](#) and [28](#), a trade mark shall not be or be deemed to have been assignable or transmissible in a case in which as a result of assignment or transmission there would in the circumstances subsist, or have subsisted, whether under the common law or by registration, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of identical trade marks or trade marks nearly resembling each other, so that, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be, or have been, likely to deceive or cause confusion. However, where a trade mark is, or has been, assigned or transmitted in such a case as mentioned above, the assignment or transmission shall not be deemed to be, or to have been, invalid under this subsection if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, or were, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise

traded in, within Trinidad and Tobago (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside Trinidad and Tobago.

(2) The proprietor of a registered trade mark who proposes to assign it in respect of any goods in respect of which it is registered may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances, and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment of the first-mentioned trade mark would or would not be invalid under [subsection \(1\)](#), and a certificate so issued shall, subject to this section as to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under [subsection \(1\)](#) of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but as regards a certificate in favour of validity, only if application for the registration under [section 34](#) of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

(3) Any decision of the Registrar under this section shall be subject to appeal to a Judge in Chambers.

Restrictions on assignment or transmission where multiple exclusive rights would subsist in different parts of Trinidad and Tobago.

30.(1) Notwithstanding anything in [sections 27](#) and [28](#), a trade mark shall not be assignable or transmissible in a case in which as a result of an assignment or transmission thereof there would in the circumstances subsist, whether under the common law or by registration, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in a place or places in Trinidad and Tobago, and an exclusive right in another of those persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in another place or other places in Trinidad and Tobago. However, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or of a person who claims that a trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, in any such case, the Registrar, if he is satisfied that in all the circumstances the use of the trade marks in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission and an assignment or transmission, so approved shall not be deemed to be or to have been invalid under this section or under [section 29](#); but in the case of a registered trade mark this provision shall not have effect unless application for the registration under [section 34](#) of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

(2) Any decision of the Registrar under this section shall be subject to appeal to a Judge in Chambers.

Conditions of assignment otherwise than in connection with the goodwill of the business.

31.(1) Where an assignment in respect of any goods of a trade mark that is at the time of the assignment used in a business in those goods is made, on or after the coming into operation of this Act, otherwise than in connection with the goodwill of that business, the assignment shall not take effect until the following requirements have been satisfied, that is to say, the assignee must, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, apply to him for directions with respect to

the advertisement of the assignment, and must advertise it in such form and manner and within such period as the Registrar may direct.

(2) Any decision of the Registrar under this section shall be subject to appeal to a Judge in Chambers.

Associated trade marks.

32.(1) Associated trade marks shall be assignable and transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks.

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

(3) Where a trade mark and any part or parts thereof are, by virtue of [section 26\(1\)](#) registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(4) All trade marks that are by virtue of [section 26\(3\)](#), registered as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(5) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by another person in relation to any of the goods in respect of which it is registered, and may amend the Register accordingly.

(6) Any decision of the Registrar under [subsection \(2\)](#) or [subsection \(5\)](#) shall be subject to appeal to a Judge in Chambers.

Power of registered proprietor to assign and give receipts.

33. Subject to this Act, the person for the time being entered in the Register as proprietor of a trade mark shall, subject to any rights appearing from the Register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for an assignment thereof.

Registration of assignments and transmissions.

34.(1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the Register.

(2) Any decision of the Registrar under this section shall be subject to appeal to a Judge in Chambers.

(3) Except for the purposes of an appeal under this section or of an application under [section 46](#), a document or instrument in respect of which no entry has been made in the Register in

accordance with [subsection \(1\)](#) of this section shall not be admitted in evidence in any court in proof of the title to a trade mark unless the Court otherwise directs.

Use and Non-use

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

35.(1) Subject to [subsection \(2\)](#), a registered trade mark may be taken off the Register in respect of any of the goods in respect of which it is registered on application by any person aggrieved to the Court or, at the option of the applicant and subject to [section 61](#), to the Registrar, on the ground either—

- (a) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him, and that there has been in fact no *bona fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to the date one month before the date of the application; or
- (b) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being.

However (except where the applicant has been permitted under [section 14\(2\)](#) to register an identical or nearly resembling trade mark in respect of the goods in question or where the Court or the Registrar, as the case may be, is of opinion that he might properly be permitted so to register such a trade mark), the Court or the Registrar as the case may be, may refuse an application made under [paragraph \(a\)](#) or [\(b\)](#) of this subsection in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

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

- (a) the matters referred to in [subsection \(1\)\(b\)](#) are shown so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in Trinidad and Tobago (otherwise than for export from Trinidad and Tobago), or in relation to goods to be exported to a particular market outside Trinidad and Tobago; and
- (b) a person has been permitted under [section 14\(2\)](#) to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be sold, or otherwise traded in, in that place (otherwise than for export from Trinidad and Tobago) or in relation to goods to be exported to that market, or the Court, or the Registrar, as the case may be, is of opinion that he might properly be permitted so to register such a trade mark,

on application by that person to the Court or, at the option of the applicant and subject to [section 61](#) to the Registrar, the Court or the Registrar, as the case may be, may impose on the registration of the first-mentioned trade mark such limitations as the Court or the Registrar thinks proper for securing that registration shall cease to extend to such use as last mentioned above.

(3) An applicant shall not be entitled to rely for the purposes of [subsection \(1\)\(b\)](#), or for the purposes of [subsection \(2\)](#), on any non-use of a trade mark that is shown to have been due to special

circumstances in the trade and not to any intention not to use or to abandon the trade mark in relation to the goods to which the application relates.

Defensive registration of well known trade marks.

36.(1) Where a trade mark consisting of an invented word or invented words has become so well known as respects any goods in respect of which it is registered and in relation to which it has been used that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in [section 35](#), the trade mark may, on the application in the prescribed manner of the proprietor registered in respect of the first-mentioned goods, be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under [section 35](#).

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application by any person aggrieved to the Court, or at the option of the applicant and subject to [section 61](#), to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of [subsection \(1\)](#) are no longer satisfied in respect of any goods in respect of which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in respect of which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in [subsection \(1\)](#).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

Registered users.

37.(1) Subject to this section, a person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for the purposes of [section 35](#) and for any other purpose for which such use is material under this Act or at common law.

(3) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within two months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant. A proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(4) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner and must furnish him with a statutory declaration made by the proprietor, or by some person authorised to act on his behalf and approved by the Registrar—

- (a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;
- (b) stating the goods in respect of which registration is proposed;
- (c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter; and
- (d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof; and with such further documents, information or evidence as may be required under the rules or by the Registrar.

Power of Registrar to refuse application.

38.(1) The Registrar shall refuse an application under [section 37](#) if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(2) Any decision of the Registrar under this section shall be subject to appeal to a Judge in Chambers.

Registration as registered user.

39.(1) When the requirements of [section 37\(4\)](#) have been complied with, if the Registrar, after considering the information furnished to him under that subsection, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or any of them by the proposed registered user, subject to any conditions or restrictions which the Registrar thinks proper, would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods subject as mentioned above.

(2) Any decision of the Registrar under this section refusing registration of a person as a registered user of a trade mark shall be subject to appeal to a Judge in Chambers.

Registrar not to disclose information to trade rivals, if so required.

40. The Registrar shall if so required by an applicant take steps to ensure that information given for the purposes of an application under [section 37](#) (other than matter entered in the Register) is not disclosed to rivals in trade.

Power of Registrar to vary or cancel registration of registered user.

41.(1) Without prejudice to the provisions of [section 46](#) the registration of a person as a registered user—

- (a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;
- (b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark; or
- (c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds:
 - (i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion;
 - (ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;
 - (iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested; or
- (d) may be cancelled by the Registrar in respect of any goods in relation to which the trade mark is no longer registered.

(2) Any decision of the Registrar under the foregoing provisions of this section shall be subject to appeal to a Judge in Chambers.

(3) The Registrar shall notify the registration of a person as a registered user to any other registered user of the trade mark, and also notify any application under [subsection \(1\)](#) to the registered proprietor and each registered user (not being the applicant) of the trade mark, and shall give to the applicant on such an application, and to all persons to whom such an application is notified and who intervene in the proceedings in accordance with the rules, an opportunity of being heard.

No right of assignment or transmission in registered user.

42. Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Proposed use of trade mark by corporation to be constituted, etc.

43.(1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark—

- (a) if the Registrar is satisfied that a body corporate is about to be constituted, and that the applicant intends to assign the trade mark to the corporation with a view to the use thereof in relation to those goods by the corporation; or
- (b) if the application is accompanied by an application for the registration of a person as a registered user of the trade mark, and the Registrar is satisfied that the proprietor

intends it to be used by that person in relation to those goods and the Registrar is also satisfied that the person will be registered as a registered user thereof immediately after the registration of the trade mark.

(2) [Section 35](#) shall have effect in relation to a trade mark registered under the power conferred by [subsection \(1\)](#) of this section, as if for the reference in [section 35\(1\)\(a\)](#) to intention on the part of an applicant for registration that a trade mark should be used by him there were substituted a reference to intention on his part that it should be used by the corporation or registered user concerned.

(3) Where a trade mark is registered in respect of any goods under the power conferred by [subsection \(1\)](#) in the name of an applicant who relies on intention to assign to a corporation as mentioned above, then, unless the corporation has been registered as the proprietor of the trade mark in respect of those goods within a period of six months or within such further period not exceeding six months as the Registrar may allow, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the Register accordingly.

Use of one of associated or substantially identical trade marks equivalent to use of another.

44.(1) Where under this Act use of a registered trade mark is required to be proved for any purpose, the Court or the Registrar may, if and so far as the Court or the Registrar thinks right, accept use of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trade mark shall for the purposes of this Act be deemed to be also a use of any registered trade mark, being a part thereof, registered in the name of the same proprietor by virtue of [section 26\(1\)](#).

Use of trade mark for export trade.

45. The application in Trinidad and Tobago of a trade mark to goods to be exported from Trinidad and Tobago, and any other act done in Trinidad and Tobago in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within Trinidad and Tobago, would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Act or at common law.

Rectification and Correction of Register

General power to rectify entries in register Schedule.

46.(1) Subject to the Schedule, the Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the Register of any entry or by any entry made in the Register without sufficient cause, or by any entry wrongly remaining on the Register, or by any error or defect in any entry in the Register, make such order for making, expunging or varying such entry as it may think fit.

(2) In case of fraud in the registration, assignment or transmission of a registered trade mark, the Registrar may himself apply to the Court under this section.

(3) Any order of the Court rectifying the Register shall direct that notice of the rectification shall be served in the prescribed manner on the Registrar, and the Registrar shall on receipt of the notice rectify the Register accordingly.

(4) The power to rectify the Register conferred by this section shall include power to remove a registration in **Part A** of the Register to **Part B**.

Power to expunge or vary registration for breach of condition.

47. The Court may, on application by any person aggrieved, or on application by the Registrar, make such order as it may think fit for expunging or varying the registration of a trade mark on the ground of any contravention of, or failure to observe, a condition entered on the Register in relation thereto.

Correction of register.

48.(1) The Registrar may on request, made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name—

- (a) correct any error in the name, address or description of the registered proprietor of a trade mark;
- (b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;
- (c) cancel the entry of a trade mark on the Register;
- (d) strike out any goods or classes of goods from those in respect of which a trade mark is registered; or
- (e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on request made by a registered user of a trade mark, correct any error, or enter any change, in the name, address or description of the registered user.

(3) Any decision of the Registrar under this section shall be subject to appeal to a Judge in Chambers.

Alteration of registered trade mark.

49. (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient to do so, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Any decision of the Registrar under this section shall be subject to appeal to a Judge in Chambers.

(4) Where leave as mentioned above is granted, the trade mark as altered shall be advertised in the prescribed manner, unless it has already been advertised, in the form to which it has been altered, in an advertisement under [subsection \(2\)](#).

Certification trade marks.

Certification Trade Marks

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

(2) In determining whether a mark is adapted to distinguish as mentioned above, the Registrar may have regard to the extent to which—

- (a) the mark is inherently adapted to distinguish as mentioned above in relation to the goods in question; and
- (b) by reason of the use of the mark or of any other circumstances, the mark is in fact adapted to distinguish as mentioned above in relation to the goods in question.

(3) Subject to [subsections \(4\), \(5\) and \(6\)](#), and to [sections 8 and 12](#), the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods, and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a person authorised by him under the regulations in that behalf using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such a manner as to render the use of the mark likely to be taken either—

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

(4) The right to the use of a certification trade mark given by registration as mentioned above shall be subject to any conditions or limitations entered on the Register, and shall not be deemed to be infringed by the use of any such mark as mentioned above in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(5) The right to the use of a certification trade mark given by registration as mentioned above shall not be deemed to be infringed by the use of any such mark as mentioned above by any person—

- (a) in relation to goods certified by the proprietor of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the trade mark and has not

subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the trade mark; or

- (b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as mentioned above or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor;

but [paragraph \(a\)](#) shall not have effect in the case of use consisting of the application of any such mark as mentioned above to any goods, notwithstanding that they are such goods as are mentioned in that paragraph, if such application is contrary to the relevant regulations.

(6) Where a certification trade mark is one of two or more registered trade marks that are identical or nearly resemble each other, the use of any of those trade marks in exercise of the right to the use of that trade mark given by registration shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

(7) There shall be deposited with the Registrar in respect of every trade mark registered under this section regulations approved by the Registrar for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the trade mark, and may contain any other provisions that the Registrar may require or permit to be inserted therein.

(8) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Registrar.

Schedule.

(9) The provisions of the Schedule shall have effect with respect to the registration of a mark under this section and to marks so registered.

Rules and Fees

Power to make rules. [45 of 1979].

51. (1) The Minister, subject to negative resolution of Parliament, may make such rules as he considers expedient—

- (a) for regulating the practice under this Act, including the service of documents;
- (b) for classifying goods for the purposes of registration of trade marks and for empowering the Registrar to amend the Register so far as may be requisite for the purpose of adapting the entries therein to any amended or substituted classification that may be prescribed;
- (c) for prohibiting the registration of any mark on the grounds of morality, public policy or other good and sufficient reason;
- (d) for making or requiring duplicates of trade marks and other documents;
- (e) prescribing anything (including forms) which is required to be, or may be, prescribed under this Act and any other forms which he may consider necessary for the purposes of this Act;

- (f) generally for regulating the business of the Registrar General's Office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar.

(2) Rules made under this Act shall while in force be of the same effect as if they were contained in this Act.

Fees.

52. There shall be paid in respect of applications and other matters under this Act such fees as may be prescribed.

Powers and Duties of Registrar

Hearing before exercise of Registrar's discretion.

53. Where any discretionary or other power is given to the Registrar by this Act or the rules, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required to do so within the prescribed time) giving to the applicant or registered proprietor an opportunity of being heard.

Power of Registrar to award costs.

54. In all proceedings before the Registrar under this Act, the Registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may, by leave of the Court, be enforced in the same manner as a judgment or order of the Court to the same effect.

Legal Proceedings and Appeals

Registration to be prima facie evidence of validity.

55. In all legal proceedings related to a registered trade mark (including applications under [section 46](#)) the fact that a person is registered as proprietor of the trade mark shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

Certificate of validity.

56. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of the trade mark, the Court may certify to that effect, and if it so certifies then in any subsequent legal proceeding in which the validity of the registration comes into question the proprietor of the trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses as between solicitor and client, unless in the subsequent proceeding the Court certifies that he ought not to have them.

Costs of Registrar in proceedings before Court, and payment of costs of Registrar.

57. In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not, except in a case in which he has appeared in the proceedings, be ordered to pay the costs of any other of the parties.

Trade usage, etc., to be considered.

58. In any action or proceeding relating to a trade mark or trade name the Court shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

Registrar's appearance in proceedings involving rectification.

59.(1) In any legal proceeding in which the relief sought includes alteration or rectification of the Register, the Registrar shall have the right to appear and be heard and shall appear if so directed by the Court.

(2) Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard, may submit to the Court a statement in writing signed by him stating the grounds of any decision given by him.

(3) The Court in dealing with any question of the rectification of the Register (including all applications under [section 46](#)) shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Discretion of court in appeals.

60. In any appeal from a decision of the Registrar to the Court or a Judge in Chambers under this Act, the Court or Judge in Chambers shall have and exercise the same discretionary powers as under this Act are conferred upon the Registrar.

Procedure in cases of option to apply to Court or Registrar.

61. Where under any of the foregoing provisions of this Act an applicant has an option to make an application either to the Court or to the Registrar—

- (a) if an action concerning the trade mark in question is pending, the application must be made to the Court;
- (b) if in any other case the application is made to the Registrar, he may, at any stage of the proceedings, refer the application to the Court, or he may, after hearing the parties, determine the question between them, subject to appeal to the Court.

Evidence

Mode of giving evidence.

62.(1) In any proceeding under this Act before the Registrar the evidence shall be given by statutory declaration in the absence of directions to the contrary, but in any case in which the Registrar thinks it right to do so, the Registrar may take evidence *viva voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

(2) In case any part of the evidence is taken *viva voce*, the Registrar shall, in respect of requiring the attendance of witnesses and taking evidence on oath, be in the same position in all respects as a Judge of the High Court.

Evidence of entries in register.

63.(1) A printed or written copy of any entry in the Register, purporting to be certified by the Registrar and sealed with the seal of the Registrar General, shall be admitted in evidence in all Courts and in all proceedings without further proof or production of the original.

(2) Any person requiring such a certified copy as aforesaid shall be entitled to obtain it on payment of the prescribed fee.

Evidence of things done by Registrar.

64. A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Offences

Falsification of entries in register.

65. Any person who makes or causes to be made a false entry in the Register, or a writing falsely purporting to be a copy of an entry in the Register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, is liable to imprisonment for two years.

Fine for falsely representing a trade mark as registered.

66.(1) Any person who makes a representation—

- (a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark; or
- (b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is so registered; or
- (c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not registered; or
- (d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the Register, the registration does not give that right,

is liable on summary conviction to a fine of seven hundred and fifty dollars.

(2) For the purposes of this section, the use in Trinidad and Tobago in relation to a trade mark of the word “registered” or of any other word referring, whether expressly or impliedly, to registration, shall be deemed to import a reference to registration in the Register, except—

- (a) where that word is used in physical association with other words delineated in characters at least as large as those in which the word is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside Trinidad and Tobago, being a country under the law of which the registration referred to is in fact in force;
- (b) where that word (being a word other than the word “registered”) is of itself such as to indicate that the reference is to such registration as last mentioned above; or

- (c) where that word is used in relation to a mark registered as a trade mark under the law of the country outside Trinidad and Tobago and in relation to goods to be exported to that country.

Miscellaneous

Change of form of trade connection not to be deemed to cause deception.

67. The use of a registered trade mark in relation to goods between which and the person using it any form of connection in the course of trade subsists, shall not be deemed to be likely to cause deception or confusion on the ground only that the trade mark has been, or is, used in relation to goods between which and that person or a predecessor in title of his a different form of connection in the course of trade subsisted or subsists.

Jointly owned trade marks.

68. Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

- (a) on behalf of both or all of them; or
(b) in relation to an article with which both or all of them are connected in the course of trade,

those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

Subject as mentioned above, nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

Trusts and equities.

69.(1) There shall not be entered in the Register any notice of any trust express, implied or constructive, nor shall any such notice be receivable by the Registrar.

(2) Subject to the provisions of this Act, equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Restriction of importation of goods bearing infringing trade marks. [7 of 1984].

69A.(1) The person who is registered as the proprietor or registered user of a trade mark in respect of any goods may give notice in writing to the Minister to whom the responsibility for Customs and Excise is assigned—

- (a) that he is the proprietor or registered user of that trade mark,
(b) that such goods bearing the trade mark are expected to arrive in Trinidad and Tobago at a time and place and by a consignment specified in the notice,
(c) that the use within Trinidad and Tobago of the trade mark in relation to the goods would infringe the proprietor's exclusive right to that use, and
(d) that he requests the Minister to treat the goods as prohibited goods.

(2) Where a notice has been given under this section in respect of any goods bearing a trade mark and has not been withdrawn and the requirements of any Regulations made under this section

are complied with, then, subject to the following provisions of this section, the importation into Trinidad and Tobago of the goods shall, if the condition of [subsection \(1\)\(c\)](#) is satisfied, be deemed to be prohibited.

(3) The Minister may make Regulations prescribing the form in which notices are to be given under this section, and requiring a person giving such a notice, either at the time of giving the notice or at the time when the goods in question are imported, or at both those times, to furnish the Minister with such evidence, and to comply with such other conditions, if any, as may be specified in the Regulations, and any such Regulations may include such incidental and supplementary provisions as the Minister considers expedient for the purposes of this section.

(4) Without prejudice to the generality of [subsection \(3\)](#), Regulations made under that subsection may include provision for requiring a person who has given a notice under [subsection \(1\)](#), or a notice purporting to be a notice under that subsection—

- (a) to pay such fees in respect of the notice as may be prescribed by the Regulations;
- (b) to give to the Minister such security as may be so prescribed in respect of any liability or expense which they may incur in consequence of the detention of any goods to which the notice relates, or in consequence of anything done in relation to goods so detained;
- (c) whether any such security is given or not, to keep the Minister indemnified against any such liability or expense as is mentioned in [paragraph \(b\)](#).

(5) Regulations under [subsection \(3\)](#) shall be subject to affirmative resolution of Parliament.

Recognition of agents.

70. Where by this Act any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, the act may under and in accordance with the rules, be done by or to an agent of that person duly authorised in the prescribed manner.

References in written law to Patents, Designs and Trade Marks Ordinance. Ch. 31 No. 18. (1950 Ed.).

71. Any reference in any written law to the provisions relating to trade marks (repealed by this Act) formerly contained in the Patents, Designs and Trade Marks Ordinance shall be read as referring to this Act.

Validity of Registrations Under Previous Ordinance

Incorporation of existing register with Part A.

72. The Register of Trade Marks existing at the date of the commencement of this Act shall be incorporated with and form part of **Part A** of the Register. Subject to [sections 8](#), [15](#) and [73](#) of this Act the validity of the original entry of any trade mark upon the Register so incorporated shall be determined in accordance with the Ordinance in force at the date of such entry and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Act.

Trade mark registrable under this Act not removable on certain grounds.

73. No trade mark which was upon the Register at the commencement of this Act and which under this Act is a registrable trade mark shall be removed from the Register on the ground that it

was not registrable under the Ordinance in force at the date of registration. But nothing in this section shall subject any person to any liability in respect of any act or thing done before the commencement of this Act to which he would not have been subject under the Ordinance then in force.

Nothing in this Act to invalidate registration of trade mark previously made.

74. Nothing in this Act shall be taken to have invalidated the original registration of a trade mark that immediately before the commencement of this Act was validly in the Register of Trade Marks existing at the commencement of this Act.

Previous use of a trade mark by person becoming registered user.

75. Where a person is registered as a registered user of a trade mark on an application made within one year from the commencement of this Act, [section 37\(2\)](#) shall have effect in relation to any previous use (whether before or after the commencement of this Act) of the trade mark by that person, being use in relation to the goods in respect of which he is registered and, where he is registered subject to conditions or restrictions, being use such as to comply substantially therewith, as if such previous use had been permitted use.

International and Inter-commonwealth Arrangements

Arrangements with Convention countries. [46 of 1979].

76.(1)(a) Any person who has applied for protection for any trade mark in a Convention country or his legal representative or assignee, is entitled to registration of his trade mark under this Act in priority to other applicants; and the registration shall take effect from the same date as the date of the application in the Convention country.

(b) This section shall not apply unless the application for protection in Trinidad and Tobago is made within six months from the date of the application in the Convention country.

(c) Nothing in this section shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the actual date on which his trade mark is registered in Trinidad and Tobago.

(2) The trade mark shall not be invalidated by reason only of the use thereof in Trinidad and Tobago during the period specified in this section as that within which the application may be made.

(3) The application for the registration of a trade mark under this section shall be made in the same manner, and subject to the payment of the same fees, as an ordinary application under this Act.

(4) Where a person has applied for protection for any trade mark by an application which—

(a) in accordance with the terms of a treaty subsisting between any two or more Convention countries, is equivalent to an application duly made in any one of those Convention countries; or

(b) in accordance with the law of any Convention country, is equivalent to an application duly made in that Convention country,

he shall be deemed for the purposes of this section to have applied in that Convention country.

(5) In this section the expression “Convention Country” means a country in the case of which there is for the time being in force an Order made by the President with a view to the fulfillment of the obligations of Trinidad and Tobago under the Convention declaring that that country is a Convention country; and with respect to any country such declaration might extend to all or to only some of the provisions of this Act, and where a declaration is in force for some (but not all) of the provisions of this Act with respect to any country that country shall be considered a Convention country for the purposes of those provisions only.

Arrangements with Commonwealth countries not being Convention countries.

77.(1) Whenever it appears to the President that the Legislature of any Commonwealth Country not being a Convention country has made satisfactory provision for the protection in such country of trade marks registered in Trinidad and Tobago, the President may by order apply all or any of the provisions of [section 76](#) relating to the protection of trade marks registered in a Convention country, with such variations or additions, if any, as he thinks fit, to trade marks registered in such Commonwealth Country.

(2) An order made under this section shall, from a date to be mentioned for the purpose in the order, take effect as if its provisions had been contained in this Act.

Restraint of Use of Arms of Trinidad and Tobago

Restraint of use of national coat of arms, etc. [45 of 1979].

78.(1) No person shall adopt in connection with any trade, business, profession or calling, as a trademark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for—

- (a) the Coat of Arms of Trinidad and Tobago;
- (b) the flag of Trinidad and Tobago;
- (c) the standard, arms or crest of the President;
- (d) any word or symbol likely to lead to the belief that the goods or services in association with which it is used have received or are produced, sold or performed under presidential or governmental patronage, approval or authority.

(2) Where it is made to appear to the Court that any act has been done contrary to this section, the Court may make any such Order as the circumstances require including provision for relief by way of injunction and the recovery of damages or profits, and may give directions with respect to the disposition of any offending wares, packages, labels and advertising material and of any dies used in connection therewith.

Repeal and Savings

Repeal and savings.

79.(1) The Patents, Designs and Trade Marks Ordinance is hereby repealed so far as the same relates to trade marks.

(2) Nothing in this Act shall affect any order, rule or requirement made, table of fees or certificate issued, notice, decision, determination, direction or approval given, application made, or thing done, under any written law repealed by this Act; and every such order, rule, direction,

approval, application or thing shall, if in force at the commencement of this Act, continue in force and shall, so far as it could have been made, issued, given or done under this Act, have effect as if made, issued, given or done under the corresponding written law of this Act.

(3) Any document referring to any written law repealed by this Act shall be construed as referring to the corresponding written law of this Act.

SCHEDULE

CERTIFICATION TRADE MARKS

1.(1) An application for the registration of a mark under [section 50](#) of this Act must be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof.

(2) The provisions of [section 19\(2\)](#), [\(4\)](#), [\(5\)](#), [\(6\)](#) and [\(7\)](#) of this Act shall have effect in relation to an application under the said [section 50](#) as they have effect in relation to an application under [section 19\(1\)](#).

(3) In dealing under the said provisions with an application under [section 50](#), the Registrar (or Judge in Chambers, as the case may be) shall have regard to the like considerations, so far as relevant, as if the application were an application under [section 19](#) of this Act and to any other considerations relevant to applications under [section 50](#), including the desirability of securing that a certification trade mark shall comprise some indication that it is such a trade mark, and also to the following matters:

- (a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered;
- (b) whether the draft regulations are satisfactory; and
- (c) whether in all circumstances the registration applied for would be to the public advantage.

(4) An applicant for the registration of a trade mark under [section 50](#) shall transmit to the Registrar draft regulations for governing the use thereof at such time before the decision of the Registrar as he may require in order to enable him to consider the draft.

2. Where an application has been accepted, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner, and [sections 21](#) and [22](#) of this Act shall have effect in relation to the registration of the mark as if the application had been an application under [section 19](#) of this Act.

3.(1) The regulations deposited in respect of a certification trade mark may, on the application of the registered proprietor be altered by the Registrar.

(2) The Registrar may cause an application for an amendment of the regulations to be advertised in any case where it appears to him that it is expedient so to do, and, where he causes an application to be advertised, if within one month from the date of the advertisement any person gives notice to him of opposition to the application, he shall not decide the matter without giving the parties an opportunity to be heard.

4.(1) The Registrar may, on the application in the prescribed manner of any person aggrieved, make such order as he thinks fit for expunging or varying any entry in the Register relating to a certification trade mark, or for varying the deposited regulations, on the ground—

- (a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the trade mark is registered, to certify those goods;
- (b) that the proprietor has failed to observe a provision of the deposited regulations to be observed on his part;
- (c) that it is no longer to the public advantage that the trade mark should be registered; or
- (d) that it is requisite for the public advantage that, if the trade mark remains registered, the regulations should be varied.

(2) The Register and the deposited regulations shall be rectified in such manner as may be requisite for giving effect to an order made under [sub-paragraph \(1\)](#).

5. Any decision of the Registrar under [paragraph 3](#) and any order of the Registrar under [paragraph 4](#) of this Schedule shall be subject to appeal to a Judge in Chambers.

6. Notwithstanding anything in [section 54](#) of this Act, the Registrar shall not have any jurisdiction to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the trade mark.

7. The following provisions of this Act shall not have effect in relation to a certification trade mark, that is to say, [sections 5, 7, 10, 19, 20, 21](#) and [22](#) (except as expressly applied by this Schedule), [sections 29, 30, 31, 35, 36, 37, 38, 39, 40, 41, 42, 43, 67](#) and any provisions the operation of which is limited by the terms thereof to registration in **Part B** of the Register.