

RAJYA SABHA

DEPARTMENT RELATED PARLIAMENTARY STANDING
COMMITTEE ON INDUSTRY

EIGHTH REPORT
ON
THE TRADE MARKS BILL, 1993

Presented on 21st April, 1994



RAJYA SABHA SECRETARIAT
NEW DELHI
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COMPOSITION OF THE COMMITTEE

1. Shri Moturu Hanumantha Rao—Chairman

MEMBERS

RAJYA SABHA

2. Shri Ramdas Agarwal
3. Shri Anil Kumar
4. Shrimati Chandrika Abhinandan Jain
5. Shri J.P. Javali
6. Shri Bhubaneswar Kalita
7. Shri Rajendra Prasad Mody
8. Shri V. Rajeshwar Rao
9. Shri Santosh Kumar Sahu
10. Shri K.K. Veerappan
11. Shri Ish Dutt Yadav
12. Shri Nyodek Yonggam
- *13. Shri Jibon Roy

LOK SABHA

14. Shri K.H. Muniyappa
15. Shri Gurudas Kamat
16. Shrimati Kesharbai Sonajirao Kshirsagar
17. Shrimati Pratibha Devisingh Patil
18. Shri Rama Krishna Konathala
19. Shri K. Ramamurthy
20. Shri Balin Kuli
21. Shri Manoranjan Bhakta
22. Shri Vishweshwar Bhagat
23. Shri Chiranjilal Sharma
24. Shri Mullappally Ramachandran
25. Shri Udaysingrao Gaikwad
26. Shri M. Baga Reddy
27. Shri Harish Narayan Prabhu Zantye
28. Shrimati Sumitra Mahajan
29. Shri Rajendra Agnihotri
30. Shri V. Dhananjaya Kumar
31. Shri S.N. Vekaria
32. Shri Ramdew Ram
33. Shri Prabhu Dayal Katharia
34. Shri Satyanarayan Jatiya
35. Shri Mohan Singh (Deoria)

36. Shri Naval Kishore Rai
37. Shri Manjay Lal
38. Shri Rasheed Masood
39. Shrimati Suseela Gopalan
40. Shri Purna Chandra Malik
41. Shri Tej Narayan Singh
42. Shri P.G. Narayanan
43. Shri Bolla Bulli Ramaiah

SECRETARIAT

Shri G.K. Saksena—*Deputy Secretary*

Shri Shamsher Singh Rana—*Under Secretary*

Shri Jagmohan Sundriyal—*Committee Officer*

REPRESENTATIVES OF THE MINISTRIES

I. Ministry of Industry

1. Shri P.G. Mankad, Additional Secretary
2. Dr. G.S. Jaiya, Director
3. Shri Pushpendra Rai, Director
4. Shri R.A. Acharya, Controller General of Trade Marks
5. Shri K.C. Kailasam, Senior Joint Registrar of Trade Marks

II. Ministry of Law, Justice and Company Affairs

1. Shri A.C.C. Unni, Additional Secretary
2. Dr. Raghubir Singh, Joint Secretary and Legislative Counsel
3. Shri V.K. Bhasin, Deputy Legislative Counsel
4. Shri S.D. Singh, Assistant Legislative Counsel

EIGHTH REPORT OF THE COMMITTEE

1. the Chairman of the Department Related Parliamentary Standing Committee on Industry having been authorised by the Committee to present the Report on its behalf, present this Eighth Report of the Committee on the Trade Marks Bill, 1993 with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 19th April, 1993. It was referred to the Committee for examination and report through separate paras published in Rajya Sabha/Lok Sabha Bulletins Part II dated the 6th August, 1993 and 13th August, 1993 respectively.

3. The Committee held six meetings. A verbatim record of these meetings was kept.

4. At its first meeting the Committee decided to invite Memoranda/suggestions from different organisations/bodies dealing with trade marks and also issue a press communique in this regard. Accordingly a press communique inviting memoranda from various individuals/organisations interested in the subject matter of the bill was issued on the 26th August, 1993 to be submitted latest by 15th September, 1993 (Appendix I).

5. 11. Memoranda containing views, opinions comments and suggestions on the various provisions and aspects of the Bill were received by the Committee from individuals, organisations, Trade Marks Attorneys, Legal practitioners and organisations connected with Trade Marks (list at Appendix II).

6. The Committee decided that the Memoranda received by it be sent to the Ministries of Industry/Law, Justice and Company Affairs for their comments. The comments of the Ministry of Industry endorsed by the Ministry of Law, Justice and Company Affairs were received and considered by the Committee.

7. The Committee heard the oral evidence tendered by 13 witnesses who represented various organisations and bodies in addition to the oral evidence of the representatives of the Ministries of Industry and Law, Justice and Company Affairs. (Appendix III).

8. The Committee decided that the evidence recorded and memoranda received should not be laid on the Table of both the Houses and that only a set of memoranda received by it from organisations/bodies/individuals be placed in the Parliament Library after the report is presented to the Houses for reference purposes.

9. The Committee considered and adopted the draft report at its meeting held on the 31 March, 1994.

10. Taking into account the documents, memoranda and evidences in respect of the Trade Marks Bill, 1993 the Committee concludes as under:—

A trade marks is generally a visually perceptible sign used in relation to goods or services. The primary purpose of a trade mark is to identify the commercial or trade origins of the goods or services. As such a trade mark distinguishes a particular product from another product. It offers an assurance to the consumer that when he is buying a particular item with a trade mark he is purchasing the same item which he has been assured of its quality composition etc. So a trade mark reflects the goodwill or reputation of a particular product. It is statutorily not compulsory for somebody to register a trade mark. If a Trade Mark is registered by

some one in that case he has a built in right to the safety of that particular mark. To qualify for registration as a trade mark any mark must fulfil the criteria as under:—

- (a) It should be distinctive. It should be something which can be separated from other marks.
- (b) It must not cause any confusion or deception.
- (c) It should not contain scandalous or obscene matters.
- (d) It should not contain any matter which may hurt the religious susceptibilities of any class or section of the people.

The registration of a trade mark does not confer any new right on the holder of the trade mark. It only supplements a right which is already existing. Therefore, a trade mark is a cumulative and not alternative to the protection of the mark by the common law.

As regards the replacement of the existing law on the subject namely the Trade and Merchandise Marks Act, 1958 by a New Bill which was under consideration of the Committee, the Government was of the opinion that the existing Act has served its purpose reasonably well. To bring a new Bill before the Parliament there were various other reasons also. One is that any Act relating to Trade Marks in the field of trade, both national and international evolves reflecting the changing realities of the market place. As such the existing Act having been there nearly for 30 and odd years started needing certain necessary amendments and changes. Similarly over a period of time the case law pertaining to trade marks got built up and there were a number of judicial pronouncements and gradually it was found that it would be desirable to incorporate these into the body of the Act. In some cases the increasing globalisation of trade also viewed some lacunae in the existing Act as a non tariff barrier. Accordingly the Government decided to bring the desired modifications in the Act as it felt that instead of bringing a number of modifications and amendments it would be more desirable to bring forward a new Bill. The present Bill according to the Government incorporates certain changes which were felt necessary thereby making it more comprehensive and more transparent. It provides for more specific and greater degree of protection against infringement and more punishment for the violators of the Act.

11. The Government highlighted the following salient features of the Trade Marks Bill, 1993 which were examined by the Committee:—

- (a) Presently the Trade and Merchandise Marks Act, 1958 provides for registration of trade marks only of “goods”. The one area which was not covered was “services”. The present Bill seeks to cover services in addition to goods under the trade marks protection.
- (b) The registration of trade marks which are imitations of well known trade marks is not to be permitted. Enlarging the grounds for refusal of registration and consequently provision of defensive registration of trade marks are proposed to be omitted from this Bill.
- (c) This Bill is taking away the system of maintaining registers of trade marks in part A and part B. At present part A trade Marks will include those trade marks which are very clearly distinguishable and about which there would be no doubt whereas in part B trade marks the trade mark is not very distinguishable. This two tier system is proposed to be done away with in this Bill.
- (d) In view of doing away with Part A and Part B trade marks the Bill proposes that there will be only a single register and not two registers.
- (e) The Bill proposes to simplify the procedure of registration of registered users and enlarging the scope of the use in terms of a permitted use.

- (f) The Bill proposes to establish an Appellate Board for speedy disposal of appeals which presently go before the courts and due to pressure of work a speedy redressal is not forthcoming.
- (g) The final authority relating to registration or certification of trade marks be vested in the Registrar instead of the Central Government.
- (h) The Bill proposes enhanced punishment for offences relating to trade marks at par with the Copyright Act to prevent sale of spurious goods. In the Copyright Act offences are cognizable inviting a minimum punishment of 3 years whereas in the Trade and Merchandise Marks Act it is non-cognizable and punishment is for two year. So it is sought to be made cognizable and punishment to be enhanced to 3 years for infringement of trade marks.
- (i) The Bill proposes to prohibit use of someone else's trade mark like the name of a corporate company or a business concern.

12. Some members of the Committee were of the opinion that the liberalisation of trade marks legislation may provide added advantage to the foreign multinational units. Instead, the policy should be to go slow in according recognition to foreign trade marks with a view to encourage domestic initiatives in the same or similar lines of production. They emphasised the need to make efforts to encourage the use of indigenous trade marks.

In the matter of inclusion of services in the jurisdiction of the Bill, they expressed the view that it should await the resolution of the current controversies that arose after the signing of GATT treaty and the agreement by western countries to provide satisfactory trade concessions on a reciprocal basis.

Also in view of the amendments required in the Indian Patents Act of 1970 consequent upon the GATT treaty they felt that the new legislation should await the changes in the Patents Law.

Some members of the Committee specifically mentioned some modifications in various Clauses of the Bill under consideration Regarding Clause 2 of the Bill, some members were of the opinion that instead of "a device, shape of goods and packaging", there should be "description of device, shape of goods or packaging" because items having functional use should be dealt by Patents Law.

Members were of the opinion that defensive registration may be continued as stipulated in the existing Act which is in force. Members while considering Clause 15 of the Bill pointed out that no mechanism for part cancellation of registration has been mentioned in the Bill. Members questioned the fate of the registration made in series if some of the marks in that series is subjected to non use Members of the Committee put forth a suggestion that Associated trade marks may be named as other individual trade mark. Commenting on Clause 18 of the Bill some Members expressed apprehension that provision of single application for multiple class could lead to blockage of trade mark for others. With regard to Clauses 37, 39 and 43 of the Bill, some Members of the Committee wanted that a limit should be imposed on consideration against assignment. Members were also of the opinion that instead of consent of the Registrar, assignment certificate should be provided for the validity of assignment.

13. The changes suggested by the Committee in the Bill and the reasons therefore are set out in the succeeding paras of this report:—

13.1 **CLAUSE 2.** — (i) The Committee observes that almost all the organisations/bodies/ individuals have desired to retain the definition of "goods" in the present Bill also because it is there in the Trade and Merchandise Marks Act, 1958 and there are no obvious reasons for omission of this definition. The clause has been amended accordingly. (ii) Clause 2(1)(g) of the

Bill has been amended to exclude members of partnership from the scope of Association of persons. This will certainly help in removing any ambiguity since individual partners of a partnership will not be entitled to use a registered trade mark separately and the mark can be used only by the partnership. The amendment has been made in the clause. (iii) In Clause 2(1)(x) the words "construction and repair" "transport and storage" and "material treatment" at appropriate places have been incorporated in the Bill which will conform to the international classification of goods and services.

13.2 CLAUSE 8. — In Clause 8 of the Bill the word "shall" has been substituted with the work word "may" which will give more flexibility to the law in its implementation. The language of rule 26(2) which was added to the rules framed under the existing Act has been inserted as sub-clause (2) of clause 8. The Government has informed that this was added in 1992 to overcome the judgment of Madras High Court which held that the Registrar has no jurisdiction to register trade mark for goods which are not specifically enumerated in the classification of goods. This amendment will enable the Registrar to properly classify the goods as and when new kind of goods emerge into market. The amendment has been incorporated in the Bill.

13.3 CLAUSE 9. — In sub-clause (1) of clause 9 the words "or is a well known trade mark" have been added at the end of the proviso to extend registration to well known trade marks. The amendment has been incorporated in the Bill.

(ii) The following *Explanation* has been added to clause 9 of the Bill which reads as under:—

"Explanation: The nature of goods or services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration".

(iii) The Committee is of the opinion that any symbol relating to religion, gods, goddesses, places of worship should not ordinarily be registered as a trade mark. However the Committee do not want to disturb the existing trade marks by prohibiting their registration as it will result in a chaos in the market. At the same time the Committee trusts that Government will initiate appropriate action if someone complains that a particular trade mark is hurting his religious susceptibilities.

13.4 CLAUSE 11. — The words "has a reputation" have been substituted with the words "well-known" in clause 11 (2)(b) of the Bill.

The Committee is of the opinion that the words "For the purposes of this Act" be added in the beginning in the *Explanation II* and accordingly the addition has been incorporated.

13.5 CLAUSE 15. — In sub-clause (3) of clause 15 the words "same goods" the words "same or similar goods" have been substituted. The amendment has been incorporated.

13.6 CLAUSE 25. — The following proviso has also been added after the Sub-clause (3) of clause to remove the present lacunae:—

"Provided that the Registrar shall not remove the mark from the register if an application is made in the prescribed form and prescribed fee and surcharge is paid within six months from the expiration of the last registration of the trade mark and shall renew the registration of the trade mark for a period of ten years under sub-section (2)."

13.7 CLAUSE 29. — In sub clause (5) of Clause 29 the words "dealing in goods or services in respect of which the trade mark is registered" have been incorporated in the Bill.

13.8 CLAUSE 82. — The Committee propose to omit the words "the English or" in para (a) of sub-clause (2) of 82 as all over the world metric system is used and it would be illegal to use the word "English system" under the Bureau of Indian Standards Act, 1986. The amendment has been incorporated in the Bill.

13.9 CLAUSE 85. — This clause of the Bill deals with the composition of Appellate Board. The Committee suggests that a Bench shall as far as may be of 2 members one of whom shall be judicial member and other shall be a technical member having specialised knowledge and experience in the law of trade marks. The amendment has been incorporated in the Bill.

13.10 CLAUSE 86. — This clause prescribes the qualifications for appointment as Chairman and Members of Appellate Board. The Committee considered certain clause related suggestions/ amendments for incorporation in Clause 85. The Committee has not found such suggestions practicable and instead recommends deletion of para (b), (e) and (f) sub-clause (2) of Clause 86 without making further changes in Clause 85 of the Bill. The deletion has been incorporated in the Bill.

14. At this stage of deliberation, the Committee would like to have recommended some more amendments in the Bill on the basis of certain suggestions put forth before it but is not doing so because they can be incorporated in the rules. The Committee, would, however, not miss to highlight its observations with regard to sub-clause (1) of Clause 92 which provides that any person aggrieved by an order or decision of the Registrar under the Act, or the rules made thereunder, may, prefer an appeal to the Appellate Board within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal. Thus an aggrieved person can file an appeal as of right. The appeal provisions to the appellate Board as to be provided a new. The Committee has been informed that Forty-Second Amendment to the Constitution in 1976 inserted a new Part XIV A of the Constitution with a view to establishment of tribunals for reducing litigation. Decisions of such tribunals can only be challenged under Article 136 of the Constitution before the Supreme Court. The Committee, therefore, without persisting for an urgent addition of a special clause recommends that Government should include provision for the establishment of an Appellate Board envisaged under Part XIV A of the Constitution for the said purpose. The Committee is of the opinion that if required, Government should bring forth an amendment to the relevant provisions of the constitution for implementing the recommendation of the Committee in letter and spirit. The Committee trusts that Government would take a positive action in this regard in due course.

15. All other modifications not enumerated in the foregoing paragraphs are either of consequential or of drafting nature.

16. The Committee recommends that the Bill as amended, be passed.

MOTURU HANUMANTHA RAO

Chairman,

Parliamentary Standing Committee on Industry.

NEW DELHI
31st March, 1994

THE TRADE MARKS BILL, 1993
(as reported by the Standing Committee on Industry)

ARRANGEMENT OF CLAUSES

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THE SCHEDULE.

THE TRADE MARKS BILL, 1993

(AS REPORTED BY THE STANDING COMMITTEE ON INDUSTRY)

[Words underlined or side-lined indicate the amendments suggested by the Committee, asterisks indicate omissions.]

A
BILL

to amend and consolidate the law relating to trade marks to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks.

Be it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

5 1. (1) This Act may be called the Trade Marks Act, 1994.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

10 Provided that different dates may be appointed for different provisions of this Act, and any reference in such provision to the commencement of this Act shall be construed as a reference to be coming into force of that provision.

2. (1) In this Act, unless the context otherwise requires,—

15 (a) “Appellate Board” means the Appellate Board established under section 84;

(b) “assignment” means an assignment in writing by act of the parties concerned;

(c) “associated trade marks” means trade marks deemed to be, or required to be, registered as associated trade marks under this Act;

20 (d) “Bench” means a Bench of the Appellate Board;

(e) “certification trade mark” means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registerable as such under Chapter IX in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person;

(f) “Chairman” means the Chairman of the Appellate Board;

Short title, extent and commencement.

Definitions and interpretation.

(g) "collective mark" means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Partnership Act, 1932) which is the proprietor of the mark from those of others; 9 of 1932.

(h) "deceptively similar".— A mark shall be deemed to be 5
deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion;

(i) "false trade description" means—

(I) a trade description which is untrue or misleading in a material respect as regards the goods or services to which 10
it is applied; or

(II) any alteration of a trade description as regards the goods or services to which it is applied, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue or misleading in a material 15
respect; or

(III) any trade description which denotes or implies that there are contained as regards the goods to which it is applied, more * * * metres than there are contained there in * * * standards metres; or 20

(IV) any mark or arrangement or combination thereof when applied—

(a) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise 25
or manufacture they really are;

(b) in relation to services in such a manner as to be likely to lead persons to believe that the services are provided or rendered by some person other than the person whose services they really are; or, 30

(V) any false name or initials of a person applied to goods or services in such manner as if such name or initials were a trade description in any case where the name or initials—

(a) is or are not a trade mark or part of a trade mark; and

(b) is or are identical with or deceptively similar to the 35
name or initials of a person carrying on business in connection with goods or services of the same description or both and who has not authorised the use of such name or initials; and

(c) is or are either the name or initials of a fictitious 40
person or of some person not *bona fide* carrying on business in connection with such goods or services,

and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act; 45

(j) "goods" means any thing which is the subject of trade or manufacture;

(k) "limitations" (with its grammatical variations) means any limitation 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 mode or area of use within India or outside India;

5 (l) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, the shape of goods, packaging, combination of colours of any combination thereof;

(m) "Member" means a Judicial Member or a Technical Member of the Appellate Board and includes the Chairman;

(n) "name" includes any abbreviation of a name;

10 (o) "notify" means to notify in the Trade Mark Journal published by the Registrar;

(p) "package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;

15 (q) "permitted use", in relation to a registered trade mark, means the use of a trade mark—

(i) by a registered user of the trade mark in relation to goods or services—

20 (a) with which he is connected in the course of trade; and

(b) in respect of which the trade mark remains registered for the time being; and

(c) for which he is registered as registered user; and

25 (d) which complies with any conditions or limitations to which the registration of registered user is subject; or

(ii) by a person other than the registered proprietor and registered user in relation to goods or services—

30 (a) with which he is connected in the course of trade; and

(b) in respect of which the trade mark remains registered for the time being; and

35 (c) by consent of such registered proprietor in a written agreement; and

(d) which complies with any conditions or limitations to which such user is subject and to which the registration of the trade mark is subject;

40 (r) "prescribed" means prescribed by rules made under this Act;

(s) "register" means the Register of Trade Marks referred to in sub-section (1) of section 6;

(t) "registered" (with its grammatical variations) means registered under this Act;

(u) "registered proprietor", in relation to a trade mark, means the person for the time being entered in the register as proprietor of the trade mark;

(v) "registered trade mark" means a trade mark which is actually on the register and remaining in force;

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(w) "registered user" means a person who is for the time being registered as such under section 49;

(x) "Registrar" means the Registrar of Trade Marks referred to in section 3;

(y) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

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(z) "trade description" means any description, statement or other indication, direct or indirect,—

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(i) as to the number, quantity, measure, gauge or weight of any goods; or

(ii) as to the standard of quality of any goods or services according to a classification commonly used or recognised in the trade; or

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(iii) as to fitness for the purpose, strength, performance or behaviour of any goods, being "drugs" as defined in the Drugs and Cosmetics Act, 1940 or "food" as defined in the Prevention of Food Adulteration Act, 1954; or

23. of 1940.

37 of 1954.

30

(iv) as to the place or country in which or the time at which any goods or services were made, produced or provided, as the case may be; or

(v) as to the name and address or other indication of the identity of the manufacturer or of the person providing the services or of the person for whom the goods are manufactured or services provided; or

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(vi) as to the mode of manufacture or producing any goods or providing services; or

(vii) as to the material of which any goods are composed; or

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(viii) as to any goods being the subject of an existing patent, privilege or copyright,

and includes—

(a) any description as the use of any mark which according 45

to the custom of the trade is commonly taken to be an indication of any of the above matters;

(b) the description as to any imported goods contained in any bill of entry or shipping bill;

5 (c) any other description which is likely to be misunderstood or mistaken for all or any of the said matters;

(za) "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include, shape
10 of goods, their packaging and combination of colours; and—

(i) in relation to Chapter XII (other than section 108), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or
15 services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the
20 course of trade between the goods or services, as the case may be, and some person having the right either as proprietor or by way of permitted use, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;

25 (zb) "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;

(zc) "tribunal" means the Registrar or, as the case may be, the Appellate Board, before which the proceeding concerned is
30 pending.

(2) In this Act, unless the context otherwise requires, any reference—

(a) to "trade mark" shall include reference to "collective mark" or "certification trade mark";

35 (b) to the use of a mark shall be construed as a reference to the use of a printed or other visual representation of the mark;

(c) to the use of a mark,—

(i) in relation to goods, shall be construed as a reference to the use of the mark upon, or in any physical or in any other
40 relation whatsoever, to such goods;

(ii) in relation to services, shall be construed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of service;

(d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3; 5

(e) to the Trade Marks Registry shall be construed as including a reference to any office of the Trade Marks Registry.

(3) For the purposes of this Act, goods and services are associated with each other if it is likely that those goods might be sold or otherwise traded in and those services might be provided by the same business and so with descriptions of goods and descriptions of services. 10

(4) For the purposes of this Act, "existing registered trade mark" means a trade mark registered under the Trade and Merchandise Marks Act, 1958 immediately before the commencement of this Act. 15 43 of 1958.

CHAPTER II

THE REGISTER AND CONDITIONS FOR REGISTRATION

Appointment of Registrar and other officers.

3. (1) The Central Government may, by notification in the Official Gazette, appoint a person to be known as the Controller-General of Patents, Designs and Trade Marks, who shall be the Registrar of Trade Marks for the purposes of this Act. 20

(2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act as he may from time to time authorise them to discharge. 25

Power of Registrar to withdraw or transfer cases, etc.

4. Without prejudice to the generality of the provisions of sub-section (2) of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (2) and deal with such matter himself either *de novo* or from the stage it was so withdrawn or transfer the same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either *de novo* or from the stage it was so transferred. 30 35

Trade Marks Registry and offices thereof.

5. (1) For the purpose to this Act, there shall be a trade marks registry and the Trade Marks Registry established under the Trade and Merchandise Marks Act, 1958, shall be the Trade Marks Registry under this Act 43 of 1958.

(2) The head office of The Trade Marks Registry shall be at such place as the Central Government may specify, and for the purpose of facilitating the registration of trade marks, there may be established at such places as the Central Government may think fit branch offices of the Trade Marks Registry. 40

(3) The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Trade Marks Registry may exercise its functions.

(4) There shall be a seal of the Trade Marks Registry.

5 6. (1) For the purposes of this Act, a record called the Register of Trade Marks shall be kept at the head office of the Trade Marks Registry wherein shall be entered all registered trade marks with the names, addresses and description of the proprietors, notifications of assignment and transmissions, the names, addresses and descriptions of registered
10 users, conditions, limitations and such other matters relating to registered trade marks as may be prescribed.

The Register of Trade Marks.

(2) No notice of any trust, express or implied or constructive, shall be entered in the register and no such notice shall be receivable by the Registrar.

15 (3) The register shall be kept under the control and management of the Registrar.

(4) There shall be kept at each branch office of the Trade Marks Registry a copy of the register and such of the other documents mentioned in section 149 as the Central Government may, by notification in the
20 Official Gazette, direct.

(5) The Register of Trade Marks, both Part A and Part B, existing at the commencement of this Act, shall be incorporated in and form part of the Register under this Act.

25 7. (1) The Registrar shall classify goods and services as far as may be, in accordance with the International classification of goods and services for the purposes of registration of trade marks.

Classification of goods and services.

(2) Any question arising as to the class within which any goods or services fall shall be determined by the Registrar whose decision shall be final.

30 8. (1) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods and services referred to in section 7.

Publication of alphabetical index.

(2) Where any goods or services are not specified in the alphabetical index of goods and services, published under sub-section (1), the
35 classification of goods and services shall be determined by the Registrar in accordance with sub-section (2), of section 7.

9. (1) The trade marks—

40 (a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;

Absolute grounds for refusal of registration.

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the
45 goods or service;

(c) which consist exclusively or marks or indications which have become customary in the current language or in the *bona fide* and established practices of the trade,

shall not be registered:

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

(2) A mark shall not be registered as a trade mark if—

(a) it is of such nature as to deceive the public or cause confusion;

(b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

(c) it comprises or contains scandalous or obscene matter;

(d) its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

(3) A mark shall not be registered as a trade mark if it consists exclusively of—

(a) the shape of goods which results from the nature of the goods themselves; or

(b) the shape of goods which is necessary to obtain a technical result; or

(c) the shape which gives substantial value to the goods.

Explanation.—For the purposes of this section, the nature of goods or Services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration.

10. (1) A trade mark may be limited wholly or in part to any combination of colours and any such limitation shall be taken into consideration by the tribunal having to decide on the distinctive character of the trade mark.

(2) So far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.

11. (1) Save as provided in section 12, a trade mark shall not be registered if, because of—

(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or

(b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

(2) A trade mark which—

(a) is identical with or similar to an earlier trade mark; and

(b) is to be registered for goods or services which are not

Limitation as to colour.

Relative grounds for refusal of registration.

similar to those for which the earlier trade mark is registered in the name of a different proprietor,

shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

(3) A trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented—

(a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or

(b) by virtue of law of copyright.

(4) Nothing in this section shall prevent the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration, and in such case the Registrar may register the mark under special circumstances under section 12.

Explanation I.—for the purposes of this section, earlier trade mark means—

(a) a registered trade mark or convention application referred to in section 155 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks;

(b) a trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.

Explanation II.—For the purposes of this Act, in determining whether a trade mark is well-known, account shall be taken of the knowledge of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark.

(5) A trade mark shall not be refused registration on the grounds specified in sub-sections (2) and (3) unless objection on any one or more of those grounds is raised in opposition proceedings by the proprietor of the earlier trade mark.

12. In the case of honest concurrent use or of other special circumstances which, in the opinion of the Registrar, make it proper so to do, he may permit the registration by more than one proprietor of the trade marks which are identical or similar (whether any such trade mark is already registered or not) in respect of the same or similar goods or services, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.

Registration in the case of honest concurrent use, etc.

13. No word—

(a) which is the commonly used and accepted name of any single chemical element or any single chemical compound (as

Prohibition of registration of names of chemical elements or international non-proprietary names.

distinguished from a mixture) in respect of a chemical substance or preparation, or

(b) which is declared by the World Health Organisation and notified in the prescribed manner by the Registrar from time to time, as an international non-proprietary name or which is deceptively similar to such name,

shall be registered as a trade mark and any such registration shall be deemed for the purpose of section 57 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require.

Use of names and representations of living persons or persons recently dead.

14. Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application for registration of the trade mark, the Registrar may, before he proceeds with the application, require the applicant to furnish him with the consent in writing of such living person or, as the case may be, of the legal representative of the deceased person to the connection appearing on the trade mark, and may refuse to proceed with the application unless the applicant furnishes the Registrar with such consent.

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

15. (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 the part as separate trade marks.

(2) Each such separate trade mark shall satisfy all the conditions applying to, and 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 or similar goods or services, or description of goods or description of services which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statement of the goods or services in relation to which they, or are respectively used or proposed to be used; or

(b) statement 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.

Registration of trade marks as associated trade marks.

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

(2) Where there is an identity or near resemblance of marks that are registered, or are the subject of applications for registration in the name of the same proprietor in respect of goods and in respect of services which are associated with those goods or goods of that description and with those services or services of that description, sub-section (1) applies as it applies as where there is an identity or near resemblance of marks that are registered, or are the subject of applications for registration, in the name of the same proprietor in respect of the same goods or description of goods or same services or description of services.

(3) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 15, 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 registered in accordance with the provisions of sub-section (3) of section 15 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 any other person in relation to any of the goods or services or both in respect of which it is registered and may amend the register accordingly.

17. (1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.

Effect of registration of parts of a mark.

(2) Notwithstanding anything contained in sub-section (1), when a trade mark—

(a) contains any part—

(i) which is not the the subject of a separate application by the proprietor for registration as a trade mark; or

(ii) which is not separately registered by the proprietor as a trade mark; or

(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character,

the registration thereof shall not confer any exclusive right in matter forming only a part of the whole of the trade mark so registered.

CHAPTER III

PROCEDURE FOR AND DURATION OF REGISTRATION

18. (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, shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark.

Application for registration

(2) A single application may be made for registration of a trade mark for different classes of goods and services and fee payable therefor shall be in respect of each such class of goods or services

(3) Every application under sub-section (1) shall be filed in the office of the Trade Marks Registry within whose territorial limits the principal place of business in India of the applicant or in the case of joint applicants the principal place of business in India of the applicant whose name is first-mentioned in the application as having a place of business in India, is situate: 5

Provided that where the applicant or any of the joint applicants does not carry on business in India, the application shall be filed in the office of the Trade Marks Registry within whose territorial limits the place mentioned in the address for service in India as disclosed in the application, is situate. 10

(4) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modification, conditions or limitations, if any, as he may think fit. 15

(5) In the case of a refusal or conditional acceptance of an application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision. 20

Withdrawal of acceptance. 19. Where, after the acceptance of an application for registration of a trade mark but before its registration, the Registrar is satisfied—

(a) that the application has been accepted in error; or

(b) that in the circumstances of the case the trade mark should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted, 25

the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted. 30

Advertisement of application. 20. (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations, if any subject to which it has been accepted, to be advertised in the prescribed manner; 35

Provided that the Registrar may cause the application to be advertised before acceptance if it relates to a trade mark to which sub-section (1) of section 9 and sub-sections (1) and (2) of section 11 apply, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do. 40

(2) Where—

(a) an application has been advertised before acceptance under sub-section (1); or

(b) after advertisement of an application,— 45

- (i) an error in the application has been corrected; or
(ii) the application has been permitted to be amended
under section 22,

the Registrar may in his discretion cause the application to be advertised again or in any case falling under clause (b) may, instead of causing the application to be advertised again, notify in the prescribed manner the correction or amendment made in the application.

21. (1) Any person may, within three months from the date of the advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month in the aggregate, as the Registrar, on application made to him in the prescribed manner and on payment of the prescribed fee, allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.

Opposition
registration.

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement 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.

(3) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

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

(7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.

22. The Registrar may, on such terms as he thinks just, at any time whether before or after acceptance of an application for registration under section 18, permit the correction of any error in or in connection with the application or permit an amendment of the application:

Correction and
amendment.

Provided that if an amendment is made to a single application referred to in sub-section (2) of section 18 involving division of such application into two or more applications, the date of making of the

initial application shall be deemed to be the date of making of the divided applications so divided.

Registration.

23. (1) Subject to the provisions of section 19, when an application for registration of a trade mark has been accepted and either—

(a) The application has not been opposed and the time for notice of opposition has expired; or

(b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall register the said trade mark and the trade mark when registered shall be registered as of the date of the making of the said application and the date shall, subject to the provisions of section 155, be deemed to be the date of registration.

(2) On the registration of a trade mark, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof, sealed with the seal of the trade Marks Registry.

(3) 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 to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

Jointly owned trade marks.

24. (1) Save as provided in sub-section (2), 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.

(2) 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 or service 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.

Duration, renewal removal and restoration of registration.

25. (1) The registration of a trade mark, after the commencement of this Act, shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of this section.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period and subject to payment of the prescribed fee, renew the registration of the trade mark for a period of ten years from the date of expiration of the original registration or of the last renewal of

registration, as the case may be (which date is in this section referred to as the expiration of the last registration).

(3) At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register:

Provided that the Registrar shall not remove the trade mark from the register if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the trade mark and shall renew the registration of the trade mark for a period of ten years under sub-section (2).

* * * * *

(4) Where a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the trade mark, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the trade mark to the register and renew the registration of the trade mark either generally or subject to such conditions or limitations as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

26. Where a trade mark has been removed from the register for failure to pay the fee from renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year, next after the date of the removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either—

Effect of removal from register for failure to pay fee for renewal.

(a) that there has been no *bona fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

CHAPTER IV

EFFECT OF REGISTRATION

27. (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark.

No action for infringement of unregistered trade mark.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

28. (1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registration proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act. 5

(2) The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

(3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor. 10 15

29. (1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being use a trade mark. 20 25

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of— 25

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or 30

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark. 35

(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which— 40

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the 45

use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

5 (5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.

10 (6) For the purposes of the section, a person uses a registered mark, if, in particular, he—

(a) affixes it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;

15 (c) imports or exports goods under the mark; or

(d) uses the registered trade mark on business papers or in advertising.

20 (7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

25 (8) A registered trade mark is infringed by any advertising of that trade mark if such advertising—

(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or

(b) is detrimental to the distinctive character, or

(c) is against the reputation of the trade mark.

30 (9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.

35 30. (1) Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purposes of identifying goods or services as those of the proprietor provided the use—

Limits on effect
of registered
trade mark.

(a) is in accordance with honest practices in industrial or commercial matters, and

40 (b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.

(2) A registered trade mark is not infringed where—

(a) the use in relation to goods or services indicates the kind, quality, quantity, intended purpose, value, geographical origin, the

time of production of goods or of rendering of services or other characteristics of goods or services;

(b) a trade mark is registered subject to any conditions or limitations, the use of the trade mark in any manner in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market or in relation to services for use or available for acceptance in any place or country outside India or in any other circumstances, to which, having regard to those conditions or limitations, the registration does not extend;

(c) the use by a person of a trade mark—

10

(i) 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 registered 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

(ii) in relation to services to which the proprietor of such mark or of a registered user conforming to the permitted use has applied the mark, where the purpose and effect of the use of the mark is to indicate, in accordance with the fact, that those services have been performed by the proprietor or a registered user of the mark;

(d) the use of a trade mark by a person in relation to goods adapted to form part of, or to be accessory to, other goods or services in relation to which the trade mark has been used without infringement of the right given by registration under this Act or might for the time being be so used, if the use of the trade mark is reasonably necessary in order to indicate that the goods or services are so adapted, and neither the purpose nor the effect of the use of the trade mark is to indicate, otherwise than in accordance with the fact, a connection in the course of trade between any person and the goods or services, as the case may be;

(e) the use of a registered trade mark, being one of two or more trade marks registered under this Act which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration under this Act.

(3) Where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade mark by reason only of—

(a) the registered trade mark having been assigned by the registered proprietor to some other person, after the acquisition of those goods; or

(b) the goods having been put on the market under the registered trade mark by the proprietor or with his consent.

(4) Sub-section (3) shall not apply where there exists legitimate

reasons for the proprietor to oppose further dealings in the goods, in particular, where the condition of the goods has been changed or impaired after they have been put on the market.

31. (1) In all legal proceedings relating to a trade mark registered under this Act (including applications under section 57), the original registration of the trade mark and of all subsequent assignments and transmissions of the trade mark shall be *prima facie* evidence of the validity thereof.

Registration to be *prima facie* evidence of validity.

(2) In all legal proceedings as aforesaid a registered trade mark shall not be held to be invalid on the ground that it was not a registrable trade mark under section 9 except upon evidence of distinctiveness and that such evidence was not submitted to the Registrar before registration, if it is proved that the trade mark had been so used by the registered proprietor or his predecessor in title as to have become distinctive at the date of registration.

32. Where a trade mark is registered in breach of sub-section (1) of section 9, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration and before commencement of any legal proceedings challenging the validity of such registration, acquired a distinctive character in relation to the goods or services for which it is registered.

Protection of registration on ground of distinctiveness in certain cases.

33. (1) Where the proprietor of an earlier trade mark has acquiesced for a continuous period of five years in the use of a registered trade mark, being aware of that use, he shall no longer be entitled on the basis of that earlier trade mark—

Effect of acquiescence.

(a) to apply for a declaration that the registration of the later trade mark is invalid, or

(b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used,

unless the registration of the later trade mark was not applied in good faith.

(2) Where sub-section (1) applies, the proprietor of the later trade mark is not entitled to oppose the use of the earlier trade mark, or as the case may be, the exploitation of the earlier right, notwithstanding that the earlier trade mark may no longer be invoked against his later trade mark.

34. Nothing in this Act shall entitle the proprietor or a registered user of 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 or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

Saving for vested rights.

(a) to the use of the first-mentioned trade mark in relation to those goods or services by the proprietor or a predecessor in title of his; or

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

whichever is the earlier, and the Registrar shall not refuse (on such use

being proved) to register the second-mentioned trade mark by reason only of the registration of the first-mentioned trade mark.

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

35. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with any *bona fide* use by a person of his own name or that of his place of business, or of the name, 5 or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods or services.

Saving for words used as name or description of an article or substance or service.

36. (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 10 registration of any word or words which the trade mark contains or of which it consists as the name or description of an article or substance or service:

Provided that, if it is proved either—

(a) that there is a well-known and established use of the said word 15 as the name or description of the article or substance or service by a person or persons carrying on trade therein, not being use in relation to goods or services connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) in relation to goods or services 20 certified by the proprietor; or

(b) that the article or substance was formerly manufactured under a patent that a period of two years or more after the cesser of the patent has elapsed and that the said word is the only practicable 25 name or description of the article, or substance,

the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then,—

(a) for the purposes of any proceedings under section 57 if the trade mark consists solely of such words, the registration of the trade 30 mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, or of the services or of any services of the same description, as the case requires, shall be deemed to be an entry wrongly remaining on the 35 register;

(b) for the purposes of any other legal proceedings relating to the trade mark,—

(i) if the trade mark consists solely of such words, all rights of the proprietor under this Act or any other law to the use of the trade 40 mark; or

(ii) if the trade mark contains such words and other matter, all such rights of the proprietor to the use of such words.

in relation to the article or substance or to any goods of the same description, or to the service or to any services of the same description, as the case requires, shall be deemed to have ceased on 45:

the date on which the use mentioned in clause (a) of the proviso to sub-section (1) first became well-known and established or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

CHAPTER V

ASSIGNMENT AND TRANSMISSION

37. The person for the time being entered in the register a proprietor of a trade mark shall, subject to the provisions of this Act and 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 such assignment.

Power of registered proprietor to assign and give receipts.

38. Notwithstanding anything in any other law to the contrary, a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible, whether with or without the goodwill of the business concerned and in respect either of all the goods or services in respect of which the trade mark is registered or of some only of those goods or services.

Assignability and transmissibility of registered trade marks.

39. An unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned.

Assignability and transmissibility of unregistered trade marks.

40. (1) Notwithstanding any thing in sections 38 and 39, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to—

Restriction on assignment or transmission where multiple exclusive rights would be created.

(a) same goods or services;

(b) same description of goods or services;

(c) goods or services or description of goods and services which are associated with each other,

of trade marks nearly resembling each other or of identical trade mark, if having regard to the similarity of the goods and services and to the similarity of the trade marks, the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion:

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, 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 India otherwise than for export therefrom, or in relation to goods to be exported to the same market outside India or in relation to services for use at any place in India or any place outside India in relation to services available for acceptance in India.

(2) The proprietor of a registered trade mark who proposes to assign it 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 or services and of the trade marks referred to in the case,

the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject 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 sub-section (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 45 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

Restriction on assignment or transmission when exclusive rights would be created in different parts of India.

41. Notwithstanding anything in sections 38 and 39, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law—

(a) 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 any place in India, or in relation to services for use, or services available for acceptance in any place in India; and

(b) an exclusive right in another of these persons concerned, to the use of a trade mark neraly resembling the first-mentioned trade mark or of an identical trade mark in relation to—

(i) the same goods or services; or

(ii) the same description of goods or services; or

(iii) services which are associated with those goods or goods of that description or goods which are associated with those services or services of that description,

limited to use in relation to goods to be sold or otherwise traded in, or services for use, or available for acceptance, in any other place in India:

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claims that a registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark 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, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 40 if application for the registration under section 45 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.

Conditions for assignment other-wise than in connection with the goodwill of a business.

42. Where an assignment of a trade mark, whether registered or unregistered is made otherwise than in connection with the goodwill of the business in which the mark has been or is used, the assignment shall not take effect unless the assignee, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, not exceeding three months in the aggregate, as

the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.

Explanation.—For the purposes of this section, an assignment of a
5 trade mark of the following description shall not be deemed to be an assignment made otherwise than in connection with the goodwill of the business in which the mark is used, namely:—

(a) an assignment of a trade mark in respect only of some of the
10 goods or services for which the trade mark is registered accompanied by the transfer of the goodwill of the business concerned in those goods or services only; or

(b) an assignment of a trade mark which is used in relation to
15 goods exported from India or in relation to services for use outside India if the assignment is accompanied by the transfer of the goodwill of the export business only.

43. A certification trade mark shall not be assignable or
transmissible otherwise than with the consent of the Registrar, for which
application shall be made in writing in the prescribed manner.

Assignability
and transmissi-
bility of certifi-
cation trade
marks.

44. Associated trade marks shall be assignable and transmissible only
20 as a whole and not separately, but, subject to the provisions of this Act, they shall, for all other purposes, be deemed to have been registered as separate trade marks.

Assignability
and transmissi-
bility of associ-
ated trade
marks.

45. (1) Where a person becomes entitled by assignment or
transmission to a registered trade mark, he shall apply in the prescribed
25 manner 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 or services in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be
30 entered on the register:

Registration of
assignments and
transmissions.

Provided that where the validity of an assignment or transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the parties have been determined by a competent court.

35 (2) Except for the purpose of an application before the Registrar under sub-section (1) or an appeal from an order thereon, or an application under section 57 or an appeal from an order thereon, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1), shall not be admitted in
40 evidence by the Registrar or the Appellate Board or any court in proof of title to the trade mark by assignment or transmission unless the Registrar or the Appellate Board or the court, as the case may be, otherwise directs.

CHAPTER VI

USE OF TRADE MARKS AND REGISTERED USERS

Proposed use of
trade mark by
company to be
formed, etc.

46. (1) No application for the registration of a trade mark in respect of any goods or services 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 if the Registrar is satisfied that—

(a) a company is about to be formed and registered under the Companies Act, 1956 and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods or services by the company, or

(b) *** the proprietor intends it to be used by a person, as a registered user after the registration of the trade mark.

(2) The provisions of section 47 shall have effect, in relation to a trade mark registered under the powers conferred by this sub-section, as if for the reference, in clause (a) of sub-section (1) of that section, 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 company or registered user concerned.

(3) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relating to any opposition or appeal, and in default of such security being duly given, may treat the application as abandoned.

(4) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods or services is registered in the name of an applicant who, relies on intention to assign the trade mark to a company, then, unless within such period as may be prescribed or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods or services, the registration shall cease to have effect in respect thereof at the expiration of that period and the Registrar shall amend the register accordingly.

Removal from
register and im-
position of limi-
tations on
ground of non-
use.

47. (1) A registered trade mark may be taken off the register in respect of the goods or services in respect of which it is registered on application made in the prescribed manner to the Registrar or the Appellate Board by any person aggrieved on the ground either—

(a) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods or services by him or, in a case to which the provisions of section 46 apply, by the company concerned or the registered user, as the case may be, and that there has, in fact, been no *bona fide* use of the trade mark in relation to those goods or services by any proprietor thereof for the time being up to a date three months before the date of the application; or

(b) that up to a date three months before the date of the application, a continuous period of five years from the date on which the trade mark is actually entered in the register or longer had elapsed during which the trade mark was registered and during
5 which there was no *bona fide* use thereof in relation to those goods or services by any proprietor thereof for the time being:

Provided that except where the applicant has been permitted under section 12 to register an identical or nearly resembling trade mark in respect of the goods or services in question, or where the tribunal is of
10 opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application under clause (a) or clause (b) in relation to any goods or services, 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
15 the time being in relation to—

(i) goods or services of the same description; or

(ii) goods or services associated with those goods or services of that description being goods or services, as the case may be, in respect of which the trade mark is registered.

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

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in a particular
25 place in India (otherwise than for export from India), or in relation to goods to be exported to a particular market outside India; or in relation to services for use or available for acceptance in a particular place in India or for use in a particular market outside India; and

(b) a person has been permitted under section 12 to register an
30 identical or nearly resembling trade mark in respect of those goods, under a registration extending to use in relation to goods to be so sold, or otherwise traded in, or in relation to goods to be so exported, or in relation to services for use or available for acceptance in that place or for use in that country, or the tribunal is
35 of opinion that he might properly be permitted so to register such a trade mark,

on application by that person in the prescribed manner to the Appellate Board or to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for
40 securing that that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or for the purposes of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade, which includes restrictions on the use of the
45 trade mark in India imposed by any law or regulation and not to any intention to abandon or not to use the trade mark in relation to the goods or services to which the application relates.

48. (1) Subject to the provisions of section 49, a person other than the registered proprietor of a trade mark may be registered as to registered user thereof in respect of any or all of the goods or services in respect of which the trade mark is registered.

(2) The permitted use of a trade mark shall be deemed to be used 5 by the proprietor thereof, and shall be deemed not to be used by a person other than the proprietor, for the purposes of section 47 or for any other purpose for which such use is material under this Act or any other law.

49. (1) Where it is proposed that a person should be registered as a 10 registered user of a trade mark, the registered proprietor and the proposed registered user shall jointly apply in writing to the Registrar in the prescribed manner, and every such application shall be accompanied by—

(a) the agreement in writing or a duly authenticated copy 15 thereof, entered into between the registered proprietor and the proposed registered user with respect to the permitted use of the trade mark; and

(b) an affidavit made by the registered proprietor or by some 20 person authorised to the satisfaction of the Registrar to act on his behalf,—

(i) giving particulars of the relationship, existing or 25 proposed, between the registered 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 30 may be made;

(ii) stating the goods or services in respect of which registration is proposed;

(iii) stating the conditions or restrictions, if any, proposed 35 with respect to the characteristics of the goods or services, to the mode or place of permitted use, or to any other matter;

(iv) 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

(c) such further documents or other evidence as may be 40 required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, the Registrar shall register the proposed registered user in respect of the goods or services as to which he is so satisfied.

(3) The Registrar shall issue notice in the prescribed manner of the registration of a person as a registered user, to other registered users of 45 the trade mark, if any.

(4) The Registrar shall, if so requested by the applicant, take steps for securing that information given for the purposes of an application under this section (other than matters entered in the register) is not disclosed to rivals in trade.

5 **50. (1)** Without prejudice to the provisions of section 57, the registration of a person as registered user—

Power of Registrar for variation or cancellation of registration as registered user.

(a) may be varied by the Registrar as regards the goods or services in respect of which it has effect on the application in writing in the prescribed manner of the registered proprietor of the trade mark;

10 (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;

15 (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, namely:—

(i) that the registered user has used the trade mark otherwise than in accordance with the agreement under clause (a) of subsection (1) of section 49 or in such way as to cause or to be likely to cause, deception or confusion;

20 (ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for registration, which if accurately represented or disclosed would not have justified the registration of the registered user;

25 (iii) that the circumstances have changed since the date of registration in such a way that at the date of such application for cancellation they would not have justified registration of the registered user;

30 (iv) 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;

35 (d) may be cancelled by the Registrar of his own motion or on the application in writing in the prescribed manner of any person, on the ground that any stipulation in the agreement between the registered proprietor and the registered user regarding the quality of the goods or services in relation to which the trade mark is to be used is either not being enforced or is not being complied with;

(e) may be cancelled by the Registrar in respect of any goods or services in relation to which the trade mark is no longer registered.

40 (2) The Registrar shall issue notice in the prescribed manner of every application under this section to the registered proprietor and each registered user (not being the applicant) of the trade mark.

(3) The procedure for cancelling a registration shall be such as may be prescribed:

45 Provided that before cancelling of registration, the registered proprietor shall be given a reasonable opportunity of being heard.

Power of Registrar to call for information relating to agreement in respect of registered users.

51. (1) The Registrar may, at any time during the continuance of the registration of the registered user, by notice in writing, require the registered proprietor to confirm to him within one month that the agreement filed under clause (a) of sub-section (1) of section 49 continues to be in force.

5

(2) If the registered proprietor fails to furnish the confirmation within one month as required under sub-section (1), the registered user shall cease to be the registered user on the day immediately after the expiry of the said period and the Registrar shall notify the same.

Right of registered user to take proceedings against infringement.

52. (1) Subject to any agreement subsisting between the parties, a registered user may institute proceedings for infringement in his own name as if he were the registered proprietor, making the registered proprietor a defendant and the rights and obligations of such registered user in such case being concurrent with those of the registered proprietor.

15

(2) Notwithstanding anything contained in any other law, a registered proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

No right of permitted user to take proceeding against infringement.

53. A person referred to in sub-clause (ii) of clause (p) of sub-section (1) of section 2 shall have no right to institute any proceeding for any infringement.

20

Registered user not to have right of assignment or transmission.

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

Explanation I.—The right of a registered user of a trade mark shall not be deemed to have been assigned or transmitted within the meaning of this section in the following cases, namely:—

25

(a) where the registered user being an individual enters into a partnership with any other person for carrying on the business concerned; but in any such case the firm may use the trade mark, if otherwise in force, only for so long as the registered user is a member of the firm;

30

(b) where the registered user being a firm subsequently undergoes a change in its constitution; but in any such case the reconstituted firm may use the trade mark, if otherwise in force, only for so long as any partner of the original firm at the time of its registration as registered user, continues to be a partner of the reconstituted firm.

35

Explanation II.—For the purposes of *Explanation I*, "firm" has the same meaning as in the Indian Partnership Act, 1932.

9 of 1932.

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

55. (1) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and, so far as it shall think right, accept use of a registered associated 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.

45

(2) The use of the whole of a registered trade mark shall, for the

purpose of this Act, be deemed to be also use of any trade mark being a part thereof and registered in accordance with sub-section (1) of section 15 in the name of the same proprietor.

(3) Notwithstanding anything in section 32, the use of part of the registered trade mark in sub-section (2) shall not be conclusive as to its evidence of distinctiveness for any purpose under the Act.

56. (1) The application in India of trade mark to goods to be exported from India or in relation to services for use outside India and any other act done in India in relation to goods to be so exported or services so rendered outside India which, if done in relation to goods to be sold or services provided or otherwise traded in within India would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods or services for any purpose for which such use is material under this Act or any other law.

Use of trade mark for export trade and use when form of trade connection changes.

(2) The use of a registered trade mark in relation to goods or services between which and the person using the mark 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 mark has been or is used in relation to goods or services between which and the said person or a predecessor in title of that person a different form of connection in the course of trade subsisted or subsisted.

CHAPTER VII

RECTIFICATION AND CORRECTION OF THE REGISTER

57. (1) On application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.

Power to cancel or vary registration and to rectify the register.

(2) Any person aggrieved by the absence 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, may apply in the prescribed manner to the Appellate Board or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(3) The tribunal may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Appellate Board rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

58. (1) The Registrar may, on application made in the prescribed manner by the registered proprietor,—

(a) correct any error in the name, address or description of the registered proprietor of a trade mark, or any other entry relating to the trade mark;

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(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 or services from those in respect of which a trade mark is registered,

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and may make any consequential amendment or alteration in the certificate of registration and for that purpose, may require the certificate of registration to be produced to him.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, and after notice to the registered proprietor, correct any error, or enter any change, in the name, address or description of the registered user.

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Alteration of registered trade marks.

59. (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.

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(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 so to do, 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.

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(3) Where leave is granted under this section, the trade mark as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

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Adaptation of entries in register to amended or substituted classification of goods or services.

60. (1) The Register shall not make any amendment of the register which would have the effect of adding any goods or classes of goods or services to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendments to be made or of antedating the registration of a trade mark in respect of any goods or services:

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Provided that this sub-section, shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods or services and would not substantially prejudice the rights of any person.

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(2) A proposal so to amend the register shall be brought to the notice of the registered proprietor of the trade mark affected and

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advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

CHAPTER VIII

COLLECTIVE MARKS

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61. (1) The provisions of this Act shall apply to collective marks subject to the provisions contained in this Chapter.

Special provisions for collective marks.

10 (2) In relation to a collective mark the reference in clause (z) of sub-section (1) of section 2 to distinguishing goods or services of one person from those of others shall be construed as a reference to distinguishing goods or services of members of an association of persons which is the proprietor of the mark from those of others.

15 62. (1) Notwithstanding anything contained in clause (b) of sub-section (1) of section 9, a collective mark which consists of any mark or indication which may serve, in trade, to designate the geographical origin of goods or services may be registered.

Indication of geographical origin may be registered as collective mark, if such use is bona fide use in trade.

(2) The registered proprietor of a collective mark shall not be entitled to prohibit the use of the mark or in particular by any person who is entitled to use the geographical name.

20 63. A collective mark shall not be registered if it is likely to deceive or cause confusion on the part of public in particular if it is likely to be taken to be something other than a collective mark, and in such case the Registrar may require that a mark in respect of which application is made for registration comprise some indication that it is a collective mark.

Collective mark not to be misleading as to character or significance.

64. (1) An application for registration of a collective mark shall be accompanied by the regulations governing the use of such collective mark.

Application to be accompanied by regulations governing use of collective marks.

30 (2) The regulations referred to in sub-section (1) shall specify the persons authorised to use the mark, the conditions of membership of the association and, the conditions of use of the mark, including any sanctions against misuse and such other matters as may be prescribed.

35 65. If it appears to the Registrar that the requirements for registration are satisfied, he shall accept the application together with the regulations, either unconditionally or subject to such conditions including amendments of the said regulations, if any, as he may deem fit or refuse to accept it and if accepted shall notify the regulations.

Acceptance of application and regulations by Registrar.

40 66. The regulations referred to in sub-section (1) of section 64 shall be open to public inspection in the same way as the register as provided in section 149.

Regulations to be open to inspection.

45 67. Any amendment of regulations referred to in sub-section (1) of section 64 shall not be effective unless the amended regulations are filed with the Registrar, and accepted and published by him in accordance with section 65.

Amendment of regulations.

68. In a suit for infringement instituted by the registered proprietor

Infringement proceedings by registered proprietor of collective mark.

of a collective mark as plaintiff the court shall take into account any loss suffered or likely to be suffered by authorised users and may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of such authorised users.

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Additional grounds for removal of registration of collective mark.

69. The registration or a collective mark may also be removed from the register on the ground—

- (a) that the manner in which the collective mark has been used by the proprietor or authorised user has caused it to become liable to mislead the public as a collective mark; or
- (b) That the proprietor has failed to observe, or to secure the observance of, the regulations governing the use of the mark.

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Explanation I.—For the purposes of this Chapter, unless the context otherwise requires, “authorised user” means a member of an association authorised to use the registered collective mark of that association.

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Explanation II.—For the purposes of this Act, use of a collective mark by an authorised user referred to in *Explanation I* shall be deemed to be the use by the registered proprietor thereof.

CHAPTER IX

20

CERTIFICATION TRADE MARKS

70. The following provision of this Act shall not apply to certification trade marks, that is to say,—

- (a) Clause (a) and (c) of sub-section (1) of section 9;
- (b) section 18, 20 and 21, except as expressly applied by this Chapter;
- (c) sections 28, 29, 30, 41, 42, 47, 48, 49, 50, 52, 54 and sub-section (2) of section 56;
- (d) Chapter XII, except section 108.

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71. A mark shall not be registrable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified or a trade of the provision of services of the kind certified.

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72. (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 75.

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(2) Subject to the provisions of section 71, the provisions of sections 18, 19 and 22 shall apply in relation to an application under this section as they apply in relation to an application under section 18, subject to the modification that references therein to acceptance of an application shall be construed as references to authorisation to proceed with an application.

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(3) In dealing under the said provisions with an application under

Certain provisions of this Act not applicable to certification trade marks.

Registration of certification trade marks.

Applications for registration of certification trade marks.

this section, the tribunal shall have regard to the like considerations, so far as relevant, as if the application were an application under section 18 and to any other consideration relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is a certification trade mark.

73. (1) The Registrar shall consider the application made under section 72 with regard to the following matters, namely:—

Consideration of application for registration by the Registrar.

(a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered;

10 (b) whether the draft of the regulations to be filed under section 75 is satisfactory;

(c) whether in all the circumstances the registration applied for would be to the public advantage,

and may either—

15 (i) refuse the application; or

(ii) accept the application and approve the said draft of the regulations either without modification unconditionally or subject to any conditions or limitations, or to any amendments or modification of the application or of the regulations, which he thinks requisite having regard to any of the said matters.

20 (2) Except in the case of acceptance and approval without modification and unconditionally, the Registrar shall not decide any matter under sub-section (1) without giving to the applicant an opportunity of being heard.

25 74. When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, the provisions of section 21 shall apply in relation to the registration of the mark as they apply in relation to an application under section 18.

Opposition to registration of certification trade marks.

30 75. (1) There shall be filed at the Trade marks Registry in respect of every mark registered as a certification trade mark regulations for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods or services and to authorise the use of the certification trade mark, and may contain any other provisions which the Registrar may by general or special order, require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor, to certify goods or to authorise the use of the certification trade mark in accordance with the regulations); and regulations so filed shall be open to inspection in like manner as the register as provided in section 149

Filing of regulations governing the use of a certification trade mark.

35 (2) The regulations so filed may, on the application of the registered proprietor, be altered by the Registrar.

40 (3) The Registrar may cause such application to be advertised in any case where it appears to him expedient so to do, and where he does so, if within the time specified in the advertisement any person gives notice of opposition to the application, the Registrar shall not

decide the matter without giving the parties an opportunity of being heard.

Infringement of
certification
trade mark.

76. The right conferred by section 79 is infringed by any person who not being the registered proprietor of the certification trade mark or a person authorised by him in that behalf under the regulations filed under section 75, using it in accordance therewith, uses in the course of trade, a mark which is identical with, or deceptively similar to the certification trade mark in relation to any goods or services in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken as being a cause as a trade mark.

Acts not con-
stituting infring-
ement of certifi-
cation trade
marks.

77. (1) Notwithstanding anything contained in this Act, the following acts do not constitute an infringement of the right to the use of a registered certification trade marks—

(a) where a certification trade mark is registered subject to any conditions or limitations entered on the register, the use of any such mark in any mode, in relation to goods to be sold or otherwise traded in any place, or in relation to goods to be exported to any market or in relation to services for use or available for acceptance in any place, country or territory or in any other circumstances, to which having regard to any such limitations, the registration does not extend;

(b) the use of a certification trade mark in relation to goods or services certified by the proprietor of the mark if, as to those goods or services or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the 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 mark;

(c) the use of a certification trade mark in relation to goods or services adapted to form part of, or to be accessory to, other goods in relation to which the mark has been used without infringement of the right given as aforesaid 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 or services 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 or services are certified by the proprietor.

(2) Clause (b) of sub-section (1) shall not apply to the case of use consisting of the application of a certification trade mark to goods or services, notwithstanding that they are such goods or services as are mentioned in that clause if such application is contrary to the regulations referred to in that clause.

(3) Where a certification trade mark is one of two or more trade marks registered under this Act, which 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.

Cancellation or
varying of regist-
ration of certifi-
cation trade
mark.

78. The Registrar may, on the application in the prescribed manner of

any person aggrieved and after giving the proprietor an opportunity of opposing the application, 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 regulations, on any of the following grounds, namely:—

(a) that the proprietor is no longer competent, in the case of any of the goods or services in respect of which the mark is registered, to certify those goods or services;

(b) that the proprietor has failed to observe any provisions of the regulations to be observed on his part;

(c) that it is no longer to the public advantage that the mark should remain registered;

(d) that it is requisite for the public advantage that if the mark remains registered, the regulations should be varied.

79. (1) Subject to the provisions of sections 34, 35 and 77, the registration of a person as a proprietor of certification trade mark in respect of any goods or services shall, if valid, give to that person the exclusive right to the use of the mark in relation to those goods or services.

Rights conferred by registration of certification trade marks.

(2) The exclusive right to the use of a certification trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

CHAPTER X

SPECIAL PROVISION FOR TEXTILE GOODS

80. The Central Government may prescribe classes of goods (in this Chapter referred to as textile goods) to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

Textile goods.

81. (1) In respect of textile goods being piece goods—

(a) no mark consisting of a line heading alone shall be registrable as a trade mark;

(b) a line heading shall not be deemed to be capable of distinguishing;

(c) the registration of trade mark shall not give any exclusive right to the use of a line heading.

Restriction on registration of textile goods.

(2) In respect of any textile goods, the registration of letters or numerals, or any combination thereof, shall be subject to such conditions and restrictions as may be prescribed.

82. (1) Piece goods, such as are ordinarily sold by length or by the piece, which have been manufactured, bleached, dyed, printed or finished in premises which are a factory, as defined in the Factories Act, 1948, shall not be removed for sale from the list of such premises in which they underwent any of the said processes without having

Stamping of piece goods, cotton yarn and thread.

conspicuously stamped in international form of Indian numerals on each piece the length thereof*** in standard metres or in standard metres and a fraction of such a metre, according to the real length of the piece, and except when the goods are sold from the factory for export from India, without being conspicuously marked on each piece with the name of the manufacturer or of the occupier of the premises in which the piece was finally processed or of the wholesale purchaser in India of the piece. 5

(2) Cotton yarn such as is ordinarily sold in bundles, and cotton thread, namely, sewing, darning, crochet or handicraft thread, which have been manufactured, bleached, dyed or finished in any premises not exempted by the rules made under section 83 shall not be removed for sale from those premises unless, in accordance with the said rules in the case of yarn— 10

(a) the bundles are conspicuously marked with an indication of the weight of yarn in *** the metric system in each bundle; and 15

(b) the count of the yarn contained in the bundle and in the case of thread each unit is conspicuously marked with the length or weight of thread in the unit and in such other manner as may be required by the said rules; and

(c) except where the goods are sold from the premises for export from India, unless each bundle or unit is conspicuously marked with the name of the manufacturer or of the wholesale purchaser in India of the goods: 20

Provided that the rules made under section 83 shall exempt all premises where the work is done by members of one family with or without the assistance of not more than ten other employees, and all premises controlled by a co-operative society where no more than twenty workers are employed in the premises. 25

Determination
of character of
textile goods by
sampling.

83. (1) For the purposes of this Act, the Central Government may make rules— 30

(a) to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight for the number of samples to be selected and tested and for the selection of the samples.

(b) to provide for the manner in which for the purposes of section 82 cotton yarn and cotton thread shall be marked with the particulars required by that section, and for the exemption of certain premises used for the manufacture, bleaching, dyeing or finishing of cotton yarn or cotton thread from the provisions of that section; and 35 40

(c) declaring what classes of goods are included in the expression "piece goods such as are ordinarily sold by length or by the piece" for the purpose of section 82, of this Act or clause (n) of sub-section (2) of section 11 of the Customs Act, 1962. 45

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in 52 of 196

force under sub-section (1), the court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1), or of an order under sub-section (2), desires that any further samples of the goods be selected and tested, such further samples shall, on his written application and on the payment in advance by him to the court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules made by the Central Government in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in the manner prescribed under sub-section (1), or in sub-section (2), as the case may be.

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

CHAPTER XI

APPELLATE BOARD

84. The Central Government shall, by notification in the Official Gazette, establish an Appellate Board to be known as the Trade Marks Appellate Board to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Establishment of
Trade Marks
Appellate
Board.

85. (1) The Appellate Board shall consist of a Chairman and such number of other Members, * * * as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Appellate Board may be exercised by a Bench thereof.

Composition of
Appellate
Board.

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member and shall sit at such place as the Central Government may, by notification in the Official Gazette, specify.

(3) Notwithstanding any thing contained in sub-section (2), the Chairman—

(a) may, in addition to discharging the functions of the Judicial Member or Technical Member of the Bench to which he is

appointed, discharge the functions of the Judicial Member or, as the case may be, the Technical Member, of any other Bench;

(b) may transfer a Member from one Bench to another Bench;

(c) may authorise the Judicial Member or the Technical Member appointed to one Bench to discharge also the functions of the Judicial Member or the Technical Member, as the case may be, of another Bench.

(4) Where any Benches are constituted, the Central Government may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Board amongst the Benches and specify the matters which may be dealt with by each Bench.

(5) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairman shall be final.

Explanation.— For the removal of doubt, it is hereby declared that the expression “matter” includes an appeal under section 92.

(6) If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

86. (1) A person shall not be qualified for appointment as a Chairman, unless he—

(a) is, or has been, a Judge of a High Court, or

(b) has, for at least two years, held the office of a Member.

(2) A person shall not be qualified for appointment as a Judicial Member, unless he—

(a) has been a Member of the Indian Legal Service and has held the post in Grade I of that Service for at least three years; or

(b) has, for at least ten years, held a civil judicial office.

(3) A person shall not be qualified for appointment as a Technical Member, unless he—

(a) has, for at least ten years exercised functions of a tribunal under this Act or under the Trade and Merchandise Marks Act, 1958, or both, and has held a post not lower than the post of a Joint Registrar for at least five years; or

(b) has, for at least ten years, been an advocate of a proven specialised experience in trade mark law.

(4) Subject to the provisions of sub-section (5), the Chairman and every other Member shall be appointed by the President of India.

(5) No appointment of a person as the Chairman shall be made except after consultation with the Chief Justice of India.

87. The Chairman or other Members shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains—

Term of office of Chairman and Members.

(a) in the case of Chairman, the age of sixty-five years; and

(b) in the case of a Member, the age of sixty-two years, whichever is earlier.

88. (1) In the even of occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise the seniormost Member shall act as Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Senior most Member to act as Chairman or discharge his functions in certain circumstances.

(2) When the Chairman is unable to discharge his functions owing to his absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairman until the date on which the Chairman resumes his duty.

89. The salaries and allowances payable to, and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairman and other Members shall be such as may be prescribed.

Salaries, allowances and other terms and conditions of service of Chairman and Members. Resignation and removal.

90. (1) The Chairman or any other Member may, by notice in writing under his hand addressed to the President of India, resign his office:

Provided that the Chairman or any other Member shall, unless he is permitted by the President of India to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

(2) The Chairman or any other Member shall not be removed from his office except by an order made by the President of India on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairman or other Member referred to in sub-section (2).

91. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Board in the discharge of its functions and provide the Appellate Board with such officers and other employees as it may think fit.

Staff of Appellate Board.

(2) The salaries and allowances and conditions of service of the officers and other employees of the Appellate Board shall be such as may be prescribed.

(3) The officers and other employees of the Appellate Board shall

discharge their functions under the general superintendence of the Chairman, in the manner as may be prescribed.

Appeals to Appellate Board.

92. (1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder may prefer an appeal to the Appellate Board within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1):

Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period.

(3) An appeal to the Appellate Board shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order of decision appealed against and by such fees as may be prescribed:

Procedure and powers of appellate Board.

93. (1) the Appellate Board shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by principles of natural justice and subject to such provisions of this Act and the rules made thereunder, the Appellate Board shall have powers to regulate its own procedure including the fixing of places and times of its hearing.

(2) the Appellate Board shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) receiving evidence;

(b) issuing commissions for examination of witnesses;

(c) requisitioning any public record; and

(d) any other matter which may be prescribed.

(3) Any proceeding before the Appellate Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, and the Appellate Board shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Bar of jurisdiction of courts, etc.

94. No Court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters, referred to in sub-section (1) of section 92.

Bar to appear before Appellate Board.

95. On ceasing to hold office, the Chairman or other Members shall not appear before the Appellate Board or the Registrar.

Conditions as to making of interim orders.

96. Notwithstanding anything contained in any other provisions of

this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or any other manner) shall be made on, or in any proceedings relating to, an appeal unless—

(a) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter.

97. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

Power of Chairman to transfer cases from one Bench to another.

98. (1) An application for rectification of the register made to the Appellate Board under section 57 shall be in such form as may be prescribed.

Procedure for application for rectification, etc., before Appellate Board.

(2) A certified copy of every order or judgment of the Appellate Board relating to a registered trade mark under this Act shall be communicated to the Registrar by the Board and the Registrar shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

99. (1) The Registrar shall have the right to appear and be heard—

Appearance of Registrar in legal proceedings.

(a) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the Trade Marks Registry is raised;

(b) in any appeal to the Board from an order of the Registrar on an application for registration of a trade mark—

(i) which is not opposed, and the application is either refused by the Registrar or is accepted by him subject to any amendments, modifications, conditions or limitations, or

(ii) which has been opposed and the Registrar considers that his appearance is necessary in the public interest,

and the Registrar shall appear in any case if so directed by the Board.

(2) Unless the Appellate Board otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him affecting it, or of the practice of the Trade Marks Registry in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the proceeding.

100. In all proceedings under this act before the Appellate Board the costs of the Registrar shall be in the discretion of the Board, but the Registrar shall not be ordered to pay the costs of any of the parties.

Costs of Registrar in proceedings before Appellate Board.

101. All cases of appeals against any order or decision of the Registrar and all cases pertaining to rectification of register, pending before any High Court, shall be transferred to the Appellate Board

Transfer of pending proceedings to Appellate Board.

from the date as notified by the Central Government in the Official Gazette and the Appellate Board may proceed with the matter either *de novo* or from the stage it was so transferred.

CHAPTER XII

OFFENCES, PENALTIES AND PROCEDURE

5

Meaning of applying trade marks and trade descriptions.

102. (1) A person shall be deemed to apply a trade mark or mark or trade description to goods or services who—

(a) applies it to the goods themselves or uses it in relation to services; or

(b) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or

(c) places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a trade mark or mark or trade description has been applied; or

(d) uses a trade mark or mark or trade description in any manner reasonably likely to lead to the belief that the goods or services in connection with which it is used are designated or described by that trade mark or mark or trade description; or

(e) in relation to the goods or services uses a trade mark or trade description in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document, and goods are delivered or services are rendered to a person in pursuance of a request or order made by reference to the trade mark or trade description as so used.

(2) A trade mark or mark or trade description shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, the goods or to any package or other thing.

Falsifying and falsely applying trade marks.

103. (1) A person shall be deemed to falsify a trade mark who, either,—

(a) without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark; or

(b) falsify any genuine trade mark, whether by alteration, addition, effacement or otherwise.

(2) A Person shall be deemed to falsely apply to goods or services a trade mark who, without the assent of the proprietor of the trade mark,—

(a) applies such trade mark or a deceptively similar mark to goods services or any package containing goods;

(b) uses any package bearing a mark which is identical with or deceptively similar to the trade mark of such proprietor, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the proprietor of the trade mark.

45

(3) Any trade mark falsified as mentioned in sub-section (1) or falsely applied as mentioned in sub-section (2), is in this Act referred to as a false trade mark:

(4) In any prosecution for falsifying a trade mark or falsely applying a trade mark to goods or services, the burden of proving the assent of the proprietor shall lie on the accused.

104. Any person who—

Penalty for applying false trade marks, trade descriptions, etc.

(a) falsifies any trade mark; or

(b) falsely applies to goods or services any trade mark; or

10 (c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying, or of being used for falsifying, a trade mark; or

(d) applies any false trade description to goods or services; or

15 (e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 140, a false indication of such country, place, name or address; or

20 (f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 140; or

(g) causes any of the things above-mentioned in this section to be done,

25 shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

30 Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

105. Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things; or provides or hires services, to which any false trade mark or false trade description is applied or which, being required under section 140 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided as the case may be, are without the indications so required, shall, unless he proves,—

Penalty for selling goods for providing services to which false trade mark or false trade description is applied.

40 (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description or that any offence had been committed in respect of the goods or services; or

45 (b) that, on demand by or on behalf of the prosecutor, he gave all

the information in his power with respect to the person from whom he obtained such goods or things or services; or

(c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Enhanced penalty on second or subsequent conviction.

106. *Whoever having already been convicted of an offence under section 104 or section 105 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:**

Provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

Penalty for removing piece goods, etc., contrary to section 82.

107. If any person removes or attempts to remove or causes or attempts to cause to be removed for sale from any premises referred to in section 82 or sells or exposes for sale or has in his possession for sale or for any purpose of trade or manufacture piece goods or cotton yarn or cotton thread which is not marked as required by that section, every such piece and every such bundle of yarn and all such thread and everything used for the packing thereof shall be forfeited to Government and such person shall be punishable with fine which may extend to one thousand rupees.

Penalty for falsely representing a trade mark as registered.

108. (1) No person shall make any 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 separately registered as a trade mark; or

(c) to the effect that a registered trade mark is registered in respect of any goods or services in respect of which it is not in fact registered; or

(d) to the effect that 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 in fact give that right.

(2) If any person contravenes any of the provisions of sub-section

(1), he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

5 (3) For the purposes of this section, the use in India in relation to a trade mark of the word "registered", or of any other expression, symbol or sign referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

10 (a) where that word or other expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or

15 (b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

20 (c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside India and in relation solely to goods to be exported to that country or in relation to services for use in that country.

25 109. If any person uses on his place of business, or on any document issued by him, or otherwise, words which would reasonably lead to the belief that his place of business is, or is officially connected with, the Trade Marks Office, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for improperly describing a place of business as connected with the Trade Marks Office.

30 110. If any person 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, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for falsification of entries in the register.

35 111. The provisions of sections 103, 104, 105 and 106 shall, in relation to a registered trade mark or proprietor of such mark, be subject to the rights created or recognised by this Act, and no act or omission shall be deemed to be an offence under the aforesaid sections if,—

No offence in certain cases.

(a) the alleged offence relates to a registered trade mark and the act or omission is permitted under this Act; and

40 (b) the alleged offence relates to a registered or an unregistered trade mark and the act or omission is permitted under any other law for the time being in force.

45 112. (1) Where a person is convicted of an offence under section 104 or section 105 or section 106 or is acquitted of an offence under section 104 or section 105 on proof that he acted without intent to defraud, or under section 105 on proof of the matters specified in clauses (a), (b) and (c) of that section, the court convicting or acquitting him may direct the forfeiture to Government of all goods and things by

Forfeiture goods.

means of, or in relation to, which the offence has been committed, or but for such proof as aforesaid would have been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the court to which in appealable cases appeals lie from sentences of the court which directed the forfeiture.

(4) When a forfeiture is directed on a conviction, the court, before whom the person is convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

113. Where a person accused of an offence under section 104 proves—

(a) that in the ordinary course of his business he is employed on behalf of other persons to apply trade marks or trade descriptions, or as, the case may be, to make dies, blocks, machines, plates or other instruments for making, or being used in making, trade marks; and

(b) that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other thing by way of profit or commission dependent on the sale of such goods or providing of services, as the case may be; and

(c) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark or trade description; and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the trade mark or trade description was applied, he shall be acquitted.

114. (1) Where the offence charged under section 104 or section 105 or section 106 is in relation to a registered trade mark and the accused pleads that the registration of the trade mark is invalid, the following procedure shall be followed:—

(a) If the court is satisfied that such defence is *prime facie* tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Appellate Board under this Act, for the rectification of the register on the ground that the registration is invalid.

(b) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court may for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.

Exemption of certain persons employed in ordinary course of business.

Procedure where invalidity of registration is pleaded by the accused.

(c) If within a period of three months or within such extended time as may be allowed by the court, the accused fails to apply to the Appellate Board for rectification of the register, the court shall proceed with the case as if the registration were valid.

5 (2) Where before the institution of a complaint of an offence referred to in sub-section (1), any application for the rectification of the register concerning the trade mark in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the tribunal, the court shall stay the further proceedings in the
10 prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification in so far as the complainant relies upon the registration of his mark.

15 **115.** (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Offences by companies.

20 Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

25 (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and
30 punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

35 **116.** (1) No court shall take cognizance of an offence under section 108 or section 109 or section 110 except on complaint in writing made by the Registrar or any officer authorised by him in writing: Cognizance of certain offences and the power of police officer for search and seizure.

40 Provided that in relation to clause (c) of sub-section (1) of section 108, a court shall take cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered trade mark has been represented as registered in respect of any goods or services in respect of which it is not in fact registered.

(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.

45 (3) The offences under section 104 or section 105 or section 106 shall be cognizable.

(4) Any police officer not below the rank of deputy superintendent or equivalent, may if he is satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before a Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be: 5

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained. 10

(5) Any person having an interest in any articles seized under sub-section (4), may, within fifteen days of such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such articles being restored to him and the Magistrate, after hearing the applicant and the prosecution, shall make such order on the application as he may deem fit. 15

Evidence of origin of goods imported by sea.

117. In the case of goods brought into India by sea, evidence of the port of shipment shall, in a prosecution for an offence under this Act or under clause (b) of section 112 of the Customs Act, 1962, relating to confiscation of goods under clause (d) of section 111 and notified by the Central Government under clause (n) of sub section (2) of section 11 of the said Act for the protection of trade marks relating to import of goods, be *prima facie* evidence of the place or country in which the goods are made or produced. 20 25

Costs of defence or prosecution.

118. In any prosecution under this Act, the court may order such costs to be paid by the accused to the complainant on by the complaint to the accused, as the court deemed reasonable having regard to all the circumstances of the case and the conduct of the parties and the cost so awarded shall be recoverable as if they were a fine. 30

Limitation of prosecution.

119. No prosecution for an offence under this Act or under clause (b) of section 112 of the Customs Act, 1962 relating to confiscation of goods under clause (d) of section 111 and notified by the Central Government under clause (n) of sub-section (2) of section 11 of the said Act for the protection of trade marks relating to import of goods shall be commenced after expiration of three years next after the commission of the offence charged, or two years after the discovery thereof by the prosecutor, whichever expiration first happens. 35 40 52 of 1962.

Information as to commission of offence.

120. An officer of the Government whose duty it is to take part in the enforcement of the provisions of this Chapter shall not be compelled in any court to say whence he got any information as to the commission of any offence against this Act.

Punishment of abetment in India of acts done out of India

121. If any person, being within India, abets the commission, without India of any act which, if committed in India, would, under this Act, be an offence, he may be tried for such abetment in any place in India in which he may be found, and be punished therefor with the 45

punishment to which he would be liable if he had himself committed in that place the act which he abetted.

122. The Central Government may, by notification in the Official Gazette, issue instructions for the limits of variation, as regards number, quantity, measure, gauge or weight which are to be recognised by criminal courts as permissible in the case of any goods.

Instructions of Central Government as to permissible variation to be observed by criminal courts.

CHAPTER XIII

MISCELLANEOUS

10 123. No suit or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Protection of action taken in good faith.

124. Every person appointed under this Act and every Member of the Appellate Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain persons to be public servants.

45 of 1860.

15 125. (1) Where in any suit for the infringement of a trade mark—

Stay of proceedings where the validity of registration of the trade mark is questioned, etc.

(a) the defendant pleads that the registration of the plaintiff's trade mark is invalid; or

20 (b) the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff pleads the invalidity of registration of the defendant's trade mark,—

the court trying the suit (hereinafter referred to as the court), shall

25 (i) if any proceedings for rectification of the register in relation to the plaintiff's or defendant's trade mark are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

30 (ii) if no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the plaintiff's or defendant's trade mark is *prima facie* tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

35 (2) If the party concerned proves to the court that he has made any such application as is referred to in clause (b) (ii) of sub-section (1) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

40 (3) If no such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the trade mark concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.

45 (4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the court shall dispose of the suit conformably to such order in so far as

it relates to the issue as to the validity of the registration of the trade mark.

(5) The stay of a suit for the infringement of a trade mark under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction, directing accounts to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit. 5

Application for rectification of register to be made to Appellate Board in certain cases.

126. (1) Where in a suit for infringement of a registered trade mark the validity of the registration of the plaintiff's trade mark is questioned by the defendant or where in any such suit the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff questions the validity of the registration of the defendant's trade mark, the issue as to the validity of the registration of the trade mark concerned shall be determined only on an application for the rectification of the register and notwithstanding anything contained in section 47 or section 57, such application shall be made to the Appellate Board and not the Registrar. 10 15

(2) Subject to the provisions of sub-section (1), where an application for rectification of the register is made to the Registrar under section 47 or section 57, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the Appellate Board. 20

Implied warranty on sale of marked goods.

127. Where a mark or a trade mark or trade description has been applied to the goods on sale or in the contract for sale of any goods or in relation to any service, the seller shall be deemed to warrant that the mark is a genuine mark and not falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of goods or providing of services on contract to and accepted by the buyer. 25

Powers of Registrar.

128. In all proceedings under this Act before the Registrar,— 30

(a) the Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses; 35

(b) the Registrar may, subject to any rules made in this behalf under section 158, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil court;

Provided that the Registrar shall have no power 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 provision of services or to authorise the use of the mark; 40

(c) the Registrar may, on an application made in the prescribed manner, review his own decision. 45

Exercise of discretionary power by Registrar.

129. Subject to the provisions of section 132, the Registrar shall not

exercise any discretionary or other power vested in him by this Act or the rules made thereunder adversely to a person applying for the exercise of that power without (if so required by that person within the prescribed time) giving to that person an opportunity of being heard.

5 **130.** In any proceeding under this Act before the Registrar, evidence shall be given by affidavit:

Evidence before Registrar.

Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.

10 **131.** If a person who is a party to a proceeding under this Act (not being a proceeding before that Appellate Board or a court) dies pending the proceeding, the Registrar may, on request, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is
15 sufficiently represented by the surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

Death of party to a proceeding.

132. (1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a
20 time expressly provided in the Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

Extension of time.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for
25 extension of time, and no appeal shall lie from any order of the Registrar under this section.

133. Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act or any Act relating to trade marks in force prior to the commencement of this
30 Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

Abandonment.

134. (1) The Registrar may, on application made to him in the prescribed manner by any person who proposes to apply for the
35 registration of a trade mark, give advice as to whether the trade mark appears to him *prima facie* to be distinctive.

Preliminary advice by the Registrar as to distinctiveness.

(2) If, on an application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative made
40 within three months after the advice was given, the Registrar, after further investigation or consideration, gives notice, to the applicant of objection on the ground that the trade mark is not distinctive, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee
45 paid on the filing of the application.

135. (1) No suit—

(a) for the infringement of a registered trade mark; or

(b) relating to any right in a registered trade mark; or

(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding or, where there are more than one such persons any of them actually or voluntarily resides or carries on business or personally works for gain.

Explanation.— For the purpose of sub-section (2), "person" includes the registered proprietor and the registered user.

136. (1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 135 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.

(2) The order of injunction under sub-section (1) may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely:—

(a) for discovery of documents;

(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

(3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) or on account of profits in any case—

(a) where in a suit for infringement of a trade mark, the infringement complained of is in relation to a certification trade mark or collective mark; or

(b) where in a suit for infringement the defendant satisfies the court—

(i) that at the time he commenced to use the trade mark complained of in the suit he was unaware and had no

reasonable ground for believing that the trade mark of the plaintiff was on the register or that the plaintiff was a registered user using by way of permitted use; and

(ii) that when he became aware of the existence and nature of the plaintiff's right in the trade mark, he forthwith ceased to use the trade mark in relation to goods or services in respect of which it was registered; or

(c) where in a suit for passing off the defendant satisfies the court—

(i) that at the time he commenced to use the trade mark complained of in the suit he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was in use; and

(ii) that when he became aware of the existence and nature of the plaintiff's trade mark he forthwith ceased to use the trade mark complained of.

137. (1) In every proceeding under Chapter VII or under section 92, every registered user of a trade mark using by way of permitted use, who is not himself an applicant in respect of any proceeding under that Chapter or section, shall be made a party to the proceeding.

Registered user to be impleaded in certain proceedings.

(2) Notwithstanding anything contained in any other law, a registered user so made a party to the proceeding shall not be liable for any costs unless he enters an appearance and takes part in the proceeding.

138. (1) A copy of any entry in the register or of any document referred to in sub-section (1) of section 149 purporting to be certified by the Registrar and sealed with the seal of the Trade Marks Registry, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

Evidence of entries in register, etc., and things done by the Registrar.

(2) 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, or of the matter or things having been done or not done.

139. The Registrar or any officer of the Trade Marks Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special cause.

Registrar and other officers not compellable to produce register, etc.

140. (1) The Central Government may, by notification in the Official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of India and imported into India, or which are made or produced within the limits of India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an

Power to require goods to show indication of origin.

indication of the country or place in which they were made or produced, or of the name and address of the manufacturer or the person for whom the goods were manufactured.

(2) The notification may specify the manner in which such indication shall be applied, that is to say, whether to goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say, whether on importation only, or also at the time of sale, whether by wholesale or retail or both.

(3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in, or manufacturers, producers, or users of, the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, with or without such inquiry as the Central Government may consider necessary.

(4) The provisions of section 23 of the General Clauses Act, 1897, shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.

(5) A notification under this section shall not apply to goods made or produced beyond the limits of India and imported into India, if in respect of those goods, the Collector or Customs is satisfied at the time of importation that they are intended for exportation whether after transshipment in or transit through India or otherwise.

Power to require information of imported goods bearing false trade marks.

141. (1) the proprietor or a licensee of a registered trade mark may give notice in writing to the Collector of Customs to prohibit the importation of any goods if the import of the said goods constitute infringement under clause (c) of sub-section (6) of section 29.

(2) Where goods, which are prohibited to be imported into India by notification of the Central Government under clause (n) of sub-section (2) of section 11 of the Customs Act, 1962, for the protection of trade marks, and are liable to confiscation on importation under that Act, are imported into India, the Collector of Customs if, upon representation made to him, he has reason to believe that the trade mark complained of is used as a false trade mark, may require the importer of the goods, or his agent, to produce any documents in his possession relating to the goods and to furnish information as to the name and address of the person by whom the goods were consigned to India and the name and address of the person to whom the goods were sent in India.

(3) The importer or his agent shall, within fourteen days, comply with the requirement as aforesaid, and if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees.

(4) Any information obtained from the importer of the goods or his agent under this section may be communicated by the Collector or Customs to the registered proprietor or registered user of the trade mark which is alleged to have been used as a false trade mark.

Certificate of validity.

142. If in any legal proceeding for rectification of the register

before the Appellate Board a decision is on contest given in favour of the registered proprietor of the trade mark on the issue as to the validity of the registration of the trade mark, the Appellate Board may grant a certificate to that effect, and if such a certificate is granted, then in any subsequent legal proceeding in which the said validity comes into question the said proprietor on obtaining a final order or judgment in his favour affirming validity of the registration of the trade mark shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full cost, charges and expenses as between legal practitioner and client.

143. (1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding for infringement of a trade mark which is registered, or alleged by the first mentioned person to be registered, or with some other like proceeding, a person aggrieved may, whether the person making the threats is or is not the registered proprietor or the registered user of the trade mark, bring a suit against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats, and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the court that the trade mark is registered and that the acts in respect of which the proceedings were threatened constitute, or, if done, would constitute, an infringement of the trade mark.

Groundless threats of legal proceedings.

(2) The last preceding sub-section does not apply if the registered proprietor of the trade mark, or a registered user acting in pursuance of sub-section (1) of section 52, with due diligence commences and prosecutes an action against the person threatened for infringement of the trade mark.

(3) Nothing in this section shall render a legal practitioner or a registered trade marks agent liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) A suit under sub-section (1) shall not be instituted in any court inferior to a District Court.

144. An address for service stated in an application or notice of opposition shall, for the purposes of the application or notice of opposition, be deemed to be the address of the applicant or opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as the case may be.

Address for service.

145. In any suit or other proceeding relating to a trade mark, the tribunal 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.

Trade usage, etc., to be taken into consideration.

146. Where, by or under this Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person,

Agents.

the act may, subject to the rules made in this behalf, be done, instead of by that person himself, by a person duly authorised in the prescribed manner, who is—

(a) a legal practitioner, or

(b) a person registered in the prescribed manner as a trade marks agent, or

(c) a person in the sole and regular employment of the principal.

Marks registered
by an agent or
representative
without au-
thority.

147. If an agent or a representative of the proprietor of a registered trade mark, without authority uses or attempts to register or registers the mark in his own name, the proprietor shall be entitled to oppose the registration applied for or secure its cancellation or rectification of the register so as to bring him as the registered proprietor of the said mark by assignment in his favour:

Provided that such action shall be taken within three years of the registered proprietor of the trade mark becoming aware of the conduct of the agent or representative.

Indexes

148. There shall be kept under the direction and supervision of the Registrar,—

(a) an index of registered trade marks,

(b) an index of trade marks in respect of which applications for registration are pending,

(c) an index of the names of the proprietors of registered trade marks, and

(d) an index of the names of registered users.

Documents open
to public inspec-
tion.

149. (1) Save as otherwise provided in sub-section (4) of section 49,—

(a) the register and any document upon which any entry in the register is based;

(b) every notice of opposition to the registration of a trade mark, application for rectification before the Registrar, counter-statement thereto, and any affidavit or documents filed by the parties in any proceedings before the Registrar;

(c) all regulations deposited under section 64 or section 75, and all applications under section 67 or section 78 for varying such regulations;

(d) the indexes mentioned in section 148; and

(e) such other documents as the Central Government may, by notification in the Official Gazette, specify,

shall, subject to such conditions as may be prescribed, be open to public inspection at the Trade Marks Registry.

(2) Any person may, on an application to the Registrar and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the register or any document referred to in sub-section (1).

Reports of Re-
gis-trar to be
placed before
Parliament.

150. The Central Government shall cause to be placed before both

Houses of Parliament once a year a report respecting the execution by or under the Registrar of this Act.

5 **151.** (1) There shall be paid in respect of applications and registration and other matters under this Act such fees and surcharge as may be prescribed by the Central Government. Fees and surcharge

(2) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar shall not do that act until the fee has been paid.

10 (3) Where a fee is payable in respect of the filing of a document at the Trade Marks Registry, the document shall be deemed not to have been filed at the Registry until the fee has been paid.

152. Nothing in Chapter XII shall—

Savings in respect of certain matters in Chapter XII

(a) exempt any person from any suit or other proceeding which might, but for anything in that Chapter, be brought against him, or

15 (b) entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution for an offence under that Chapter or against clause (h) of section 112 of the
52 of 1962 Customs Act, 1962, relating to confiscation of goods under clause (d)
20 of section 111 of that Act and notified by the Central Government under clause (n) of sub-section (2) of section 11 thereof for the protection of trade marks relating to import of goods, or

25 (c) be construed so as to render liable to any prosecution or punishment any servant of a master resident in India who in good faith acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

30 16 of 1908. **153.** Notwithstanding anything contained in the Registration Act, 1908, no document declaring or purporting to declare the ownership or title of a person to a trade mark other than a registered trade mark shall be registered under that Act.

Declaration as to ownership of trade mark not registerable under the Registration Act, 1908.

154. The provisions of this Act shall be binding on the Government.

Government to be bound.

35 **155.** (1) With a view to the fulfilment of a treaty, convention or arrangement, with any country outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purposes of this Act.

Special provisions relating to applications for registration from citizens of convention countries.

40 (2) Where a person has made an application for the registration of a trade mark in a convention country and that person, or his legal representative or assignee, makes an application for the registration of the trade mark in India within six months after the date on which the application was made in the convention country, the trade mark shall, if registered under this Act, be registered as of the date on which the
45 application was made in the convention country and that date shall be deemed for the purposes of this Act to be the date of registration.

(3) Where applications have been made for the registration of a trade mark in two or more convention countries, the period of six months referred to in the last preceding sub-section shall be reckoned from the date on which the earlier or earliest of those applications was made.

5

(4). Nothing in this Act shall entitle the proprietor of a trade mark to recover damages for infringement which took place prior to the date of application for registration under this Act.

Provision as to
reciprocity.

156. Where any country specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of trade marks as it accords to its own nationals, no national of such country shall be entitled, either solely or jointly with any other person—

10

(a) to apply for the registration of, or be registered as the proprietor of, a trade mark,

15

(b) to be registered as the assignee of the proprietor of a registered trade mark, or

(c) to apply for registration or be registered as a registered user of a trade mark under section 49.

Power of Central Government
to remove difficulties.

157. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

20

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

25

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make
rules.

158. (1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the provisions of this Act.

30

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the matters to be included in the Register of Trade Marks under sub-section (1) of section 6;

35

(ii) the manners in which the Registrar may notify a word as an international non-proprietary name under section 13;

(iii) the manner of making an application for dissolution of an association under sub-section (5) of section 16;

(iv) the manner of making an application for registration of a trade mark under sub-section (1) of section 18;

40

(v) the manner of advertising of an application for registration under sub-section (1) and the manner of notifying corrections or amendments under sub-section (2) of section 20;

(vi) the manner of making an application and the fee payable for such application, giving notice under sub-section (1) and sending counterstatements under sub-section (2) and submission of evidence and the time therefor under sub-section (4) of section 21;

(vii) the form of certificate of registration under sub-section (2) and the manner of giving notice to the applicant under sub-section (3) of section 23;

(viii) the forms of application, the time within which such application is to be made and fee and surcharge if any payable with each application, under section 25 and the time within which the Registrar shall send a notice and the manner of such notice under sub-section (3) of that section;

(ix) the manner of submitting statement of cases under sub-section (2) of section 40;

(x) the manner of making an application by the proprietor of a trade mark under section 41;

(xi) the manner of making an application for assignment or transmission of a certification trade mark under section 43;

(xii) the manner of making an application to the Registrar to register title under sub-section (1) of section 45;

(xiii) the manner in which and the period within which an application is to be made under sub-section (4) of section 46;

(xiv) the manner of making an application under sub-section (2) of section 47;

(xv) the manners of making an application, documents and other evidence to accompany such application sub-section (1) and the manner in which notice is to be issued under sub-section (3) of section 49;

(xvi) the manner of making application under sub-section (1); the manner of issuing a notice under sub-section (2) and the procedure for cancelling a registration under sub-section (3) of section 50;

(xvii) the manner of making application under sub-section (1) and (2), the manner of giving notice under sub-section (4) and the manner of service of notice of rectification under sub-section (5) of section 57;

(xviii) the manner of making an application under section 58;

(xix) the manner of making an application under sub-section (1), the manner of advertising an application, time and manner of notice by which application may be opposed under sub-sections (2) and (3) of section 59;

(xx) the manner of advertisement under sub-section (2) of section 60;

(xxi) the other matters to be specified in the regulations under sub-section (2) of section 64;

(xxii) the manner of making an application under sub-section (1) of section 72;

(xxiii) the manner of advertising an application under section 74;

5

(xxiv) the manner of making an application under section 78;

(xxv) the classes of goods under section 80;

(xxvi) the conditions and restrictions under sub-section (2) of section 81;

(xxvii) determination of character of textile goods by sampling under section 83;

10

(xxviii) the salaries and allowances payable and other terms and conditions of service of the Chairman and other Members under section 89;

(xxix) the procedure for investigation of misbehaviour or incapacity of the Chairman and other Members under sub-section (3) of section 90;

15

(xxx) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Board under sub-section (2) and the manner in which the officers and other employees of the Appellate Board shall discharge their functions under sub-section (3) of section 91;

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(xxxi) the form of making an appeal, the manner of verification and the fee payable under sub-section (3) of section 92;

(xxxii) the form in which and the particulars to be included in the application to the Appellate Board under section 98;

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(xxxiii) the manner of making an application for review under section 128;

(xxxiv) the time within which an application is to be made to the Registrar for exercising his discretionary power under section 129;

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(xxxv) the manner of making an application and the fee payable therefor under sub-section (1) of section 132;

(xxxvi) the manner of making an application under sub-section (1) and the period for withdrawal of such application under sub-section (2) of section 134;

35

(xxxvii) the manner of authorising any person to act and the manner of registration as a trade mark agent under section 146;

(xxxviii) the conditions for inspection of documents under sub-section (1) and the fee payable for obtaining a certified copy of any entry in the register under sub-section (2) of section 149;

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(xxxix) the fees and surcharge payable for making applications, registration and other matters under section 151;

(xl) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central government under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

159. The enactment specified in the Schedule shall be amended in the manner specified therein. Amendments.

43 of 1958. 160. (1) The Trade and Merchandise Marks Act, 1958 is hereby repealed. Repeal and savings.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897, with respect to repeals, any notification, rule order, requirement, registration, certificate, notice, decision, determination, direction, approval, authorisation, consent, application, request or thing made, issued, given or done under the Trade and Merchandise Marks Act, 1958 shall, if in force at the Commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

(3) The provisions of this Act shall apply to any application for registration of a trade mark pending at the commencement of this Act and to any proceedings consequent thereon and to any registration granted in pursuance thereof.

(4) Subject to the provisions of section 101 and notwithstanding any thing contained in any other provision of this Act, any legal proceeding pending in any court at the commencement of this Act may be continued in that court as if this Act had not been passed.

(5) Notwithstanding anything contained in this Act, where a particular use of a registered trade mark is not an infringement of a trade mark registered before the commencement of this Act, then the continued use of that mark shall not be an infringement under this Act.

(6) Notwithstanding anything contained in sub-section (2), the date of expiration of registration of a trade mark registered before the commencement of this Act shall be the date immediately after the period of seven years for which it was registered or renewed:

43 of 1958. Provided that the registration of a defensive trade mark referred to in section 47 of the Trade and Merchandise Marks Act, 1958 shall cease to have effect on the date immediately after the expiry of five years of such commencement or after the expiry of the period for which it was registered or renewed, whichever is earlier.

THE SCHEDULE

(See Section 159)

AMENDMENTS

Year	Act No.	Short title	Amendment
1956	I	The Companies Act, 1956	(1) In section 20, for sub-section (2), the following sub-sections shall be sub-stituted, namely:— “(2) Without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles,— (i) the name by which a company in existence has been previously registered, or (ii) a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1993, may be deemed to be undesirable by the Central Government within the meaning of sub-section(1). (3) The Central Government may, before deeming a name as undesirable under clause (ii) of sub-section (2), consult the Registrar of Trade Marks.” (II) In section 22, in sub-section (1)— (i) for the portion beginning with “If, through” and ending with “the first-mentioned company—”, the following shall be substituted, namely:— “If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,— (i) in the opinion of the Central Government, is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, whether under this Act or any previous companies law, the first-mentioned company, or (ii) on an application by a registered proprietor of a trade mark, is in the opinion of the Central Government identical with, or too nearly resembles, a registered trade mark of such proprietor under the Trade Marks Act, 1993, such company—” (ii) the following proviso shall be added, namely:— “Provided that no application under clause (ii) made by a registered proprietor of a trade mark after five years of coming to notice of registration of the company shall be considered by the Central Government.”

APPENDIX-I

26 August 1993

PRESS COMMUNIQUE

The Trade Marks Bill, 1993 which was introduced in the Lok Sabha on the 19th April, 1993 and published in the Gazette of India, Extraordinary Part II, Section 2, dated the 19th April, 1993 has been referred to the Department Related Parliamentary Standing Committee on Industry for examination and report. The Committee consists of 42 Members of both the Houses of Parliament is headed by Shri Moturu Hanumantha Rao, M.P.

The Bill *inter-alia* propose to amend an consolidate a law relating to Trade Marks to provide for registration and better protection of Trade Marks for goods and services and for the prevention of the use of fraudulent marks.

The Committee has decided to invite suggestions/comments from concerned individuals, organisations and bodies on the various clauses of the Bill. Interested parties are, accordingly, requested through this Press Communique to send their views in the form of memorandum for the consideration of the Committee latest by 15th September, 1993. Copies of the memorandum may be sent to Shri Tapas Das Gupta, Under Secretary, Department Related Parliamentary Standing Committee on Industry, Rajya Sabha Secretariat, Parliament House, New Delhi (preferably with 75 copies both in English and Hindi of the Memorandum).

Copies of the Bill for reference purposes are available in Parliament Library, New Delhi and Libraries of all the State Legislatures in different States. Copies may also be obtained on specific request from Committee Officer, Department Related Parliamentary Standing Committee on Industry, Rajya Sabha Secretariat, Room No. 123A, Third Floor, Parliament House, New Delhi.

Sd/-
(TAPAS DAS GUPTA)
UNDER SECRETARY
Ph : 3034540

LIST OF INDIVIDUALS/ORGANISATIONS ETC. FROM WHO MEMORANDA OR COMMENTS WERE RECEIVED BY THE COMMITTEE

1. Ramfry and Sagar
Attorney-at-Law
Remfry House
8, Nangal Raya Business Centre,
New Delhi-110046.
2. The All India Patent,
Trade Marks Attorneys' Association,
C/o Shah and Shah
'A' Adium Building, 5th Floor,
1st Dhobi Talao,
Bombay-400002.
3. Trade Marks, Patents, Designs and Copyright
Owners Association of India
Army and Navy Building, 3rd Floor,
Mahatma Gandhi Road, Fort,
Bombay-400001.
4. D.P. Ahuja and Company,
53, Syed Amir Ali Avenue,
Calcutta-700019.
5. The Associated Chambers of Commerce
and Industry of India,
2nd Floor, Allahabad Bank Building,
17, Parliament Street,
New Delhi-110001.
6. Federation of Indian Chambers of Commerce
and Industry of India,
Federation House,
Tansen Marg,
New Delhi-110001.
7. Dr. S. Vedaraman
Controller General of Patents, Designs
and Trade Marks (Retd.)
Flat No. 508, 'C' Wing Manju Mahal
35, Smt. Nargis Dutt Road,
Bandra,
Bombay-400050.

8. Daswani & Daswani,
Patent and Trade Mark Attorneys
Jabakusum House, Ist Floor,
34, Chittaranjan Avenue,
Calcutta-700012.
9. S/Shri D. Parthasarathy, J. Durga Rao and K. Hema
Prakasa Roa,
3-6-104,
Skyline Theatre Lane,
Himayathnagar,
Hyderabad-500029.
10. Centre of Indian Trade Unions,
15, Talkatora Road,
New Delhi-110001.

LIST OF WITNESSES WHO TENDERED EVIDENCE BEFORE THE COMMITTEE

A. Representatives of the Ministry of Industry

1. Shri P.G. Mankad, Additional Secretary.
2. Shri G.S. Jaiya, Director.
3. Shri Puspendra Rai, Director,
4. Shri R.A. Acharya, Controller General of Trade Marks.
5. Shri K.C. Kailasam, Senior Joint Registrar of Trade Marks.

B. Representatives of the Ministry of Law, Justice and Company Affairs

1. Shri A.C.C. Unni, Additional Secretary.
2. Dr. Raghubir Singh, Joint Secretary and Legislative Counsel.
3. Shri V.K. Bhasin, Deputy Legislative Counsel.
4. Shri S.D. Singh, Assistant Legislative Counsel.

C. Representatives of Organisations and Other Individuals who have submitted Memorandum on the Trade Marks Bill, 1993

- | | |
|--|--|
| 1. Remfry and Sagar, New Delhi; | : (i) Shri R. Sampath Kumar
(ii) Shri Rajendra Kumar |
| 2. The All India Patent, Trade Marks Attorneys' Association, Bombay; | : (i) Shri V.F. Shah
(ii) Shri L.B. Desai |
| 3. Trade Marks Patents, Design and Copyright Owners Association, Bombay; | : (i) Shri C.J. Mehimkar
(ii) Shri A.V. Gadgil |
| 4. D.P. Ahuja and Company, Calcutta; | : (i) Shri D.P. Ahuja
(ii) Shri C.S. Rao |
| 5. The Associated Chambers of Commerce and Industry of India, New Delhi; | : (i) Shri Govind Hari Singhania
(ii) Shri S Narayanaswamy |
| 6. Federation of Indian Chambers of Commerce and Industry, New Delhi; and | : (i) Shri G.K. Kwatra
(ii) Shri Pravin Anand |
| 7. Dr. S. Vedaraman, former Controller General of Patents, Design and Trade Marks, Bombay. | |

MINUTES OF THE MEETINGS OF THE COMMITTEE

*XI

ELEVENTH MEETING

The Committee met at 6.00 PM on Wednesday the 25th August, 1993, in Committee Room No. 63, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Moturu Hanumantha Rao — **Chairman**

MEMBERS

RAJYA SABHA

2. Shri Rajendra Prasad Mody

LOK SABHA

3. Shrimati Kesharbai Sonajirao Kshirsagar
4. Shrimati Pratibha Devisingh Patil
5. Shri Balin Kuli
6. Shri Manoranjan Bhakta
7. Shri Harish Narayan Prabhu Zantye
8. Shrimati Sumitra Mahajan
9. Shri V. Dhananjaya Kumar
10. Shrimati Suseela Gopalan
11. Shri Puran Chandra Malik
12. Shri Tej Narayan Singh
13. Shri P.G. Narayanan
14. Shri Bolla Bulli Ramaiah

SECRETARIAT

Shri G.K. Saxena, Deputy Secretary
Shri Tapas Das Gupta, Under Secretary
Shri Sham Sher Singh, Under Secretary
Shri S.P. Goyal, Committee Officer

2. The Committee considered the Trade Marks Bill, 1993 as Introduced in the Lok Sabha and referred to it for examination and report. In this connection the Committee also considered the background note received from the Ministry of Industry and the Trade and Merchandise Marks Act, 1958. After some discussion the Committee decided to issue a press Communique inviting views from organisations/bodies and individuals on the subject matter of the Bill so as to reach the Secretariat by 15th September, 1993.

The Committee further decided to hear the Secretary of the Ministry of Industry on 15th September, 1993 by way of preliminary briefing on the need for bringing the proposed legislation

*Minutes of the 1st to Xth Meetings of the Committee relate to other matters.

and the difficulties faced by the Government in the administration of the Trade and Merchandise Marks Act, 1958.

3. * * * * *

4. The Committee then adjourned at 7.00 P.M.

XII TWELFTH MEETING

The Committee met at 11.00 A.M. on Wednesday, the 15th September, 1993 in Committee Room No. 63, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Moturu Hanumantha Rao—Chairman

MEMBERS

RAJYA SABHA

2. Shrimati Chandrika Abhinandan Jain
3. Shri Rajendra Prasad Mody
4. Shri V. Rajeshwar Rao
5. Shri Ish Dutt Yadav

LOK SABHA

6. Shri K.H. Muniyappa
7. Shrimati Kesharbai Sonajirao Kshirsagar
8. Shrimati Pratibha Devisingh Patil
9. Shri Balin Kuli
10. Shri Manoranjan Bhakta
11. Shri Chiranji Lal Sharma
12. Shri Mullappally Ramachandran
13. Shri Udaysingrao Gaikwad
14. Shri M. Baga Reddy
15. Shri Harish Narayan Prabhu Zantye
16. Shri Rajendra Agnihotri
17. Shri V. Dhananjaya Kumar
18. Shri S.N. Vekaria
19. Shri Prabhu Dayal Katharia
20. Shri Satyanarayan Jatiya
21. Shri Mohan Singh (Deoria)
22. Shri Manjay Lal
23. Shrimati Suseela Gopalan
24. Shri Puran Chandra Malik
25. Shri Tej Narayan Singh
26. Shri Bolla Bulli Ramaiah

SECREATARIAT

Shri G.K. Saksena, Deputy Secretary
Shri Shamsher Singh Rana, Under Secretary
Shri Jagmohan Sundriyal, Committee Officer

WITNESSES

Representatives of the Ministry of Industry:

1. Shri P.G. Mankad, Additional Secretary
 2. Shri G.S. Jaiya, Director
 3. Shri K.C. Kailasam, Joint Registrar of Trade Marks
2. The Committee heard the oral evidence of the above mentioned witnesses on the various provisions of the Trade Marks Bill, 1993. The Committee felt that the issues points identified by the Members during the discussion need further clarifications. The Committee asked the witnesses to send a further on the raised during the discussion for its consideration.

A verbatim record of the discussion was kept.

3. The Committee then adjourned at 1.45 P.M. to meet again at 11.00 A.M. on 16th September, 1993.

***XVI SIXTEENTH MEETING**

The Committee met at 11.00 A.M. on Tuesday, the 12th October, 1993 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Moturu Hanumantha Rao—Chairman

MEMBERS

RAJYA SABHA

2. Shri Bhubaneswar Kalita
3. Shri Rajendra Prasad Mody
4. Shri Santosh Kumar Sahu
5. Shri Ish Dutt Yadav
6. Shri Nyodek Yonggam

LOK SABHA

- * 7. Shri Guruda Kamat
8. Shrimati Prātibha Devisingh Patil
9. Shri Rama Krishna Konathala
10. Shri Balin Kuli
11. Shri Manoranjan Bhakta
12. Shri Chiranji Lal Sharma
13. Shri Mullappaly Ramachandran
14. Shri Udaysingrao Gaikwad
15. Shri M. Baga Reddy
16. Shri Harish Narayan Prabhu Zantye
17. Shrimati Sumitra Mahajan
18. Shri V. Dhananjaya Kumar
19. Shri S.N. Vekaria
20. Shri Satyanarayan Jatiya
21. Shri Mohan Singh (Deoria)
22. Shri Naval Kishore Rai
23. Shri Manjay Lal

24. Shrimati Suseela Gopalan
25. Shri Puran Chandra Malik
26. Shri Tej Narayan Singh
27. Shri Bolla Bulli Ramaiah

SECRETARIAT

Shri G.K. Saksena, Deputy Secretary
 Shri S.S. Rana, Under Secretary
 Shri Jagmohan Sundriyal, Committee Officer

WITNESSES

Representatives of the Ministry of Law, Justice and Company Affairs:

1. Shri A.C.C. Unni, Additional Secretary
2. Dr. Raghubir Singh, Joint Secretary and Legislative Counsel
3. Shri V.K. Bhasin, Deputy Legislative Counsel
4. Shri S.D. Singh, Assistant Legislative Counsel

2. The Committee heard the oral evidence of the above mentioned witnesses on the Trade Marks Bill, 1993. The Committee directed the Secretariat to send a copy each of the memorandum received by the Committee on the Bill to the witnesses and asked them to send their comments on the suggestions contained therein within 2 weeks.

A verbatim record of the evidence was kept.

3. The Committee further decided that the Ministry of Industry, being the administrative Ministry, may also be asked to submit their reactions on the Memoranda received by the Committee within two weeks.

4. The Committee then adjourned at 1.05 P.M. to meet again at 11.00 A.M. on the 13th October, 1993.

***XIX**

NINETEENTH MEETING

The Committee met from 11.00 A.M. to 1.45 P.M. and again from 3.00 P.M. to 5.50 P.M. on Wednesday, the 10th November, 1993 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Moturu Hanumantha Rao — **Chairman**

MEMBERS

RAJYA SABHA

2. Shrimati Chandrika Abhinandan Jain
3. Shri Santosh Kumar Sahu

LOK SABHA

4. Shri K.H. Muniyappa
5. Shri Rama Krishna Konathala
6. Shri Balin Kuli
7. Shri Chiranji Lal Sharma

8. Shri Mullappally Ramachandran
9. Shri M. Baga Reddy
10. Shri Harish Narayan Prabhu Zantye
11. Shri V. Dhanajaya Kumar
12. Shri Ramdew Ram
13. Shri Mohan Singh (Deoria)
14. Shri Manjay Lal
15. Shrimati Suseela Gopalan
16. Shri Purna Chandra Malik
17. Shri Tej Narayan Singh
18. Shri P.G. Narayanan
19. Shri Bolla Bulli Ramaiah

SECRETARIAT

Shri G.K. Saksena, Deputy Secretary

Shri S.S. Rana, Under Secretary

Shri Jagmohan Sundriyal, Committee Officer

WITNESSES

I- Representatives of Organisations and Other Individuals who have Submitted Memorandum on the Trade Marks Bill, 1993

- | | | |
|--|---|--------------------------------|
| 1. Remfry and Sagar, New Delhi; | : | (i) Shri R. Sampath Kumar |
| | | (ii) Shri Rajendra Kumar |
| 2. The All India Patent, Trade Mark Attorneys' Association, Bombay; | : | (i) Shri V.F. Shan |
| | | (ii) Shri L.B. Desai |
| 3. Trade Marks Patents, Design and Copyright Owners Association, Bombay; | : | (i) Shri C.J. Mehimkar |
| | | (ii) Shri A.V. Gadgil |
| 4. D.P. Ahuja and Company, Calcutta | : | (i) Shri D.P. Ahuja |
| | | (ii) Shri C.S. Rao |
| 5. The Associated Chambers of Commerce and Industry of India, New Delhi; | : | (i) Shri Govind Hari Singhania |
| | | (ii) Shri S. Narayanaswamy |
| 6. Federation of Indian Chambers of Commerce and Industry, New Delhi; and: | : | (i) Shri G.K. Kwatra |
| | | (ii) Shri Pravin Anand |
| 7. Dr. S. Vedaraman, former Controller General of Patents, Design and Trade Marks, Bombay. | | |

II * * * * *

2. The Committee heard the oral evidence of the witnesses at I above on the various clauses of the Trade Marks Bill, 1993.

A verbatim record of the evidence was kept.

3. * * * * *

4. * * * * *

5. The Committee then adjourned at 5.50 P.M. to meet again at 11.00 A.M. on 11th November, 1993.

***XXI**

TWENTY FIRST MEETING

The Committee met from 11.00 A.M. on Thursday, the 25th November, 1993 in Committee Room 'A' ground floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Moturu Hanumantha Rao — Chairman

MEMBERS

RAJYA SABHA

2. Shri Ramdas Agarwal
3. Shrimati Chandrika Abhinandan Jain
4. Shri J.P. Javali
5. Shri Bhubaneswar Kalita

LOK SABHA

6. Shri Balin Kuli
7. Shri Manoranjan Bhakta
8. Shri Mullappally Ramachandran
9. Shri Harish Narayan Zantye
10. Shri V. Dhananjay Kumar
11. Shri S.N. Vekaria
12. Shri Mohan Singh (Deoria)
13. Shri Manjay Lal
14. Shrimati Suseela Gopalan
15. Shri Puran Chandra Malik
16. Shri Tej Narayan Singh
17. Shri P.G. Narayanan

SECRETARIAT

Shri S.S. Rana, Under Secretary
Shri Jagmohan, Sundriyal, Committee Officer

SPECIAL INVITEES

Representatives of the Ministry of Law, Justice and Company Affairs;

1. Dr. Raghubir Singh, Joint Secretary and Legislative Counsel
2. Shri S.D. Singh, Assistant Legislative Counsel

WITNESSES

Representatives of the Ministry of Industry:

1. Shri P.G. Mankad, Additional Secretary

2. Shri Puspendra Rai, Director
 3. Shri K.C. Kailsam, Senior Joint Registrar, Trade Marks
 4. Shri R.A. Acharya, Controller General of Trade Marks
2. The Committee heard the oral evidence of the above mentioned witnesses in connection with the various clauses of the Trade Marks Bill, 1993.
- A varbatim record of the evidence was kept.
3. The Committee then adjourned at 1.30 P.M. to met again at 3.00 P.M. on the 26th November, 1993.

***XXVI**
TWENTY SIXTH MEETING

The Committee met at 11.00 A.M. on Wednesday, the 19th January, 1994 in Committee Room No. 63, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Moturu Hanumantha Rao — **Chairman**

MEMBERS

RAJYA SABHA

2. Shri Ramdas Agarwal
3. Shrimati Chandrika Abhinandan Jain
4. Shri Rajendra Prasad Mody
5. Shri V. Rajeshwar Rao
6. Shri Santosh Kumar Sahu
7. Shri Jibon Roy

LOK SABHA

8. Shri Gurudas Kamat
9. Shri Rama Krishna Konathala
10. Shri Manoranjan Bhakta
11. Shri Chiranjilal Sharma
12. Shri Mullapally Ramachandran
13. Shri Udaysingrao Gaikwad
14. Shri M. Baga Reddy
15. Shri Harish Narayan Prabhu Zantye
16. Shri V. Dhananjaya Kumar
17. Shri S.N. Vekaria
18. Shri Prabhu Dayal Katharia
19. Shri Satyanarayan Jatiya
20. Shri Manjay Lal
21. Shrimati Suseela Gopalan
22. Shri Purna Chandra Malik

23. Shri Tej Narayan Singh

24. Shri P.G. Narayanan

SECRETARIAT

Shri G.K. Saksena, Deputy Secretary

Shri S.S. Rana, Under Secretary

Shri Jagmohan Sundriyal, Committee Officer

2. ***** The Committee also directed the Secretariat to prepare the draft report on the Trade Marks Bill, 1993.

3. The Committee then considered its future programme and decided to meet on 8th, 9th and 10th February, 1994 respectively.

A verbatim record of the proceeding was kept.

4. The Committee then adjourned at 1.00 P.M.

XXXIV

THIRTY FOURTH MEETING

The Committee met at 6.00 P.M. on Thursday, the 17th March, 1994 in Committee Room No. 63, Parliament House, New Delhi.

PRESENT

1. Shri Moturu Hanumantha Rao— Chairman

MEMBERS

RAJYA SABHA

2. Shrimati Chandrika Abhinandan Jain

3. Shri J.P. Javali

4. Shri Bhubaneswar Kalita

5. Shri Rajendra Prasad Mody

6. Shri V. Rajeshwar Rao

LOK SABHA

7. Shri K.H. Muniyappa

8. Shrimati Pratibha Devisingh Patil

9. Shri Rama Krishna Konathala

10. Shri Balin Kuli

11. Shri Manoranjan Bhakta

12. Shri Vishveshwar Bhagat

13. Shri Chiranji Lal Sharma

14. Shri Udaysingrao Gaikwad

15. Shri M. Baga Reddy

16. Shri Rajendra Agnihotri

17. Shri S.N. Vekaria

18. Shri Manjay Lal
19. Shrimati Suseela Gopalan
20. Shri Purna Chandra Malik
21. Shri Tej Narayan Singh
22. Shri Bolla Bulli Ramaiah

SECRETARIAT

Shri G.K. Saksena, Deputy Secretary
 Shri S.S. Rana, Under Secretary
 Shri Jagmohan Sundriyal, Committee Officer

2. * * * * *

3. Thereafter the Chairman of the Committee informed the Committee about receipt of Note of dissent from Shrimati Suseela Gopalan, M.P. and S/Shri Purna Chandra Malik and Jibon Roy, M.P.s with regard to the draft Sixth Report on the Trade Marks Bill, 1993. The Chairman directed the Secretariat to circulate these notes to the Members of the Committee. The Committee then deferred the consideration of the said draft report and decided to take up the same on 31st March, 1994.

A summary of the proceedings was kept.

4. * * * * *

5. The Committee then adjourned at 6.15 P.M.

XL

FORTIETH MEETING

The Committee met at 3.00 P.M. on the 31st March, 1994 in Committee Room No. 63, Parliament House, New Delhi.

PRESENT

1. Shri Moturu Hanumantha Rao — **Chairman**

MEMBERS

RAJYA SABHA

2. Shri Ramdas Agarwal
3. Shri J.P. Javali
4. Shri Bhubaneswar Kalita
5. Shri V. Rajeshwar Rao
6. Shri K.K. Veerappan
7. Shri Ish Dutt Yadav
8. Shri Jibon Roy

LOK SABHA

9. Shri K.H. Muniyappa

10. Shri Rama Krishna Konathala
11. Shri Balin Kuli
12. Shri Manoranjan Bhakta
13. Shri Vishveshwar Bhagat
14. Shri Chiranji Lal Sharma
15. Shri Mullapally Ramachandran
16. Shri M. Baga Reddy
17. Shri Harish Narayan Prabhu Zantye
18. Shri Rajendra Agnihotri
19. Shri Ramdew Ram
20. Shri Naval Kishore Rai
21. Shri Manjay Lal
22. Shrimati Suseela Gopalan
23. Shri Purna Chandra Malik

SECRETARIAT

Shri G.K. Saksena, Deputy Secretary

Shri S.S. Rana, Under Secretary

Shri Jagmohan Sundriyal, Committee Officer

2. The Committee considered the draft Report on the Trade Marks Bill, 1993 and after some discussion adopted it unanimously with some minor changes. The Committee decided to present the Report on 21st April, 1994 and authorised SSh. Jibon Roy and Ramdas Agarwal to present the Report to the Rajya Sabha. The Committee authorised SSh. Harish Narayan Prabhu Zantye and Purna Chandra Malik to lay a copy of the Report on the Table of Lok Sabha on behalf of the Committee.

A Summary of the Proceedings was kept.

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|----|---|---|---|---|---|---|
| 3. | * | * | * | * | * | * |
| 4. | * | * | * | * | * | * |
| 5. | * | * | * | * | * | * |

6. The Committee then adjourned at 5.30 P.M.