



ST CHRISTOPHER AND NEVIS

CHAPTER 18.22

MARKS, COLLECTIVE MARKS AND TRADE NAMES ACT

and Subsidiary Legislation

Revised Edition

showing the law as at 31 December 2002

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CHAPTER 18.22

MARKS, COLLECTIVE MARKS AND TRADE NAMES ACT

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CHAPTER 18.22

MARKS, COLLECTIVE MARKS AND TRADE NAMES ACT

AN ACT to provide for the protection of Marks, Collective Marks and Trade Names in Saint Christopher and Nevis; and to provide for related or incidental matters.

PART I – PRELIMINARY

1. **Short title.**

This Act may be cited as the Marks, Collective Marks and Trade Names Act.

2. **Interpretation.**

In this Act, unless the context otherwise requires,

“collective mark” means a visible sign designated as such in the application for registration and capable of distinguishing the origin or other common characteristic, such as the quality, of goods or services of different enterprises which use the sign under the control of the registered owner of that sign;

“Court” means the High Court;

“International Classification” means the classification according to the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks, of June 15, 1957, as last revised;

“mark” means any visible sign capable of distinguishing the goods (“trademark”) or services (“service mark”) of an enterprise;

“Minister” means the Minister responsible for marks, collective marks and trade names;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised;

“priority date” means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

“Register” means the Register of Marks referred to in section 23 of this Act;

“Registrar” means the Registrar responsible for registering Marks;

“trade name” means the name or designation by which a business or enterprise is identified and distinguished.

*PART II – MARKS***3. Acquisition of exclusive right to a mark.**

The exclusive right to a mark, as conferred by this Act, shall be acquired by registration in accordance with the provisions of this Act.

4. Registrability of mark.

A mark shall not be registrable if it is

- (a) incapable of distinguishing the goods or services of one enterprise from those of other enterprises;
- (b) contrary to public order or morality;
- (c) likely to mislead the public or trade circles, in particular, as regards the geographical origin of goods or services concerned or their nature or characteristics;
- (d) identical to, or is an imitation of, or contains as an element, an armorial bearing, flag or other emblem, a name or abbreviation or initials of the name of or official sign or hallmark adopted by, any State, inter-governmental Organisation or Organisation created by an international convention, unless authorised by the competent authority of that State or Organisation;
- (e) identical to, or confusingly similar to, or constitutes a translation of, a mark or trade name which is well known in Saint Christopher and Nevis for identical or similar goods or services of another enterprise, or if it is well-known and registered in Saint Christopher for goods or services which are not identical, or similar to those in respect of which registration is applied for, provided, in the latter case, that
 - (i) use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark; and
 - (ii) the interests of the owner of the well-known mark are likely to be prejudiced by such use; or
- (f) identical to a mark belonging to a different owner and already on the Register, or with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services, or if it so nearly resembles such a mark as to be likely to deceive or cause confusion.

5. Application for registration.

(1) An application for the registration of a mark shall be filed with the Registrar on the prescribed form and shall contain the following:

- (a) a request that the mark be registered;
- (b) a reproduction of the mark; and

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- (c) a list of the goods or services for which registration of the mark is requested, listed under the applicable class or classes of the International Classification.
- (2) The application shall be accompanied by the prescribed application fee.
- (3) The application may contain a declaration claiming the priority, as provided for in the Paris Convention, of an earlier national or regional application filed by the applicant or his or her predecessor in title in or for any State party to the Convention or any member of the World Trade Organisation, in which case the Registrar may require that the applicant furnishes, within the prescribed time limit, a copy of the earlier application, certified as correct by the Office with which it was filed.
- (4) The effect of the declaration shall be as provided in the Paris Convention.
- (5) Where the requirements of subsection (3) of this section and any regulations pertaining to that subsection have not been satisfied, the declaration shall be considered not to have been made.
- (6) The applicant may withdraw the application at anytime before the mark is registered.

6. Examination of application.

- (1) The Registrar shall examine the application to determine whether it complies with the requirements of subsections (1) and (2) of section 5 of this Act and the Regulations pertaining to those subsections.
- (2) The Registrar shall also examine and determine whether the mark is a mark as defined in section 2 of this Act and complies with the requirements of paragraphs (a), (b), (c), (d) and (e) of section 4 of this Act.
- (3) Where the Registrar finds that the requirements referred to in subsections (1) and (2) of this section are fulfilled, he or she shall forthwith cause the application, as accepted, to be published in the *Gazette* in the prescribed manner.

7. Opposition to registration.

- (1) Any interested person may, within the prescribed period and in the prescribed manner, give notice to the Registrar of opposition to the registration of the mark on the ground that one or more of the requirements of section 4 of this Act and the regulations pertaining to that section have not been fulfilled, or that the mark is not a mark as defined in section 2 of this Act.
- (2) The Registrar shall send forthwith a copy of the notice to the applicant who shall, within the prescribed period and in the prescribed manner, file, with the Registrar, a counter-statement of the grounds on which he or she relies for his or her application.
- (3) The applicant shall be deemed to have abandoned his or her application if he or she fails to comply with the provisions of subsection (2) of this section.

(4) Where the applicant files a counter-statement, the Registrar shall forthwith furnish a copy of the statement to the person who gave notice of opposition and, after hearing the parties, if they wish to be heard, and considering the merits of the case, shall decide whether the mark should be registered or not.

(5) After an application is published and until the registration of the mark, the applicant shall have the same privileges and rights as he or she would have if the mark had been registered, except that it shall be a valid defence to an action brought under this section in respect of an act done after the application was published if the defendant establishes that the mark could not validly have been registered at the time the act was done.

8. Registration of mark.

(1) Where the Registrar finds that the requirements for the registration of a mark are fulfilled, and the registration of the mark is not opposed within the prescribed time limit, or the registration of the mark is opposed but is decided in the applicant's favour, he or she shall

- (a) register the mark in the Register;
- (b) publish a reference to the registration in the *Gazette*; and
- (c) issue, to the applicant, a certificate of registration.

(2) Where the requirements for registration are not satisfied or an application is successfully opposed, the Registrar shall refuse the application.

9. Rights conferred by registration of mark.

(1) No person shall use a registered mark in relation to any goods or services for which it is registered unless he or she has the authorisation of the owner to do so.

(2) The registered owner of a mark shall, in addition to any other rights, remedies or actions available to him or her, have the right to institute court proceedings against any person who infringes the mark by using the mark without his or her authorisation or who performs acts which make it likely that infringement will occur.

(3) The right conferred under subsection (2) of this section shall extend to the use of a sign similar to the registered mark and use in relation to goods and services similar to those for which the mark has been registered, where confusion may arise in the public.

(4) The rights conferred by the registration of a mark shall not extend to the use of the mark in respect to goods which are put on the market by the registered owner or with his or her consent.

(5) The rights in a mark may be assigned or transferred by succession.

10. Duration and renewal of registration.

(1) The registration of a mark shall expire ten years from the filing date of the application for registration but may, upon the written request of the registered owner and payment of the prescribed renewal fee, be renewed for consecutive periods of ten years.

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(2) Where the period prescribed for the payment of the renewal fee expires and payment of the fee has not been made, the Registrar shall give the registered owner of the mark a period of grace not exceeding six months within which to pay the renewal fee.

(3) The registered owner of the mark shall, when paying the renewal fee in accordance with subsection (2) of this section, also pay, to the Registrar, the surcharge prescribed for late payment.

11. **Invalidation of mark.**

(1) The court may, on the application of any interested party, invalidate the registration of a mark on the ground that

- (a) it is not a mark as defined in section 2 of this Act; or
- (b) the requirements of section 4 of this Act have not been satisfied.

(2) Where the court invalidates the registration of a mark, the registrar shall, as soon as possible, record the invalidation in the register and publish a reference thereto in the *Gazette*, and the invalidation shall be deemed to have been effective as of the date of the registration of the mark.

12. **Removal of mark from Register.**

(1) The court may, on the application of any interested person, order the removal, from the Register, of a mark in respect of any of the goods or services in respect of which it is registered on the ground that up to one month prior to filing the request the mark had, after its registration, not been used by the registered owner or a licensee during a continuous period of three years or longer.

(2) The court shall not order the removal of a registered mark from the Register if the owner shows that special circumstances existed which prevented the use of the mark, and that there was, in relation to the goods or services referred to in subsection (1) of this section, no intention not to use the mark or to abandon it.

13. **Licensing of marks.**

(1) The owner of a registered mark or an application for the registration of a mark may grant licences in respect of that mark.

(2) A copy of each licence contract concerning a registered mark or an application for the registration of a mark shall provide for the effective control, by the licensor, of the quality of the goods or services of the licensee in connection with which the mark is used.

(3) Any licence contract made in relation to the registration of a mark or an application for the registration of a mark shall provide for the effective control, by the licensor, of the quality of the goods or services of the licensee in connection with which the mark is used.

(4) Where the licence contract does not provide for the quality control or if the quality control is not effectively carried out, the licence contract shall be invalid.

(5) A licence contract shall have no effect against third parties unless it has been recorded.

PART III – COLLECTIVE MARKS

14. Collective marks.

(1) Subject to subsections (2) and (3) of this section, and section 15 of this Act, sections 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 shall apply to collective marks.

(2) An application for the registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the regulations governing the use of the collective mark.

(3) The registered owner of a collective mark shall notify the Registrar of any changes made in respect of the regulations referred to in subsection (2) of this section.

(4) For the purposes of subsection (2) of this section, “regulations” means the regulations made by the person under whose control the collective mark may be used.

15. Invalidation of collective mark.

In addition to the grounds set out in section 11 of this Act, the court shall invalidate the registration of a collective mark if the person requesting the invalidation proves that only the registered owner uses the mark, or that he or she uses or permits its use in contravention of the regulations referred to in section 14 (2) of this Act, or that he or she uses or permits its use in a manner which is liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

16. Licensing of collective mark.

The registration of a collective mark, or an application for the registration of, may not be the subject of a licence contract.

PART IV – TRADE NAMES

17. Trade names.

(1) A name or designation shall not be used as a trade name if, by its nature or the use to which it may be put, it is contrary to public order or morality and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

(2) Notwithstanding any law requiring the registration of trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(3) The use of any trade name by a third party, whether as a trade name or a mark or collective mark, or the use of a similar trade name or mark, that is likely to mislead the public, is unlawful.

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PART V – GENERAL PROVISIONS

18. Where documents not in English.

Any application or other document filed under this Act shall, if not in English, be accompanied by a translation thereof in English, verified by the translator that the translation is, to the best of his or her knowledge, complete and faithful.

19. Changes in ownership.

(1) Any change in the ownership of the registration of a mark or collective mark, or in the ownership of an application therefor shall be

- (a) in writing and addressed to the Registrar;
- (b) recorded in the Register by the Registrar at the request of any interested party; and
- (c) published by the Registrar in the *Gazette*, except in the case of an application.

(2) A change referred to in subsection (1) of this section shall have no effect against third parties unless it has been recorded.

(3) Any change in the ownership of the registration of a collective mark, or in the ownership of an application therefor shall require the prior written approval of the Minister.

(4) Any change in the ownership of a trade name shall be made with the transfer of the enterprise or part thereof identified by that name and shall be in writing.

(5) A change in ownership of the registration of a mark or a collective mark shall be invalid if it is likely to deceive or cause confusion, particularly in regard to the nature, origin, manufacturing process, characteristics, or suitability for their purpose, of the goods or services in relation to which the mark or collective mark is intended to be used or is being used.

20. Agents.

(1) Where an applicant's ordinary residence or principal place of business is outside Saint Christopher and Nevis, he or she shall be represented by a legal practitioner resident and practising in Saint Christopher and Nevis in accordance with the relevant law.

21. Registrar.

(1) The Registrar shall perform the functions and exercise the powers conferred on him or her by this Act and any other enactment.

(2) Without derogating from the generality of subsection (1) of this section, the Registrar shall

- (a) perform all functions relating to the registration of marks and collective marks;
- (b) administer registered marks and collective marks as specified in this Act and the Regulations made under this Act;

- (c) superintend and perform all duties required by this Act and the Regulations made under this Act; and
- (d) carry out studies, programmes or exchanges of items or services recording domestic and international law on marks, collective marks, and trade names.

22. Register.

(1) The Registrar shall maintain a register, to be known as the Register of Marks, in which he or she shall record all matters required by this Act or the Regulations made under this Act to be recorded.

(2) The registrar shall register collective marks in a special section of the Register created for that purpose.

(3) Any person may, upon payment of the prescribed fees and in accordance with the prescribed conditions, consult, inspect or make a copy of, or obtain an extract from, the Register.

(4) The Register shall be *prima facie* evidence of anything required or authorised by this Act to be registered, and shall be admissible and sufficient evidence of anything registered in the register.

(5) A certificate purporting to be signed by the Registrar and certifying that any entry which he or she is authorised to make by this Act has or has not been made, or that any other thing which he or she is so authorised to do has or has not been done, shall be *prima facie* evidence, and shall be admissible and sufficient evidence, of the matter so certified.

(6) Each of the following, that is to say, a copy of

- (a) an entry in the Register or an extract from the Register which is supplied under subsection (3) of this section;
- (b) any document kept in the Registrar's Office, or an extract from such document, or any matter which has been published under this Act, which purports to be a certified copy or a certified extract;

shall be admitted in evidence without production of the original, and such evidence shall be sufficient evidence of the matters stated therein.

(7) In this section, "certified copy" and "certified extract" means a copy and extract certified by the Registrar and sealed with his or her seal.

23. Correction of errors.

(1) The Registrar may, of his or her own volition or upon the written request of any interested person, correct any clerical error or error of translation or transcription in any application filed under this Act, or in any document filed in pursuance of such application, and the Registrar may also correct any clerical error in the Register.

(2) Subsection (1) of this section shall not be construed as giving the Registrar the power to correct the register, any application or document in a material way.

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24. Extension of time for applications.

(1) Where the Registrar is satisfied that the circumstances justify it, he or she may, upon the written request of any interested person, and upon such terms as he or she may direct, extend the time for doing any act or taking any proceeding under this Act or the Regulations, and shall give written notice to the parties concerned.

(2) The extension may be granted though the time for doing the act or taking the proceedings has expired.

25. Exercise of discretionary power.

The Registrar shall give any party to a proceeding before him or her the discretionary opportunity of being heard before exercising any discretionary power vested in him or her under this Act or the Regulations made under this Act if the exercise of the powers might adversely affect that party.

26. Jurisdiction of court.

(1) The court shall have jurisdiction in cases of disputes relating to the application of this Act and the Regulations made under this Act and in matters which, under this Act, may be brought before it.

(2) Any person who is aggrieved by a decision of the Registrar under this Act may, within two months of that decision, appeal to the court.

27. Infringement.

(1) Subject to section 9.(4) of this Act, an infringement shall consist of the performance, in Saint Christopher and Nevis, of any act referred to in section 9 of this Act by a person, other than the owner of the title of protection, and without the agreement of the latter.

(2) On the application of the owner of the title of protection, or of a licensee if he or she has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so, the court may

- (a) grant an injunction to prevent
 - (i) infringement,
 - (ii) an imminent infringement, or
 - (iii) an unlawful act referred to in sections 17 (2) and (3), and 28 (2) of this Act;
- (b) award damages;
- (c) order the seizure, forfeiture or destruction of
 - (i) any infringing product or article, or of any product or article of which the infringing product or article forms an inseparable part; and
 - (ii) any article, instrument or thing by means of which any infringing product or article was produced; or
- (d) grant any other remedy provided for in the general law.

28. Offences.

(1) Any person who performs an act which constitutes an infringement as defined in section 27 of this Act or an unlawful act as defined in section 17 (3) of this Act commits an offence and is liable, on conviction, to a fine of not less than ten thousand dollars and not exceeding thirty thousand dollars, or imprisonment for a term of not less than three years and not exceeding ten years, or both.

(2) Any person who

- (a) forges a mark or collective mark;
- (b) makes any die, block, machine or other instrument for the purposes of forging or of being used for forging a mark or collective mark;
- (c) disposes of, or has, in his or her possession, any such die, block, machine or other instrument;
- (d) sells, or has, in his or her possession for sale, any goods to which is affixed a forged mark or collective mark;
- (e) imports, into Saint Christopher and Nevis
 - (i) any product or article bearing a forged mark or collective mark;
or
 - (ii) any other infringing product or article;

commits an offence, and shall be liable, on conviction, to a fine of not less than fifteen thousand dollars and not exceeding forty thousand dollars, or imprisonment for a term of not less than five years and not exceeding twelve years, or both.

(3) Any person who, knowing the same to be false,

- (a) makes or causes to be made a false entry in the Register;
- (b) makes or causes to be made any document falsely purporting to be a copy of an entry in the Register; or
- (c) produces, tenders or causes to be produced in evidence any such entry or copy thereof;

commits an offence, and shall be liable, on conviction, to a fine of not less than ten thousand dollars and not exceeding thirty thousand dollars, or to imprisonment for a term of not less than three years and not exceeding ten years, or both.

(4) Any person who, for the purpose of

- (a) deceiving the Registrar or any other officer in the execution of his or her duties under this Act; or
- (b) procuring or influencing the doing or omission of any act under this Act;

makes a false statement or representation knowing the same to be false, commits an offence, and shall be liable, on conviction, to a fine of not less than five thousand dollars and not exceeding twenty thousand dollars, or imprisonment for a term of not less than two years and not exceeding five years, or both.

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29. Registrar's annual report.

The Registrar shall, before 1st June every year, make an annual report to the Minister regarding the operation of this Act and the discharge of his or her functions under this Act.

30. Regulations.

The Minister may generally make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing, he or she may make regulations providing for any matter which is to be prescribed under this Act.

31. Application of international treaties.

The provisions of any international treaty in respect of Marks, Collective Marks, and Trade Names to which Saint Christopher and Nevis is a party shall apply to matters dealt with by this Act, and, in case of conflict with the provisions of this Act, shall prevail over the latter.

FIRST SCHEDULE**TRADE MARKS RULES**

(Saved by section 19 of Interpretation Act, Cap. 1.02)

*PART I – PRELIMINARY***1. Short title.**

These Rules may be cited as the Trade Marks Rules.

2. Classification of Goods.

For the purposes of these rules goods are classified in the manner appearing in Schedule 1 to these Rules.

3. Determination of Doubts as to Classes.

If any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the Registrar.

4. Fees.

The fees to be charged in pursuance of these rules are the fees specified in Schedule 2 to these Rules.

5. Registration.

A trade mark or trade marks may be registered in pursuance of the same application by the same person in respect of all or any goods, subject to payment of the additional fees specified in Schedule 2 to these Rules in respect of the registration of different trade marks or the extension of the same trade mark to goods in different classes.

*PART II – APPLICATION FOR REGISTRATION***6. Statement and Declaration on Application for Registration.**

(1) Any person, whether a British subject or an alien, desiring to register a trade mark, shall employ an agent with an address in the State for the purpose of making the application.

(2) The application shall be accompanied by a statement and a declaration as is hereinafter mentioned.

7. Contents of Statement.

The statement shall contain the following particulars:

- (a) the name and address and calling of the applicant;
- (b) the description or reference to a description of the trade mark to be registered;

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- (c) the class or classes of goods, being some one or more of the classes mentioned in schedule 1, and the particular description or descriptions of goods in such class or classes, with respect to which he or she desires the trade mark to be registered; and
- (d) in the case of a trade mark already in use, a description of the goods in respect of which it has been used and the length of time during which it has been so used.

8. Other Requisites of Statement.

- (1) The above statement must bear a date and be signed by the applicant.
- (2) Subject to any other directions that may be given by the Registrar, the statement sent to the Registrar shall be upon foolscap paper, of a size of thirteen inches by eight inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half.

9. Description of Trade Mark.

- (1) Subject to any other directions that may be given by the Registrar, a description of a trade mark shall be given in writing and shall be accompanied, when practicable, by a drawing or other representation in duplicate, not less than three inches square, on foolscap paper of the size aforesaid, or by a specimen of the trade mark, pasted or otherwise fastened on such paper.
- (2) When a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent, either of full size, or on a reduced scale, and in such form as may be thought most convenient.
- (3) The Registrar may, if dissatisfied with the representation of a trade mark, require a fresh representation, either before he or she proceeds with the application, or before he or she registers the trade mark.
- (4) The Registrar may also, in exceptional cases, deposit in such place as the Minister shall direct a specimen or copy of a trade mark which cannot conveniently be placed on his or her register, and may refer thereto in his or her register in such manner as he or she thinks advisable.

10. Requisites of Declaration.

The declaration must be on foolscap paper of the above-mentioned size and must verify the statement and declare that, to the best of the applicant's knowledge and belief, he or she is lawfully entitled to use the trade mark, and must be made and subscribed as hereinafter mentioned.

11. Application by a company.

Where an application for the registration of a trade mark is made by or on behalf of a corporate or quasi-corporate body of persons, the statement and declaration shall be made by the secretary or other principal officer of the body of persons, and the Registrar may require such proof as he or she thinks fit that the application made is duly authorised by such body of persons.

12. Acknowledgment of Application.

On receipt of the application the Registrar shall send to the applicant an acknowledgment thereof.

*PART III – ADVERTISEMENT OF APPLICATION AND NOTICE OF OPPOSITION***13. Advertisement of Application.**

(1) As soon as may be after the receipt of an application made as provided by these rules, the Registrar shall forward the same or a copy thereof of the Minister for advertisement in the *Gazette*, and shall require the applicant or his or her agent to insert an advertisement thereof in the said *Gazette* during such time and in such form and generally in such manner as the Registrar may think desirable, and stating the length of time during which the mark has been used.

(2) For the purposes of such advertisement the applicant may be required to furnish a wood-block or electrotype of the trade mark of such dimensions as may from time to time be directed by the Registrar, or such other information or means of advertising the trade mark as may be allowed by the Registrar.

14. Notice of Opposition.

A notice of opposition may be given by sending to the Registrar, together with the prescribed fee, a written notice in duplicate, on foolscap paper of such size as aforesaid, stating the grounds of the opposition, and the applicant's counter statement in duplicate shall also be written on foolscap paper of such size as aforesaid.

*PART IV – REGISTRATION OF TRADE MARK***15. Time for Registration.**

On the expiration of three months from the date of the first appearance of the advertisement in the *Gazette* the Registrar may, if he or she is satisfied that the applicant is entitled to registration, register the trade mark in respect of the description of goods for which he or she may be entitled to be registered, and the applicant as the proprietor thereof, on payment of the prescribed fee.

16. Entries to be made in Register.

Upon registering any trade mark the Registrar shall enter in the register the date on which the statement relating to the application for registration was received by the Registrar (which day shall be deemed to be the date of the registration) and such other particulars as he or she may think necessary including the name and address of the proprietor.

17. Notice of Registration.

The Registrar shall send notice to the applicant of the registration of his or her trade mark.

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PART V – REGISTRATION OF SUBSEQUENT PROPRIETORS

18. Rights of Assignee.

The person to whom any registered trade mark has been assigned or transmitted may apply to be registered as proprietor thereof.

19. Evidence of Assignment.

When the trade mark has been assigned, the person claiming as assignee to be registered shall send to the Registrar, with his or her application, an assignment by deed, executed by both the assignor and the assignee, and a declaration verifying such assignment.

20. Evidence of Transmission.

(1) Where a trade mark has been transmitted, the person applying as the transmittee to be registered shall send to the Registrar, together with his or her application, a statement of the manner in which such trade mark has been transmitted, and a declaration verifying such statement.

(2) Any transmittee may assign his or her interests in the mark, notwithstanding that he or she has not been registered as proprietor thereof.

(3) When the person applying to be registered claims as the transmittee of any registered proprietor, or as the assignee of a transmittee, there shall be produced to the Registrar the following evidence:

- (a) if the business concerned in the goods with respect to which the trade mark is registered is carried on in the State or in England or Ireland, then
 - (i) if such transmission has taken place by the death of any person, there shall be produced the probate of the will of such deceased person, or the letters of administration to his or her estate, or an official extract therefrom; and
 - (ii) if such transmission has taken place by the marriage of a female proprietor, there shall be produced a certified copy of the register of such marriage, or other legal evidence of the celebration thereof, and a declaration of the identity of such female proprietor; and
 - (iii) if such transmission has taken place by the bankruptcy of the registered proprietor, or otherwise by operation of law, there shall be produced to the Registrar such evidence as may for the time being be receivable as proof of the title of the applicant; and
- (b) where such business is not carried on in the State or in England or Ireland there shall be produced similar evidence to that hereinbefore prescribed, or such evidence as would be received as sufficient evidence in the courts of justice in the country or place at which the proprietor carried on business.

21. Declaration of assignee of transmittee.

Every declaration made by an assignee or transmittee shall state his or her name and address, and that he or she is entitled to the goodwill of the business concerned in the goods with respect to which the trade mark is registered, or to some part of such goodwill.

22. Joint proprietors.

Where two or more persons are registered as joint proprietors of the same registered trade mark, those proprietors, or the survivors or survivor of them, or their or his or her assignee or transmittee, shall alone be recognised by the Registrar as having any title to the mark.

23. Separate proprietors.

(1) Where divers persons claim to be severally entitled to the goodwill of a business concerned in the goods with respect to which a trade mark has been registered, such persons, or any of them, may, if they all consent thereto, and on the production of the proper evidence, and on payment of the prescribed fee, be registered separately as separate proprietors of such trade mark.

(2) If all such persons so entitled do not so consent, the Registrar shall not, without leave of the court, register any of them as separate proprietors of such trade mark.

PART VI – ALTERATION AND RECTIFICATION OF REGISTER

24. Alteration of address.

If the registered proprietor of a trade mark sends to the Registrar, through an agent with an address in the State together with the prescribed fee, notice of an alteration in his or her address, the Registrar shall alter the register accordingly.

25. Removal of trade mark from register.

The court may, on the application of any person aggrieved, remove any trade mark from the register on the ground, after the expiration of five years from the date of the registration thereof, that the registered proprietor is not engaged in any business concerned in the goods with respect to which the trade mark is registered.

26. Opposition to alteration of register.

Any person may send, with the prescribed fee, notice to the Registrar through an agent with an address in the State of his or her desire to oppose the registration of any assignee or transmittee, or any alteration of the register, and in every such case the proceedings shall be the same as in the case of a notice of opposition to the original registration of a trade mark.

27. Publication of alteration of register.

Whenever the register is rectified or altered in any particular in respect to any trade mark, the Registrar shall, if he or she thinks that such rectification or alteration should be

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made public, at the expense of any person interested, publish, by advertisement or otherwise and in such manner as he or she thinks fit, the circumstances attending the rectification.

PART VII – INSPECTION OF REGISTER

28. Inspection of register.

On such days and during such hours as the Registrar may from time to time determine, not being less than three hours on three separate days in a week, any person may, on paying the prescribed fee, inspect the register of trade marks, and the days and hours for such inspection shall be Saturdays from 9 a.m. to 12 noon and other week-days from 9 a.m. to 3.30 p.m.

PART VIII – APPLICATION TO THE COURT

29. Application to the court.

An application to the court under the Marks, Collective Marks and Trade Names Act and these rules may, subject to Rules of court, be made by motion or by application in chambers, or in such other manner as the court may direct.

30. Procedure in contested claims.

When the Registrar refuses to comply with the claims of any persons, until their rights have been determined by the court, the manner in which the rights of such claimants may be submitted by the Registrar, or, if the Registrar so require, by the claimants, to the court shall, unless the court otherwise order, be by a special case, and such special case shall be filed and proceeded with in like manner as any other special case submitted to the court or in such other manner as the court may direct.

31. Settlement of special case.

The special case may be agreed to by the parties, or, if they differ, may be settled by the Registrar.

PART IX – DECLARATIONS AND EVIDENCE

32. Form of declaration.

(1) The declarations required by these rules shall be made and subscribed in the United Kingdom under the Statutory Declarations Acts, 1835, (5 & 6 W. 4. c. 62.), and may be made and subscribed before any Justice of the Peace, or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding.

- (2) The declaration, when taken out of the United Kingdom, shall;
- (a) if made in any other part of the British Empire, be made and subscribed before any court, judge, justice of the peace, or any officer authorised by law to administer an oath there for the purpose of a legal proceeding; and
 - (b) if made out of the British Empire, be made and subscribed before a British Minister, or person exercising the functions of a British Minister, or a Consul, Vice-Consul, or other person exercising the functions of a British Consul, or a notary public, or before a Judge or magistrate.

(3) Any document purporting to have affixed, impressed or subscribed thereto or thereon the seal or signature of any person hereby authorised to take such declaration, in testimony of such declaration having been made and subscribed before him or her, may be admitted by the Registrar without proof of the genuineness of any such seal or signature or of the official character of such person or his or her authority to take such declaration.

33. **Substitutory evidence.**

In any case in which any person is required under the Marks, Collective Marks and Trade Names Act or these rules to make a declaration on behalf of himself or herself or of any body corporate, or any evidence is required to be produced to the Registrar, the Registrar, if satisfied that from any reasonable cause such person is unable to make the declaration or that such evidence may be dispensed with, may, upon the production of such other declaration or evidence, and subject to such terms as he or she may think fit, dispense with any such declaration or evidence.

35. **Service of documents.**

Any application, statement, notice and document to be served on or sent to the Registrar shall be deemed to be properly addressed, if addressed to the Registrar of Marks, Collective Marks and Trade Names at his or her office; and, if required to be served on or sent to the proprietor of any mark shall be deemed to be properly addressed, if addressed to the registered proprietor at his or her registered address.

36. **Forms.**

The forms set out in Schedule 3 or such other forms as the Registrar may direct may be used in all cases to which they are applicable.

SCHEDULE 1 TO THE REGULATIONS

(Rule 2)

CLASSES OF GOODS

Class I

Chemical substances used in manufactures, photography or philosophical research, and anti-corrosives.

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Class II

Chemical substances used for agricultural, horticultural, veterinary and sanitary purposes.

Class III

Chemical substances prepared for use in medicine and pharmacy.

Class IV

Raw or partly prepared vegetable, animal and mineral substances used in manufactures, not included in other classes.

Class V

Unwrought and partly wrought metals used in manufacture.

Class VI

Machinery of all kinds and parts of machinery, except agricultural and horticultural machines included in Class VII.

Class VII

Agricultural and horticultural machinery and parts of such machinery.

Class VIII

Philosophical instruments, scientific instruments and apparatus for useful purposes. Instruments and apparatus for teaching.

Class IX

Musical instruments.

Class X

Horological instruments.

Class XI

Instruments, apparatus and contrivances, not medicated, for surgical or curative purposes or in relation to the health of men or animals.

Class XII

Cutlery and edged tools.

Class XIII

Metal goods not included in other classes.

Class XIV

Goods of precious metals (including aluminium, nickel, Britannia metal, etc.) and jewellery and imitations of such goods and jewellery.

Class XV

Glass.

Class XVI

Porcelain and earthenware.

Class XVII

Manufactures from mineral and other substances for building or decoration.

Class XVIII

Engineering, architectural and building contrivances.

Class XIX

Arms, ammunition and stores not included in Class XX.

Class XX

Explosive substances.

Class XXI

Naval architectural contrivances and naval equipment not included in Classes XIX and XX.

Class XXII

Carriages.

Class XXIII

- (a) Cotton yarn and sewing cotton not on spools or reels.
- (b) Sewing cotton on spools or reels.

Class XXIV

Cotton piece goods of all kinds.

Class XXV

Cotton goods not included in Classes XXIII, XXIV or XXXVIII.

Class XXVI

Linen and hemp yarn and thread.

Class XXVII

Linen and hemp piece goods.

Class XXVIII

Linen and hemp goods not included in Classes XXVI, XXVII and L.

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Class XXIX

Jute yarns and tissues and other articles made of jute, not included in Class L.

Class XXX

Silk, spun, thrown or sewing.

Class XXXI

Silk piece goods.

Class XXXII

Other silk goods, not included in Classes XXX and XXXI.

Class XXXIII

Yarns of wool, worsted or hair.

Class XXXIV

Cloths and stuffs of wool worsted or hair.

Class XXXV

Woollen, worsted and hair goods not included in Classes XXXIII and XXXIV.

Class XXXVI

Carpets, floor cloth and oil cloth.

Class XXXVII

Leather, skins unwrought, and wrought, and articles made of leather, not included in other classes.

Class XXXVIII

Articles of clothing.

Class XXXIX

Paper (except paper hangings), stationery, bookbinding.

Class XL

Goods manufactured from india-rubber and gutta percha, not included in other classes.

Class XLI

Furniture and upholstery.

Class XLII

Substances used as food or as ingredients in food.

Class XLIII

Fermented liquors and spirits.

Class XLIV

Mineral and aerated waters, natural and artificial, including ginger beer.

Class XLV

Tobacco, whether manufactured or unmanufactured.

Class XLVI

Seeds for agricultural and horticultural purposes.

Class XLVII

Candles, common soap, detergents; illuminating, heating or lubricating oils; matches and starch, blue and other preparations for laundry purposes.

Class XLVIII

Perfumery (including toilet articles, preparations for the teeth and hair and perfumed soap).

Class XLIX

Games of all kinds and sporting articles not included in other classes.

Class L

1. Goods manufactured from ivory, bone or wood, not included in other classes.
2. Goods manufactured from straw or grass, not included in other classes.
3. Goods manufactured from animal and vegetable substances, not included in other classes.
4. Tobacco pipes.
5. Umbrellas, walking sticks, brushes and combs.
6. Furniture cream, plate powder.
7. Tarpaulins, tents, rick-cloths, rope, twine.
8. Buttons of all kinds other than of precious metal or imitations thereof.
9. Packing and hose of all kinds.
10. Goods not included in the foregoing classes.

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SCHEDULE 2 TO THE REGULATIONS

(Rule 4)

FEES

The following fees shall be payable to the Registrar on or for the following occasions or purposes

| Item | \$ | ¢ |
|---|--------|---|
| 1. On application to register a trade mark or service mark for one or more article included in one class | 500.00 | |
| 2. On application to register more than one trade mark or service mark for one or more articles included in one class, for each additional trade mark or service mark after the first | 300.00 | |
| 3. On application to register a trade mark or service mark in respect of goods in different classes, for every class after the first to which such trade mark or service mark is extended, an additional fee of | 50.00 | |
| 4. For registration of one trade mark or service mark | 240.00 | |
| 5. Where the same person is registered at the same time for more than one mark, for registration of each additional mark after the first..... | 100.00 | |
| 6. Where the same person is registered at the same time for the same trade mark or service mark in respect of goods in different classes for the registration of one mark in each class after the first, an additional fee of | 30.00 | |
| 7. For entering notice of opposition | 250.00 | |
| 8. For registering subsequent proprietor | 240.00 | |
| 9. For altering address on the register | 60.00 | |
| 10. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged | 120.00 | |
| 11. For continuance of mark at the expiration of fourteen years..... | 400.00 | |
| 12. Additional fee where a fee is paid within three months after expiration of fourteen years..... | 240.00 | |
| 13. Additional fee for the restoration of trade mark, or service mark when removed for non-payment of fee..... | 400.00 | |
| 14. For certificate..... | 240.00 | |
| 15. For inspecting register, for every quarter of an hour fifteen minutes | 15.00 | |
| 16. For office copy of document, \$1.50 per folio but never less than certified copy of Document..... | 15.00 | |
| 17. Settling a special case by Registrar | 400.00 | |

[Substituted by SRO No. 33 of 1998]

SCHEDULE 3 TO THE REGULATIONS**FORM A***Form of statement on application for registration of one trade mark*

I, of,
apply to be registered as proprietor of trade mark and
which is represented in the paper annexed hereto.

I desire that the said trade mark may be registered in respect of the description of goods
following, contained in Class, that is to say,

I have used the said trade mark in respect of the said goods for..... years
before the date of this statement.

The day of 20.....

.....
(Signature.)

FORM B*Form of statement on application for registration of more than one trade mark*

I, of,
apply to be registered as proprietor of the following trade marks, numbered
from "1" to

The trade marks, numbered, are described as follows, that is to say,

No. 1 is and is represented
on Paper 1 annexed hereto.

No. 2 is and is represented
on Paper 2 annexed hereto.

I desire that the said trade marks may be registered in respect of the descriptions of goods
following, that is to say,

As to No. 1, in respect of the following goods contained in Class, viz:

As to No. 2, in respect of the following goods contained in Class, viz:

I have used the trade marks numbered respectivelyand
.....in respect of the goods for which I desire them
to be registered foryears before the date of this statement.

The day of 20.....

.....
(Signature.)

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FORM C

Form of declaration to accompany statement on application for registration of trade mark

I,, of,
do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows:

(1) The statement signed by me and dated the..... day of
and marked with the letter "A" and shown to me at the time of making this declaration is true.

(2) The description of the trade mark in such statement is a true description of the trade
mark for the registration of which I apply.

(3) I am lawfully entitled to the use of the trade mark of which the said description is a
true description.

.....
(Signature.)

Declared before me [etc.].

FORM D

Form of assignment of trade mark

Trade mark, Class.....No.

Name

Place of business

I,, of,
being registered proprietor of the trade mark above particularly described, in consideration
ofdollars paid to me by carrying
on business atin under the firm of,
hereby assign the said trade mark to the said..... together with the
goodwill of the business concerned in the goods with respect to which the trade mark is registered.

It witness whereof I have hereunto subscribed my name and affixed my
seal, this day of, 20

.....
(Signature and Seal).

Executed by the above-named,
in the presence of

Executed by the above-named,
in the presence of

FORM E

Declaration by transmittee applying to be registered as proprietor

Trade mark.Class No.....

Name of owner

Firm

Place of business

(1) I, the undersigned,
of , in
the
..... of
carrying on business at in
the of declare as follows:

I declare that the registered
proprietor of the trade mark above described, [died at in the
of having
first made his or her Will dated the day of ,
whereby he or she appointed me executor, and I proved (or confirmed) his or her said Will on
the day of in the Court
of] [or died at in the
of on the day of ,
intestate, and letters of administration of his or her estate and effects were (confirmation
as executor of the said was)
on the day of duly granted to me by
the court of];

or,

I declare, that , the registered proprietor of
the trade mark above described, was, on the day of
duly [adjudged a bankrupt], and that I was on the day of ,
appointed trustee of the estate of the said and I
am by law entitled to be registered as proprietor of the said trade mark in
place of the said

or

I declare that on the day of I
inter-married with and am now the husband of ,
the registered proprietor of the trade mark above described; and I declare that
on such marriage the interest of the said in the
said trade mark and in the goodwill of the business concerned in the goods in
respect to which the trade mark is registered became by law vested in me, and that
I am entitled to be registered as owner of the said trade mark in the place of the
said ; and I declare that
is the person referred to in the annexed certificate.

(2) I am lawfully entitled to the goodwill of the business concerned in the goods with
respect to which the trade mark so transmitted to me is registered.

And I make this solemn declaration believing the same to be true.

.....

(Signature)

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Dated at..... the..... day of 20.....

Made and subscribed by the above-named
in the presence of me

.....
(Signed)

[Name of Registrar
or Justice of the Peace.]

SECOND SCHEDULE

REGISTRATION OF UNITED KINGDOM TRADE MARKS RULES

(Saved by section 19 of the Interpretation Act, Cap., 1.02)

1. **Short Title.**

These Rules may be cited as the Registration of United Kingdom Trade Marks Rules.

2. **Renewal of Registration.**

(1) The renewal in the United Kingdom of the registration of a Trade Mark shall be notified to the Registrar by the registered proprietor thereof in writing not later than three months after the expiration of the period fixed by section 14 of the Registration of United Kingdom Trade Marks Act.

(2) The registered proprietor shall at the same time forward to the Registrar a certificate of the renewal of the registration of the Trade Mark signed by the Comptroller General of the United Kingdom Patent Office.

(3) Upon the renewal of such registration a notice to that effect shall be sent by the Registrar to the registered proprietor or his or her agent.

3. **Assignment of Interest, etc.**

Any person who, by assignment or other form of transfer, becomes entitled to the privileges and rights conferred by a certificate of registration and who desires to have his or her name entered on the register as subsequent registered proprietor shall make application in writing to that effect to the Registrar and such application shall be accompanied by a certificate of the Comptroller General of the United Kingdom Patent Office of the assignment or other mode of transfer thereof.

4. **Application by Non-Resident.**

Where the applicant for registration, renewal of registration, or registration of assignment of a United Kingdom Trade Mark does not reside in the State, he or she shall employ, for the purpose of making the application and of doing all things necessary for obtaining the registration of the Trade Mark, an agent resident in the State, whose name and address shall be endorsed by him or her on the application.

5. Forms

The forms set out in Schedule 1 to these Rules or such other forms as the Registrar may direct shall be used in all cases to which they are applicable.

6. Fees.

The fees set out in Schedule 2 shall be charged in respect of the various items therein set out and shall be paid by the applicant or his or her agent to the Registrar who shall pay the same into the Treasury as soon as possible after the receipt thereof.

SCHEDULE 1 TO THESE REGULATIONS

(Rule 5)

FORM A

STATE OF SAINT CHRISTOPHER AND NEVIS

The Registration of United Kingdom Trade Marks Act

APPLICATION FOR REGISTRATION OF TRADE MARK

Application is hereby made byof
the registered proprietor of Trade Mark No. registered in Class.....
in respect of..... under the Trade Marks Act, 1938, of the United Kingdom,
for the registration in the State of the same in respect of

A certified representation of the Trade Mark together with a certificate of the United Kingdom Registrar of Trade Marks are submitted herewith.

Dated this day of 20.....
To the Registrar of Trade Marks.

.....
.....

FORM B

STATE OF SAINT CHRISTOPHER AND NEVIS

The Registration of United Kingdom Trade Marks Act.

No.

CERTIFICATE OF REGISTRATION.

I HEREBY CERTIFY that the United Kingdom Trade Mark No.....
shown above and registered in Part A (or B) of the United Kingdom Register
in the name ofin Class.....as of the date of

20in respect of..... has this day been registered in the State under
the provisions of the above Act.

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Dated this day of 20.....

Registrar of Trade Marks

Registrar's Office

.....
.....

FORM C

STATE OF SAINT CHRISTOPHER AND NEVIS

The Registration of United Kingdom Trade Marks Act

APPLICATION FOR REGISTRATION OF REGISTERED USER.

Application is hereby made by of.....
who under section 28 of the Trade Marks Act, 1938 (Imperial) is entered in the
United Kingdom Register of Trade Marks as a registered user of Trade Mark
No.....registered in Class in respect of.....
and in respect of which said trade mark a certificate of registration is in force,
to be registered in the State as a registered user of the abovenamed registered
trade mark subject to the following conditions and restrictions:

The proposed permitted use is to end on the..... day of.....20.....

The proposed permitted use is without limit of period.

A certificate of the United Kingdom Registrar of Trade Marks as required
by section 12 of the Registration of United Kingdom Trade Marks Act, is
submitted herewith.

Dated this day of 20.....

To the Registrar of Trade Marks.

.....
.....

FORM D

STATE OF SAINT CHRISTOPHER AND NEVIS

The Registration of United Kingdom Trade Marks Act

NOTICE OF REGISTRATION OF REGISTERED USER

TAKE NOTICE that..... of who under section 28
of the Trade Marks Act, 1938 (Imperial) is entered in the United Kingdom Register
of Trade Marks as a registered user of Trade Mark No. registered in
Class in respect of has this day been
registered in the State as a registered user of the said Trade Mark subject to the following conditions
and restrictions:

Dated this day of 20.....

.....

Registrar.

To

FORM E

STATE OF SAINT CHRISTOPHER AND NEVIS

APPLICATION FOR TRANSFER OF TRADE MARK

Application is hereby made by of to be entered on the register as subsequent registered proprietor of United Kingdom Trade Mark No. registered in Class..... in respect of

I am (or We are) entitled to the said Trade Mark by virtue of

.....

A certificate of the United Kingdom Registrar of Trade Marks as to the registration of the applicant(s) as registered proprietor(s) of the said Trade Mark is submitted herewith.

Dated this day of 20.....

To the Registrar of Trade Marks.

.....

.....

FORM F

STATE OF SAINT CHRISTOPHER AND NEVIS

NOTICE OF REGISTRATION OF SUBSEQUENT PROPRIETOR

TAKE NOTICE that of has this day been entered in the register as subsequent registered proprietor of United Kingdom Trade Mark No. registered in Class in respect of

Dated this day of 20.....

.....

Registrar of Trade Marks.

To

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FORM G

STATE OF SAINT CHRISTOPHER AND NEVIS

NOTICE OF RENEWAL OF REGISTRATION OF TRADE MARK IN THE UNITED KINGDOM

I (or We) of hereby give you notice that the United Kingdom Trade Mark No. registered in Class. in respect of of which I am (or We are) the registered proprietor(s) in the State was renewed in the United Kingdom on the day of 20 and transmit herewith the prescribed fee for the renewal of the registration thereof.

Dated this day of 20..... To the Registrar of Trade Marks.

.....
.....

FORM H

STATE OF SAINT CHRISTOPHER AND NEVIS

NOTICE OF RENEWAL OF REGISTRATION OF TRADE MARK IN THE STATE

TAKE NOTICE that the registration of United Kingdom Trade Mark No. registered in Class in respect of which you are the registered proprietor has this day been renewed in the State.

Dated this day of 20.....

.....

Registrar of Trade Marks.

SCHEDULE 2 TO THE RULES

(Rule 6)

FEES

The following fees shall be payable to the Registrar in respect of the various items therein set out.

| | \$ | ¢ |
|--|--------|---|
| 1. On application for registration | 200.00 | |
| 2. Certificate of registration of one trade mark or service mark | 100.00 | |
| 3. For each additional trade mark, or service mark after the first, granted upon the same application | 50.00 | |
| 4. Where the certificate of registration is for a trade mark or service mark in respect of goods in different classes, for every class after the first and additional fee of | 25.00 | |
| 5. Registering subsequent proprietor | 100.00 | |
| 6. For altering address in register | 25.00 | |

| | \$ | ¢ |
|---|--------|---|
| 7. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged | 50.00 | |
| 8. For every entry of renewal of registration of trade mark or service mark | 200.00 | |
| 9. For office copy of document, \$2.00 per folio, subject to a minimum of | 15.00 | |
| 10. For certified copy of document, \$3.00 per folio subject to a minimum of | 25.00 | |
| 11. For inspecting register, for every quarter of an hour or part thereof | 15.00 | |

[Substituted by SRO 32/1998]