

Industrial Property

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INTERNATIONAL UNION

FEDERATION OF NIGERIA

Adhesion

of the Federation of Nigeria to the Paris Convention for the Protection of Industrial Property (Lisbon Text)

The following communication has been received from the Swiss Federal Political Department:

(Translation)

“In compliance with the instructions of the Swiss Federal Political Department dated 2nd August, 1963, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that its Government received on 17th July, 1963, a declaration of adhesion of the Federation of Nigeria to the Paris Convention for the Protection of Industrial Property of 20th March, 1883, as last revised at Lisbon on 31st October, 1958.

In application of Article 16 (3) of the said Convention, the adhesion of Nigeria will take effect on 2nd September, 1963.

With regard to its contributions to the common expenses of the International Bureau of the Union, this State is placed, at its request, in the Sixth Class, for the purposes of Article 13 (8) and (9) of the Convention of Paris as revised at Lisbon”

REPUBLIC OF THE CONGO (Brazzaville)

Declaration of Continuity and of Adhesion of the Republic of the Congo (Brazzaville) to the Paris Convention for the Protection of Industrial Property (London and Lisbon Texts)

The following communication has been received from the Swiss Federal Political Department:

(Translation)

“In compliance with the instructions of the Swiss Federal Political Department dated 2nd August, 1963, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Government of the Republic of the Congo (Brazzaville), in a letter dated 26th June, 1963¹⁾, addressed to the President of the Swiss Confederation, declared the Paris Convention for the Protection of Industrial Property, signed at Paris on 20th March, 1883, and revised at Brussels on 14th December, 1900, at Washington on 2nd June, 1911, at The Hague on 6th November, 1925, and at London on 2nd June, 1934, applicable to that State by virtue of its former ratification by France.

In the above-mentioned letter, the Congolese Government further declares its adhesion to the Convention of Paris, as revised at Lisbon on 31st October, 1958. In application of Article 16 (3) of the said Convention, the adhesion of the Republic of the Congo will take effect on 2nd September, 1963.

With regard to its contributions to the common expenses of the International Bureau of the Union, this State is placed, at its request, in the Sixth Class, for the purposes of Article 13 (8) and (9) of the Convention of Paris as revised at Lisbon.”

* * *

The two adhesions notified above will bring the membership of the Union to 54 with effect from 2nd September, 1963.

MONACO — NETHERLANDS

Ratification of the Additional Act to the Arrangement of The Hague

In a Note dated 14th August, 1963, we have been informed by the Swiss Federal Political Department that the Principality of Monaco and the Netherlands have deposited their instruments of ratification in respect of the Additional Act, signed at Monaco on 18th November, 1961, to the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models of 6th November, 1925, revised at London on 2nd June, 1934.

In compliance with paragraph (3) of Article 7 of the above-mentioned Additional Act, the ratifications of Monaco and the Netherlands will take effect from 14th September, 1963.

At present five countries in all have now ratified the Additional Act signed at Monaco, Germany (Fed. Rep.), France and Switzerland having ratified this Act in the course of 1962.

¹⁾ Omitted. (Ed.)

LEGISLATION

IRELAND

Trade Marks Act

(No. 9, of 1963)

(Third and Last Part)¹⁾

Certification trade marks

45.— (1) A mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified shall be registrable as a certification trade mark in Part A of the register in respect of those goods in the name, as proprietor thereof, of that person:

Provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified.

(2) In determining whether a mark is adapted to distinguish as aforesaid, the Court or the Controller (as the case may be) may have regard to the extent to which:

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

(3) Subject to subsections (4) to (6) of this section, and of sections 15 and 16 of this Act, the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods, and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a person authorised by him under the regulations in that behalf using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either:

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

(4) The right to the use of a certification trade mark given by registration as aforesaid shall be subject to any con-

ditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

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

- (a) in relation to goods certified by the proprietor of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the trade mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the trade mark; or
- (b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as 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 are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor:

Provided that paragraph (a) of this subsection shall not have effect in the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that paragraph, if such application is contrary to the relevant regulations.

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

(7) (a) There shall be deposited at the Office in respect of every trade mark registered under this section regulations approved by the Minister for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the trade mark, and may contain any other provisions that the Minister may require or permit to be inserted therein (including provisions conferring a right of appeal to the Controller against any refusal of the proprietor to certify goods or to authorise the use of the trade mark in accordance with the regulations).

(b) Regulations deposited under this subsection shall be open to inspection in like manner as the register.

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

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

¹⁾ See *Industrial Property*, 1963, pp. 118 and 144.

Registration of marks by Ministers

46. — (1) A Minister of State may, subject to this Act, procure the registration of a trade mark or of a certification trade mark and a Minister by whom such registration is procured shall be, and shall be registered as, the proprietor thereof for all purposes under this Act.

(2) A Minister of State may procure the registration in any register maintained in any place outside the State of a trade mark (whether registered or not registered under subsection (1) of this section) if and so far as and subject to such conditions as such registration is permitted by the law regulating such register and in any such case may procure himself to be entered in such register as the proprietor of such trade mark.

Misuse of trade marks indicative of Irish origin

47. — It shall be lawful for the Minister to take in any place outside the State such lawful steps, whether by way of action or prosecution at law or otherwise, as he shall think proper to prevent, restrain, or to secure punishment for the registration, use, or application in relation to or in respect of goods not grown, produced, or manufactured in the State of any trade mark or other mark or description indicating or suggesting or likely to lead to the belief that the goods in respect of which or to which such trade mark, mark, or description is used or applied were grown, produced or manufactured in the State.

PART III

Provisions relating to Powers and Duties of Controller and to Legal Proceedings

Preliminary advice by Controller as to distinctiveness

48. — (1) The power to give to a person who proposes to apply for the registration of a trade mark in Part A or Part B of the register advice as to whether the trade mark appears to the Controller *prima facie* to be inherently adapted to distinguish, or capable of distinguishing, as the case may be, shall be a function of the Controller under this Act.

(2) Any such person who is desirous of obtaining such advice must make application to the Controller therefor in the prescribed manner.

(3) If on an application for the registration of a trade mark as to which the Controller has given advice as aforesaid in the affirmative, made within three months after the advice is given, the Controller, after further investigation or consideration, gives notice to the applicant of objection on the ground that the trade mark is not adapted to distinguish, or capable of distinguishing, as the case may be, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the filing of the application.

Controller may consult Attorney General

49. — The Controller may, in any case of doubt or difficulty in the administration of this Act, apply to the Attorney General for directions in the matter.

Hearing before exercise of Controller's discretion

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

Power of Controller to award costs

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

Registration to be prima facie evidence of validity

52. — In all legal proceedings relating to a registered trade mark (including applications under section 40 of this Act) the fact that a person is registered as proprietor of the trade mark shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

Certificate of validity

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

Costs of the Controller in Court proceedings

54. — In any proceedings before the Court under this Act the Controller shall be neither awarded costs nor ordered to pay the costs of any other party.

Trade usage and other matters to be considered

55. — In any action or proceeding relating to a trade mark or trade name, the Court or the Controller (as the case may be) 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.

Controller's appearance in proceedings

56. — (1) The Controller shall be given notice in writing (by the plaintiff, appellant or applicant, as the case may be) of any legal proceeding in which the relief sought would affect the register (including an appeal from any order or decision of the Controller and an application under section 25 or 26 of this Act to extend the time for making an appeal against a decision of the Controller under either of those sections) and of the decision of the Court respecting any such

legal proceeding, and shall have the right to appear and be heard, and shall appear if so directed by the Court, in any such legal proceeding.

(2) Unless otherwise directed by the Court, the Controller in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting it or of the practice of the Office in like cases or of such other matters relevant to the issues, and within his knowledge as Controller, as he thinks fit, and the statement shall be deemed to form part of the evidence in the proceeding.

Appeal to the Court

57. — (1) An appeal shall lie to the Court from any order or decision of the Controller under any provision of this Act (not being a decision of the Controller under section 11 or subsection [7] of section 69 of this Act) or from a correction of an error in the register by the Controller under subsection (3) of section 42 of this Act, and the Court may make such order confirming, annulling or varying the order or decision or correction of the Controller as it thinks fit.

(2) In any appeal from a decision of the Controller to the Court under this Act, the Court shall have and exercise the same discretionary powers as under this Act are conferred upon the Controller.

(3) Except by leave of the Court, no appeal (other than an appeal under section 25 or 26 of this Act) from an order or decision of the Controller or from a correction of an error in the register by the Controller under subsection (3) of section 42 of this Act shall be entertained of which notice to the Court is not given within one month from the date of the order, decision or correction appealed against or within such further period not exceeding three months as the Controller may allow (upon request received before the expiration of the said period of one month).

(4) Subject to subsection (5) of this section, a decision of the Court under this section shall be final and not appealable.

(5) By leave of the Court, an appeal from a decision of the Court under this section shall lie to the Supreme Court on a specified question of law.

Court's power to review Controller's decision

58. — The Court, in dealing with any question of the rectification of the register (including all applications under section 40 of this Act), shall have power to review any decision of the Controller relating to the entry in question or the correction sought to be made.

Procedure in cases of option to apply to Court or Controller

59. — Where under this Act an applicant has an option to make an application either to the Court or to the Controller:

(a) if an action concerning the trade mark in question is pending, the application must be made to the Court;

(b) if in any other case the application is made to the Controller, he may, at any stage of the proceedings, refer the application to the Court, or he may, after hearing the parties, determine the question between them, subject to appeal to the Court.

Mode of giving evidence

60. — (1) In any proceeding under this Act before the Controller, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which the Controller thinks it right so to do, the Controller may take evidence orally in lieu of or in addition to evidence by declaration.

(2) Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

(3) In case any part of the evidence is taken orally the Controller may do all or any of the following things:

- (a) summon witnesses to attend before him;
- (b) examine on oath (which he is hereby authorised to administer), or permit the examination on oath of, the witnesses attending before him;
- (c) require any such witness to produce to the Controller any document in such witness's power or control.

(4) A witness before the Controller shall be entitled to the same immunities and privileges as if he were a witness before the Court.

(5) A summons shall be signed by the Controller.

(6) If any person:

- (a) on being duly summoned as a witness before the Controller makes default in attending, or
- (b) being in attendance as a witness refuses to take an oath legally required by the Controller to be taken, or to produce any document in his power or control legally required by the Controller to be produced by him, or to answer any question to which the Controller may legally require an answer, or
- (c) does any other thing which would, if the Controller were a court of law, having power to commit for contempt of court, be contempt of such court,

the Controller may certify the offence of that person under his official seal to the Court and the Court may, after such inquiry as it thinks proper to make, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the Court.

Evidence of entries in register

61. — (1) A copy of any entry in the register, purporting to be certified by, and sealed with the official seal of, the Controller, shall be admitted in evidence in any court of law, and in all proceedings, without further proof or production of the original.

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

Evidence of things done by Controller

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

PART IV

Miscellaneous

Falsification of entries in register

63. — A person who makes or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or who produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds or, at the discretion of the court, to imprisonment for any term not exceeding three months or to both such fine and such imprisonment.

Fine for falsely representing a trade mark as registered

64. — (1) Any person who makes a representation:

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

shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty pounds and, in the case of a continuing offence, a further fine not exceeding five pounds for every day on which the offence continues.

(2) For the purposes of this section, the use in the State in relation to a trade mark of the word "registered", or of any other word referring whether expressly or impliedly to registration, or of a prescribed symbol shall be deemed to import a reference to registration in the register, except:

- (a) where that word or that symbol is used in physical association with words delineated in characters at least as large as those in which that word or that symbol is delineated and indicating that the reference is to registration as a trade mark under the law of a place outside the State, being a place under the law of which the registration referred to is in fact in force;
- (b) where that word (being a word other than the word "registered") or that symbol is of itself such as to in-

dicating that the reference is to such registration as last aforesaid; or

- (c) where that word or that symbol is used in relation to a mark registered as a trade mark under the law of a place outside the State and in relation to goods to be exported to that place.

Unauthorised user of State badges

65. — Any person who without lawful authority uses in connection with any business, trade, calling or profession any badge, device, emblem, or flag reserved by law for the use of, or commonly used by, the State, the Defence Forces, any officer of the State or any Department of State (or any badge, device, emblem, or flag so closely resembling the same as to be likely to deceive) in such manner as to be likely to lead to the belief that he is duly authorised to use such badge, device, emblem, or flag, shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty pounds (and, in the case of a continuing offence, to a further fine not exceeding five pounds for every day on which the offence continues) or, at the discretion of the court, to imprisonment for any term not exceeding three months.

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

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

Jointly owned trade marks

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

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

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

Provided that the rights of any person who is so registered shall be deemed to be infringed by any other of the said persons who uses the trade mark in physical or other relation to goods in respect of which the trade mark is registered under this section, but with which both or all of the said persons are not and have not been connected in the course of trade.

(2) Subject to subsection (1) of this section, nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

Trusts and equities

68. — (1) There shall not be entered in the register any notice of any trust express, implied or constructive, nor shall any such notice be receivable by the Controller.

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

Recognition and registration of trade mark agents

69. — (1) Whenever under this Act any act has to be done by or to any person in connection with a trade mark or any procedure relating to a trade mark or the registration thereof, the act (if not excepted by the rules) may, under and in accordance with rules made under this section or, in particular cases, with the consent of the Minister, be done by or to an agent of that person duly authorised in the prescribed manner and, if acting for gain, registered in the register kept under subsection (2) of this section.

(2) There shall be kept at the Office a register which shall be called the register of trade mark agents, and no person shall, either alone or in partnership with any other person, practise, describe himself, hold himself out, or permit himself to be described or held out, as a trade mark agent, unless he is registered in the register of trade mark agents, and a partnership shall not so practise, describe itself, hold itself out, or permit itself so to be described or held out, unless all the partners are so registered.

(3) Any person who:

- (a) resides in the State,
- (b) has a place of business in the State,
- (c) is not an alien (within the meaning of section 2 of the Irish Nationality and Citizenship Act, 1956),
- (d) possesses the prescribed educational and professional qualifications, and
- (e) complies with the prescribed conditions,

shall be eligible to be registered in the register of trade mark agents, and a partnership shall be so eligible if every partner thereof is registered in accordance with this section, and a person or partnership so eligible shall on application in the prescribed form and manner and on payment of the prescribed fee, be so registered.

(4) Notwithstanding subsection (3) of this section any person who has been in continuous practice as a trade mark agent in the State for a period of five years before the commencement of this Act and makes application (in the prescribed form and manner and upon payment of the prescribed fee) for registration within twelve months from the commencement of this Act shall be eligible to be registered in the register of trade mark agents.

(5) Any person who at any time after the expiration of three months from the commencement of this Act contravenes this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding, in the case of a first offence, twenty pounds and, in the case of a second or subsequent offence, one hundred pounds.

(6) Any person registered in the register of trade mark agents who:

- (a) ceases to be eligible to be so registered, or
- (b) applies to be removed from the register,

may be removed by the Controller from the register of trade mark agents, but no person shall be so removed (except on his own application) without being given an opportunity of being heard.

(7) (a) Where a person registered in the register of trade mark agents is found by the Controller, after due inquiry by the Controller (including the hearing by the Controller of representations, if any, by the person), to have been guilty of conduct disgraceful to that person in a professional respect, the Controller may, if he sees fit, decide that the name of that person should be erased from the register of trade mark agents.

(b) On making a decision under this subsection, the Controller shall forthwith send by post to the person to whom the decision relates, at his address as stated in the register of trade mark agents, a notice in writing stating the decision, the date thereof and the reason therefor.

(c) A person to whom a decision of the Controller under this subsection relates may, within the period of fourteen days beginning on the date of the decision, on giving notice to the Controller in the prescribed manner apply to the Court for cancellation of the decision, and if he so applies:

- (i) the Court, on the hearing of the application, may either:
 1. cancel the decision, or
 2. confirm the decision and direct the Controller to erase the name of such person from the register of trade mark agents,
- (ii) if at any time the Controller satisfies the Court that such person has delayed unduly in proceeding with the application, the Court shall, unless it sees good reason to the contrary, confirm the decision and direct the Controller to erase the name of such person from the register,
- (iii) the Court may, subject to section 54 of this Act, direct how the costs of the application are to be borne.

(d) Where a person to whom a decision of the Controller under this subsection relates does not, within the period of fourteen days beginning on the date of the decision, apply to the Court for cancellation of the decision, the Controller may apply *ex parte* to the Court for confirmation of the decision and, if the Controller so applies, the Court, on the hearing of the application, shall, unless it sees good reason to the contrary, confirm the decision and direct the Controller to erase the name of such person from the register of trade mark agents.

(e) The decision of the Court on an application under this subsection shall be final, save that, by leave of the Court, an appeal, by the Controller or the person concerned, from the decision shall lie to the Supreme Court on a specified question of law.

(f) On erasing the name of a person from the register of trade mark agents under this subsection, the Controller shall forthwith send by post to such person, at his address as stated in the register of trade mark agents, notice in writing of the erasure.

(g) A person whose name has been erased from the register of trade mark agents under this subsection may at any time be restored to the register by special direction of the Controller but not otherwise, and when a person is so restored to the register, the Controller may attach to the restoration such conditions (including the payment of a fee not exceeding the fee which would be payable by such person if he was then being registered for the first time) as the Controller thinks fit.

(8) A person (in this subsection referred to as an agent) duly authorised by any person under subsection (1) of this section to act as his agent may (subject to any provision to the contrary in any agreement between the agent and that person), on giving notice to the Controller and that person, cease to act as agent for that person.

(9) The Minister may by order make rules under this section for the management of the register of trade mark agents, and may by such rules prescribe any matter or thing referred to in this section as prescribed, and in particular may so prescribe the educational and professional qualifications and the conditions for eligibility for registration in the register of trade mark agents, and the maximum fees which may be charged by any person registered in the register of trade mark agents for such services in connection with the registration of trade marks as may be specified in such rules.

(10) (a) A person who is registered in the register of trade mark agents shall not be guilty of an offence under section 58 of the Solicitors Act, 1954, by reason only of the preparation by him for use in proceedings under this Act before the Controller or the Court of any document other than a deed.

(b) Notwithstanding subsection (5) of this section, it shall not be an offence under this section for the legal personal representative of a deceased trade mark agent to carry on business or practise in the name of that deceased trade mark agent for a period not exceeding three years from the death of that trade mark agent, or for such further period (if any) as the Court allows, if the legal personal representative is himself a trade mark agent or employs a trade mark agent to manage the business or practice on his behalf.

(11) Notwithstanding subsection (3) of this section, the Minister may, with a view to the fulfilment by the Government on behalf of the State of any international agreement to which the State is a party, by order declare that a citizen of a particular state (being a state which is also a party to that international agreement) shall, if he otherwise complies with that subsection, be eligible to be registered in the register of trade mark agents.

(12) Notwithstanding subsection (4) of section 10 of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this section may be instituted within twelve months from the date of the offence.

International agreements

70. — (1) Where any person has applied, in a foreign state which is a party to any international agreement for the mutual protection of trade marks to which the State is a party,

for protection of a trade mark of which that person is the proprietor, that person or his legal representative or assignee shall be entitled to registration under this Act of that trade mark in priority to other applicants; and the registration shall have the same date as the date of the application in that foreign state.

Provided that:

- (a) the application in the State is made within the prescribed period, and
- (b) nothing in this section shall entitle the proprietor of a trade mark to recover damages for any infringement occurring prior to the date which, but for subsection (1) of section 27 of this Act, would have been the date of registration of that trade mark.

(2) The registration under this Act of a trade mark to which this section applies shall not be invalidated by reason only of the use of that trade mark in the State during the period prescribed under paragraph (a) of subsection (1) of this section as that within which the application for such registration may be made.

(3) An application for the registration under this Act of a trade mark to which this section applies shall be made in the manner specified in section 25 of or, in the case of a certification trade mark in the manner specified in the First Schedule to this Act.

(4) Any person who by an application which:

- (a) in accordance with the law of any foreign state is equivalent to an application duly made in that foreign state, or
- (b) in accordance with the terms of any international agreement subsisting between any two or more foreign states is equivalent to an application duly made in one of those foreign states,

has applied for protection of a trade mark of which he is the proprietor shall for the purpose of this section be deemed to have so applied in that foreign state.

(5) This section shall apply only in the case of those foreign states with respect to which the Government, by order, declares it to be applicable and so long only in the case of each foreign state as the order continues in force with respect to that foreign state.

(6) In this section "foreign state" includes any territory for the foreign relations of which any state (being a state which is a party to any international agreement for the mutual protection of trade marks to which the State is a party) considers itself responsible.

Offences by bodies corporate or unincorporated bodies

71. — Where an offence under section 63, 64, 65, or 69 of this Act:

- (a) is committed by a body corporate or a partnership or by a person purporting to act on behalf of a body corporate or a partnership, and
- (b) is proved to have been so committed with the consent or approval of, or to have been facilitated by any default on the part of, any person being, in the case of a body

corporate, a director thereof, or, in the case of a partnership, a partner thereof, that person shall also be guilty of the offence.

Transitional provisions

72. — The transitional provisions set out in the Second Schedule to this Act shall have effect with respect to the matters therein mentioned respectively.

FIRST SCHEDULE

Certification Trade Marks

1. — (1) An application for the registration of a mark under section 45 of this Act must be made to the Controller in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof.

(2) The provisions of subsection (2) and of subsections (4) to (8) of section 25 of this Act shall have effect in relation to an application under the said section 45 as they have effect in relation to an application under subsection (1) of the said section 25, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

(3) In dealing under the said provisions with an application under the said section 45, the Court or the Controller (as the case may be) shall have regard to the like considerations so far as relevant, as if the application were an application under the said section 25 of this Act and to any other considerations (not being matters within the competence of the Minister under subparagraph [5] of this paragraph) relevant to applications under the said section 45, including the desirability of securing that a certification trade mark shall comprise some indication that it is such a trade mark.

(4) An applicant for the registration of a mark under the said section 45 shall transmit to the Controller draft regulations for governing the use thereof at such time before the decision of the Controller on the application as he may require in order to enable him to consider the draft, and the Controller shall report thereon to the Minister.

(5) When authorisation to proceed with an application has been given, the Minister shall consider the application with regard to the following matters, that is to say:

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

and may either:

- (i) direct that the application shall not be accepted; or
 - (ii) direct the Controller to accept the application, and approve the regulations, either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modifications of the application or of the regulations, which he thinks requisite having regard to any of the matters aforesaid;
- but, except in the case of a direction for acceptance and approval without modification and unconditionally, the Minister

shall not decide the matter without giving to the applicant an opportunity of being heard.

Provided that the Minister may, at the request of the applicant made with the concurrence of the Controller, consider the application with regard to any of the matters aforesaid before authorisation to proceed with the application has been given, so however that the Minister shall be at liberty to reconsider any matter on which he has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft regulations.

2. — (1) When an application has been accepted, the Controller shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner, and the provisions of subsections (2) to (12) of section 26 of this Act shall have effect in relation to the registration of the mark as if the application had been an application under section 25 of this Act.

Provided that, in deciding under the said provisions, the Court or the Controller (as the case may be) shall have regard only to the considerations referred to in subparagraph (3) of paragraph 1 of this Schedule, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Minister under subparagraph (2) of this paragraph of any opposition relating to any of the matters referred to in subparagraph (5) of the said paragraph 1.

(2) When notice of opposition is given relating to any of the matters referred to in subparagraph (5) of paragraph 1 of this Schedule, the Minister shall, after hearing the parties, if so required, and considering any evidence, decide whether, and subject to what conditions or limitations, or amendments or modifications of the application or of the regulations, if any, registration is, having regard to those matters, to be permitted.

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

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

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

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

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

and neither the Court nor the Controller shall have any jurisdiction to make an order under section 40 of this Act on any of those grounds.

(2) The Controller shall rectify the register and the deposited regulations in such manner as may be requisite for giving effect to an order made under subparagraph (1) of this paragraph.

5. — Notwithstanding anything in section 51 of this Act, the Controller shall not have any jurisdiction to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the trade mark.

6. — The following provisions of this Act shall not have effect in relation to a certification trade mark, that is to say, section 12, section 14, section 17, sections 25 and 26 (except as expressly applied by this Schedule), subsections (4) to (7) of section 30, sections 34 to 37, section 66, and any provisions the operation of which is limited by the terms thereof to registration in Part B of the register.

SECOND SCHEDULE

Transitional Provisions

Preservation for three years of rights under section 82 (2) of Act of 1927

1. — Notwithstanding subsection (1) of section 17 of this Act and the repeal of subsection (2) of section 82 of the Act of 1927, any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the 13th day of August, 1875, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application shall, in the period ending on the day which is three years after the commencement of this Act, be registrable as a trade mark in Part A of the register under this Act.

Assignments and transmissions before the commencement of this Act giving exclusive rights in different places in the State

2. — The validity of an assignment or transmission of a trade mark effected or claimed to have been effected before the commencement of this Act, in any such case as is mentioned in subsection (6) of section 30 of this Act, shall be determined as if the provisions contained in subsections (1) to (5) of that section had not been enacted.

Provided that, on application made in the prescribed manner within three years from the commencement of this

Act, by a person who claims that an assignment or transmission of a registered trade mark to him or to a predecessor in title of his has been so effected, the Controller shall have the like jurisdiction as under the proviso to subsection (6) of the said section 30, and an assignment or transmission approved by him shall not be deemed to have been invalid on the ground of the subsistence of such rights as are mentioned in the said subsection (6) or on the ground that the assignment or transmission was effected otherwise than in connection with the goodwill of a business or was effected in respect of some (but not all) of the goods in respect of which the trade mark was registered, if application for the registration under section 33 of this Act of the title of the person becoming entitled is made within six months from the date on which the approval is given, or was made before that date.

Saving as to retrospective provisions relating to assignments and transmissions

3. — The retrospective provisions contained in section 30 of this Act, and in paragraph 2 of this Schedule shall have effect without prejudice to any determination of the Controller or the Court that was made before the commencement of this Act, or to the determination of any appeal from a determination so made, or to any title acquired for valuable consideration before the commencement of this Act.

Association of trade marks assignable or transmissible as a whole

4. — Where immediately before the commencement of this Act a trade mark was registered in Part B of the register subject to a condition rendering it assignable or transmissible only as a whole with another trade mark registered in the name of the same proprietor or with two or more other trade marks so registered, and not separately, the trade marks shall be deemed to be associated trade marks, and the entries in the register relating thereto may be amended accordingly.

Previous use of a trade mark by person becoming registered user on application made within three years of appointed day

5. — Where a person is registered as a registered user of a trade mark on an application made within three years from the commencement of this Act, subsection (2) of section 36 of this Act shall have effect in relation to any previous use (whether before or after the commencement of this Act) of the trade mark by that person, being use in relation to the goods in respect of which he is registered and, where he is registered subject to conditions or restrictions, being use such as to comply substantially therewith, as if such previous use had been permitted use.

Use of trade mark for export trade before appointed day

6. — Section 39 of this Act shall be deemed to have had effect in relation to an act done before the commencement of this Act as it has effect in relation to an act done after the commencement of this Act, without prejudice, however, to any determination of the Controller or the Court which was made before the commencement of this Act or to the determination of any appeal from a determination so made.

Trade marks registered under section 123 of the Industrial and Commercial Property (Protection) Act, 1927 to be deemed to have been registered under section 45 of this Act

7. — Section 45 of this Act shall have effect, in relation to a trade mark that immediately before the appointed day was on the register by virtue of section 123 of the Act of 1927, as if the said section 45 had been in force at the date of the registration of the trade mark and it had been registered under that section, subject however to the following modifications, that is to say:

- (a) the proviso to subsection (1) of the said section 45 shall not apply;
- (b) in a case in which regulations for governing the use of the trade mark are deposited at the Office at the commencement of this Act, those regulations shall be deemed to have been deposited under the said section 45;
- (c) in a case in which no such regulations are deposited at the commencement of this Act, the proprietor shall be at liberty, or may be required by the Minister as a condition of the continuance of the registration, to deposit at any time thereafter such regulations as the Minister may permit or require; and
- (d) in a case in which no such regulations are for the time being deposited, the said section 45 shall have effect as if references therein, and in the First Schedule to this Act, to the regulations had been omitted.

CORRESPONDENCE

Letter from Israel

By Dr Reinhold COHN, Patent Attorney, Tel Aviv

BOOK REVIEWS

Publications on Industrial Property added to the Library of the International Bureau

May 1963

FORO ITALIANO (Il). *Repertorio generale annuale di Giurisprudenza, Bibliografia e Legislazione*. Rome/Bologne, Foro Italiano/N. Zanichelli, 1957. - 31,5 cm. Donata Radonich Scialoja et collab.

MAMOPOULOU (Petros). *Biomekanike Idioktesia eis ta Plaisia tes Koines Agoras (E)*. Athènes, s. n., 1963. - 24 cm., 17 p. Préf. Kristos Panagos.

MÖNNIG (Richard). *Amerika und England im deutschen, österreichischen und schweizerischen Schrifttum der Jahre 1945—1949*. Stuttgart. W. Kohlhammer, 1951. - 21 cm., IX-259 p.

OFFICE AFRICAÏN ET MALGACHE DE LA PROPRIÉTÉ INDUSTRIELLE. (African and Malgasy Industrial Property Office). *Accord relatif à la création d'un Office Africain et Malgache de la propriété industrielle*. Libreville, 1962. - 27 cm., 30 pages.

An English translation of this Accord was published in *Industrial Property*, April, 1963, p. 66 et seq.

RUSSELL-CLARKE (A. D.). *Copyright and Industrial Designs*. London, Sweet & Maxwell, 1951. - 21,5 cm., XV-261 pages. Also in the Library: 3rd Edition, 1960.

This work gives an account of the development of British legislation with regard to the protection of industrial designs and models. A third edition was published after the adoption of the Copyright Act, 1956. The author has endeavoured to make a clear distinction between the rights of authorship for authors of literary and artistic works and authors of industrial designs and models. A table of jurisprudence will enable practitioners rapidly to acquaint themselves with the practice in the Courts.

ULMER (Eugen). *Europäisches Patentrecht im Werden*. Weinheim, Verlag Chemie, 1962. - 30 cm., [9] pages. Extr. from "Gewerhlicher Rechtsschutz und Urheberrecht, Auslands- und internationaler Teil", No. 11/12, 1962, pages 537-545.

The unification of the European patent right is an essential factor at the present time. The author gives an account of the results obtained thanks to the divers efforts undertaken recently.

It would be appropriate to mention the preliminary draft Convention relating to a European Patent Law, produced within the European Economic Community, by the Working group on "Patents".

The Council of Europe has, since 1955, applied itself to the study of various problems relating to the unification of certain regulations regarding the protection of inventions and in particular with regard to the basic conditions regulating the protection ensured by the patent.

In the Spring of 1962, a draft common law on patents was published in Scandinavia as a result of collaboration for several years by the Nordic States.

The author concerns himself more particularly with the study of the preliminary draft elaborated within the Common Market and indicates in detail the principal provisions thereof.

June 1963

BOARD OF TRADE. *Report of the Departmental Committee on Industrial Designs*. London, H. M. S. O., 1962. - 24,5 cm., 143 pages. Cmnd. 1808.

CONGRESSES AND MEETINGS

Congress of the International Federation of Printers

(Vienna, June, 1963)

The Founding Committee of the International Typographical Association (A.T.Y.P.I.) met in Vienna on 15th June, 1963, on the occasion of the Congress of the International Federation of Printers; the following professional customs and practices for the reproduction of type faces were codified and unanimously adopted by the members of the said Committee, present and represented¹⁾:

"In conformity with the customs and practices in force and unless expressly provided to the contrary, the sale of type faces to Printers, Publishers, Publicity Agents and Type Setters, includes for the purchaser or his representatives, a right to reproduce the texts set up by means of the type faces sold. This right may not be assigned to third parties.

The purchaser's rights include, moreover, the right to sell reproductions of the type face, particularly in the form of plates, either stereotyped or galvanised and to make enlargements or reductions as may be required for technical reasons according to standards in use.

Furthermore, the purchaser may hire the services of a fellow-member of the profession of his own choice and entrust to him either the composition, the films or the blocks of composed type."

¹⁾ See *Industrial Property*, 1963, p. 128.

In 1959, the President of the British Board of Trade instructed a Committee to investigate whether it would be advisable to revise the legislation relating to the protection of industrial designs and models. Furthermore, the Committee had to determine in what manner an efficient and equitable protection could be obtained in other countries, on a basis of reciprocal agreements.

The present Report gives an account of the conclusions which emanated from the work of the Committee.

DELLER (Anthony William). *Extent and Usefulness of Arbitration in Settling Patent Disputes*. New York, Arbitration Journal, 1948. - 21,5 cm., 16 pages. Extr. Arbitration Journal, Summer 1948.

The author notes a growing tendency in recent years to provide for arbitration clauses in agreements concluded in relation to patents. The causes should be investigated with a view to a rapid liquidation of the conflicts, and avoidance of formalities and the high costs which ordinary legal procedure involves.

The author ends with a summary of various disputes which may arise in regard to patents and indicates the regulations to be observed in an arbitrary proceeding.

DERENBERG (Walter J.). *Territorial Scope and Situs of Trademarks and Goodwill*. Charlottesville/Leyden, Virginia Law Review/Sythoff, 1961. - 24 cm. Extr. Virginia Law Review, vol. 47, No. 5, pp. 733-750. XXth Century Comparative and Conflicts Law, pp. 419-431.

This study deals mainly with a question on which several countries have recently had to take a decision, that is to say, whether original products of a universally wellknown firm and bearing the original trade mark, may be imported and sold in a country without the authorisation of the enterprise domiciled in that country and at lower prices than those demanded by the enterprise in that country, for the same products bearing the same trade mark. The author recalls the judgement on the "Philips" case, which is well-known to our readers, in which the Swiss Federal Tribunal declared that the trade mark "Philips" designated the entirety of the products of any enterprise belonging to the "Konzern Philips", irrespective of the country in which they were produced and, in these circumstances, all danger of deceiving the public was excluded. This judgement was in opposition with that of the United States Supreme Court (*A. Bourjois & Co. v. Katzel*).

ELLWOOD (L. A.). *Incorporation of the Industrial Property Convention in Continental System of Law (The)*. London, IAPIP (British Group). 1956. - 21,5 cm., 26 pages.

In his capacity of legal adviser of a world-wide concern, the author of this study of comparative law has had, more than anyone else, to express views on problems to which the title of the book refers. He did so on the occasion of a conference held in memory of the late William Henry Ballantyne. The appendix contains a summary of laws applicable in European countries in the field of patents, trade marks, industrial designs and models and unfair competition. Furthermore, the author indicates, for each country, the constitutional article by which it is enabled to adhere to the Union Convention of Paris and to the various Restricted Unions.

Surprising as it may seem, these indications, in spite of their importance, are neglected by most authors.

GODENHJELM (Berndt). *Legal effects of Patents as a Legislative Problem (The)*. Stockholm, Scandinavian Studies in Law, 1958. - 22,5 cm., [30] pages. Extr. Scandinavian Studies in Law 1958, pp. 121-148.

The author begins by ascertaining that the owner of a patent may not, by virtue of his patent, claim the right of manufacture or sale of the invention, nor apply the patented process, but he may only prevent third parties from doing so.

He proceeds with the examination of a series of national laws with a view to revealing the effects of a patent in the countries in question. He concludes by affirming that it would seem preferable to determine in a positive manner the rights conferred by a patent.

JAPANESE PATENT OFFICE. *Statistical Report of the Japanese Patent Office*. Tokyo, Patent Office, 1936. - 26 cm.

KURSAKOV (S. F.). *Organizatsiia i Planirovanie Izobretatel'skoi i Ratsionalizatorskoi Raboty na Predpriatiiak*. Moscow, Gosplanizdat, 1960. - 20 cm., 96 pages.

LAMPERT (Wilhelm). *Simplification of Patent Application Procedure for the Territory of Several States*. London, IAPIP (British Group), 1957. - 21,5 cm., 14 pages.

As is known, any person who wishes to protect his invention in several countries is at present obliged to make separate applications in each country. This is an uneconomical solution which, moreover, has the effect of overburdening the patent offices examining the applications which has already been, or will in future be, the object of the same examination in other countries. The work of the patent agents is thus unnecessarily complicated.

The author explains his proposal which tends to permit a deposit made in the same terms in several countries simultaneously. Only one of the several national offices would be called upon to examine the application. If the examination was to find an obstacle to the delivery of a patent, the depositor would have to decide whether he should withdraw the application deposited in the other countries and, in the author's opinion, he would probably do this in most cases. The patent office in charge of the examination would inform the other national offices of the withdrawal of the application and the latter could then delete the obsolete application from their registers.

YUASA (Kyozo). *Report on Patent Legislation in Japan*. Tokyo, Journal of Japanese Group of IAPIP, 1963. - 26 cm., 7 pages.

The author gives a clear and concise survey of the historical development of the protection ensured by patents for invention in Japan. He outlines the rights and obligations of the owner of a patent and also deals briefly with the law on utility models. He points out that Japan has been a party to the Union Convention of Paris since 1899 and that if the Japanese law was to provide provisions contrary to the Conventional regulations, the latter would nevertheless be applicable. Statistical data reflects the considerable economic development of Japan.

NEWS ITEMS

Calendar of BIRPI Meetings*

Place	Date	Title	Object	Invitations to participate	Observers
Brazzaville	5-10 August 1963	African Study Meeting on Copyright	Seminar to discuss general principles regarding protection of authors	33 African States	Non-African States Members of the Berne Union or of Unesco Interested international intergovernmental and non-governmental organisations
Brazzaville	12-14 August 1963	African Seminar on Industrial Property	Discussion of general principles in regard to industrial property	33 African States	States Members of the Paris Union and interested international intergovernmental and non-governmental organisations
Geneva	2-4 October 1963	Committee of Experts. Nice Arrangement (Classification)	Examination and approval of texts to be published in <i>Classification internationale des produits et des services auxquels s'appliquent les marques de fabrique ou de commerce</i>	Representatives of Member countries of the Nice Arrangement (Classification)	None
Geneva	7-10 October 1963	Committee of Experts (Type Faces)	Preparation of a draft international agreement on the protection of Type Faces	Governmental experts nominated by Member States of the Paris Union	Interested international intergovernmental and non-governmental organisations
Geneva	21-23 October 1963	Committee of Experts (Industrially less developed countries and the protection of industrial property)	To study the problems of industrially less developed countries in the field of industrial property	Experts from: Algeria, Brazil, Ceylon, Colombia, Czechoslovakia, Guinea, Iran, Japan, Liberia, Sweden, Tanganyika, Thailand, United Arab Republic, United States of America and Venezuela	None
Geneva	18-23 November 1963	Committee of Experts (Copyright)	Discussion of proposals for amendment of the Berne Convention	Governmental experts from: Belgium, Brazil, Canada, Czechoslovakia, Finland, Germany, India, Italy, Japan, Poland, Sweden, Switzerland and United Kingdom	Non-Member countries which participated in the Study Group on the International Protection of Cinematographic Works and interested international intergovernmental and non-governmental organisations
Geneva	25-29 November 1963	Conference of the Directors of National Industrial Property Offices of the Member States of the Madrid Union	Consideration of certain matters concerning the Madrid Union for the International Registration of Trade Marks	Directors of Industrial Property Offices of the countries members of the Madrid Union	None
Geneva	27-29 November 1963	Interunion Coordinating Committee	Consideration of the programme and the budget of BIRPI	States Members of the Permanent Committee of the Berne Union and of the Permanent Bureau of the Paris Union	None
New Delhi	2-7 December 1963	Eleventh Ordinary Session of the Permanent Committee of the Berne Union	Consideration of various questions concerning Copyright	The States Members of the Permanent Committee	States not Members of the Permanent Committee Interested international intergovernmental and non-governmental organisations

* Meetings for which dates have been definitely arranged

