

COLLECTIVE MARKS

1. General.- The provisions of this Ordinance shall apply to collective marks subject to the provisions contained in this Schedule.

2. Signs of which a collective mark may consist.-

In relation to a collective mark the reference in clause (xlvii) of section 2 to

distinguish goods or services of one undertaking from those of other undertaking shall be construed as a reference to distinguishing goods or services of members of the association which is the proprietor of the mark from those of other undertakings.

3. Indication of geographical origin.-

(1) Notwithstanding the provisions of clause (c) of sub-section (1) of section 14, a collective mark may be registered which consist of marks or indications which may serve, to distinguish the geographical origin of the goods or services.

(2) The proprietor of such a mark shall not be entitled to prohibit the use of the marks or indications in accordance with honest practices in industrial or commercial matters, in particular, by a person who is entitled to use a geographical name.

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

(1) A collective mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular, if it is likely to be taken to be something other than a collective mark.

(2) The Registrar may accordingly require that a mark in respect of which application is made for registration include some indication that it is a collective mark.

(3) Notwithstanding the provisions of sub-section (7) of section 27, an application may be amended so as to comply with any such requirement.

5. Regulations governing use of collective mark.-

(1) An application for registration of a collective mark may be filed with the Registrar along with regulations governing the use of the mark.

(2) The regulations referred to in sub-Para (1) shall specify the persons authorized to use the mark, the conditions of membership of the association and , where they exist, the conditions of the use of the mark, including any sanctions against misuse.

(3) Any further requirement with which the regulations referred to in sub-Para (1) shall have to comply may be imposed as may be prescribed.

6. Approval of regulations by the Registrar.-

(1) A collective mark shall not be registered unless the regulations governing the use of the mark-

(a) comply with the requirements of Para (2) of Para 5 and any further requirement as may be prescribed; and

(b) are not contrary to public policy or to accepted principles of morality.

(2) Before the end of the prescribed period after the date of the publication for registration of a collective mark, the applicant shall file the regulations with the Registrar and pay the prescribed fee failing which the application shall be deemed to have been withdrawn.

7. Procedure of acceptance or refusal of applications.-

(1) The Registrar shall consider whether the requirements specified in sub-Para (1) of Para 6 are duly met.

(2) If it appears to the Registrar that such requirements are not met, he shall inform the applicant and give him an opportunity, within such period as the Registrar may specify, to make representation or to file amended regulations.

(3) If the applicant fails to satisfy the Registrar that such requirements are met, or to file regulations amended so as to meet them, or fails to respond before the end of the specified period, the Registrar shall refuse the application.

(4) If it appears to the Registrar that such requirements, and the other requirements for registration, are met he shall accept the applications and shall proceed in accordance with section 28;

8. Regulation to be published.-

(1) The regulations governing the use of a collective mark shall be published and notice of oppositions may be given, and observation may be made, relation to the matters specified in sub-para (1) of para 6.

(2) The provisions of sub-para (1) shall be in addition to any other grounds on which the application may be opposed or observations made.

9. Regulations to be open to inspection.- The regulations governing the use of a registered collective mark shall be open to public inspection in the same way as the Register.

10. Amendment of regulations.-

(1) An amendment of the regulations governing the use of a registered collective mark shall not be effective unless and until the amended regulations are filed with the Registrar and accepted by him.

(2) Before accepting any amended regulations the Registrar may, in any case where it appears to him expedient to do so, cause them to be published.

(3) If the Registrar does so, a notice of opposition may be give, and observations may be made, relating to the matters specified in sub-para (1) of para 6.

11. Infringement of rights of authorized user.-

The following provisions shall apply in relation to an authorized user of a registered collective mark as in relation to a licensee of a trade mark, namely:-

- (a) sub-section (7) of section 40;
- (b) sub-section (2) of section 51; and
- (c) section 53.

12 Infringement of a registered collective mark.-

(1) The provisions of this para shall have effect as regards the rights of an authorized user in relation to infringement of a registered collective mark.

(2) An authorized user shall be entitled, subject to any agreement to the contrary between him and the proprietor, to call on the proprietor to take infringement proceedings in respect of any matter which affect his interests.

(3) If the proprietor-

(a) refuses to do so; or

(b) fails to do so within two months after being called upon.

the authorized user may bring the proceedings in his own name as if he were the proprietor.

(4) Where infringement proceedings are brought under this para, the authorized user may not, without the leave of the High Court, proceed with the action unless the proprietor is either joined as a plaintiff or added as a defendant.

(5) The provisions of para (4) shall not affect the granting of interlocutory relief on an application by an authorized user alone.

(6) A proprietor who is added as a defendant as provided in sub-para (4) shall not be made liable for any costs in the action unless he takes part in the proceedings.

(7) In infringement proceedings brought by the proprietor of a registered collective mark, any loss suffered or likely to be suffered by authorised user shall be taken into account, and the High Court or a District Court may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of such users.

13. Additional grounds for revocation of registration.- Apart from the grounds of revocation provided for in section 73, the registration of a collective mark may be revoked on any of the following grounds, namely:-

(a) that the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in sub-para (1) of para 4;

(b) that the proprietor has failed to observe, or to secure the observance of, the regulations governing the use of the mark; or

(c) that an amendment of the regulations governing the use of mark has been made so that such regulations-

(i) no longer comply with requirement of sub-para (2) of para 5, and any further conditions as may prescribed; or

(ii) are contrary to public policy or to accepted principles of morality.

14. Additional grounds for invalidity of registration.- Apart from the grounds of invalidity provided for in section 80, the registration of a collective mark may be declared invalid on the ground that the mark was registered in breach of the provisions of sub-para (1) of para 4, or sub-para (1) of para 6.

CERTIFICATION MARKS

1. General.- The provisions of this Ordinance shall apply to certification marks subject to the provisions contained in this Schedule.

2. Signs of which certification mark may consist.- In relation to a certification mark the reference in clause (xlvii) of section 2 to distinguish goods or services of one undertaking from those of other undertaking shall be construed as a reference to distinguishing goods or services which are certified from those which are not.

3. Indication of geographical origin.-

(1) Notwithstanding the provisions of clause (c) of sub-section (1) of section 14, a certification mark may be registered which consist of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services.

(2). The proprietor of such a mark shall not be entitled to prohibit the use of the signs or indications in accordance with honest practices in industrial or commercial matters, in particular, by a person who is entitled to use a geographical name.

4. Nature of proprietor's business.- A certification mark shall not be registered if the proprietor carries on a business involving the supply of goods or services of the kind certified.

5. Certification mark not to be misleading as to character or significance.-

(1) A certifications mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular, if it is likely to be taken to be something other than a certification mark.

(2) The Registrar may, accordingly, require that a mark in respect of which application has been made for registration include some indication that it is a certification mark.

(3) Notwithstanding the provisions of sub-section (7) of section 27, an application may be amended so as to comply with any such requirement.

6. Regulations governing use of certification mark.-

(1) An application for registration of a certification mark may be filed with the Registrar along with regulations governing the use of the mark.

(2) The regulations referred to in sub-para (1) shall indicate who shall be authorized to use the certification mark, the characteristics by the mark, how the certifying body shall test those characteristics and supervise the use of the mark, the fee, if any, to be paid in connection with the operation of the mark and the procedures for resolving disputes.

(3) Any further requirements with which the regulation referred to in sub-para (1) shall have to comply may be imposed as may be prescribed.

7. Approval of regulations by the Registrar.-

(1) A certification mark shall not be registered unless-

- (a) the regulations governing the use of the mark-
 - (i) comply with the requirements of sub-para (2) of para 6, and any further requirements, as may be prescribed; and
 - (ii) are not contrary to public policy or to accepted principles of morality;
- and
- (b) the applicant is competent to certify the goods or services for which the mark is to be registered.

(2). Before the end of the prescribed period after the date of the application for registration of a certification mark, the applicant shall file the regulations with the Registrar and pay the prescribed fee, failing which the application shall be deemed to be withdraw.

8. Procedure for acceptance or refusal of application.-

(1) The Registrar shall consider whether the requirements specified in sub-para (1) of para 7 are met.

(2) If it appears to the Registrar that such requirements are not met, he shall inform the applicant and give him an opportunity, within such period as the Registrar may specify, to make representations or to file amended regulations.

(3) If the applicant fails to satisfy the Registrar that such requirements are met, or to file regulation amended so as to meet them, or fails to respond before the end of the specified period, the Registrar shall refuse the application.

(4) If it appears to the Registrar that such requirements, and the other requirements for registration, are met, he shall accept the application and shall proceed in accordance with section 28.

9. Regulations to be published.- The regulations governing the use of a registered certification mark shall be published and notice of opposition may be given, and observations may be made, relating to the matters specified in sub-para (1) of para 7, in addition to any other grounds on which the application may be opposed or observations made.

10. Regulations to be open to inspection.- The regulations governing the use of a registered certification mark shall be open to be public inspection in the same way as the Register.

11. Amendment of regulations.-

(1) An amendment of the regulations governing the use of a registered certification mark shall not be effective unless and until the amended regulations are filed with the Register and accepted by him.

(2) Before accepting any amended regulations the Registrar may, in any case where it appears to him expedient to do so, cause them to be published.

(3) If he does so, a notice of opposition may be given, and observations may be made, relating to the matters specified in sub-para (1) of para 7.

12. Consent to assignment of registered certification mark.- The assignment or other transmission of a registered certification mark shall not be effective without the consent of the Registrar.

13. Infringement of rights of authorised user.-

The following provisions shall apply in relation to an authorised user of a registered certification mark as in relation to a licensee of a trade mark, namely:-

(a) sub-section (7) of section 40;

- (b) sub-section (2) of section 51; and
- (c) section 53.

14. The High Court or a District Court to take into account loss suffered by authorised users.- In infringement proceedings brought by the proprietor of the registered certification mark any loss suffered or likely to be suffered by authorised user shall be taken into account and the High Court or a District Court may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of such users.

15. Additional grounds for revocation of registration.-

Apart from the grounds of revocation provided for in section 73, the registration of a certification mark may be revoked on any of the following grounds, namely:-

(a) that the proprietor has begun to carry on such a business as is specified in para 4;

(b) that the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in sub-para (1) of para 5;

(c) that the proprietor has failed to observe, or to secure the observance of, the regulations governing the use of the mark;

(d) that an amendment of the regulations has been made so that the regulations-

(i) no longer comply with the requirements of sub-para (2) of para 6, and any further conditions as may be prescribed; or

(ii) are contrary to public policy or to accepted principles of morality; or

(e) that the proprietor is no longer competent to certify the goods or services for which the mark is registered.

16. Additional grounds for invalidity of registration.- Apart from the grounds of invalidity provided for in section 80, the registration of a certification mark may be declared invalid on the ground that the mark was registered in breach of the provisions of para 4, sub-para (1) of para 5 or sub-para (1) of para 7.