

CHAPTER T13 - TRADE MARKS ACT

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CHAPTER T13

TRADE MARKS ACT

An Act to repeal the Trade Marks Act and make new provisions with respect to trade marks in place thereof and for connected purposes.

[1965 No. 29.]

[1st June, 1967]

[Commencement.]

The Registrar and the register

1. The Registrar of Trade Marks

(1) There shall continue to be an officer known as the Registrar of Trade Marks (in this Act referred to as "the Registrar") who shall be appointed by the Federal Civil Service Commission and whose office shall be situated in the Federal Capital Territory, Abuja.

(2) The Registrar shall in the exercise of his functions, other than the taking of any decision which under this Act is subject to appeal to the court, act under the general direction of the Minister.

(3) Any act or thing directed to be done by or to the Registrar may be done by or to any other officer in the public service of the Federation authorised by the Minister.

(4) The Registrar shall have an official seal which shall be officially and judicially noticed.

2. The register

(1) There shall continue to be kept the record called the register of trade marks, in which shall be entered all registered trade marks with the names and addresses of their proprietors, the date on which applications were made for their registration, notifications of assignments and transmissions, the names and addresses of all registered users and such other matters relating to registered trade marks as may be prescribed.

(2) The register shall continue to be kept under the control and management of the Registrar at the Registrar's office.

(3) The register shall continue to be divided into two parts called respectively Part A and Part B.

(4) The register shall at all convenient times be open to the inspection of the public, subject to such rules as may be prescribed.

Effects of registration and non-registration

3. Effect of non-registration

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

4. Registration to be in respect of particular goods

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

5. Right given by registration in Part A

(1) Subject to the provisions of this section and of sections 7 and 8 of this Act, the registration (whether before or after the commencement of this Act) of a person in Part A of the register as proprietor of a trade mark (other than a certification trade mark) in respect of any goods, shall, if valid, give or be deemed to have given to that person the exclusive right to the use of that trade mark in relation to those goods.

(2) Without prejudice to the generality of the right to the use of a trade mark given by such registration as aforesaid, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof, using it by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either-

(a) as being used as a trade mark; or

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

(3) The right to the use of a trade mark given by such registration as aforesaid shall be subject to any conditions or limitations entered on the register, and the use of any such mark as aforesaid in any circumstances to which, having regard to any such limitations, the registration does not extend, shall not constitute an infringement of that right.

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

6. Right given by registration in Part B

(1) Except as provided by subsection (2) of this section, the registration (whether before or after the commencement of this Act) of a person in Part B of the register as proprietor of a trade mark in respect of any goods, shall, if valid, give or be deemed to have given to that person the like right in relation to those goods as if the registration had been in Part A of the register, and section 5 (2) to (4) of this Act shall apply in relation to a trade mark registered in Part B accordingly.

(2) In any action for infringement of the right to the use of a trade mark given by such registration as aforesaid in Part B of the register, no injunction or other relief shall be granted to the plaintiff if the defendant establishes to the satisfaction of the court that the use of which the plaintiff complains is not likely to deceive or cause confusion or to lead to the belief in a connection in the course of trade between the goods and some person entitled either as proprietor or as a registered user to use the trade mark.

7. Saving for vested rights

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

- (a) the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his; or
- (b) the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his, whichever first occurred, or (where such use is proved) to object to that person being put on the register for that identical or nearly resembling trade mark in respect of those goods under section 13 (2) of this Act.

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

The registration of a trade mark shall not interfere with-

- (a) any bona fide use by a person of his own name or the name of his place of business, or of the name, or the name of the place of business, of any of his predecessors in business; or
- (b) the use by any person of any bona fide description of the character or quality of his goods, not being a description that would be likely to be taken as importing any such reference as is mentioned in section 5 (2) (b) or 43 (4) (b) of this Act.

Registrability and validity of registration

9. Distinctiveness needed for registration in Part A

(1) In order for a trade mark (other than a certification trade mark) to be registrable in Part A of the register, it must contain or consist of at least one of the following essential particulars-

- (a) the name of a company, individual, or firm, represented in a special or particular manner;
- (b) the signature of the applicant for registration or some predecessor in his business;
- (c) an invented word or invented words;
- (d) a word or words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or a surname;
- (e) any other distinctive mark:

Provided that a name, signature or word or words other than such as fall within paragraphs (a) to (d) of this section, shall not be registrable under paragraph (e) of this section, except upon evidence of its distinctiveness.

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

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

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

10. Capability of distinguishing trade mark needed for registration in Part B

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

(2) In determining whether a trade mark is capable of distinguishing as aforesaid, the tribunal may have regard to the extent to which-

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

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

11. Deceptive or scandalous matter not registrable

It shall not be lawful to register as a trade mark or part of a trade mark-

- (a) any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice or be contrary to law or morality; or
- (b) any scandalous design.

12. Names of chemical substances not to be registered

(1) Subject to this section, no word which is the commonly used and accepted name of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark in respect of a chemical substance or preparation; and any such registration in force at the commencement of this Act or thereafter shall, notwithstanding anything in section 14 of this Act, be treated for the purposes of section 38 of this Act as being an entry made in the register without sufficient cause, or an entry wrongly remaining on the register, as the case may require.

(2) The foregoing subsection shall not apply in relation to a word which is used to denote only a brand or make of such an element or compound as made by the proprietor or a registered user of the trade mark as distinguished from that element or compound as made by others, and in association with a suitable name or description open to the public use.

13. Identical and resembling trade marks not to be registered

(1) Subject to the provisions of subsection (2) of this section, no trade mark shall be registered in respect of any goods or description of goods that is identical with a trade mark belonging to a

different proprietor and already on the register in respect of the same goods or description of goods, or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion.

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

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

- (a) by the Registrar; or
- (b) by the court on an appeal from the Registrar.

14. Part A registration conclusively valid after seven years

(1) In all legal proceedings relating to a trade mark registered in Part A of the register (including applications under section 38 of this Act) the original registration of the trade mark in Part A of the register shall, after the expiration of seven years from the date of that registration, be taken to be valid in all respects, unless-

- (a) that registration was obtained by fraud; or
- (b) the trade mark offends against the provisions of section 11 of this Act.

(2) Nothing in section 6 (1) of this Act shall be construed as making applicable to a trade mark, as being a trade mark registered in Part B of the register, the foregoing provisions of this section relating to a trade mark registered in Part A of the register.

15. Disclaimer for purposes of registration

If a trade mark-

(a) contains any part not separately registered by the proprietor as a trade mark; or

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

the Registrar or the court, in deciding whether the trade mark shall be entered or shall remain on the register, may require, as a condition of its being on the register-

(i) that the proprietor shall disclaim any right to the exclusive use of any part of the trade mark, or to the exclusive use of all or any portion of any such matter as aforesaid, to the exclusive use of which the tribunal holds him not to be entitled; or

(ii) that the proprietor shall make such other disclaimer as the tribunal may consider necessary for the purpose of defining his rights under the registration:

Provided that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

16. Registration with or without limitation as to colour

(1) A trade mark may be limited in whole or in part to one or more specified colours, and in any such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark.

(2) If and so far as a trade mark is registered without limitation of colour, it shall be taken to be registered for all colours.

Procedure for and duration of registration

17. Preliminary advice on distinctiveness

(1) Any person proposing to apply for the registration of a trade mark in Part A or Part B of the register may, if he so desires, apply to the Registrar in the prescribed manner for advice as to whether the trade mark appears to the Registrar prima facie to be inherently adapted to distinguish, or capable of distinguishing, as the case may be; and the Registrar shall have power to give the advice asked for in the application.

(2) If an application for the registration of a trade mark, as to which the Registrar has given advice under this section in the affirmative, is made within three months after the giving of the advice, and the Registrar, after further investigation or consideration, gives to the applicant under section 18 of this Act notice of his objection to the acceptance of the application on the ground that the trade mark is not adapted to distinguish, or not 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.

18. Application for registration

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

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

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

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

(5) An appeal under this section shall be made in the prescribed manner, and on the appeal the court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what amendments, modifications, conditions or limitations, if any, the application is to be accepted.

(6) Appeals under this section shall be heard on the materials stated by the Registrar in pursuance of subsection (4) of this section, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those so stated by him, except by leave of the court; and if any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of costs on giving such notice as may be prescribed.

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

19. Publication of notice of application

(1) Subject to the provisions of this section, when an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause notice of the application as accepted to be published in the Journal; and the notice shall set out all conditions and limitations subject to which the application has been accepted.

(2) In the case of an application made under section 9 (1) (e) of this Act, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances to do so, the Registrar may cause notice of an application for registration of a trade mark to be published in the Journal before acceptance.

(3) Where, under subsection (2) of this section, notice of such an application has been published in the Journal before acceptance, the Registrar may, if he thinks fit, cause notice of the application to be published in the Journal again when it has been accepted, but shall not be bound to do so.

20. Opposition to registration

(1) Any person may within two months from the date of the publication under section 19 of this Act of notice of an application give notice to the Registrar of opposition to the registration.

(2) The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of every such notice to the applicant; and within one month after the date on which the copy is received by the applicant the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application and, if he does not do so, shall be treated as having abandoned his application.

(4) If the applicant sends such a counter-statement as aforesaid, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) The Registrar may request a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such a notice, to give security for costs of the

proceedings before him relating to the opposition, and in default of such security being duly given may treat the opposition or application, as the case may be, as abandoned.

21. Appeal from Registrar's decision on opposed application

(1) A decision of the Registrar under section 20 (4) of this Act shall be subject to appeal to the court.

(2) An appeal under this section shall be made in the prescribed manner, and on the appeal the court, shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions or limitations, if any, registration is to be permitted.

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

(4) On an appeal under this section, no further ground of opposition to the registration of a trade mark shall be allowed to be taken by an opponent or the Registrar, other than those stated in pursuance of section 20 of this Act by that or any other opponent, except by leave of the court; and if any further grounds of opposition are taken, the applicant shall be entitled, on giving such notice as may be prescribed, to withdraw his application without payment of the costs of the opponent or any of the opponents.

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

(6) The court may require an appellant under this section to give security for costs of the appeal, and in default of such security being duly given, may direct the appeal to be treated as abandoned.

22. Registration

(1) When an application for registration of a trade mark in Part A or in Part B of the register has been accepted, and either-

- (a) the application has not been opposed and the time for notice of opposition has expired; or
 - (b) the application has been opposed and the opposition has been decided in favour of the applicant,
- the Registrar shall, unless the application has been accepted in error, register the trade mark in Part A or Part B, as the case may be.

(2) Subject to the provisions of this Act relating to international arrangements, a trade mark, when registered, shall be registered as of the date of the application for registration, and that date shall be taken for the purposes of this Act to be the date of registration.

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

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

23. Duration and renewal of registration

(1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section:

Provided that, in relation to a registration as of a date before the commencement of this Act, this subsection shall have effect with the substitution of a period of fourteen years for the said period of seven years.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fourteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in the section referred to as "the expiration of the last registration").

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

(4) Where a trade mark has been removed from the register for non-payment of the fee for renewal, it shall, nevertheless, for the purpose of any application for the registration of a trade mark during one year next after the date of the removal, be deemed to be a trade mark that is already on the register:

Provided that the foregoing provisions of this subsection shall not have effect where the court is satisfied either-

- (a) that there has been no bona fide trade use of the trade mark that has been removed during the two years immediately preceding its removal; or
- (b) that no deception or confusion would be likely to arise from the use of the trade mark that is the subject of the application for registration by reason of any previous use of the trade mark that has been removed.

24. Separate registration of part of trade mark

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

(2) Each such separate trade mark must satisfy all the conditions of an independent trade mark and shall, subject to section 36 (2) of this Act, have all the incidents of an independent trade mark.

(3) Where a trade mark and any part or parts thereof are, by virtue of subsection (1) above, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks; and section 28 of this Act shall apply to them accordingly.

25. Registration of resembling trade marks as a series

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

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

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

(2) All trade marks that are by virtue of the foregoing subsection registered as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks; and section 28 of this Act shall apply to them accordingly.

Assignment and transmission

26. Assignability of trade marks

(1) Notwithstanding any rule of law or equity to the contrary, a registered trade mark shall, after the commencement of this Act, be assignable and transmissible either in connection with the goodwill of a business or not.

(2) A registered trade mark shall after the commencement of this Act be assignable and transmissible in respect either of all the goods in respect of which it is registered, or was registered, as the case may be, or of some (but not all) of those goods.

(3) Subsections (1) and (2) of this section shall apply in regard to an unregistered trade mark used in relation to any goods, as they apply in regard to a registered trade mark registered in respect of any goods, if-

- (a) at the time of the transmission of the unregistered trade mark it is used in the same business as a registered trade mark; and
- (b) it is assigned or transmitted at the same time and to the same person as that registered trade mark; and
- (c) it is so assigned or transmitted in respect of goods all of which are goods-
 - (i) in relation to which the unregistered trade mark is used in that business; and
 - (ii) in respect of which the registered trade mark is assigned or transmitted.

(4) Where, after the commencement of this Act, a trade mark is assigned in respect of any goods and at the time of the assignment the trade mark is used in a business in those goods, then, if the assignment is made otherwise than in connection with the goodwill of that business, the assignee shall not acquire any rights under the assignment until the following requirements have been satisfied, that is to say the assignee-

(a) must within six months from the date of the assignment or within such extended period, if any, as the Registrar may allow, apply to the Registrar for directions with respect to the advertisement of the assignment; and

(b) must advertise the assignment in such form and manner and within such period as the Registrar may direct.

(5) Where the Registrar gives directions under subsection (4) of this section for the advertisement of an assignment, he shall also cause notice of the assignment to be published in the Journal.

27. Power of Registrar to require, or dissolve, association of trade marks

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

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

(3) Any decision of the Registrar under this section shall be subject to appeal to the court.

28. Effect of association of trade marks

Trade marks that are registered as, or are deemed by virtue of this Act to be, associated trade marks, shall be assignable and transmissible only as a whole, and not separately, but shall for all other purposes be deemed to have been registered as separate trade marks.

29. Registered proprietor's power to assign

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

30. Registration of assignments, etc.

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

(2) Any decision of the Registrar under this section shall be subject to appeal to the court.

(3) Except for the purposes of an appeal under this section or of an application under section 38 of this Act, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of subsection (1) of this section, shall not be admitted in evidence in any court in proof of the title to a registered trade mark, unless the court otherwise directs.

Use and non-use

31. Removal from register on ground of non-use

(1) Subject to this and the next following section, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on an application made by any person concerned to the court or, at the option of the applicant and subject to section 56 of this Act, to the Registrar, on either of the grounds set out in subsection (2) of this section.

(2) The said grounds are-

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

(b) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods by any proprietor thereof for the time being.

(3) The tribunal may refuse an application made under this section on either of the said grounds if it is shown that before the relevant date or during the relevant period, as the case may be, there has been bona fide use of the trade mark, by any proprietor for the time being thereof, in relation to goods of the same description as the goods to which the application relates, being goods in respect of which the trade mark is registered:

Provided that where on any such application it is shown as aforesaid, the tribunal shall not refuse the application-

(a) if the applicant has been permitted under section 13 (2) of this Act to register an identical or nearly resembling trade mark in respect of the goods in question; or

(b) if the tribunal is of opinion that the applicant might properly be permitted to register such a trade mark.

(4) An applicant shall not be entitled to rely for the purposes of subsection (2) (b) of this section, on any non-use of a trade mark that is shown to have been due to special circumstances in the trade and not to any intention not to use or to abandon the trade mark in relation to the goods to which the application relates.

32. Defensive registration of well-known invented words

(1) Where a trade mark consisting of an invented word or invented words has, as respects any goods in respect of which it is registered and in relation to which it has been used (in this

subsection referred to as "the familiar goods"), become so well known that its use in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the familiar goods, the trade mark may, on the application in the prescribed manner of the proprietor registered in respect of the familiar goods, be registered in his name in respect of those other goods, as a defensive trade mark, notwithstanding that the proprietor registered in respect of the familiar goods does not use or propose to use the trade mark in relation to those other goods, and notwithstanding anything in section 31 of this Act; and while so registered, the trade mark shall not be liable to be taken off the register in respect of those goods under section 31 of this Act.

(2) The registered proprietor of a trade mark-

(a) may apply for its registration in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark; or

(b) may apply for its registration in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in place, in either case, of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor, shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks, and section 28 of this Act shall apply to them accordingly.

(4) On application by any person concerned to the court or, at the option of the applicant and subject to section 56 of this Act, to the Registrar, the registration of a trade mark as a defensive trade mark-

(a) may be cancelled on the ground that the requirements of subsection (1) of this section are no longer satisfied in respect of any goods in respect of which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark; or

(b) may be cancelled as respects any goods in respect of which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in the said subsection (1).

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

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

33. Registered users

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

(2) The use of a trade mark by a registered user thereof in relation to goods-

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

(b) in respect of which for the time being the trade mark remains registered and he is registered as a registered user,

is in this Act referred to as "the permitted use" of that trade mark:

Provided that where the registration of a person as a registered user is subject to any conditions or restrictions, "the permitted use" in his case does not include any use which does not comply with those conditions or restrictions.

(3) For the purposes of section 31 of this Act and for any other purpose for which the use of a trade mark is material under this Act or at common law, the permitted use of a trade mark shall be deemed-

(a) to be use by the proprietor thereof; and

(b) not to be use by a person other than the proprietor.

(4) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and, if the proprietor refuses or neglects to do so within two months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant:

Provided that a proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(5) Nothing in this section shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

34. Provisions supplementary to section 33

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

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;

(b) stating the goods in respect of which registration is proposed;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter; and

(d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof, and shall also furnish the Registrar with such further documents, information or evidence as may be required under the regulations or by the Registrar.

(2) When the requirements of the foregoing subsection have been complied with, if the Registrar, after considering the information furnished to him under that subsection, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or any of them by the proposed registered user, subject to any conditions or restrictions which the Registrar thinks proper, would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods as to which he is so satisfied, subject as aforesaid.

(3) The Registrar shall refuse an application under the foregoing provisions of this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

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

(5) Without prejudice to the provisions of section 38 of this Act, the registration of a person as a registered user-

(a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark; or

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say-

(i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(6) Provision shall be made by the regulations for the notification of the registration of a person as a registered user to any other registered user of the trade mark, and for the notification of an application under the last foregoing subsection to the registered proprietor and each registered user (not being the applicant) of the trade mark, and for giving to the applicant on such an

application, and to all persons to whom such an application is notified and who intervene in the proceedings in accordance with the regulations, an opportunity of being heard.

(7) The Registrar may at any time cancel the registration of a person as a registered user of a trade mark in respect of any goods in respect of which the trade mark is no longer registered.

(8) Any decision of the Registrar under the foregoing provisions of this section shall be subject to appeal to the court.

35. Registration with a view to assignment to company about to be formed, etc.

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

(a) if the tribunal is satisfied that a body corporate is about to be constituted, and that the applicant intends to assign the trade mark to the body corporate with a view to the use thereof in relation to those goods by the body corporate; or

(b) if the application is accompanied by an application for the registration of a person as a registered user of the trade mark, and the tribunal is satisfied that the proprietor intends it to be used by that person in relation to those goods and the tribunal is also satisfied that that person will be registered as a registered user thereof immediately after the registration of the trade mark.

(2) The provisions of section 31 of this Act shall have effect, in relation to a trade mark registered under the power conferred by the foregoing subsection, as if for the reference in subsection (1) (a) of that section to intention on the part of an applicant for registration that a trade mark should be used by him, there were substituted a reference to intention on his part that it should be used by the body corporate or registered user concerned.

(3) The tribunal may, as a condition of the exercise of the power conferred by subsection (1) of this section, in favour of an applicant who relies on intention to assign to a body corporate as aforesaid, require him to give security for the costs of any proceedings before the court relative to any opposition or appeal, and in default of such security being duly given, may treat the application as abandoned.

(4) Where a trade mark is registered in respect of any goods under the power conferred by subsection (1) of this section, in the name of an applicant who relies on intention to assign to a body corporate as aforesaid, then, unless within six months, or within such further period not exceeding two months as the Registrar may on application being made to him in the prescribed manner allow, the body corporate has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

36. Use of one trade mark equivalent to use of another in certain cases

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

an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trade mark shall, for the purposes of this Act, be deemed to be also a use of any registered trade mark, being a part thereof, registered in the name of the same proprietor by virtue of section 24 of this Act.

37. Use of trade mark in relation to goods for export

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

Rectification and correction of register

38. General power to rectify register

(1) Any person concerned who alleges-

- (a) that any entry has not been inserted in, or has been omitted from, the register; or
- (b) that any entry has been made in the register without sufficient cause; or

- (c) that any entry wrongly remains on the register; or

- (d) that any error or defect exists in any entry on the register,

may apply in the prescribed manner to the court or, at the option of the applicant and subject to section 56 of this Act, to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as the tribunal thinks fit.

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

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

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

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

39. Power to strike out or vary registration for breach of condition

(1) Any person concerned may apply to the court or, at the option of the applicant and subject to section 56 of this Act, to the Registrar, for an order under this section on the ground of any contravention of, or failure to observe, a condition entered on the register in relation to a trade mark.

(2) The Registrar may apply to the court for an order under this section on the ground aforesaid.

(3) On an application under the foregoing provisions of this section, the tribunal may make on the ground aforesaid such order as the tribunal thinks fit for striking out or varying the registration of the trade mark in question.

40. Correction of register

(1) The Registrar may, on request made in the prescribed manner by the registered proprietor-

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

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

(3) Any decision of the Registrar under this section shall be subject to appeal to the court.

41. Alteration of registered trade mark

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

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

(3) Any decision of the Registrar under this section shall be subject to appeal to the court.

(4) Where leave as aforesaid is granted, the trade mark as altered shall be advertised in the Journal, unless it has already been advertised, in the form to which it has been altered, in an advertisement under subsection (2) of this section.

42. Adaptation of register to revised classification of goods

(1) The Minister may make such regulations and prescribe such forms as he thinks expedient, for empowering the Registrar to amend the register, whether by making or striking out or varying entries therein, so far as may be requisite for the purpose of adapting the designation therein of the goods or

classes of goods in respect of which trade marks are registered to any amended or substituted classification that may be prescribed.

(2) The Registrar shall not, in exercise of any power conferred on him for the purpose aforesaid, make any amendment of the register that would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of any goods:

Provided that this subsection shall not have effect in relation to goods as to which the Registrar is satisfied that compliance with this subsection in relation thereto would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(3) A proposal for the amendment of the register for the purpose aforesaid-

- (a) shall be notified to the registered proprietor of the trade mark affected;
- (b) shall be subject to appeal by the registered proprietor to the court;
- (c) shall be advertised in the Journal with any modifications; and
- (d) may be opposed before the Registrar by any person concerned on the ground that the proposed amendment contravenes the provisions of subsection (2) of this section.

(4) The decision of the Registrar on any opposition under subsection (3) (d) of this section shall be subject to appeal to the court.

(5) Regulations under this section shall not have effect until published in the Federal Gazette.

Certification trade marks

43. Certification trade marks

(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, method 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 tribunal may have regard to the extent to which-

- (a) the mark is 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 the provisions of subsections (5) and (6) of this section, and of sections 7 and 8 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.

(4) Without prejudice to the generality of the right to the use of a certification trade mark given by such registration as aforesaid, that right shall be taken to be infringed by any person who, not being the proprietor of the trade mark or a person authorised by him under the rules 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 used as a trade mark; or
- (b) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or by his authorisation under the relevant rules to use the trade mark or to goods certified by the proprietor.

(5) The right to the use of a certification trade mark given by such registration as aforesaid shall be subject to any conditions or limitations entered on the register, and the use of any such mark as aforesaid in any circumstances to which, having regard to any such limitations, the registration does not extend, shall not constitute an infringement of that right.

(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 constitute an infringement of the right to the use of any other of those trade marks so given.

(7) There shall be deposited at the office of the Registrar in respect of every trade mark registered under this section, rules 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 Registrar against any refusal of the proprietor to certify goods or to authorise the use of the trade mark in accordance with the rules).

(8) Rules deposited under subsection (7) of this section, shall be open to inspection in like manner as the register.

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

(10) 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.

[First Schedule.]

International arrangements

44. International arrangements

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

Provided that-

- (a) this subsection shall not apply unless application for registration is made within six months from the application for protection in the Convention country; and
- (b) nothing in this section shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the actual date on which his trade mark is registered in Nigeria.

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

(3) The application for the registration of a trade mark by virtue of this section must be made in the same manner as an ordinary application for the registration of a trade mark under this Act.

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

- (a) in accordance with the terms of a treaty subsisting between any two or more Convention countries, is equivalent to an application duly made in anyone of those Convention countries; or
 - (b) in accordance with the law of any Convention country, is equivalent to an application duly made in that Convention country,
- he shall be deemed for the purposes of this section to have applied in that Convention country.

(5) In this Act, "Convention country" means a country in the case of which there is for the time being in force a declaration made by the President, with a view to the fulfilment of a treaty, convention, arrangement or engagement, declaring that that country is a Convention country: Provided that a declaration may be made as aforesaid for the purposes either of all or of some (but not all) of the provisions of this Act, and a country in the case of which a declaration made for the purposes of some (but not all) of the provisions of this Act is in force shall be deemed to be a Convention country for the purposes of those provisions only.

(6) A declaration made under this section shall not have effect until published in the Federal Gazette.

Regulations

45. Power to make regulations

(1) The Minister may make regulations-

- (a) for regulating the practice under this Act, including the service of documents;
- (b) for classifying goods for the purposes of registration of trade marks;

- (c) for making or requiring duplicates of trade marks and other documents;
- (d) for securing and regulating the publishing and selling or distributing, in such manner as the Minister thinks fit, of copies of trade marks and other documents;
- (e) for prescribing the fees to be paid in respect of applications, registrations and other matters under this Act;
- (f) for prescribing anything required or authorised by this Act to be prescribed by regulations;
- (g) for extending the time limited by this Act for the performance of any act, whether generally or in particular cases and whether at the discretion of the Registrar or otherwise;
- (h) for imposing restrictions as regards the registration under this Act of the arms, flags, emblems, titles or other distinctive marks of any country or international organisation;
- (i) generally, for regulating the business of the office of the Registrar and all things by this Act placed under the direction or control of the Registrar or the Minister.

(2) Regulations under this section shall not have effect until published in the Federal Gazette.

Powers and duties of Registrar

46. Duty of Registrar, if required, to hear certain persons

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

47. Power of Registrar to award costs

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

48. Annual reports of Registrar

The Registrar shall, before 1 July in every year, send to the Minister a report on the execution by or under the Registrar of this Act, and on receipt of any such report, the Minister shall lay a copy thereof before each House of the National Assembly.

Legal proceedings and appeals

49. Registration to be prima facie evidence of validity

In all legal proceedings relating to a registered trade mark (including applications under section 38 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.

50. Certificate of validity

In all legal proceedings 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 proceedings 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 be entitled to his costs unless in the subsequent proceedings the court certifies that he ought not to have them.

51. Costs of Registrar, etc.

In all proceedings before the court under this Act the costs of the Registrar shall be in the discretion of the court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

52. Trade usage, etc., to be considered

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

53. Registrar's appearance in proceedings involving rectification

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

(2) Unless otherwise directed by the court, the Registrar, instead 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 of the Registrar in like cases or of such other matters relevant to the issues, and within his knowledge as Registrar, as he thinks fit, and the statement shall be deemed to form part of the evidence in the proceedings.

54. Court's power to review Registrar's decisions

The court, in dealing with any question of the rectification of the register (including all applications under the provisions of section 38 of this Act), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

55. Powers of court on appeal

In any appeal from a decision of the Registrar to the court under this Act, the court shall have and exercise the same discretionary powers as under this Act are conferred upon the Registrar.

56. Procedure in cases of option to apply to court or Registrar

Where, under any of the foregoing provisions of this Act, an applicant has an option to make an application either to the court or to the Registrar-

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

Evidence

57. Method of giving evidence, etc.

(1) In any proceedings under this Act before the Registrar, the evidence shall be given by statutory declaration except in so far as the Registrar otherwise directs; but in any case where the Registrar thinks it right to do so, he may take evidence viva voce instead of or in addition to evidence by statutory declaration.

(2) Where, in any such proceedings, any evidence has been given by means of a statutory declaration, that evidence may, in the case of an appeal, be given before the court by means of that statutory declaration instead of by affidavit; but any evidence given by statutory declaration before the court by virtue of this subsection shall have all the incidents and consequences of evidence given by affidavit.

(3) The Chief Judge of the Federal High Court may, with respect to the taking in any proceedings before the Registrar under this Act of any part of the evidence viva voce, make rules-

(a) as to the examination of the parties, and of witnesses, on oath or affirmation; and

(b) as to the procedure of securing the attendance of witnesses and the production of documents.

(4) Rules made under subsection (3) of this section, shall not have effect until published in the Federal Gazette.

58. Evidence of entries in register

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

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

59. Evidence of things done by Registrar

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

Offences, and restraint of use of Arms of Nigeria, etc.

60. Falsification of register

If any person makes or causes to be made a false entry, in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence and be liable on conviction on indictment to imprisonment for a term not exceeding seven years.

61. Falsely representing trade mark as registered

(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 circumstance in which, having regard to limitations entered on the register, the registration does not give that right,
shall be liable on summary conviction to a fine not exceeding two hundred naira.

(2) For the purposes of this section, the use in Nigeria in relation to a trade mark of the word "registered", or of any other word referring, whether expressly or by implication, to registration, shall be taken to import a reference to registration in the register, except-

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

(b) where that word (being a word other than the word "registered") is of itself such as to indicate that the reference is to such registration as last aforesaid; or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country other than Nigeria and in relation to goods to be exported to that country.

62. Restraint of use of Arms of Nigeria or of a State, etc.

(1) If in connection with any trade, business, calling or profession any person, without the authorisation of the appropriate authority-

(a) uses the Arms of Nigeria or the Arms of a State (or arms so closely resembling the same as to be calculated to deceive) in any manner calculated to lead to the belief that he is duly authorised to use the Arms of Nigeria or the Arms of that State, as the case may be; or

(b) uses any device, emblem or title in any manner calculated to lead to the belief that he is employed by or supplies goods to the President or the Governor of a State in his official capacity as such,
he shall be guilty of an offence and liable on summary conviction to a fine not exceeding forty naira.

(2) Nothing in the foregoing subsection shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem or title as aforesaid to continue to use that trade mark.

(3) In this section, "the appropriate authority"-

(a) in relation to the Arms of Nigeria and to employment by or the supply of goods to the President, means the President; and

(b) in relation to the Arms of a State and to employment by or the supply of goods to the Governor of a State, means the Governor of that State.

Miscellaneous and supplemental

63. The Trade Marks Journal

(1) The Registrar shall, from time to time, publish a journal (in this Act referred to as "the Journal") to be known as the Trade Marks Journal.

(2) There shall be published in the Journal all matters required by or under this Act to be so published and all such other matters relating to trade marks as the Registrar thinks fit.

64. Joint proprietorship of trade mark

(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.

(2) Subject to the foregoing subsection, 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.

65. Trusts and equities

(1) There shall not be entered in the register any notice of any trust, whether express, implied or constructive; and no such notice shall be receivable by the Registrar.

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

66. Recognition of agents

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

67. Interpretation

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say-

"assignment" means assignment by act of the parties concerned;

"court" means the Federal High Court;

"Journal" means the Trade Marks Journal published under section 63 of this Act;

"limitations" means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that

right as to manner of use, as to use in relation to goods to be sold or otherwise traded in, in any place in Nigeria, or as to use in relation to goods to be exported to any market outside Nigeria;

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

"Minister" means the Minister charged with responsibility for trade marks;

"permitted use" has the meaning assigned by section 33 (2) of this Act;

"person concerned", in relation to any matter, does not include the Registrar;

"prescribed" means, in relation to proceedings before the court, prescribed by rules of court, and, in other cases, prescribed by this Act or the Regulations;

"register" means the register of trade marks kept under this Act;

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

"registered user" means a person who is for the time being registered as such under section 34 of this Act;

"Registrar" means the Registrar of Trade Marks appointed under section 1 of this Act;

"regulations" means regulations made by the Minister under section 42 or 45 of this Act;

"trade mark" means, except in relation to a certification trade mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under section 43 of this Act;

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

"tribunal" means the Registrar or the court, as the context or circumstances may require.

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

68. Transitional provisions, repeal and savings

(1) The transitional provisions set out in the Second Schedule to this Act shall have effect with respect to the various matters therein mentioned.

[Second Schedule.]

(2) The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) Nothing in this Act shall affect any order, requirement or application made, certificate issued, or notice, decision, determination, direction or approval given, or any other thing done, under any enactment repealed by this Act; and every such order, requirement, application, certificate, notice, decision, determination, direction, approval or thing shall, if in force at the commencement of this Act, continue in force and shall, so far as it could have been made, issued,

given or done under this Act or the regulations, have effect as if made, issued, given or done under the corresponding provision of this Act or the regulations.

(4) Without prejudice to the generality of subsection (3) of this section, the appointment as Registrar of Trade Marks of the officer who immediately before the commencement of this Act held that office shall be deemed to have been made by the Federal Civil Service Commission under this Act.

(5) Any proceedings begun under the Trade Marks Act may be continued under this Act.

[Cap. 199 of the 1958 Edition. Cap. T13.]

(6) The provisions of this section shall be without prejudice to the provisions of section 6 of the Interpretation Act (which relates to the effect of repeals).

69. Short title

This Act may be cited as the Trade Marks Act.

SCHEDULES

FIRST SCHEDULE

[Section 43 (10).]

Certification trade marks

1. (1) An application for the registration of a mark under section 43 of this Act must be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof.

(2) The provisions of subsections (2) and (4) to (7) of section 18 of this Act shall have effect in relation to an application under the said section 43 as they have effect in relation to an application under subsection (1) of the said section 18, 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 43 the tribunal shall have regard to the like considerations, so far as relevant, as if the application were an application under section 18 of this Act and to any other considerations (not being matters within the competence of the Minister under subparagraph (5) below) relevant to applications under the said section 43, 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 43 shall transmit to the Registrar draft rules for governing the use thereof at such time before the decision of the Registrar on the application as he may require in order to enable him to consider the draft, and the Registrar 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 rules 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 Registrar to accept the application, and approve the rules, either without modification and unconditionally or subject to any condition or limitations, or to any amendments or modifications of the application or of the rules, which the Minister 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 Registrar, 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 Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the Journal, and the provisions of sections 20 and 21 of this Act shall have effect in relation to the registration of the mark as if the application had been an application under section 18 of this Act:

Provided that, in deciding under the said provisions, the tribunal shall have regard only to the considerations referred to in paragraph 1 (3) 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 sub-paragraph (2) of this paragraph of any opposition relating to any of the matters referred to in paragraph 1 (5) of this Schedule.

(2) When notice of opposition is given relating to any of the matters referred to in paragraph 1 (5) 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 rules, if any, registration is, having regard to those matters, to be permitted.

3. (1) The rules deposited in respect of a certification trade mark may, on the application of the registered proprietor, be altered by the Registrar, 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 the Minister of opposition to the application, the Minister 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 concerned, or on the application of the Registrar, make such order as he thinks fit for striking out or varying any entry in the register relating to a certification trade mark, or for varying the deposited rules, 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 rules 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 rules should be varied,
- and neither the court nor the Registrar shall have any jurisdiction to make an order under section 38 of this Act on any of those grounds.

(2) The Registrar shall rectify the register and the deposited rules in such matter as may be requisite for giving effect to an order made under the foregoing sub-paragraph.

5. Notwithstanding anything in section 47 of this Act, the Registrar shall not have any jurisdiction to award costs to or against any party on an application 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, sections 5 and 9, sections 18 to 21 (except as expressly applied by this Schedule), section 26 (4), sections 31 to 35, and any provisions the operation of which is limited by the terms thereof to registration in Part B of the register.

SECOND SCHEDULE

[Section 68 (1).]

Transitional provisions

Validity of registrations under previous enactments

1. (1) Subject to the provisions of this paragraph and of section 14 of this Act, the validity of the original entry of any trade mark on the register of trade marks existing at the commencement of the Trade Marks Act shall be determined in accordance with the enactments in force at the date

of that entry, and any such trade mark shall retain its original date, but for all other purposes shall be deemed to have been registered under the Trade Marks Act.

(2) No trade mark which is on the register at the commencement of this Act and which under this Act is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the enactments in force at the date of its registration.

(3) Nothing in this Act shall be taken to have invalidated the original registration of a trade mark that immediately before the commencement of this Act was validly on the register.

(4) Nothing in section 43 of the Trade Marks Act or in this Act shall be construed as having subjected any person to any liability in respect of any act or thing done before the commencement of that Act or this Act respectively to which he would not have been subject under the enactments then in force.

Previous use of trade mark by person becoming registered user on application made within one year of commencement of Act

2. Where a person is registered as a registered user of a trade mark on an application made within one year from the commencement of this Act, section 33 (3) 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 that previous use had been permitted use.

Previous use of trade mark in relation to goods for export

3. Section 37 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 a competent tribunal 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 62 of the former Trade Marks Act (Cap. 199) deemed to be registered under section 43 of this Act

4. Section 43 of this Act shall have effect, in relation to a trade mark that immediately before the commencement of this Act was on the register by virtue of section 62 of the Trade Mark Act as if the said section 43 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 43 shall not apply;
- (b) in a case in which rules for governing the use of the trade mark are deposited at the office of the Registrar at the commencement of this Act, those rules shall be deemed to have been deposited under the said section 43;
- (c) in a case in which no such rules 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 rules as the Minister may permit or require; and

(d) in a case in which no such rules are for the time being deposited, the said section 43 shall have effect as if references therein, and in the First Schedule to this Act, to the rules had been omitted.

THIRD SCHEDULE

[Section 68 (2).]

Repeals

Chapter or number	Short title	Extent of repeal
Cap. 199	The Trade Marks Act	The whole Act
1958 Vol. X, Page 2516	The Trade Marks Regulations	The whole of the Regulations
L.N. 122 of 1961	The Trade Marks (Fees) Regulations 1961	The whole of the Regulations
L.N. 112 of 1964	The Adaptation of Laws(Miscellaneous Provisions) Order 1964	
In the First Schedule, the entry relating to the Trade Marks Act (Cap. 199)		

CHAPTER T13

TRADE MARKS ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
