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Naghti l-kunsens tieghi.

(L.S.)

GUIDO DE MARCO
President

23 ta' Ġunju, 2000

ATT Nru. XVI ta' l-2000

ATT sabiex jirregola t-'Trademarks'

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'ligi dan li ġej:-

TAQSIMA I: PRELIMINARI

1. Dan l-Att jista' jissejjah l-Att ta' l-2000 dwar it-*Trademarks*, u għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għall-protezzjoni tal-Proprietà Industrijali jista' jstabilixxi b'avviż fil-Gazzetta, u jistgħu jiġu hekk stabbiliti dati differenti għal dispożizzjonijiet differenti u għal għanijiet differenti ta' l-Att. Titolu fil-qosor u bidu fis-sehh.

2. (1) F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tehtiegħ xort'ohra: Tifsir.

“Kontrollur” tfisser il-Kontrollur tal-Proprietà Industrijali u tinkludi lil kull persuna ohra li tiġi mahtura sabiex teżerċita is-setgħat kollha jew x'uhud minnhom u twettaq id-dmirijiet kollha jew x'uhud minnhom tal-Kontrollur;

“Konvenzjoni ta' Pariġi” tfisser il-konvenzjoni msemmija fl-artikolu 49 ta' dan l-Att;

“kummerċ” tinkludi kull negozju jew professjoni;

“Ministru” tfisser il-Ministru responsabbli għall-protezzjoni tal-Proprietà Industrijali;

“negozju” tinkludi kull kummerç jew professjoni;

“preskritt” tfisser preskritt b’ dan l-Att jew b’ kull regolamenti maghmulin tahtu;

“jippubblika” tfisser min jaghmel disponibbli għall-pubbliku, u riferenzi għall-pubblikazzjoni f’ dak li għandu x’jaqsam mar-registrazzjoni, huma riferenzi għal publikazzjoni taht l-artikolu 37 (4);

“proċedimenti ta’ kontravvenzjoni” għar-rigward ta’ *trademark* registrata tinkludi proċedimenti taht l-artikolu 16;

Kap. 29.

“registru” tfisser ir-registru ta’ *trademarks* li jinzamm taht dan l-Att u tinkludi r-registru ta’ *trademarks* li jinzamm taht l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrijali, li hi f’ parti minnha mhassra b’ dan l-Att;

“*trademark*” tfisser kull sinjal li jista’ jiġi rappreżentat b’ mod grafiku u li bih jistghu jintgħarfu l-oġġetti u s-servizz ta’ xi impriża minn dawk ta’ impriżi oħra. *Trademark* tista’, b’ mod partikolari, tkun tikkonsisti fi kliem (inklużi ismijiet personali), elementi figurattivi, ittri, numri jew il-forma ta’ oġġetti jew l-ippakkettjar tagħhom;

Izda għall-ghan ta’ dan l-Att “kull sinjal li jista’ jiġi rappreżentant b’ mod grafiku” jinkludi kull sinjal li jista’ jiġi msawwar fi kliem.

(2) (a) Riferenzi f’ dan l-Att għal *trademark* jinkludu, kemm-il-darba r-rabta tal-kliem ma tehtiegħ xort’ oħra, riferenza għal marka kollettiva jew għal marka ta’ ċertifikazzjoni rispettivament imsemmija fl-artikoli 45 u 46.

(b) Riferenzi f’ dan l-Att għal użu (jew xi deskrizzjoni partikolari ta’ użu) ta’ *trademark*, jew ta’ sinjal identiku magħha, li jixbahha, jew li x’aktarx jiftiehem bi żball li hu *trademark*, jinkludu użu (jew dik id-deskrizzjoni ta’ użu) xort’ oħra milli permezz ta’ raffigurazzjoni grafika.

TAQSIMA II: TRADEMARKS REĠISTRATI

Introduzzjoni

Dritt ta’ proprietà.

3. *Trademark* registrata hija proprjetà miksuba bir-registrazzjoni tat-*trademark* taht dan l-Att. Il-proprjetarju ta’ *trademark* registrata jkollu d-drittijiet u r-rimedji provduti b’ dan l-Att.

Raġunijiet għal rifjut ta' reġistrazzjoni

4. (1) Dawn li ġejjin ma għandhomx jiġu reġistrati bhala *trademarks* - Raġunijiet assoluti għal rifjut.

(a) sinjali li ma jinkwadrawx fit-tifsira ta' *trademarks* fl-artikolu 2;

(b) *trademarks* li huma neqsin minn kull karattru distintiv;

(ċ) *trademarks* li jikkonsistu esklużivament f'sinjali jew indikazzjonijiet li jistgħu jservu, fil-kummerċ, biex ifissru ix-xorta, kwalità, skop intiz, valur, oriġni ġeografika, żmien ta' produzzjoni ta' oġġetti jew ta' għoti ta' servizzi, jew karatteristiċi ohrajn ta' oġġetti jew servizzi;

(d) *trademarks* li jikkonsistu esklużivament f'sinjali jew indikazzjonijiet li saru konswetudinarji fl-ilsien mitkellem jew fl-użanzi bonafidi u stabbiliti ta' dak il-kummerċ:

Iżda *trademark* ma għandhiex tiġi rifjutata milli tiġi reġistrata minhabba fil-paragrafu (b), (ċ) jew (d) hawn aktar qabel jekk, qabel id-data ta' l-applikazzjoni għar-reġistrazzjoni, tkun fil-fatt kisbet karattru distintiv b'riżultat ta' l-użu li jsir minnha f'Malta.

(2) Sinjal ma għandux jiġi reġistrat bhala *trademark* jekk ikun esklużivament jikkonsisti -

(a) fil-forma li tirriżulta mix-xorta ta' l-oġġetti nfushom,

(b) fil-forma ta' oġġetti li tkun mehtieġa biex jinkiseb riżultat tekniku, jew

(ċ) fil-forma li tagħti valur sostantiv lill-oġġetti.

(3) *Trademark* ma għandhiex tkun reġistrata jekk din -

(a) tmur kontra *public policy* jew il-prinċipji aċċettati tal-moralità, jew

(b) tkun ta' tali xorta li tqarraq bil-pubbliku jew x'aktarx li tqarraq bil-pubbliku bħal dwar ix-xorta, kwalità jew oriġni ġeografika ta' l-oġġetti jew tas-servizz jew b'kull mod ieħor li jkun.

(4) *Trademark* ma ghandhiex tiġi registrata jekk jew daqskemm l-użu tagħha jkun projbit f'Malta bl-ghemil ta' xi liġi.

(5) *Trademark* ma ghandhiex tiġi registrata fil-kazijiet speċifikati, jew imsemmija, fl-artikolu 5.

(6) *Trademark* ma ghandhiex tiġi registrata jekk, jew daqskemm, l-applikazzjoni ssir b'malafidi.

5. (1) *Trademark* li tikkonsisti fi, jew ikun fiha -

Emblemi protetti
b'mod speċjali.

(a) l-istemmi, jew xi waħda mill-armaturi prinċipali ta' l-istemmi li jkunu jappartjenu lill-President jew lill-Arċisqof Kattoliku Ruman ta' Malta, jew xi insinja jew arma oħra li jkunu daqstant jixbhu dawk l-armi jew dik l-armatura ta' l-istemmi li x'aktarx jithawdu magħhom,

(b) raffigurazzjoni tal-bnadar Presidenzjali jew Episkopali,

(c) raffigurazzjoni tal-President jew ta' l-Arċisqof, jew xi tixbiha mlewna tagħhom, jew

(d) kelmiet, ittri jew mezzi li x'aktarx iwasslu lil min jaħseb li jew l-applikant għandu jew li reċentement kellu l-patroċinju jew l-awtorizzazzjoni Presidenzjali jew Episkopali,

ma ghandhiex tiġi registrata kemm-il darba l-Kontrollur ma jkunx tal-fehma li jkun inghata l-kunsens minn jew f'isem il-President jew l-Arċisqof.

(2) *Trademark* li tkun tikkonsisti f'raffigurazzjoni tal-bandiera nazzjonali ta' Malta ma ghandhiex tiġi registrata.

(3) *Trademark* li jkun fiha raffigurazzjoni tal-bandiera nazzjonali ta' Malta m'ghandhiex tiġi registrata jekk il-Kontrollur ikun tal-fehma li l-użu tat-*trademark* se jkun wiehed qarrieqi jew gravement offensiv.

(4) *Trademark* ma ghandhiex tkun registrata fil-kazijiet speċifikati fl-artikolu 51 jew fl-artikolu 52:

Iżda l-Ministru jista' b'regolamenti jestendi l-applikabilità tad-dispożizzjonijiet ta' dan is-subartikolu biex dawn ikunu japplikaw *mutatis mutandis* għar-rigward ta' reliġjonijiet oħra minbarra r-Reliġjon Kattolika Appostolika Rumana.

Raġunijiet relattivi
għal rifjut ta'
registrazzjoni.

6. (1) *Trademark* ma ghandhiex tkun registrata jekk din tkun identika ma *trademark* preċedenti u l-oġġetti u s-servizzi li dwarhom issir l-applikazzjon għat-*trademark* ikunu identiċi ma' l-oġġetti jew is-servizzi li dwarhom it-*trademark* preċedenti tkun protetta.

(2) *Trademark* ma ghandhiex tkun registrata jekk minhabba li jew ghax tkun identika ma' *trademark* preċedenti u tkun se tiġi registrata dwar oġġetti jew servizzi simili ghal dawk li dwarhom it-*trademark* preċedenti tkun protetta, jew ghax tkun simili ghal *trademark* preċedenti u tkun se tiġi registrata dwar oġġetti jew servizzi identiċi jew simili ghal dawk li dwarhom it-*trademark* preċedenti tkun protetta, ikun hemm probabbiltà ta' konfużjoni min-naha tal-pubbliku, inkluża l-probabbiltà ta' assoċjazzjoni mill-pubbliku mat-*trademark* preċedenti:

Izda s-sempliċi assoċjazzjoni minghajr il-probabbiltà ta' konfużjoni ma ghandhiex tipprevjeni li marka ma tiġix registrata.

(3) *Trademark* li -

(a) tkun identika jew simili ghal *trademark* preċedenti, u

(b) ghandha tiġi registrata dwar oġġetti jew servizzi li ma jkunux simili ghal dawk li dwarhom it-*trademark* preċedenti tkun protetta,

ma ghandhiex tkun registrata jekk, jew daqskemm, t-*trademark* preċedenti jkollha riputazzjoni f'Malta u l-użu tat-*trademark* sussegwenti minghajr kawża ġusta jkun ta' vantaġġ mhux ġust jew ta' detriment ghax-xorta distintiva jew ir-riputazzjoni tat-*trademark* preċedenti.

(4) *Trademark* ma ghandhiex tkun registrata jekk, jew daqskemm, jista' ma jithalliex li jsir l-użu taghha f'Malta minhabba -

(a) f'liġi li tkun tipproteġi *trademark* mhux registrata jew xi sinjal ieħor li jintuza fil-kors tal-kummerċ, jew

(b) fi dritt preċedenti li ma jkunx wiehed minn dawk imsemmija fil-paragrafu (a) ta' dan is-subartikolu jew fis-subartikoli (1) sa (3), b'mod partikolari minhabba fil-liġi dwar id-drittijiet ta' l-awtur, jew ta' disinji registrati.

Persuna li jkollha jedd li ma thallix li jsir l-użu ta' *trademark* tissemma f'dan l-Att bhala "l-proprjetarju ta' dritt preċedenti" ghar-rigward tat-*trademark*.

(5) Ebda haġa f'dan l-artikolu ma żzomm mir-registrazzjoni ta' *trademark* meta l-proprjetarju tat-*trademark* preċedenti jew il-proprjetarju ta' dritt preċedenti jaghti l-kunsens tiegħu ghar-registrazzjoni.

Tifsira ta' "trademark precedenti".

7. (1) F'dan l-Att "*trademark precedenti*" tfisser -

(a) *trademark* registrata, li jkollha data ta' l-applikazzjoni ghar-registrazzjoni iktar kmieni minn dik tat-*trademark* involuta, meta jitqiesu, fejn ikun il-każ, l-prijoritajiet mitluba ghar-rigward tat-*trademarks*,

(b) *trademark* li, fid-data ta' l-applikazzjoni ghar-registrazzjoni tat-*trademark* involuta jew (ghax ikun jixraq) tal-prijorità mitluba ghar rigward ta' l-applikazzjoni, kellha jedd għal protezzjoni taht il-Konvenzjoni ta' Parigi bhala *trademark* maghrufa sew.

(2) Bla hsara ghal dik ir-registrazzjoni taghha bhala tali, kull riferenza f'dan l-Att ghal *trademark precedenti* tinkludi *trademark* li ghar-rigward taghha tkun saret applikazzjoni ghar-registrazzjoni u li, jekk registrata, kienet tkun *trademark precedenti* bis-sahha tas-subartikolu (1)(a).

(3) *Trademark* bhalma tissemma fis-subartikolu (1)(a) li r-registrazzjoni taghha tiskadi, ghandha titkompli titqies meta tittiehed decizjoni dwar ir-registrabilità ta' *trademark* sussegwenti sa żmien sena wara l-iskadenza taghha. Madankollu, jekk il-Kontrollur jkun sodisfatt li ma kienx hemm użu bonafidi tat-*trademark* matul is-sentejn minnufih qabel l-iskadenza, it-*trademark* skaduta ma ghandha titqies b'ebda mod.

Setgħa li jitnehew raġunijiet relattivi għal rifjut ta' registrazzjoni.

8. (1) Il-Ministru jista' jagħmel regolamenti li jipprovdu li *trademark* ma ghandhiex ma tithalliex li tiġi registrata minhabba f'xi raġuni msemmija fl-artikolu 6.

(2) Dawk ir-regolamenti jistgħu jagħmlu dawk il-provvedimenti konsegwenzjali li jistgħu jidhru xierqa lill-Ministru dwar —

(a) l-ghemil ta' riċerki mill-Kontrollur ghal *trademarks precedenti*, u

(b) il-persuni li jistgħu jagħmlu applikazzjoni ghal dikjarazzjoni ta' invalidità minhabba fir-raġunijiet speċifikati fl-artikolu 43 (2).

(3) Regolamenti li jkunu jipprovdu kif hemm imsemmi fis-subartikolu (2)(a) jistgħu jordnaw li d-dispożizzjonijiet ta' l-artikolu 35 daqskemm dawn ikunu jehtieġu li ssir riċerka, ma ghandhomx ikollhom effett.

(4) Regolamenti li jkunu jipprovdu kif hemm imsemmi fis-subartikolu (2)(b) jistghu jipprovdu li l-artikolu 43 (3) sakemm dan jipprovdi li kulhadd jista' jagħmel applikazzjoni għal dikjarazzjoni ta' invalidità, ikollhom effett bla hsara għall-provvedimenti ta' l-ordni.

(5) Regolamenti taht dan l-artikolu jista' jkun fihom dawk id-dispożizzjonijiet transitorji hekk kif il-Ministru jidhirlu li jkunu meħtieġa.

Effetti ta' "trademark" registrata

9. (1) Il-proprjetarju ta' *trademark* registrata għandu drittijiet esklużivi dwar dik it-*trademark*. Dawk id-drittijiet jigu kontravvenuti meta t-*trademark* hekk tintuża f'Malta bil-mod speċifikat fl-artikolu 10, mingħajr il-kunsens tal-proprjetarju.

Drittijiet mogħtija permezz ta' *trademark* registrata.

(2) Kull riferenza f'dan l-Att għall-kontravvenzjoni ta' *trademark* registrat għandha titqies bħala riferenza għal kontravvenzjoni bħal dik tad-drittijiet tal-proprjetarju.

(3) Id-drittijiet tal-proprjetarju ikollhom effett mid-data tar-registrazzjoni li titqies skond l-artikolu 37(3) :

Izda -

(a) ma jistghu jinbdew ebda proċedimenti ta' kontravvenzjoni qabel id-data meta t-*trademark* tkun fil-fatt registrata; u

(b) ma jsir ebda reat taht l-artikolu 72 b'xi għemil li jsehh qabel id-data tal-pubblikazzjoni tar-registrazzjoni.

10. (1) Persuna tikkontravvjoni *trademark* registrata meta fil-kors tal-kummerċ tuża sinjal li jkun identiku mat-*trademark* għar-rigward ta' oġġetti jew servizzi li jkunu identiċi ma' dawk li dwarhom it-*trademark* tkun registrata.

Kontravvenzjoni ta' *trademark* registrata.

(2) Persuna tikkontravvjoni *trademark* registrata meta fil-kors tal-kummerċ tuża sinjal li minhabba -

(a) li s-sinjal ikun identiku mat-*trademark* u jkun użat għar-rigward ta' oġġetti jew servizzi simili għal dawk li dwarhom it-*trademark* tkun registrata, u

(b) is-sinjal ikun simili għat-*trademark* u jintuża għar-rigward ta' oġġetti jew servizzi identiċi ma', jew simili għal dawk li dwarhom it-*trademark* tkun registrata,

jkun hemm probabbiltà ta' konfużjoni min-naħa tal-pubbliku, inkluża l-probabbiltà ta' assoċjazzjoni mat-*trademark*:

Iżda assoċjazzjoni waħidha mingħajr il-probabbiltà ta' konfużjoni ma għandhiex titqies bħala li tikkostitwixxi kontravvenzjoni.

(3) Persuna tikkontravvjoni *trademark* registrata meta fil-kors tal-kummerċ tuża sinjal li -

(a) jkun identiku jew jixbah it-*trademark*, u

(b) jintuża għar-rigward ta' oġġetti jew servizzi li ma jkunux simili għal dawk li dwarhom it-*trademark* tkun registrata,

meta t-*trademark* ikollha riputazzjoni f'Malta u l-użu tas-sinjal, li jsir mingħajr kawża ġusta, jiehu vantaġġ mhux ġust fuq, jew ikun detrimental għax-xorta distintiva jew ir-riputazzjoni tat-*trademark*.

(4) Għall-ghanijiet ta' dan l-artikolu persuna tuża sinjal jekk, b'mod partikolari, hija -

(a) twaħhalha ma' l-oġġetti jew mal-ippakkettjar tagħhom;

(b) toffri jew tesponi oġġetti għal bejgħ, tohroġhom fis-suq jew taħzinhom għal dawk l-ghanijiet taht is-sinjal, jew toffri jew tforni servizzi taht is-sinjal;

(c) timporta jew tesporta oġġetti taht is-sinjali; jew

(d) tuża s-sinjal fuq kartolerija kummerċjali jew fir-reklamar.

(5) Persuna li tapplika *trademark* registrata għal materjal maħsub li jintuża għall-ittikkettjar jew l-ippakkettjar ta' oġġetti, bħala kartolerija kummerċjali, jew għar-reklamar ta' oġġetti jew servizzi, għandu jitqies bhallikieku parti fl-użu tal-materjal li jikkontravvjoni t-*trademark* registrata jekk meta huwa jkun applika t-*trademark* kien jaf jew kellu għaliex jahseb li l-applikazzjoni tat-*trademark* ma kienetx debitament awtorizzata mill-proprjetarju jew minn persuna liċenzjata.

(6) Ebda haġa fid-dispożizzjonijiet ta' qabel ta' dan l-artikolu ma għandha tiftiehem bħala li tipprevjeni l-użu ta' *trademark* registrata minn xi persuna bil-ghan li jiġu identifikati oġġetti jew servizzi bħal dawk tal-proprjetarju jew tal-persuna liċenzjata.

Madankollu, kull użu bħal dak xort'ohra milli skond kull prattika onesta fi hwejjeġ industrijali jew kummerċjali għandu jitqies bħala lil jikkontravvjoni ta' *trademark* reġistrata jekk l-użu minghajr kawża ġusta jkun jiehu vantaġġ mhux ġust fuq, jew ikun detrimental għax-xorta distintiva jew riputazzjoni ta' *trademark*.

11. (1) Ma ssirx kontravvenzjoni ta' *trademark* reġistrata bl-użu ta' *trademark* reġistrata ohra għar-rigward ta' oġġetti jew servizzi li dwarhom it-*trademark* l-ohra tkun reġistrata. Limiti fuq l-effett ta' *trademark* reġistrata.

(2) Ma ssirx kontravvenzjoni ta' *trademark* reġistrata billi

(a) jsir użu minn persuna ta' l-isem u l-indirizz tiegħu nnifsu,

(b) jsir użu ta' indikazzjonijiet li jkunu jirrigwardaw ix-xorta, l-kwalità, l-kwantità, l-iskop intiż, il-valur, l-oriġni ġeografika, iż-żmien tal-produzzjoni ta' l-oġġetti jew ta' l-ghoti ta' servizzi, jew karatteristiċi ohra ta' oġġetti jew servizzi, jew

(c) jsir użu ta' *trademark* meta jkun meħtieġ li jiġi indikat l-iskop intiż ta' prodott jew servizz, b'mod partikolari, bhala aċċessorji jew *spare parts*:

Iżda l-użu jkun skond kull prattika onesta fi hwejjeġ industrijali jew kummerċjali.

(3) (a) Ma ssirx kontravvenzjoni ta' *trademark* reġistrata bl-użu fil-kors ta' kummerċ f'Malta ta' dritt preċedenti.

(b) Għall-ghanijiet ta' dan is-subartikolu "dritt preċedenti" jfisser *trademark* mhux reġistrata jew sinjal iehor li jintuża kontinwament għar-rigward ta' oġġetti jew servizzi minn persuna jew mill-predeċessor tagħha fit-titolu minn data li tiġi qabel dak li jiġi l-aktar kmieni minn -

(i) l-użu ta' *trademark* l-ewwel imsemmija għar-rigward ta' dawg l-oġġetti jew servizzi mill-proprjetarju jew mill-predeċessor tagħha fit-titolu, jew

(ii) ir-reġistrazzjoni ta' *trademark* l-ewwel imsemmija għar-rigward ta' dawg l-oġġetti jew servizzi f'isem il-proprjetarju jew predeċessor b'jedd fuqhom; u

(iii) dritt preċedenti jitqies li jkun japplika jekk, jew daqskemm, l-użu tiegħu jkun protett bis-sahha ta' xi liġi.

Eżawriment ta' drittijiet moghtija bi *trademark* registrata.

12. (1) Ma ssirx kontravvenzjoni ta' *trademark* registrata bl-użu tat-*trademark* għar-rigward ta' oġġetti li jkunu nharġu fis-suq f' Malta taht dik it-*trademark* mill-proprjetarju jew bil-kunsens tiegħu.

(2) Is-subartikolu (1) ma japplikax meta jkun hemm raġunijiet legittimi għal proprjetarju biex jopponi iktar negozju fl-oġġetti, b'mod partikolari iżda mingħajr preġudizzju għall-ġeneralità ta' dak hawn imsemmi, meta l-kondizzjoni ta' l-oġġetti tkun imbidlet jew ittiefset wara li jkunu nharġu fis-suq.

Reġistrazzjoni suġġetta għal ċhid jew limitazzjoni.

13. (1) Applikant għal reġistrazzjoni ta' *trademark*, jew il-proprjetarju ta' *trademark* registrata, jista' -

(a) jiċhad kull dritt għall-użu esklużiv ta' xi element speċifikat tat-*trademark*, jew

(b) jaqbel li d-drittijiet moghtija bir-reġistrazzjoni jkunu suġġetti għal limitazzjoni speċifika territorjali jew xort'ohra.

(2) Il-Kontrollur jista' jiċhad kull dritt għall-użu esklużiv ta' xi element speċifikat tat-*trademark*.

(3) Il-Ministru jista' jagħmel regoli li jkunu jipprovdu għall-pubblikazzjoni u l-kitba fir-reġistru ta' xi ċhid jew limitazzjoni.

(4) Meta r-reġistrazzjoni ta' *trademark* tkun suġġetta għal ċhid jew limitazzjoni, id-drittijiet moghtija bl-artikolu 9 jkunu ristretti skond hekk.

Proċedimenti ta' kontravvenzjoni

Azzjoni dwar kontravvenzjoni.

14. (1) Bla hsara għad-dispożizzjonijiet ta' l-artikoli 28 u 29, kontravvenzjoni ta' *trademark* registrata hi azzjonabbli mill-proprjetarju tat-*trademark* b'ċitazzjoni li tiġi pprezentata fil-Prim'Awla tal-Qorti Ċivili.

(2) F'azzjoni dwar kontravvenzjoni kull rimedju bħalma hu disponibbli għar-rigward tal-kontravvenzjoni ta' kull dritt iehor li jirrigwarda l-proprjetà jkun disponibbli lill-attur.

Ordni għat-tahsir, eċċ. ta' sinjal kontravenjenti.

15. (1) Meta jirrizulta li persuna tkun ikkontravvenjenti *trademark* registrata, il-Qorti tista' tohrog ordni li tehtiegħa -

(a) tara li s-sinjal kontravenjenti jithassar, jitneħħa jew jiġi ngassat minn fuq oġġetti, materjal jew hwejjeġ fil-pussess, kustodja jew kontroll tagħha, jew

(b) jekk ma jkunx raġonevolment prattikabbli li s-sinjali kontravvenjenti jithassar, jitneħħa jew jiġi ngassat, li tiżgura li sseħħ il-qerda ta' tali oġġett, materjal jew haġa involuta.

(2) Jekk ordni taht is-subartikolu (1) ma jiġix imħares, jew inkella l-Qorti jkun jidhrilha li x'aktarx li dik l-ordni ma tkunx se tithares, il-Qorti tista' tordna li oġġetti, materjal jew hwejjeġ kontravvenjenti għandhom jingħataw lil dik il-persuna li l-Qorti tista' ssemmi biex teffettwa t-taħsir, tneħħija jew ingassar tas-sinjali, jew għall-qerda, skond il-każ.

16. (1) Il-proprietarju ta' *trademark* reġistrat jista' jitlob lill-Qorti toħrog ordni għall-konsenja lilu, jew lil min il-Qorti tista' tordna, ta' dawk l-oġġetti, materjal jew hwejjeġ kontravvenjenti li persuna jkollha fil-pussess, kustodja jew kontroll tagħha fil-kors ta' xi kummerç.

Ordni għall-konsenja ta' l-oġġetti, materjal jew hwejjeġ kontravvenjenti.

(2) Ma għandhiex issir applikazzjoni wara tmiem il-perijodu speċifikat fl-artikolu 18; u ma għandha ssir ebda ordni kemm-il darba l-Qorti ma toħroġx ukoll ordni, jew ikun jidher lill-Qorti li jkun hemm raġunijiet għall-ħruġ ta' ordni, taht l-artikolu 19.

(3) Min jiġi konsenjat lilu xi oġġett, materjal jew haġa kontravvenjenti skond u b'mod konformi ma' ordni taht dan l-artikolu għandu jibqa' jzommhom sakemm tingħata d-deċiżjoni tal-Qorti taht l-artikolu 19.

(4) Ebda haġa f'dan l-artikolu ma tolgot xi setgha oħra tal-Qorti.

17. (1) F'dan l-Att, il-frażijiet "oġġetti kontravvenjenti", "materjal kontravvenjenti" u "hwejjeġ kontravvenjenti" għandhom jiftieħmu skond dawn is-subartikoli li ġejjin ta' dan l-artikolu.

Tifsira ta' "oġġetti, materjal jew hwejjeġ kontravvenjenti".

(2) Oġġetti jkunu "oġġetti kontravvenjenti", għar-rigward ta' *trademark* reġistrata, jekk l-oġġetti jew l-ippakkettjar tagħhom jgibu fuqhom sinjal identiku jew jixbah lil dik it-*trademark* u -

(a) l-applikazzjoni tas-sinjali għall-oġġetti jew l-ippakkettjar tagħhom jkun kontravvenzjoni tat-*trademark* reġistrata, jew

(b) l-oġġetti jkunu qed jiġu proposti li jiġu importati f'Malta u l-applikazzjoni f'Malta tas-sinjali dwarhom jew l-ippakkettjar tagħhom jkun kontravvenzjoni tat-*trademark* reġistrata, jew

(c) is-sinjali jkun xort'oħra intuża għar-rigward ta' l-oġġetti b'mod li jikkontravvjoni t-*trademark* reġistrata.

(3) Materjal jkun “materja kontravvenjenti”, ghar-rigward ta’ *trademark* registrata, jekk igibu fuqhom sinjal identiku jew jixbah lil dik it-*trademark* u -

(a) ikun użat ghat-tikkettjar jew l-ippakkettjar ta’ oġġetti, bhala kartolerija kummerċjali, jew ghar-reklamar ta’ oġġetti jew servizzi, b’mod li jikkontravvjani t-*trademark* registrata, jew

(b) ikun intiż li hekk jintuża u dak l-użu jkun jikkontravvjani t-*trademark* registrata.

(4) “Hwejjeg kontravvenjenti”, ghar-rigward ta’ *trademark* registrata, tfisser hwejjeg -

(a) li jkunu speċifikament disinjati jew adattati ghall-ghemil ta’ kopji ta’ sinjal identiku jew jixbah lil dik it-*trademark*, u

(b) li persuna jkollha fil-pussess, kustodja jew kontroll taghha, filwaqt li tkun taf, jew ikollha ghaliex taħseb, li jkunu ġew użati jew ikunu se jintużaw biex jipproduċu oġġetti jew materjal kontravvenjenti.

Perijodu li warajh ma jibqax disponibbli irrimedju tal-konsenja.

18. (1) Applikazzjoni ghal ordni taht l-artikolu 16 ma tistax issir wara tmiem il-perijodu ta’ sitt snin -

(a) fil-każ ta’ oġġetti kontravvenjenti, mid-data meta t-*trademark* kienet applikata ghall-oġġetti jew l-ippakkettjar taghhom,

(b) fil-każ ta’ materjal kontravvenjenti, mid-data meta t-*trademark* giet applikata ghall-oġġetti, jew

(c) fil-każ ta’ hwejjeg kontravvenjenti, mid-data meta dawk ikunu saru,

hlief kif provdut fis-subartikolu li ġej.

(2) Jekk matul il-perijodu kollu jew parti minnu l-proprjetarju tat-*trademark* registrata ma jithallix, bi frodi jew habi, milli jikxef il-fatti li jaghtuh jedd japplika ghal ordni, tista’ ssir applikazzjoni f’kull żmien qabel tmiem il-perijodu ta’ sitt snin mid-data meta huwa seta’, b’diligenza ragonevoli, skopra dawk il-fatti.

Ordni dwar it-tnehhija ta’ oġġetti, materjal jew hwejjeg kontravvenjenti.

19. (1) Meta oġġetti, materjal jew hwejjeg kontravvenjenti jkunu ġew konsenjati skond u b’mod konformi ma’ ordni taht l-artikolu 16, tista’ ssir azzjoni permezz ta’ ċitazzjoni quddiem il-Qorti minn kull parti li jkollha interess -

(a) ghal ordni li jiġu meqruda jew konfiskati lil min il-Qorti jista' jidhrilha li jkun xieraq, jew

(b) ghal deċiżjoni li ma ghandha ssir ebda ordni bhal dik.

(2) Meta tiġi biex tqis id-deċiżjoni tagħha, l-Qorti ghandha tqis jekk rimedji oħra disponibbli f'azzjoni dwar kontravvenzjoni tat-*trademark* reġistrata jkunux adegwati biex jikkumpensaw lill-proprietarju u xi detentur ta' licenza biex jiproteġu l-interessi tagħhom.

(3) Il-Qorti ghandha tordna n-notifika taċ-ċitazzjoni lil persuni li jkollhom interess fl-oġġetti, materjal jew hwejjeġ kontravvenjenti, u kull persuna li jkollha interess ghandu jkollha jedd -

(a) tidher waqt proċedimenti ghal ordni taht dan l-artikolu, sew jekk kienet notifikata b'avviż sew jekk ma kienetx, u

(b) tappella kontra xi ordni mahruġa, sew jekk tkun dehret sew jekk ma tkunx dehret fl-ewwel istanza, u kull ordni bhal dik ma ghandhiex isseħħ sa tmiem il-perijodu li fih jista' jiġi pprezentat appell jew, jekk qabel tmiem dak il-perijodu jkun hekk ġie pprezentat appell, sad-deċiżjoni finali jew iċ-ċessjoni tal-proċedimenti ta' l-appell.

(4) Meta jkun hemm aktar minn persuna waħda li jkollha interess fl-oġġetti, materjal jew hwejjeġ, il-Qorti ghandha tohroġ dak l-ordni li tqis idoneju.

(5) Jekk il-Qorti tiddeċiedi li ma ghandu jinhareġ ebda ordni taht dan l-artikolu, min kellu fil-pussess, kustodja jew kontroll tiegħu l-oġġetti, materjal jew hwejjeġ qabel il-konsenja tagħhom, ikollu jedd għar-radd lura tagħhom.

20. (1) Meta persuna thedded lil persuna oħra bi proċedimenti ta' kontravvenzjoni dwar *trademark* reġistrata li ma tkunx -

Rimedju għal theddid bla raġun ta' proċedimenti ta' kontravvenzjoni.

(a) l-użu tat-*trademark* fuq oġġetti jew l-ippakkettjar tagħhom,

(b) l-importazzjoni ta' oġġetti li dwarhom, jew dwar l-ippakkettjar tagħhom, tkun ġiet applikata t-*trademark*, jew

(ċ) il-provvista ta' servizzi taht it-*trademark*,

persuna aġġravata tista' tibda proċedimenti għal rimedju taht dan l-artikolu b'ċitazzjoni quddiem il-Prim'Awla tal-Qorti Ċivili.

(2) Ir-rimedju li tista' ssir applikazzjoni dwaru hu wiehed minn dawn li ġejjin -

(a) dikjarazzjoni li t-theddid ma jkunx ġustifikat,

(b) inibizzjoni kontra t-tkomplija tat-theddid,

(ċ) danni għar-rigward ta' kull telf li seta' ġarrab permezz tat-theddid,

u l-attur ikollu jedd għal dak ir-rimedju kemm-il darba l-konvenut ma jurix li l-atti li dwarhom kienu mhedda l-proċedimenti jikkostitwixxu, jew inkella jekk isiru jkunu jikkostitwixxu, kontravvenzjoni tat-*trademark* registrata involuta.

(3) Meta l-konvenut juri li l-attijiet li dwarhom kienu mhedda l-proċedimenti kienu jikkostitwixxu jew kieku kienu jikkostitwixxu kontravvenzjoni tat-*trademark* registrata, l-attur għandu madankollu jkollu jedd għal rimedju jekk juri li r-registrazzjoni tat-*trademark* ma tkunx valida jew tista' tiġi revokata.

(4) L-avviż wahdu li *trademark* tkun registrata, jew li tkun saret applikazzjoni għal registrazzjoni, ma jikkostitwixx theddida ta' proċedimenti għall-iskopijiet ta' dan l-artikolu.

"Trademark" registrata bħala proprjetà

Xorta ta' *trademark* registrata.

21. *Trademark* registrata hija proprjetà personali ta' sidha.

Komproprjetà ta' *trademark* registrata.

22. (1) Meta *trademark* registrata tiġi konċessa lil tnejn min-nies jew aktar solidalment, kull wiehed minnhom ikollu jedd, sakemm ma jkunx ġie miftiehem kuntrarju, għal sehem indaqs mhux diviż fit-*trademark* registrata.

(2) Dawn id-dispożizzjonijiet li ġejjin japplikaw meta tnejn min-nies jew aktar ikunu komproprjetarji ta' *trademark* registrata, bis-saħħa tas-subartikolu (1) jew xort'ohra.

(3) Bla hsara għal kull ftehim kuntrarju, kull komproprjetarju jkollu jedd, personalment jew permezz ta' l-aġenti tiegħu, li jagħmel għall-benefiċċju tiegħu nnifsu u minghajr il-kunsens jew il-htieġa ta' rendikont lejn xi komproprjetarju iehor, kull att li kieku xort'ohra jammonta għal kontravvenzjoni tat-*trademark* registrata.

(4) Minkejja d-dispożizzjonijiet tas-subartikolu (3), komproprjetarju ma jistax minghajr il-kunsens ta' l-iehor jew ta' l-ohrajn —

(a) jaghti liċenza għall-użu tat-*trademark* registrata, jew

(b) jassenja jew iċedi kontroll tas-sehem tiegħu fit-*trademark* registrata.

(5) Proċedimenti ta' kontravvenzjoni jistgħu jinbdew minn kull komproprietarju, iżda komproprietarju ma jistax, minghajr il-permess tal-Qorti, ikompli bl-azzjoni sakemm il-komproprietarju l-iehor, jew kull wiehed mill-komproprietarji l-oħrajn, jiġi kjamat fil-kawża.

Komproprietarju li hekk jiġi kjamat fil-kawża ma jbati ebda spejjez fl-azzjoni.

Ebda haga f'dan is-subartikolu ma tolqot l-għemil ta' xi mandat kawtelatorju fuq rikors ta' komproprietarju uniku.

(6) Ebda haga f'dan l-artikolu ma tolqot id-drittijiet u obbligazzjonijiet ta' *trustees* jew ta' rappreżentanti personali, jew tad-drittijiet u l-obbligi tagħhom bhala tali.

23. (1) *Trademark* registrata tista' tiġi trasmessa b'assenjazzjoni, dispożizzjoni testamentarja jew xi provvediment tal-liġi bl-istess mod bħal kull proprjetà oħra personali jew mobbli. Trasmissjoni ta' *trademark* registrata.

Din tiġi hekk trasmessa sew f'konnessjoni mat-twillija ta' negozju sew b'mod indipendenti.

(2) Assenjazzjoni jew trasmissjoni oħra ta' *trademark* registrata tista' tkun parzjali u limitata sabiex tapplika -

(a) għar-rigward ta' x'uhud mill-oġġetti u s-servizzi, iżda mhux kollha, li dwarhom tkun registrata t-*trademark*, jew

(b) għar-rigward ta' l-użu tat-*trademark* b'xi mod partikolari jew f'xi lokalità partikolari.

(3) Assenjazzjoni ta' *trademark* registrata ma tkunx effettiva kemm-il darba ma ssirx bil-miktub u tkun iffirmata miċ-ċedent jew inkella, skond il-każ, minn rappreżentant tiegħu.

(4) Ebda haga f'dan l-Att ma għandha tiftiehem bhala li tolqot l-assenjazzjoni jew xi trasmissjoni oħra ta' *trademark* mhux registrata bhala parti mit-twillija ta' negozju.

Registrazzjoni ta' transazzjonijiet li jolqtu *trademark* registrata.

24. (1) Meta ssir applikazzjoni lill-Kontrollur minn -

(a) persuna li tippretendi li jkollha jedd għal interess fi jew taht *trademark* registrata bis-sahħa ta' transazzjoni registrabbli, jew

(b) xi persuna ohra li tippretendi li se tintlaqat minn transazzjoni bhal dik,

il-partikolaritajiet preskritti tat-transazzjoni għandhom jiddahhlu fir-registru.

(2) Dawn li ġejjin huma transazzjonijiet registrabbli -

(a) l-assenjazzjoni ta' *trademark* registrata jew ta' xi dritt fiha;

(b) l-ghoti ta' liċenza taht *trademark* registrata;

(c) it-trasferiment ta' *trademark* registrata permezz ta' dispożizzjoni testamentarja;

(d) ordni ta' Qorti jew ta' xi awtorità kompetenti ohra li tittrasferixxi *trademark* registrata jew xi dritt fiha jew tahta.

(3) Sakemm issir applikazzjoni għar-registrazzjoni tal-partikolaritajiet preskritti ta' transazzjoni registrabbli -

(a) it-transazzjoni ma jkollhiex effett fil-konfront ta' persuna li b'bonafidi tikseb interess konfliggenti fit-*trademark* registrata, u

(b) persuna li tippretendi li tkun detentur ta' liċenza bis-sahħa tat-transazzjoni ma jkollhiex il-protezzjoni ta' l-artikolu 28 jew 29.

(4) Meta persuna ssir il-proprjetarju jew detentur ta' liċenza ta' *trademark* registrata bis-sahħa ta' transazzjoni registrabbli, hija ma jkollha la jedd għal danni lanqas għal kont ta' profitti għar-rigward ta' ebda kontravvenzjoni tat-*trademark* registrata li tigri wara d-data tat-transazzjoni registrabbli u qabel ma jiġu registrati l-partikolaritajiet preskritti tat-transazzjoni, kemm-il darba:

(a) ma ssirx applikazzjoni għal registrazzjoni tal-partikolaritajiet preskritti tat-transazzjoni qabel tmiem il-perijodu ta' sitt xhur li jibdew għaddejin mid-data tat-transazzjoni, jew

(b) il-Qorti ma tkunx sodisfatta li ma kienx prattikabbli li ssir applikazzjoni bhal dik qabel tmiem dak il-perijodu u li tkun saret applikazzjoni kemm seta' kien malajr wara dan.

(5) Il-Ministru jista' jagħmel regolamenti li jkunu jippreskrivu regoli dwar -

(a) l-emenda ta' partikolaritajiet reġistrati li jkollhom x'jaqsmu ma' liċenza biex ikunu jirriflettu kull tibdil fil-pattijiet tal-liċenza, u

(b) it-tneħħija ta' dawk il-partikolaritajiet mir-reġistru -

(i) meta jkun jidher mill-partikolaritajiet reġistrati li l-liċenza tkun ingħatat għal perijodu fiss u li dak il-perijodu jkun skada;

(ii) meta ma jiġi indikat ebda perijodu bhal dak u, wara dak il-perijodu li jista' jiġi hekk preskritt, u wara li l-Kontrollur ikun avza lill-partijiet bil-ħsieb tiegħu li jneħħi l-partikolaritajiet mir-reġistru u l-partijiet ma jkunux indikaw li jkunu fteħmu li dawk il-partikolaritajiet ma għandhomx jitneħħew għal dak il-perijodu li dwaru l-partijiet ikunu qablu u indikaw lill-Kontrollur;

(c) l-emenda jew tneħħija mir-reġistru ta' partikolaritajiet li jkunu jirrigwardaw interess f'xi titolu fuq talba, jew bil-kunsens tal-persuna li jkollha jedd għall-benefiċċju ta' dak it-titolu.

25. Id-dispożizzjonijiet ta' l-artikoli 21 sa 24 japplikaw *mutatis mutandis* għar-rigward ta' talba għar-reġistrazzjoni ta' *trademark* bl-istess mod bhallikieku għal *trademark* reġistrata.

Applikazzjoni għal reġistrazzjoni ta' *trademark* bhala proprjetà.

26. (1) Liċenza għall-użu ta' *trademark* reġistrata tista' tkun sew ġenerali sew limitata. Liċenza limitata tista' b'mod partikolari tapplika -

Liċenzjar ta' *trademark* reġistrata.

(a) għar-rigward ta' x'uhud mill-oġġetti jew servizzi, iżda mhux kollha, li dwarhom tkun reġistrata t-*trademark*, jew

(b) għar-rigward ta' l-użu tat-*trademark* b'mod partikolari jew f'lokalità partikolari.

(2) Kemm-il darba l-liċenza ma tkunx tipprovdi xort'ohra, din tkun vinkolanti fuq suċċessur fit-titolu għall-interess tal-konċedent, u riferenzi f'dan l-Att għall-għemil ta' xi haga bil-kunsens, jew minghajru, tal-proprjetarju ta' *trademark* reġistrata għandu jiftiehem skond hekk.

(3) Meta l-liċenza tkun hekk tipprovdi, tista' tigi konċessa sotto-liċenza mid-detentur tal-liċenza; u riferenzi f'dan l-Att għal xi liċenza jew detentur ta' liċenza tinkludi sotto-liċenza jew detentur ta' sotto-liċenza.

Liċenzi esklużivi.

27. (1) F'dan l-Att "liċenza esklużiva" tfisser liċenza (sew generali sew limitata) li tkun tawtorizza lid-detentur tal-liċenza b'esklużjoni ta' kull persuna ohra, inkluż min ikun qiegħed jikkonċedi l-liċenza nnifsu, li juża *trademark* reġistrata bil-mod awtorizzat fil-liċenza.

(2) Detentur ta' liċenza esklużiv ikollu l-istess drittijiet fir-rigward ta' suċċessur fit-titolu li jkun marbut bil-liċenza l-istess bhalma jkollu fir-rigward tal-konċedent tal-liċenza.

Dispożizzjonijiet generali dwar id-drittijiet ta' detenturi ta' liċenza f'każijiet ta' kontravvenzjoni.

28. (1) Id-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu japplikaw għar-rigward tad-drittijiet ta' detentur ta' liċenza għar-rigward ta' kontravvenzjoni ta' *trademark* reġistrata:

Izda dawn ma japplikawx meta u daqskemm skond l-artikolu 29 (1) id-detentur ta' liċenza esklużiv ikollu dritt li jibda proċedimenti f'ismu nnifsu.

(2) Detentur ta' liċenza jkollu jedd, kemm-il darba l-liċenza tiegħu ma tkunx tipprovdi xort'ohra, li jinterpella lill-proprjetarju tat-*trademark* reġistrata biex jibda proċedimenti ta' kontravvenzjoni għar-rigward ta' kull haga li tolqot l-interessi tiegħu.

(3) Jekk il-proprjetarju -

(a) jirrifjuta milli jagħmel dan, jew

(b) jonqos milli jagħmel dan fi żmien xahrejn minn meta jkun ġie interpellat,

id-detentur tal-liċenza jista' jibda l-proċedimenti f'ismu bhallikieku kien hu l-proprjetarju.

(4) Meta jinbdew proċediment ta' kontravvenzjoni minn detentur ta' liċenza bis-sahha ta' dan l-artikolu, il-proprjetarju għandu jingħaqad fil-kawża.

(5) Fi proċedimenti ta' kontravvenzjoni mibdijin minn proprjetarju ta' *trademark* registrat, kull telfien imġarrab jew x'aktarx li jiġi mġarrab minn detenturi ta' liċenza għandu jiġi kkunsidrat mill-Qorti li għandha tagħti dawk l-ordnijiet kif tqis xierqa dwar id-disponiment u d-distribuzzjoni ta' kull ammont mogħti bhala rimedju għall-kontravvenzjoni.

29. (1) Liċenza esklużiva tista' tipprovi li d-detentur ta' liċenza għandu jkollu, daqskemm jista' jiġi pprovdut bil-liċenza, l-istess drittijiet u rimedji għar-rigward ta' hwejjeg li jiġru wara l-konċessjoni tal-liċenza bhallikieku l-liċenza kienet assenjazzjoni. Detentur esklużiv ta' liċenza li jkollu d-dritt u r-rimedji taċ-ċedent.

Meta jew daqskemm isir dak il-provvediment, id-detentur tal-liċenza għandu jkollu jedd, bla hsara għall-provvedimenti tal-liċenza u tad-dispożizzjonijiet li ġejjin ta' dan l-artikolu, li jibda proċedimenti ta' kontravvenzjoni f'ismu proprju kontra kull persuna li mhix il-proprjetarju.

(2) Kull dritt u rimedju bħal dawk ta' detentur esklużiv ta' liċenza jikkonkorri ma' dawk tal-proprjetarju tat-*trademark* registrata; u riferenzi f'dan l-Att għall-proprjetarju ta' *trademark* registrata li jirrigwardaw kontravvenzjonijiet għandhom jiftiehm skond dan.

(3) F'azzjoni li tinbeda minn detentur esklużiv ta' liċenza taħt dan l-artikolu, konvenut jista' jġib favur tiegħu nnifsu kull difiza li kienet tkun disponibbli għalih li kieku l-azzjoni kienet ingiebet mill-proprjetarju tat-*trademark* registrata.

(4) Meta l-proċedimenti għall-kontravvenzjoni ta' *trademark* registrata jinbdew jew mill-proprjetarju jew mid-detentur esklużiv ta' liċenza dwar kontravvenzjoni li dwarha jkollhom dritt ta' azzjoni konkorrenti, il-proprjetarju jew id-detentur esklużiv tal-liċenza, skond il-każ, li ma jkunux l-attur għandhom jingħaqdu fil-kawża.

(5) (a) Meta tinbeda azzjoni għal kontravvenzjoni ta' *trademark* registrata li tkun tirrigwarda kontravvenzjoni li għar-rigward tagħha l-proprjetarju u detentur esklużiv ta' liċenza jkollhom dritt ta' azzjoni konkorrenti: -

(i) meta tiġi biex tagħmel stima tad-danni l-Qorti għandha tqis -

(1) il-pattijiet tal-liċenza, u

(2) kull rimedju pekunjarju mogħti qabel jew disponibbli lil xi wiehed minnhom għar-rigward tal-kontravvenzjoni;

(ii) ebda kont ta' profitti ma ghandu jiġi ordnat li jsir jekk ikunu gew assenjati d-danni, jew kont tal-profitti jkun gie ordnat, favur xi wiehed minnhom ghar-rigward tal-kontravvenzjoni; u

(iii) il-Qorti ghandha, jekk ikun gie ordnat kont ta' profitti, taqşam il-profitti bla hsara ghal kull ftehim bejnithom f'ishma hekk kif il-Qorti tqis li jkun gust.

(b) Id-dispożizzjonijiet ta' dan is-subartikolu japplikaw sew jekk l-azzjoni tinbeda mill-proprjetarju wahdu, sew jekk tinbeda mill-proprjetarju u d-detentur esklużiv tal-liċenza; u jekk ma jkunux it-tnejn partijiet, il-Qorti tista' taghti dawk l-ordnijiet hekk kif tqis li jkun xieraq ghar-rigward tad-disponiment u d-distribuzzjoni ta' kull ammont moghti bhala rimedju għall-kontravvenzjoni.

(6) Il-proprjetarju ta' *trademark* reġistrata ghandu javza lil xi detentur esklużiv ta' liċenza li jkollu dritt ta' azzjoni konkorrenti qabel ma japplika għall-għemil ta' ordni taht l-artikolu 16; u l-Qorti tista, fuq talba tad-detentur tal-liċenza, taghmel dik l-ordni taht dak l-artikolu skond ma tqis li jkun xieraq meta tikkonsidra l-pattijiet tad-detentur tal-liċenza.

(7) Id-dispożizzjonijiet tas-subartikoli (4) sa (6) ta' dan l-artikolu ghandhom ikunu bla preġudizzju ghal kull ftehim għall-kuntrarju bejn id-detentur esklużiv ta' liċenza u l-proprjetarju.

Applikazzjoni għal "trademark" reġistrata

Applikazzjoni ghal reġistrazzjoni.

30. Applikazzjoni ghal reġistrazzjoni ta' *trademark* ghandha ssir lill-Kontrollur b'dak il-mod hekk kif jista' jiġi preskritt.

Data meta tiġi pprezentata.

31. (1) Id-data meta tiġi pprezentata applikazzjoni ghal reġistrazzjoni ta' *trademark* hija d-data meta l-elementi preskritti jiġu pprovduti lill-Kontrollur mill-applikant:

Izda meta l-elementi jiġu pprovduti fi granet differenti, id-data tal-prezentata tkun id-data meta l-ahhar minn dawk l-elementi jkun gie hekk provdut.

(2) Riferenzi f'dan l-Att ghad-data ta' l-applikazzjoni ghar-reġistrazzjoni ghandhom jiftiehm bhala riferenzi ghad-data tal-prezentata ta' l-applikazzjoni.

32. (1) Oggetti u servizzi ghandhom ikunu klassifikati għall-ghanijiet tar-reġistrazzjoni ta' *trademarks* skond dik is-sistema ta' klassifikazzjoni li tista' tiġi preskritta.

Klassifikazzjoni ta' *trademarks*.

(2) Kull kwistjoni li tqum dwar il-klassi li fiha jaqghu xi oġġetti jew servizzi għandha tkun deċiża mill-Kontrollur, li d-deċizjoni tiegħu tkun wahda finali.

Prijorità

33. (1) Min ikun debitament ipprezenta applikazzjoni għall-protezzjoni ta' *trademark* f'pajjiż membru tal-World Trade Organisation jew ikun parti fil-Konvenzjoni ta' Pariġi, hawnhekk iżjed 'il quddiem f' dan l-Att imsejha "applikazzjoni taht il-Konvenzjoni", jew is-suċċessur tiegħu fit-titolu, ikollu jedd għall-prijorità għall-iskop tar-reġistrazzjoni ta' l-istess *trademark* taht dan l-Att għal x'uhud jew kollha mill-oġġetti jew servizzi li għalihom dik l-applikazzjoni tkun giet ipprezentata, għal perijodu ta' sitt xhur mid-data tal-prezentata ta' l-ewwel applikazzjoni bhal dik.

Pretensjoni ta' prijorità f'applikazzjoni taht il-Konvenzjoni.

(2) Jekk l-applikazzjoni għar-reġistrazzjoni taht dan l-Att issir matul dak il-perijodu ta' sitt xhur -

(a) id-data rilevanti għall-ghanijiet li jiġu stabbiliti liema drittijiet jkollhom preċedenza għandha tkun id-data tal-prezentata ta' l-ewwel applikazzjoni taht il-Konvenzjoni, u

(b) kemm tista' tkun reġistrabbli t-*trademark* ma għandux jintlaqat b'xi użu tat-*trademark* f'Malta fil-perijodu bejn dik id-data u d-data ta' l-applikazzjoni taht dan l-Att.

(3) (a) Kull prezentata li f'pajjiż li jkun membru tal-World Trade Organisation jew ikun parti fil-Konvenzjoni ta' Pariġi tkun taht il-leġislazzjoni tiegħu jew taht xi ftehim internazzjonali li dak il-pajjiż ikun parti fih, ittrattata bħallikieku kienet prezentata nazzjonali regolari, għandha titqies bhala li taghti lok għad-dritt ta' prijorità.

(b) Għall-iskopijiet ta' dan is-subartikolu "prezentata nazzjonali regolari" tfisser prezentata li hija adegwata biex tiġi stabbilita d-data meta l-applikazzjoni tkun giet ipprezentata f'dak il-pajjiż, kienet x'kienet l-applikazzjoni sussegwenti.

(4) Applikazzjoni sussegwenti li tkun tinvolvi l-istess oġġetti jew servizzi bħall-ewwel applikazzjoni taht il-Konvenzjoni, pprezentata fl-istess pajjiż fil-Konvenzjoni, għandha titqies bhala l-ewwel applikazzjoni tal-Konvenzjoni (li d-data tal-prezentata tagħha tkun id-

data tal-bidu tal-perijodu ta' prijorità), jekk fil-waqt ta' l-applikazzjoni sussegwenti -

(a) l-applikazzjoni ta' qabel tkun giet irtirata, abbandunata jew rifjutata, minghajr ma tkun ingiebet għall-ispezzjon pubbliku u minghajr ma thalli xi drittijiet pendenti, u

(b) tkun għadha ma servietx bhala bażi għal pretensjoni ta' dritt ta' prijorità,

u l-applikazzjoni ta' qabel ma tistax wara dan isservi bhala bażi għall-pretensjoni ta' dritt ta' prijorità.

(5) Jista' jiġi pprovdut permezz ta' regoli dwar kif issir pretensjoni ta' dritt ta' prijorità fuq il-baži ta' applikazzjoni taht il-Konvenzjoni.

(6) Dritt għal prijorità li jirrizulta minn applikazzjoni taht il-Konvenzjoni jista' jiġi assenjat jew xort'ohra trasmess, sew ma' l-applikazzjoni sew independentement.

Pretensjoni għal prijorità minn applikazzjoni rilevanti ohra barranija.

34. (1) Il-Ministru jista' jagħmel regolamenti li bihom jikkonferixxi lil persuna li tkun debitament ipprezentat applikazzjoni għall-protezzjoni ta' *trademark* f'pajjiż jew territorju li għar-rigward tiegħu il-Gvern Malti jkun issieheb fi trattat, konvenzjoni, arrangament jew rabta għall-protezzjoni reċiproka ta' *trademarks*, dritt ta' prijorità, għall-iskop tar-registrazzjoni ta' l-istess *trademark* taht dan l-Att għal xi wiehed, jew kull wiehed mill-istess oġġetti jew servizzi, għal dak il-perijodu li jista' jiġi speċifikat fir-rikors mid-data tal-prezentata ta' dik l-applikazzjoni.

(2) Dawk ir-regolamenti jistghu jipprovdu b' mod simili għal dak li hemm fl-artikolu 33 għar-rigward ta' applikazzjonijiet taht il-Konvenzjoni jew ikunu jipprovdu b' dak il-mod ieħor li jkun jidher xieraq lill-Ministru.

Proċedura ta' registrazzjoni

Eżami ta' applikazzjoni.

35. (1) Il-Kontrollur għandu jezamina jekk applikazzjoni għal registrazzjoni ta' *trademark* tkunx tissodisfa l-htigiet ta' dan l-Att u għal dak l-ghan huwa għandu jagħmel rċerka. daqskemm iqis li jkun mehtieg, ta' *trademarks* preċedenti.

(2) Jekk il-Kontrollur jkun jidhirli li ma jkunux sodisfatti l-htigiet ghar-registrazzjoni, huwa ghandu jgharraf b'dan lill-applikant u jagħtih opportunità li jagħmel il-kummenti tiegħu jew li jemenda l-applikazzjoni f'dak il-perjodu li l-Kontrollur jista' jispeċifika.

(3) Jekk l-applikant jonqos milli jaċċerta lill-Kontrollur li dawk il-htigiet gew sodisfatti, jew li jemenda l-applikazzjoni biex ikunu sodisfatti, jew jonqos milli jirrispondi qabel tmiem il-perijodu speċifikat, il-Kontrollur ghandu jirrofta l-applikazzjoni.

(4) Jekk il-Kontrollur ikun jidhirli li l-htigiet ghar-registrazzjoni jkunu gew sodisfatti, huwa ghandu jaċċetta l-applikazzjoni bhala waħda eliġibbli ghar-registrazzjoni.

36. (1) L-applikant jista' f'kull waqt jirtira l-applikazzjoni tiegħu jew jirrestringi l-oġġetti jew servizzi li dwarhom tkun l-applikazzjoni. Irtirar, restrizzjoni jew emenda ta' aplikazzjoni.

(2) Salv kif hemm provdut fis-subartikolu (1), aplikazzjoni tista' tiġi emendata biss, fuq talba ta' l-applikant, billi jissewwa -

- (a) l-isem jew l-indirizz ta' l-applikant,
- (b) żbalji fit-tiswir tal-kliem jew fl-ikkupjar, jew
- (ċ) żbalji ovvji,

u hekk biss meta l-korrezzjoni ma tkunx sostanzjalment tolqot l-identità tat-*trademark* jew testendi l-oġġetti jew is-servizzi koperti bl-applikazzjoni.

37. (1) Meta aplikazzjoni tkun giet aċċettata bhala eliġibbli ghar-registrazzjonijiet, il-Kontrollur ghandu jirreġistra t-*trademark*, kemm-il darba ma jkunx jidhirli, wara li jqis dak kollu li jista' josserva wara li jkun aċċetta l-applikazzjoni, li din tkun giet aċċettata bi żball. Registrazzjoni.

(2) *Trademark* ma ghandhiex tkun reġistrata u l-applikazzjoni ghandha titqies li tkun giet irtirata kemm-il darba xi dritt preskritt dwar xi azzjoni li tkun ittiedet qabel ir-registrazzjoni ma jkunx thallas fi żmien il-perijodu preskritt.

(3) Ir-registrazzjoni ta' *trademark* ghandha ssir billi din tigi registrata fid-data tal-prezentata ta' l-applikazzjoni ghar-registrazzjoni, u dik id-data ghandha titqies ghall-ghanijiet ta' dan l-Att li tkun id-data tar-registrazzjoni.

(4) Meta tigi registrata *trademark*, il-Kontrollur ghandu jippubblika r-registrazzjoni bil-mod preskritt u johrog ċertifikat ta' registrazzjoni lill-applikant.

Žmien. tiġdid u bdil ta' "trademark" registrata

Žmien ta' registrazzjoni.

38. (1) *Trademark* ghandha tibqa' registrata ghal żmien għaxar snin mid-data tar-registrazzjoni.

(2) Ir-registrazzjoni tista' tiġġedded skond l-artikolu 39 ghal perijodi ohra ta' għaxar snin.

Tiġdid ta' registrazzjoni.

39. (1) Ir-registrazzjoni ta' *trademark* tista' tiġġedded fuq talba tal-proprjetarju, wara li jsir il-hlas tad-dritt preskritt ghat-tiġdid mhux iktar minn sitt xhur qabel id-data meta tiskadi.

(2) Il-Ministru jista' permezz ta' regolamenti jagħmel regoli li jkunu jipprovdu biex il-Kontrollur jgħarraf lill-proprjetarju ta' *trademark* registrata, qabel ma tiskadi r-registrazzjoni tagħha, bid-data ta' l-iskadenza tagħha u l-mod kif tkun tista' tiġġedded ir-registrazzjoni.

(3) Minghajr preġudizzju għas-subartikolu (1) talba għal tiġdid ghandha ssir qabel ma tiskadi r-registrazzjoni:

Iżda t-talba tista' ssir u d-dritt jiġi mhallas f'dak iz-żmien ulterjuri li jista' jiġi preskritt, f'liema każ ghandu jithallas ukoll matul dak il-perijodu dak id-dritt addizzjonali ghat-tiġdid li jiġi preskritt.

(4) It-tiġdid ghandu jibda jsehh mill-iskadenza tar-registrazzjoni ta' qabel.

(5) Jekk ir-registrazzjoni ma tiġġeddidx skond id-dispożizzjonijiet ta' qabel, il-Kontrollur ghandu jneħhi t-*trademark* mir-registru.

(6) Jista' jiġi pprovdut permezz ta' regoli dwar kif ghandha tigi restawrata r-registrazzjoni ta' *trademark* li tkun tneħhiet mir-registru,

bla hsara ghal dawk il-kondizzjonijiet (jekk ikun hemm) li jistghu jiġu preskritti.

(7) It-tiġdid jew ir-restawr tar-reġistrazzjoni ta' *trademark* ghandu jiġi pubblikat bil-mod preskritt.

40. (1) *Trademark* reġistrata ma ghandhiex tinbidel fir-reġistru matul il-perijodu ta' reġistrazzjoni jew ta' tiġdid. Bdil ta' *trademark* reġistrata.

(2) Madankollu, il-Kontrollur jista', fuq talba tal-proprjetarju, jippermetti l-bdil ta' *trademark* reġistrata meta l-marka tkun tinkludi isem il-proprjetarju jew l-indirizz tiegħu u l-bdil ikun limitat għall-bdil f' dak l-isem jew indirizz u ma jkunx sostanzjalment jolqot l-identità tal-marka.

(3) Ghandu jiġi pprovdut permezz ta' regoli dwar il-pubblikazzjoni ta' kull bdil bhal dak u l-għemil ta' oġġezzjonijiet minn kull min jippretendi li jkun intlaqat b'dan.

Ċessjoni, revoka u invalidità

41. (1) *Trademark* reġistrata tista' tiġi ċeduta mill-proprjetarju għar-rigward ta' xi wiehed jew kull oġġett jew servizz li tkun reġistrata dwarhom. Ċessjoni ta' *trademark* reġistrata.

(2) Jista' jiġi pprovdut permezz ta' regoli -

(a) dwar il-mod u l-effett ta' ċessjoni, u

(b) għall-protezzjoni ta' l-interessi ta' persuni oħra li jkollhom dritt fit-*trademark* reġistrata.

42. (1) Ir-reġistrazzjoni ta' *trademark* tista' tiġi revokata għal xi wahda minn dawn ir-raġunijiet li ġejjin - Revoka ta' reġistrazzjoni.

(a) li fil-perijodu ta' hames snin wara d-data tat-temm tal-proċedura ta' reġistrazzjoni din ma tkunx tqieghdet f'użu ġenwin f'Malta, mill-proprjetarju jew bil-kunsens tiegħu, għar-rigward ta' l-oġġetti jew is-servizzi li dwarhom tkun reġistrata, u ma jkunx hemm raġunijiet xierqa għaliex ma tkunx qeghda hekk tintuża;

(b) li dak l-użu jkun ġie sospiż għal perijodu mhux interrott ta' hames snin, u ma jkunx hemm raġunijiet xierqa għaliex ma tkunx qeghda hekk tintuża;

(c) li, b'konsegwenza ta' attijiet jew in-nuqqas ta' azzjoni tal-proprjetarju, tkun saret l-isem komuni fil-kummerç għal prodott jew servizz li tkun giet registrata għalih;

(d) li b'konsegwenza ta' l-użu magħmul minnha mill-proprjetarju jew bil-kunsens tiegħu, tista' tqarraq bil-pubbliku dwar l-oġġetti jew is-servizzi li dwarhom tkun registrata, partikolarment dwar ix-xorta, kwalità jew oriġni geografika ta' dawk l-oġġetti jew servizzi.

(2) Għall-ghanijiet tas-subartikolu (1), użu ta' *trademark* jinkludi l-użu f'għamla li ma taqbilx f'dawk l-elementi li ma jibdlux ix-xorta distintiva tal-marka fl-għamla kif kienet registrata, u l-użu f'Malta jinkludi t-twahhil tat-*trademark* ma' oġġetti jew ma' l-ippakkettjar ta' oġġetti f'Malta unikament għal ghanijiet ta' esportazzjoni.

(3) Ir-registrazzjoni ta' *trademark* ma ghandhiex tiġi revokata għal xi raġuni msemmija fil-paragrafi (a) jew (b) tas-subartikolu (1) jekk dak l-użu bħalma hemm imsemmi f'dawk il-paragrafi jinbeda jew jitkompla wara li jiskadi l-perijodu ta' hames snin u qabel ma ssir l-applikazzjoni għar-revoka:

Izda kull bidu jew tkomplija ta' użu bħal dawk, wara li jiskadi l-perijodu ta' hames snin iżda fi żmien tliet xhur qabel ma ssir l-applikazzjoni, ma ghandux jittiehed kont tagħhom kemm-il darba t-thejjijiet għall-bidu jew it-tkomplija ma jkunux inbdew qabel ma l-proprjetarju jkun sar jaf li l-applikazzjoni x'aktarx li ssir.

(4) Applikazzjoni għal revoka tista' ssir b'ċitazzjoni quddiem il-Prim'Awla tal-Qorti Ċivili minn kull persuna.

(5) Meta jkunu jezistu raġunijiet għal revoka għar-rigward ta' biss x'uhud mill-oġġetti jew mis-servizzi li dwarhom tkun registrata t-*trademark*, ir-revoka għandha tkun limitata għal dawk l-oġġetti jew servizzi waħidhom.

(6) Meta r-registrazzjoni ta' *trademark* tkun revokata sa xi limitu, id-drittijiet tal-proprjetarju għandhom jitqiesu li jkunu ġew ċeduti sa dak il-limitu -

(a) mid-data ta' l-applikazzjoni għar-revoka, jew

(b) jekk ir-raġunijiet għar-revoka kienu jezistu f'xi data aktar qabel, minn dik id-data aktar qabel.

43. (1) Ir-registrazzjoni ta' *trademark* tista' tiġi dikjarata invalida minhabba f'li t-*trademark* kienet registrata bi ksur ta' l-artikolu 4 jew ta' xi waħda mid-dispożizzjonijiet imsemmija f'dak l-artikolu. Raġunijiet għal invalidità ta' registrazzjoni.

Meta t-*trademark* tkun giet registrata bi ksur tas-subartikolu (1) (b), (ċ) jew (d) ta' dak l-artikolu, din ma għandhiex tiġi dikjarata invalida jekk, b'konsegwenza ta' l-użu li jkun sar minnha, din tkun wara r-registrazzjoni kisbet xorta distintiva għar-rigward ta' l-oġġetti jew is-servizzi li dwarhom tkun registrata.

(2) Ir-registrazzjoni ta' *trademark* tista', kemm-il darba l-proprjetarju ta' dik it-*trademark* preċedenti jew dritt iehor preċedenti ma jkunx ta l-kunsens tiegħu għar-registrazzjoni, tiġi dikjarata invalida għar-raġuni li -

(a) jkun hemm *trademark* preċedenti li għar-rigward tagħha jkunu jseħhu l-kondizzjonijiet stabbiliti fl-artikolu 6 (1), (2) jew (3), jew

(b) jkun hemm dritt preċedenti li għar-rigward tiegħu tkun sodisfatta l-kondizzjoni stabbilita fl-artikolu 6 (4).

(3) Applikazzjoni għal dikjarazzjoni ta' invalidità tista' ssir b'ċittazzjoni quddiem il-Prim Awla tal-Qorti Ċivili minn kull persuna.

(4) Fil-każ ta' malafidi fir-registrazzjoni ta' *trademark*, il-Kontrollur innifsu jista' japplika lill-Qorti għal dikjarazzjoni dwar l-invalidità tar-registrazzjoni.

(5) Meta r-raġunijiet ta' l-invalidità jkunu jeżistu għar-rigward ta' biss x'uhud mill-oġġetti jew servizzi li dwarhom tkun registrata t-*trademark*, it-*trademark* għandha tiġi dikjarata invalida għar-rigward ta' dawk l-oġġetti jew servizzi waħidhom.

(6) Meta r-registrazzjoni ta' *trademark* tiġi dikjarata invalida sa xi limitu, ir-registrazzjoni għandha sa dak il-limitu titqies bħallikieku qatt ma saret:

Iżda dan ma għandux jolqot dawk it-transazzjonijiet li jkunu saru u ġew konklużi.

44. (1) Meta l-proprjetarju ta' *trademark* preċedenti jew ta' xi dritt iehor preċedenti, għax ikun jaf bl-użu ta' *trademark* registrata f'Malta, jkun siket għal perijodu kontinwu ta' hames snin dwar dak l-użu, huwa għandu jtemm milli jibqa' jkollu xi jedd minhabba dik it-*trademark* preċedenti jew dritt iehor - L-effett li wieħed iżomm siket.

(a) biex huwa japplika ghal dikjarazzjoni li r-registrazzjoni tat-*trademark* sussegwenti tkun wahda invalida, jew

(b) biex huwa jopponi l-użu tat-*trademark* sussegwenti ghar-rigward ta' l-oġġetti jew servizzi li dwarhom tkun giet hekk użata,

kemm-il darba r-registrazzjoni tat-*trademark* sussegwenti ma tkunx saret applikazzjoni ghalha b'malafidi.

(2) Fil-każijiet imsemmija fis-subartikolu (1), il-proprjetarju tat-*trademark* sussegwenti ma jkollux jedd jopponi l-użu tat-*trademark* preċedenti jew, skond il-każ, l-esplojtazzjoni tad-dritt preċedenti, minkejja li t-*trademark* jew dritt preċedenti ma jkunux jistgħu aktar jiġu invokati kontra t-*trademark* sussegwenti tiegħu.

Marki kollettivi

Marki kollettivi.

45. (1) Marka kollettiva hija marka li tiddistingwi l-oġġetti jew is-servizzi ta' membri f'assoċjazzjoni li tkun il-proprjetarja tal-marka minn dawk ta' impriži ohra.

(2) Id-dispożizzjonijiet ta' dan l-Att japplikaw għal marki kollettivi bla hsara għad-dispożizzjonijiet ta' Skeda 1 li tinsab ma' dan l-Att.

Marki ta' ċertifikazzjoni

Marki ta' ċertifikazzjoni.

46. (1) Marka ta' ċertifikazzjoni hija marka li tindika li oġġetti jew servizzi li din tintuża dwarhom jkunu ċertifikati mill-proprjetarju tal-marka għar-rigward ta' oriġni, materjal, mod ta' manifattura ta' oġġetti jew għoti ta' servizzi, kwalità, eżattezza jew karatteristiċi ohra.

(2) Id-dispożizzjonijiet ta' dan l-Att japplikaw għal marki ta' ċertifikazzjoni bla hsara għad-dispożizzjonijiet ta' Skeda 2.

TAQSIMA III: AFFARIJET INTERNAZZJONALI

Registrazzjoni internazzjonali

Il-Protokoll ta' Madrid.

47. F'din it-Taqsima -

“il-Bureau Internazzjonali” għandha t-tifsira mogħtija bl-Artiklu 2 (1) tal-Protokoll ta' Madrid;

“il-Protokoll ta' Madrid” tfisser il-Protokoll li għandu x'jaqşam mal-Ftehim ta' Madrid li jirrigwarda r-Registrazzjoni Internazzjonali ta' Marki adottat f'Madrid fis-27 ta' Gunju, 1989;

“*trademark* internazzjonali (Malta)” tfisser *trademark* li jkollha jedd għall-protezzjoni f’Malta taht dak il-Protokoll.

48. (1) Il-Ministru jista’ b’Ordni jagħmel dawk il-provvedimenti li jqis li jkunu mehtieġa sabiex jagħti seħħ f’Malta lid-dispożizzjonijiet tal-Protokoll ta’ Madrid u kull sistema oħra ta’ reġistrazzjoni ta’ *trademarks* reġjonali jew internazzjonali u mingħajr preġudizzju għall-ġeneralità ta’ dak imsemmi qabel.

Setgħa ta’ għemil ta’ provvedimenti biex jingħata seħħ lill-Protokoll ta’ Madrid.

L-Ordni jista’, b’mod partikolari, jsir dwar -

(a) l-għemil ta’ applikazzjonijiet għal reġistrazzjonijiet internazzjonali permezz ta’ l-Uffiċċju għall-Proprietà Industrijali bhala l-uffiċċju ta’ l-origini;

(b) il-proċeduri li jkollhom jiġu segwiti meta l-applikazzjoni jew ir-reġistrazzjoni bażika f’Malta tonqos jew ittemm milli tibqa’ sseħħ;

(c) il-proċeduri li jkollhom jiġu segwiti meta l-Uffiċċju għall-Proprietà Industrijali jirċievi mingħand il-Bureau Internazzjonali talba għal estensjoni ta’ protezzjoni għal Malta;

(d) l-effetti ta’ talba b’suċċess għall-estensjoni ta’ protezzjoni għal Malta;

(e) it-trasformazzjoni ta’ applikazzjoni għal reġistrazzjoni internazzjonali, jew reġistrazzjoni internazzjonali, f’applikazzjoni nazzjonali għal reġistrazzjoni;

(f) il-komunikazzjoni ta’ informazzjoni lill-Bureau Internazzjonali;

(g) il-hlas tad-drittijiet u l-ammonti preskritti għar-rigward ta’ applikazzjonijiet għal reġistrazzjonijiet, estensjonijiet ta’ protezzjoni u tiġdid internazzjonali.

(2) Mingħajr preġudizzju għall-ġeneralità tas-subartikolu (1), jista’ jiġi pprovdut permezz ta’ regolamenti taht dan l-artikolu li jkunu japplikaw għar-rigward ta’ “*trademark* internazzjonali (Malta)” id-dispożizzjonijiet ta’ l-artikolu 20 u ta’ l-artikoli 72 sa 86 ta’ dan l-Att.

Il-Konvenzjoni ta’ Pariġi

49. (1) F’din it-Taqsima -

Il-Konvenzjoni ta’ Pariġi.

(a) “il-Konvenzjoni ta’ Pariġi” tfisser il-Konvenzjoni ta’ Pariġi għall-Protezzjoni tal-Proprietà Industrijali ta’ l-20 ta’ Marzu 1883, kif riveduta jew emendata minn żmien għal żmien, u

(b) “pajjiż fil-Konvenzjoni” tfisser pajjiż, minbarra Malta, li jkun parti f’dik il-Konvenzjoni.

(2) Il-Ministru jista’ jagħmel regolamenti biex jipprovdi, kif jidhirlu xieraq b’konsegwenza ta’ xi reviżjoni jew emenda tal-Konvenzjoni ta’ Pariġi wara li jgħaddi dan l-Att sabiex Malta tkun tista’ thares kull provvediment ta’ dik l-emenda, u dawk ir-regolamenti jistgħu partikolarment jipprovdu li kull waħda mid-dispożizzjonijiet tat-Taqsima II ta’ dan l-Att ma għandhomx jibqgħu japplikaw jew inkella għandhom japplikaw b’dawk l-emendi li jistgħu jkunu meħtieġa.

Protezzjoni ta’
trademarks
magħrufin: Artiklu
6 bis.

50. (1) Riferenzi f’dan l-Att għal *trademark* li jkollha jedd għal protezzjoni taht il-Konvenzjoni ta’ Pariġi bhala *trademark* magħrufa huma għal *trademark* li tkun magħrufa f’Malta bhala l-marka ta’ persuna li tkun ċittadin ta’ pajjiż fil-Konvenzjoni, jew tkun domiciljata fi, jew ikollha stabbiliment industrijali jew kummerċjali reali u effettiv f’pajjiż fil-Konvenzjoni, sew jekk dik il-persuna tkunx tiġġestixxi negozju, jew ikollha xi twillija, f’Malta, u referenzi għall-proprjetarju ta’ dik il-marka għandhom jiftehmu skond hekk.

(2) Bla ħsara għad-dispożizzjonijiet ta’ l-artikolu 44, il-proprjetarju ta’ *trademark* li jkollha jedd għal protezzjoni taht il-Konvenzjoni ta’ Pariġi bhala *trademark* magħrufa ikollu jedd iżomm b’inibizzjoni l-użu f’Malta ta’ *trademark* li tkun, jew li jkollha l-parti essenzjali tagħha, identika jew tixxiebah mal-marka tiegħu, għar-rigward ta’ oġġetti jew servizzi identiċi jew li jixxieħbu, meta l-użu x’aktarx li jagħti lok għal konfużjoni.

(3) Ebda haġa fis-subartikolu (2) ma għandha toqot it-tkomplija ta’ xi użu bonafidi ta’ *trademark* li jkun inbeda qabel id-dhul fis-seħħ ta’ dan l-artikolu.

Emblemi
nazzjonali, eċċ., ta’
pajjiżi fil-
Konvenzjoni:
Artiklu 6 ter.

51. (1) *Trademark* li tkun tikkonsisti fi, jew ikun fiha l-bandiera ta’ xi pajjiż fil-Konvenzjoni m’għandhiex tiġi reġistrata minghajr l-awtorizzazzjoni ta’ l-awtoritajiet kompetenti ta’ dak il-pajjiż, kemm-il darba l-Kontrollur ma jkunx jidhirlu li jkun permess l-użu tal-bandiera bil-mod propost minghajr dik l-awtorizzazzjoni.

(2) *Trademark* li tikkonsisti fi, jew ikun fiha l-armatura prinċipali jew xi emblema statali ohra ta’ xi pajjiż fil-Konvenzjoni li jkun protett taht il-Konvenzjoni ta’ Pariġi m’għandhiex tkun reġistrata minghajr l-awtorizzazzjoni ta’ l-awtoritajiet kompetenti ta’ dak il-pajjiż.

(3) *Trademark* li tikkonsisti fi, jew ikun fiha xi sinjal jew imbolla uffċjali li jindikaw kontroll u garanzija adottati minn xi pajjiż fil-Konvenzjoni m’għandhiex, meta s-sinjal jew l-imbolla tkun protetta

taht il-Konvenzjoni ta' Pariġi, tkun registrata għar-rigward ta' l-oġġetti jew is-servizzi ta' l-istess xorta, jew ta' xorta simili, bħal dawk li għar-rigward tagħhom tkun tindika kontroll u garanzija, minghajr l-awtorizzazzjoni ta' l-awtoritajiet kompetenti tal-pajjiż involut.

(4) Id-dispożizzjonijiet ta' dan l-artikolu relattivi għall-bnadar nazzjonali u emblemi statali ohra, u sinjali jew imbolli uffiċjali japplikaw indaqs għal kull haġa li minn angolu araldiku tkun timita lil dik il-bandiera jew emblema ohra, jew sinjal jew imbolla.

(5) Ebda haġa f'dan l-artikolu ma għandha tipprevjeni r-registrazzjoni ta' *trademark* meta ssir applikazzjoni minn xi ċittadin ta' pajjiż li jkun awtorizzat li jagħmel użu minn emblema statali jew xi sinjal jew imbolla uffiċjali, ta' dak il-pajjiż, minkejja x-xebh ma' dawk ta' xi pajjiż ieħor.

(6) Meta bis-saħha ta' dan l-artikolu tkun meħtieġa jew x'aktarx li tkun meħtieġa l-awtorizzazzjoni ta' l-awtoritajiet kompetenti ta' pajjiż fil-Konvenzjoni għar-registrazzjoni ta' *trademark*, dawk l-awtoritajiet ikollhom jedd li jzommu milli jsir kull użu tat-*trademark* f'Malta minghajr l-awtorizzazzjoni tagħhom.

52. (1) Dan l-artikolu japplika għall-armatura prinċipali, bnadar jew emblemi ohra, u għall-ismijiet u l-abbrevjazzjonijiet, ta' organizzazzjonijiet intergovernamentali internazzjonali li tagħhom xi pajjiż wiehed jew iktar fil-Konvenzjoni ikunu membri.

Emblemi, eċċ. ta' ċertu organizzazzjonijiet internazzjonali: Artiklu 6 *ter.*

(2) *Trademark* li tikkonsisti fi, jew li jkunu fiha xi emblema, abbrevjazzjoni jew isem bħal dawk li jkunu protetti taht il-Konvenzjoni ta' Pariġi m'għandhomx jiġu registrati minghajr l-awtorizzazzjoni ta' l-organizzazzjoni internazzjonali involuta, kemm-il darba ma jkunx jidher lill-Kontrollur li l-użu ta' l-emblema, abbrevjazzjoni jew isem bil-mod propost -

(a) ma jkunx tali li jissuġġerixxi lill-pubbliku li jkun hemm rabta bejn l-organizzazzjoni u t-*trademark*, jew

(b) x'aktarx li mhux se jiżgwi lill-pubbliku dwar l-eżistenza ta' rabta bejn l-utent u l-organizzazzjoni.

(3) Id-dispożizzjonijiet ta' dan l-artikolu relattivi għall-emblemi ta' organizzazzjoni internazzjonali għandhom ikunu japplikaw indaqs għal kull haġa li minn angolu araldiku tkun tixbah xi emblema bħal dik.

(4) Meta bis-saħha ta' dan l-artikolu l-awtorizzazzjoni ta' organizzazzjoni internazzjonali tkun jew x'aktarx tkun meħtieġa għar-

registrazzjoni ta' xi *trademark*, dik l-organizzazzjoni jkollha jedd li zzomm kull użu tat-*trademark* f'Malta minghajr l-awtorizzazzjoni tagħha.

(5) Ebda haġa f'dan l-artikolu ma tolqot il-jedd ta' xi persuna li l-użu b'bonafidi tat-*trademark* relattiv ikun beda qabel l-1 ta' Jannar, 2000.

Notifikazzjoni taht
l- Artiklu 6 *ter*
tal-Konvenzjoni.

53. (1) Għall-ghanijiet ta' l-artikolu 51 l-emblemi statali ta' pajjiż fil-Konvenzjoni (li ma jkunux il-bandiera nazzjonali), u sinjali jew imbollli uffiċjali, għandhom jitqiesu bhala li huma protetti taht il-Konvenzjoni ta' Pariġi biss jekk, jew sal-limitu illi -

(a) il-pajjiż involut ikun avża lil Malta skond l-Artiklu 6 *ter* (3) tal-Konvenzjoni li jkun jixtieq li jipproteġi dik l-emblema jew imbolla jew dak is-sinjal,

(b) in-notifikazzjoni tibqa' fis-sehh, u

(ċ) Malta ma tkunx oġġezzjonat għalihom skond l-Artiklu 6 *ter* (4) jew xi oġġezzjoni bħal dik tkun giet irtirata.

(2) Għall-ghanijiet ta' l-artikolu 52 l-emblemi, abbrevjazzjonijiet u ismijiet ta' organizzazzjoni internazzjonali għandhom jitqiesu bhala li huma protetti taht il-Konvenzjoni ta' Pariġi biss jekk, jew sal-limitu li -

(a) l-organizzazzjoni involuta tkun avżat lil Malta skond l-Artiklu 6 *ter* (3) tal-Konvenzjoni li hija tkun tixtieq tipproteġi dik l-emblema jew abbrevjazzjoni jew dak l-isem,

(b) in-notifikazzjoni tibqa' fis-sehh, u

(ċ) Malta ma tkunx oġġezzjonat għalihom skond l-Artiklu 6 *ter* (4) jew kull oġġezzjoni bħal dik tkun giet irtirata.

(3) Notifikazzjoni taht l-Artiklu 6 *ter* (3) tal-Konvenzjoni ta' Pariġi għandu jkollha effett biss għar-rigward ta' applikazzjonijiet għar-registrazzjoni li jsiru iktar minn xahrejn wara l-wasla tan-notifikazzjoni.

(4) Il-Kontrollur għandu jzomm u jagħmel disponibbli għall-ispezzjon pubbliku minn kull persuna, kif preskritt, lista ta' l-emblemi statali u s-sinjali jew imbolli uffiċjali, u l-emblemi, l-abbrevjazzjonijiet u l-ismijiet ta' organizzazzjonijiet internazzjonali, li f'dak il-hin ikunu protetti taht il-Konvenzjoni ta' Pariġi bis-saħħa ta' notifikazzjoni li ssir taht l-Artiklu 6 *ter* (3).

54. (1) Dawn id-dispożizzjonijiet japplikaw meta applikazzjoni għal reġistrazzjoni ta' *trademark* issir minn persuna li tkun agent jew rappreżentant ta' persuna li tkun il-proprjetarju tat-*trademark* f'pajjiż fil-Konvenzjoni.

Atti ta' agent jew ta' rappreżentant: Artiklu 6 *septies*.

(2) Il-proprjetarju jista' permezz ta' citazzjoni quddiem il-Prim Awla tal-Qorti Ċivili:

- (i) jitlob dikjarazzjoni ta' invalidità tar-reġistrazzjoni; jew
- (ii) jitlob ir-rettifika tar-reġistru sabiex jissostitwixxi ismu bhala l-proprjetarju tat-*trademark* reġistrata.”.

(3) Il-proprjetarju jista' jzomm milli tintuża t-*trademark* f'Malta mhux minnu awtorizzata.

(4) Is-subartikoli (2) u (3) ma għandhomx japplikaw jekk, jew sal-limitu li, l-agent jew ir-rappreżentant juri li l-azzjonijiet tiegħu kienu awtorizzati mill-proprjetarju.

(5) Applikazzjoni taht is-subartikolu (2) għandha ssir fi żmien tliet snin minn meta l-proprjetarju jinduna bir-reġistrazzjoni; u ebda inibizzjoni m'għandha tingħata taht is-subartikolu (3) għar-rigward ta' xi użu li dwaru l-proprjetarju jkun siket għal perijodu kontinwu ta' tliet snin jew iżjed.

TAQSIMA IV: PROVVEDIMENTI AMMINISTRATTIVI U SUPPLIMENTARI OĦRA

Ir-Registru

55. (1) (a) Il-Kontrollur għandu jzomm registru tat-*trademarks*.

Registru li għandu jinżamm u x'ikun fih.

(b) Kull riferenza f'dan l-Att għal “ir-registru” huma għal dak ir-registru; u kull riferenza għal reġistrazzjoni, b'mod partikolari, fil-kliem “*trademark* reġistrata”, hi, kemm-il darba r-rabta tal-kliem ma tehtiegħ xort'oħra, għal reġistrazzjoni li ssir f'dak ir-registru.

(2) Għandu jitniżżel fir-registru skond dan l-Att -

(a) *trademarks* registrati,

(b) dawk il-partikolaritajiet li jistghu jiġu preskritti dwar transazzjonijiet registrabbli li jolqtu *trademark* registrata, u

(c) dawk il-hwejjeg l-oħra li jirrigwardaw *trademarks* skond ma jistghu jiġu preskritti.

(3) Ir-registru għandu jinżamm b'dak il-mod hekk kif jista' jiġi preskrit, u għandu jiġi b'mod partikolari pprovdut dwar -

(a) spezzjon pubbliku tar-registru, u

(b) il-provvista ta' kopji, jew estratti, sew ċertifikati sew mhumiex, ta' notamenti fir-registru.

Rettifika jew
korrezzjoni
tar-registru.

56. (1) Kull min ikollu interess suffiċjenti jista' japplika għarrettifika ta' xi żball jew ommissjoni fir-registru:

Izda applikazzjoni għal rettifika ma tistax issir għar-rigward ta' xi haġa li tkun tolqot il-validità tar-registrazzjoni ta' *trademark*.

(2) Applikazzjoni għal rettifika tista' ssir sew lill-Kontrollur sew lill-Qorti :

Izda jekk ikun hemm pendenti quddiem il-Qorti proċedimenti li jirrigwardaw it-*trademark* involuta -

(a) l-applikazzjoni jkollha ssir quddiem il-Qorti; u

(b) jekk l-applikazzjoni ssir lill-Kontrollur, huwa jista' f'kull stadju tal-proċedimenti jirreferi l-applikazzjoni quddiem il-Qorti.

(3) Hlief meta l-Kontrollur jew il-Qorti jordnaw xort' oħra, l-effett tarrettifika tar-registru jkun li l-izball jew l-ommissjoni involuti jitqiesu bħallikieku qatt ma saru.

(4) Il-Kontrollur jista', fuq talba magħmula bil-mod preskrit mill-proprjetarju ta' *trademark* registrata, jew minn detentur ta' licenza, jagħmel kull tibdil fl-isem jew l-indirizz tiegħu kif ikun imniżżel fir-registru.

(5) Il-Kontrollur jista' jnehhi mir-registru kull taghrifa li skond hu ma jkunx għad għandha iktar effett.

57. (1) Il-Ministru jista' permezz ta' regolamenti jaghmel regoli li jaghtu setgħa lill-Kontrollur li jaghmel dak kollu li jista' jkun meħtieġ biex iwettaq kull klassifika emendata jew sostitwita ta' oġġetti jew servizzi għall-ghanijiet tar-reġistrazzjoni ta' *trademarks*, u mingħajr preġudizzju għall-ġeneralità ta' dak kollu hawn aktar qabel imsemmi, jista' b'mod partikolari jsir provvedimenti għall-emendar ta' reġistrazzjonijiet eżistenti fir-reġistru sabiex dawn jingiebu jaqblu mal-klassifikar il-ġdid.

Adattar ta' reġistrazzjonijiet għal klassifikar ġdid.

(2) Kull setgħa ta' emenda bħal dik m'għandhiex tiġi eżerċitata sabiex testendi d-drittijiet mogħtijin bir-reġistrazzjoni, hliet meta l-Kontrollur ikun jidhirlu li t-tħaris ta' din il-ħtieġa jkun jinvolvi komplikazzjoni mhux dovuta u li kull estensjoni ma tkunx sostanzjali u ma tkunx toqot hażin il-jedd ta' xi persuna.

(3) Ir-regoli jistgħu iktar minn hekk jaghtu s-setgħa lill-Kontrollur -

(a) li jeħtieġ lill-proprjetarju ta' *trademark* reġistrata, f'dak iz-żmien li jista' jiġi preskritt, jippreżenta proposta għal emenda tar-reġistru, u

(b) li jħassar jew jiċhad milli jġedded ir-reġistrazzjoni tat-*trademark* fil-każ li l-proprjetarju jonqos milli jaghmel dan.

(4) Kull proposta bħal dik għandha tkun reklamata, u din tista' tiġi opposta, b'dak il-mod li jista' jiġi preskritt.

Setgħat u dmirijiet tal-Kontrollur

58. Il-Kontrollur jista' jeħtieġ l-użu ta' dawk il-formuli hekk kif huwa jista' jordna għal kull għan li jkollu x'jaqsam mar-reġistrazzjoni ta' *trademark* jew għal kull proċediment ieħor quddiemu taħt dan l-Att.

Setgħa li jenħtieġ l-użu ta' formuli.

59. (1) Bla ħsara għal dawk ir-restrizzjonijiet li l-Ministru jista' b'regolamenti jimponi, wara l-pubblikazzjoni ta' reġistrazzjoni ta' *trademark*, il-Kontrollur għandu meta jiġi hekk mitlub jipprovdi lil persuna b'dak it-tagħrif u jippermettilu li jispezzjona dawk id-dokumenti li jkollhom x'jaqsmu mat-*trademark* reġistrata, skond kif jista' jiġi speċifikat fit-talba.

Tagħrif dwar *trademarks* reġistrati.

Kull talba bħal dik għandha ssir b'dak il-mod u tkun msieħba b'dak id-dritt li jista' jiġi preskritt.

(2) Qabel il-pubblikazzjoni tar-registrazzjoni ta' *trademark*, dokumenti jew taghrif li jkun jikkostitwixxi jew ikollu x'jaqsam ma' l-applikazzjoni ma ghandux ikun ippubblikat mill-Kontrollur jew komunikat minnu lil xi persuna hlief -

(a) f'dawk il-kazijiet u daqstant kemm jista' jigi preskritt, jew

(b) bil-kunsens ta' l-applikant.

Esklużjoni ta' responsabbiltà ghar-rigward ta' attijiet ufficjali.

60. (1) Il-Kontrollur ma ghandux jittiehed bhala li jiggarantixxi l-validità tar-registrazzjoni ta' *trademark* taht dan l-Att jew taht xi trattat, konvenzjoni, arrangament jew obbligazzjoni li Malta tkun imsiehbha fih.

(2) Il-Kontrollur mhu suggett ghal ebda responsabbiltà minhabba fi, jew f'dak li ghandu x'jaqsam ma' xi eżami mehtieg jew awtorizzat b'dan l-Att, jew kull trattat, konvenzjoni, arrangament jew obbligazzjoni bhal dawk, jew xi rapport jew procedimenti ohra konsegwenzjali ghal dak l-eżami.

(3) Ma ghandha tittiehed ebda azzjoni kontra xi ufficjal tal-Kontrollur ghar-rigward ta' xi haga li ghaliha, bis-saħha ta' dan l-artikolu, il-Kontrollur ma jkunx responsabbli.

Procedimenti legali u appelli

Ir-registrazzjoni tkun xiehda *prima facie* tal-validità.

61. Fil-procedimenti legali kollha li jkollhom x'jaqsmu ma *trademark* registrata (inkluzi procedimenti ghar-rettifika tar-registru) ir-registrazzjoni ta' persuna bhala proprjetarju ta' *trademark* ghandha tkun xiehda *prima facie* tal-validità tar-registrazzjoni originali u ta' kull assenjament sussegwenti jew trasmissjoni ohra taghha.

Certifikazzjoni ta' validità ta' registrazzjoni kontestata.

62. (1) Jekk waqt il-procedimenti quddiem il-Qorti tigi kkontestata l-validità tar-registrazzjoni ta' *trademark* u l-Qorti jirrizultalha li *trademark* tkun registrata validament, il-Qorti ghandha tiddeciedi skond hekk.

(2) Meta l-Qorti tkun tat sentenza bhal dik u fi procedimenti sussegwenti -

(a) il-validità tar-registrazzjoni terga' titqajjem, u

(b) il-proprjetarju jikseb ordni finali jew sentenza favurih, huwa ghandu jkollu jedd ghall-ispejjeż tieghu kemm-il darba l-Qorti ma tiddecidix xort'ohra.

63. (1) Fi proċedimenti quddiem il-Qorti li jkunu jirrigwardaw talba -

Meta jidher il-Kontrollur fi proċedimenti li jinvolve lir-registru.

(a) għar-revoka ta' registrazzjoni ta' *trademark*,

(b) għal dikjarazzjoni ta' invalidità tar-registrazzjoni ta' *trademark*, jew

(c) ir-rettifika tar-registru,

il-Kontrollur għandu jiġi avżat bil-proċedimenti u jkollu jedd jidher u jinstama' jekk jiġi hekk ordnat li jagħmel mill-Qorti.

(2) Kemm-il darba ma jiġix ordnat xort' ohra mill-Qorti, il-Kontrollur jista' minflok ma jidher, jippreżenta fl-atti tal-kawża dikjarazzjoni bil-miktub minnu ffirmata, li tkun tagħti partikolaritajiet dwar -

(a) proċedimenti quddiemu għar-rigward tal-kwistjoni involuta,

(b) ir-ragunijiet għal xi deċiżjoni minnu mogħtija li jolqtu l-kwistjoni,

(c) xi tkun il-prattika li l-Uffiċċju għall-Proprietà Industrijali soltu jadotta f'kazijiet simili, jew

(d) dawk l-affarijiet kollha rilevanti għall-kwistjoni u li jkunu fl-ambitu tal-konozzenza tiegħu bħala Kontrollur skond kemm iqis li jkun sew;

u d-dikjarazzjoni għandha titqies li tkun tagħmel parti mix-xieħda fil-proċedimenti.

64. (1) Deċiżjoni tal-Kontrollur taħt dan l-Att tista' tiġi appellata quddiem il-Qorti ta' l-Appell magħmul bil-mod li hemm provdut fis-subartikolu (6) ta' l-artikolu 41 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili b'rikors fi żmien hmistax il-jum min-notifika tad-deċiżjoni tal-Kontrollur.

Appelli minn deċiżjoni tal-Kontrollur.

(2) Għall-ghanijiet tas-subartikolu (1) ta' dan l-artikolu "deċiżjoni" tfisser kull att, hlief għal dawk l-attijiet li jistgħu b'regolamenti jiġu preskritti, li jsiru mill-Kontrollur fit-twertiq ta' diskrezzjoni vestita fih b'dan l-Att jew tahtu.

(3) Il-Ministru jista' jagħmel regoli li jkunu jirregolaw l-appelli quddiem il-Qorti ta' l-Appell skond dan l-Att, u li jippreskrivi skala ta' spejjeż dwar dawk l-appelli.

Regoli, drittijiet, hinijiet tax-xoghol, eċċ.

Setgħa tal-Ministru
li jagħmel regoli.

65. (1) Il-Ministru responsabbli għall-protezzjoni tal-proprjetà industrijali jista' jagħmel regolamenti għall-aħjar amministrazzjoni ta' dan l-Att, billi jagħmel dawk ir-regoli li jkunu meħtieġa b'kull provvediment ta' dan l-Att, biex jippreskrivi kull haġa li hi awtorizzata jew meħtieġa b'xi provvediment ta' dan l-Att li tiġi preskritta, u ġeneralment biex tirregola l-prattika u l-proċedura taht dan l-Att, u b'mod partikolari jista' jiġi pprovdut dwar -

(a) il-mod kif jiġu pprezentati l-applikazzjonijiet u dokumenti oħra;

(b) il-ħtieġa u r-regolament tat-traduzzjoni ta' dokumenti u l-preżentata u l-awtentikazzjoni ta' traduzzjonijiet;

(c) in-notifika ta' dokumenti;

(d) l-awtorizzazzjoni tar-rettifika ta' irregolaritajiet fi proċeduri;

(e) il-preskrizzjoni ta' termini għal kull haġa meħtieġa li ssir f'dak li għandu x'jaqsam ma' xi proċediment taht dan l-Att;

(f) l-estensjoni ta' xi terminu hekk preskrit, jew speċifikat mill-Kontrollur, sew jekk dak it-terminu jkun diġà skada sew jekk ma jkunx.

Drittijiet.

66. (1) Għandhom jithallsu dwar applikazzjonijiet u hwejjeġ oħra taht dan l-Att dawk id-drittijiet li jistghu jiġu preskritti.

(2) Jista' jiġi pprovdut b'regoli dwar -

(a) il-hlas ta' dritt uniku għar-rigward ta' żewġ hwejjeġ jew iktar, u

(b) iċ-ċirkostanzi, jekk ikun hemm, li fihom dritt jista' jerga' jithallas jew jingħata lura.

Hinijiet tax-xoghol
u jiem tax-xoghol.

67. (1) Il-Kontrollur jista' jordna billi jispeċifika l-hinijiet tax-xogħol ta' l-Uffiċċju għall-Proprjetà Industrijali meta l-pubbliku jkun jista' jmexxi xogħol taht dan l-Att, u l-jiem li jkunu granet tax-xogħol għal dak l-għan.

(2) Xogħol li jsir f'xi ġurnata wara l-hinijiet tax-xogħol speċifikati, jew f'xi ġurnata li ma tkunx jum tax-xogħol, għandu jitqies

bhala li jkun sar fil-jum tax-xoghol ta' wara; u meta t-terminu għall-għemil ta' xi haġa taħt dan l-Att jiskadi f'xi għurnata li ma tkunx jum tax-xoghol, dak it-terminu għandu jittawwal sal-jum tax-xoghol li jkun imiss.

(3) Ordnijiet taħt dan l-artikolu jistgħu jagħmlu provvedimenti differenti għal klassijiet differenti ta' xoghol u għandhom jiġu ppubblikati fil-forma preskritta.

Aġenti ta' "trademarks"

68. Hlief kif jista' xort'ohra jiġi preskritt, kull att mehtieg jew awtorizzat b'dan l-Att li jintgħamel minn jew dwar xi persuna f'dak li għandu x'jaqsam mar-registrazzjoni ta' *trademark*, jew kull proċedura li jkollha x'taqsam ma' *trademark* registrata, tista' ssir minn jew dwar aġent li jkun awtorizzat minn dik il-persuna bil-miktub. Għarfien ta' aġenti.

69. (1) Il-Ministru jista' jagħmel regoli li jkunu jehtieġu li jinżamm registru ta' persuni li jagħmluha ta' aġent bil-ghan li japplikaw għal jew li jiksbru r-registrazzjoni ta' *trademarks*; u f'dan l-Att "aġent ta' *trademark* registrata" tfisser persuna li isimha jinkiteb fir-registru li jinżamm taħt dan l-artikolu. Ir-registru ta' aġenti/mandatarji ta' *trademark*.

(2) Il-Ministru jista' jagħmel regoli li jkunu jirregolaw ir-registrazzjoni ta' persuni bhala aġenti ta' *trademark* registrata, u jistgħu b'mod partikolari -

(a) jehtieġu l-hlas ta' dawk id-drittijiet f'dak li għandu x'jaqsam ma' dik ir-registrazzjoni li jistgħu jiġu preskritti, u

(b) jawtorizzaw f'kazijiet bħal dawk bħalma jiġu speċifikati it-thassir mir-registru ta' l-isem ta' xi persuna li tkun registrata bhala aġent ta' *trademark* registrata, jew is-sospensjoni ta' registrazzjoni bħal dik.

(3) Persuni registrati biss jistgħu -

(a) jiġġestixxu xi negozju taħt xi isem jew deskrizzjoni ohra li jkun fiha l-kliem "aġent registrat ta' *trademark*"; jew

(b) fil-kors tan-negozju xort'ohra jiddeskrivi jew jipproġetta ruħu, jew iħalli lilu nnifsu jiġi deskritt jew proġettat, bhala aġent registrat ta' *trademark*.

70. Id-dispożizzjonijiet ta' l-artikolu 588 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom japplikaw għar-rigward Privileġġ għal komunikazzjoni ma' aġenti ta' *trademarks* registrati.

ta' agenti ta' *trademark* registrata bhalma japplikaw ghar-rigward ta' avukati u prokuraturi legali.

Setgħa tal-Kontrollur li jirrifjuta li jittratta ma' ċertu agenti.

71. Il-Kontrollur jista', skond dawk ir-regoli li jistgħu jigu preskritti, jirrifjuta milli jirrikonoxxi bhala agent dwar xi negozju taht dan l-Att -

(a) lil xi persuna li għalkemm ma tkunx agent ta' *trademark* registrata, tkun falzament għamlietha bhala tali;

(b) lil xi persuna li isimha jkun thassar mir-registru u ma jkunx reġa' ddaħhal fih, jew li tkun sospiża mir-registru ta' agent ta' *trademark* minhabba fi mgieba hażina;

(ċ) lil xi persuna li tkun instabet hatja ta' mgieba bhal dik li kieku, fil-każ ta' individwu registrat fir-registru ta' agenti ta' *trademark*, tirrendih li jista' jkollu ismu mhassar mir-registru minhabba f'imgieba hażina;

(d) lil xi soċjetà jew korp magħqud li tagħhom xi hadd mis-soċji jew diretturi jkun persuna li r-registratur jista' jirrifjuta li jirrikonoxxi taht il-paragrafu (a), (b) jew (ċ) hawn aktar qabel imsemmija.

TAQSIMA V: REATI KRIMINALI

Reati

Użu mhux awtorizzat ta' *trademark*, eċċ. dwar oġġetti.

72. (1) Persuna li bil-għan li tiehu vantaġġ għaliha nnifisha jew għal persuna oħra, jew bil-hsieb li tikkaguna telf lil xi persuna oħra, u mingħajr il-kunsens tal-proprjetarju -

(a) tapplika fuq oġġetti jew fuq l-ippakkettjar tagħhom sinjal identiku għal, jew li x'aktarx jithawwad ma' *trademark* registrata, jew

(b) tbiegħ jew tikri, toffri jew tesponi għall-bejgħ jew kiri jew tqassam oġġetti li jkollhom fuqhom, jew li l-ippakkettjar tagħhom ikollu fuqu, sinjal bhal dak, jew

(ċ) jkollha fil-pussess, kustodja jew kontroll tagħha fil-kors ta' xi negozju xi oġġetti bhal dawk bil-għan li hi jew persuna oħra tagħmel xi haġa li tkun reat taht il-paragrafu (b), jew

(d) tapplika sinjal identiku ma' *trademark* registrata, jew li x'aktarx jithawwad ma' *trademark* registrata, ma' xi materjal maħsub biex jintuża -

(i) għall-ittikkettjar jew l-ippakkettjar ta' oġġetti,

(ii) bhala kartolerija kummerċjali għar-rigward ta' oġġetti, jew

(iii) għar-reklamar ta' oġġetti, jew

(e) tuża, fil-kors ta' xi negozju, materjal li jkun fih sinjal bhal dak għall-ittikkettjar jew l-ippakkettjar ta' oġġetti, jew bhala kartolerija kummerċjali għar-rigward ta' oġġetti, jew għar-reklamar ta' oġġetti, jew

(f) jkollha fil-pussess, kustodja jew kontroll tagħha, fil-kors ta' xi negozju, xi materjal bhal dak bil-ghan li hi jew persuna oħra tagħmel xi haġa li tkun reat taht il-paragrafu (e), jew

(g) (i) tagħmel oġġett li jkun speċifikament disinjat jew adattat għall-ghemil ta' kopji ta' xi sinjal ta' *trademark* reġistrata, jew għall-ghemil ta' sinjal li x'aktarx jithawwad magħha, jew

(ii) ikollha xi oġġett bhal dak fil-pussess, kustodja jew kontroll tagħha fil-kors ta' xi negozju,

filwaqt li tkun taf jew ikollha għaliex taħseb li tkun intużat, jew li tkun se tintuża, biex tipproduci oġġetti, jew materjal għall-ittikkettjar jew l-ippakkettjar ta' oġġetti, bhala kartolerija kummerċjali għar-rigward ta' oġġetti, jew għar-reklamar ta' oġġetti,

tkun hatja ta' reat kontra dan l-artikolu.

(2) Persuna ma tagħmilx reat kontra dan l-artikolu kemm-il darba -

(a) l-oġġetti li dwarhom isir ir-reat ikunu oġġetti li dwarhom tkun reġistrata t-*trademark*, jew

(b) it-*trademark* ikollha riputazzjoni f'Malta u l-użu tas-sinjal jiehu jew kieku jiehu vantaġġ mhux ġust ta', jew ikun jew kieku jkun detrimental għax-xorta distintiva jew ir-riputazzjoni tat-*trademark*.

(3) Persuna li tiġi akkużata b'reat kontra dan l-artikolu tista' tghid b'difiża li kienet taħseb fuq bażi raġonevoli li l-użu tas-sinjal bil-mod kif dan intuża, jew kellu jintuża, ma kienx ksur tat-*trademark* reġistrata.

(4) Persuna hatja ta' reat taht dan l-artikolu tista' meta tinsab hekk hatja tehel prigunerija ghal zmien ta' mhux iżjed minn tliet snin jew multa ta' mhux aktar minn Lm 10,000 jew ghal dik il-multa u prigunerija flimkien.

Falsifikazzjoni
tar-registru eċċ.

73. (1) Persuna li, għalkemm tkun taf jew ikollha raġuni taħseb li jkun qarrieqi:-

(a) tagħmel, jew iġġieghel li jsir, tniżżil falz fir-registru tat-*trademarks*; jew

(b) tagħmel, jew tikkaguna li ssir, xi haġa falza li tiftiehem bhallikieku hi kopja ta' xi tniżżil fir-registru, jew

(c) tipproduċi jew taghti jew tikkaguna li tigi prodotta jew li tinghata b'xiehda xi haġa,

tkun hatja ta' reat kontra dan l-artikolu.

(2) Min jinsab hati ta' reat kontra dan l-artikolu jista', meta jinsab hekk hati, jehel prigunerija għal zmien mhux iżjed minn sentejn jew multa ta' mhux aktar minn Lm 5,000 jew għal dik il-multa u prigunerija flimkien.

Rappreżentazzjoni
ta'
trademark kif
reġistrata b'mod
qarrieq.

74. (1) Huwa reat kontra dan l-artikolu li persuna -

(a) b'mod qarrieqi tirrappreżenta marka bħala *trademark* reġistrata, jew

(b) tagħmel rappreżentazzjoni falza fuq l-oġġetti jew is-servizzi li dwarhom *trademark* tkun reġistrata,

meta tkun taf jew ikollha għaliex taħseb li dik ir-rappreżentazzjoni tkun waħda qarrieqa.

(2) Għall-ghanijiet ta' dan l-artikolu, l-użu f'Malta għar-rigward ta' *trademark* -

(a) tal-kelma "reġistrata", jew

(b) ta' xi kelma ohra jew simbolu iehor li jkunu jfissru riferenza, espressa jew implícita, għal reġistrazzjoni,

għandha titqies bħala rappreżentazzjoni dwar reġistrazzjoni taht dan l-Att kemm-il darba ma jintweriex li r-riferenza tkun għal reġistrazzjoni band'ohra milli f'Malta u li t-*trademark* tkun fil-fatt hekk reġistrata għall-oġġetti jew għas-servizzi involuti.

(3) Min jinsab hati ta' reat kontra dan l-artikolu jista', meta jinsab hati, jehel multa ta' mhux aktar minn Lm 5,000.

75. (1) Persuna ma ghandhiex minghajr l-awtorità tal-President tuża f'dak li ghandu x'jaqsam ma' xi kummerċ, xi mezz, emblema jew titolu tali li jitqies li jwassal li wiehed jaħseb li tkun impjegata mill-President, jew li tfornih b'oggetti jew servizzi.

Użu mhux awtorizzat ta' ċertu mezzi, emblemi, eċċ.

(2) Kull min jikser id-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu jkun hati ta' reat kontra dan l-artikolu u jista' jehel, meta jinsab hati, multa ta' mhux iżjed minn Lm 3,000.

76. Il-Qorti tista', iktar minn hekk, fil-każijiet imsemmija fl-artikolu 73, fuq talba tal-prosekuzzjoni, tordna li l-makkinarju jew mezzi oħra jew apparat iehor industrijali li jkun gie użat b'kontravvenzjoni tad-drittijiet tal-proprjetarji tat-*trademarks*, l-oggetti kontravvenjenti, u l-apparat maħsub għall-produzzjoni tagħhom, jiġi kkonfiskat, kollu kemm hu jew parti minnu, u kkonsenjat lid-detentur tat-*trademark*, minghajr preġudizzju għal kull dritt iehor għal rimedju taht dan l-Att.

Ċessjoni ta' oggetti kontravvenjenti eċċ.

77. Sakemm ikun għadu pendent kull proċediment għal xi wiehed mir-reati msemmija f'din it-Taqsima, kull Maġistrat jista', jekk ikun sodisfatt b'tagħrif li jingħata taht gurament li jkun hemm kawza raġonevoli li jiġi suspettat li xi oggetti jew hwejjeg li permezz tagħhom, jew li dwarhom ikun sar ir-reat, ikunu f'xi dar jew fond ta' l-akkużat, jew ikunu fil-pussess tiegħu jew taht il-kontroll tiegħu f'xi post iehor, b'ordni mahruġ u ffirmit minnu, jordna lil xi ufficjal tal-Pulizija li jissemma' fl-ordni, li jidhol f'xi dar, fond jew post, li jissemmew ukoll fl-istess ordni, sabiex hemm ifittex, jaqbad, u jnehhi dawk l-oggetti jew hwejjeg.

Setgħa tal-maġistrati.

78. Jekk sid l-oggetti jew il-hwejjeg li, li kieku kellu jinsab hati ta' xi wiehed mir-reati msemmija f'din it-Taqsima, kienu kieku jistgħu jiġu kkonfiskati, ma jkunx magħruf jew ma jkunx jista' jinsab, kull Maġistrat ikun jista' bl-istess mod u fiċ-ċirkostanzi meħtieġa fl-artikolu li jiġi minnufih qabel dan, johroġ dik l-ordni.

Meta sid l-oggetti ma jkunx magħruf.

79. L-oggetti u l-hwejjeg hekk maqbudin għandhom jingiebu quddiem il-Qorti tal-Maġistrati bhala qorti ta' gudiatura kriminali, u dik il-Qorti għandha tistabbilixxi jekk dawn għandhomx jiġu kkonfiskati taht dan l-Att.

Konfiska ta' l-oggetti maqbudin.

80. (1) Fil-każ imsemmi fl-artikolu 78, il-Qorti għandha tordna l-hruġ ta' bandi li għandhom jiġu ppubblikati għal darbtejn, b'intervall ta' mill-anqas tmint ijiem fil-Gazzetta tal-Gvern, u jitwählhu fid-dahla tal-edificċju fejn ikun hemm il-Qorti, u f'kull post iehor fejn il-qorti

Proċedura meta s-sid ma jkunx magħruf.

tqis li jkun xieraq, fejn jiġi ddikjarat li l-oġġetti jew il-hwejjeġ maqbudin għandhom jiġu kkonfiskati, kemm-il darba fil-hin u l-post imsemmija fil-bandi s-sid ta' dawk l-oġġetti jew hwejjeġ jew persuna oħra li jkollha interess f'dawk l-oġġetti jew hwejjeġ ma tattendix quddiem il-Qorti fil-hin u l-lok indikati fil-bandi u tghid għaliex dan ma għandux isir.

(2) Jekk is-sid jew xi hadd iehor f'ismu, jew xi persuna oħra li jkollha interess f'dawk l-oġġetti jew hwejjeġ, tonqos milli tattendi fil-hin u l-post imsemmija fil-bandu biex tghid għaliex dan ma għandux isir, il-Qorti tista' tordna li dawk l-oġġetti jew hwejjeġ jew xi wieħed jew waħda minnhom għandhom jiġu kkonfiskati.

Għoti ta' kumpens lil partijiet bonafidi.

81. Il-Qorti tista' tordna li l-oġġetti jew il-hwejjeġ hekk konfiskati għandhom jiġu meqruda jew imnehhija, wara li *t-trademarks* jew deskrizzjonijiet kummerċjali oħra jkun thassru għalkollox minn fuqhom, u tista' tordna wkoll illi, mid-dhul nett li jista' jsir bit-tnehhija ta' dawk l-oġġetti jew hwejjeġ u sa l-ammont li dawn iġibu, kull min, u li jkun persuna bonafidi, ikun ġie aggravat bil-konfiska, għandu jinghata kumpens għal kull telf lilu kaġunat.

Limitazzjoni tal-azzjonijiet kriminali.

82. Azzjonijiet kriminali taht dan l-Att jaqghu bi preskrizzjoni bl-gheluq ta' tliet snin mill-jum minn meta jkun sar l-att li jikkostitwixxi r-reat, jekk il-persuna li r-reat ikun twettaq bi preġudizzju għaliha, ma kienetx qabel taf bih; f'kull każ iehor iż-żmien ta' preskrizzjoni jkun ta' sena mill-jum meta dik il-persuna tkun saret taf b'dak l-att.

Użu ta' marki falsifikati.

83. Il-provvedimenti li jirrigwardaw l-użu ta' marki falsifikati ma għandhomx japplikaw għall-użu ta' xi marka ta' manifattura jew deskrizzjoni użata fil-kummerċ biex tindika xi oġġetti ta' klassi partikolari, jew il-manifattura tagħhom b'xi metodu partikolari, meta, fil-waqt tal-promulgazzjoni ta' dan l-Att, dik il-marka ta' manifattura jew deskrizzjoni kienet legittimament u ġeneralment applikata għall-iskop hawn aktar qabel imsemmi:

Iżda meta dik il-marka ta' manifattura jew deskrizzjoni tinkludi l-isem ta' xi post jew pajjiż u l-oġġetti ma jiġux prodotti fil-post jew fil-pajjiż indikat fil-marka ta' manifattura jew deskrizzjoni hekk użata, id-dispożizzjonijiet ta' dan l-artikolu ma japplikawx, kemm-il-darba ma jiżdiedx mal-marka ta' manifattura jew deskrizzjoni, minnufih qabel jew wara l-isem ta' dak il-post jew pajjiż, b'mod daqstant li jidher, il-post jew il-pajjiż li fihom l-oġġetti attwalment saru jew ġew prodotti, u kemm-il darba ma jissemmiex hawnhekk ukoll li l-oġġetti saru jew ġew prodotti f'dak il-post jew pajjiż.

Persuna li tippreżenta ruħha bħala aġent ta' *trademark* reġistrata.

84. Persuna li falsament tippretendi li tkun aġent ta' *trademark* reġistrata meta ma tkunx hekk reġistrata skond l-artikolu 69 ta' dan l-

Att, tkun hatja ta' reat kontra dan l-artikolu u tista' tehel, meta tinsab hatja, multa ta' mhux iżjed minn Lm500.

85. Il-provvedimenti ta' din it-Taqsima ghandhom japplikaw minghajr preġudizzju ghad-dritt li kull persuna ghandha li titlob id-danni b'konsegwenza għal kull att li jikkostitwixxi reat. Id-dritt ghad-danni ma jintlaqatx.

86. Ma jinbdew ebda proċedimenti kontra persuna fis-servizz ta' persuna oħra, jekk l-impjegat juri b'bonafidi li jkun aġixxa b'ubbidjenza għall-istruzzjonijiet tal-prinċipal tiegħu, u meta jiġi interrogat mill-Pulizija, jagħti kull tagħrif dwar il-prinċipal tiegħu u dwar il-fatti tal-każ kif ikun jafhom hu. Prinċipal u impjegat.

TAQSIMA VI: PROVVEDIMENTI ĠENERALI

87. Jekk fi proċedimenti ċivili taħt dan l-Att tqum xi kwistjoni dwar l-użu li *trademark* reġistrata seta' sar minnha, l-oneru tal-prova li jkun sar xi użu partikolari minnha jaqa' fuq il-proprjetarju. Min ghandu d-dmir iġib prova dwar l-użu ta' *trademark*.

88. Azzjonijiet ċivili taħt dan l-Att jaqgħu bi preskrizzjoni bl-gheluq ta' hames snin f'kull każ fejn ma jkunx xort' oħra stabbilit f'dan l-Att xi perijodu ieħor li fih jistgħu jinbdew dawk l-azzjonijiet. Limitazzjoni ta' azzjoni ċivili.

TAQSIMA VII: PROVVEDIMENTI TRANSITORJI

89. (1) F'din it-Taqsima - Tifsir.

“il-Liġi l-Qadima” tfisser l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrjali, u kull liġi oħra jew regola li tkun tapplika għal marki reġistrati eżistenti minnufih qabel il-bidu fis-seħh ta' dan l-Att; Kap. 29.

“marka reġistrata eżistenti” tfisser *trademark* reġistrata taħt l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrjali, minnufih qabel il-bidu fis-seħh ta' dan l-Att;

“ir-reġistru l-ġdid” tfisser ir-reġistru li jinżamm taħt dan l-Att;

“ir-reġistru ta' qabel” tfisser ir-reġistru li kien jinżamm taħt il-Liġi l-Qadima.

(2) Għall-ghanijiet ta' din it-Taqsima -

(a) applikazzjoni għandha tiġi trattata bħala pendenti mal-bidu fis-seħh ta' dan l-Att jekk din tkun saret iżda ma tkunx giet finalment deċiża qabel il-bidu fis-seħh, u

(b) id-data meta din tkun saret ghandha tiftiehem bhala d-data tal-prezentata taht il-Ligi l-Qadima.

Marki registrati ezistenti.

90. (1) Il-marki registrati ezistenti ghandhom, mal-bidu fis-sehh ta' dan l-Att, jigu trasferiti ghal gor-registru l-gdid, u bla hsara ghad-dispozizzjonijiet ta' din it-Taqsima, jkollhom sehh bhallikieku gew registrati taht dan l-Att.

(2) Marki registrati ezistenti li jkunu registrati bhala serje taht l-artikoli 91(2) u 91(3) ta' l-Ordinanza ghandhom jigu registrati bl-istess mod fir-registru l-gdid.

(3) F'kull kaz iehor noti li jkunu jindikaw li marki registrati ezistenti jkunu assoċjati ma' marki ohra ghandhom itemmu milli jkollhom sehh mal-bidu fis-sehh ta' dan l-Att.

Proċedimenti taht il-Ligi l-Qadima.

91. (1) Proċedimenti taht il-Ligi l-Qadima li jkunu ghadhom pendenti mal-bidu fis-sehh ta' dan l-Att ghandhom jigu trattati taht il-Ligi l-Qadima u ghandha ssir kull tibdila mehtiega skond u konformi ma' dawk il-proċedimenti fir-registru l-gdid.

(2) Ċahda ta' dritt jew limitazzjoni li titnizzel fuq ir-registru ta' qabel ghar-rigward ta' marka registrata ezistenti minnufih qabel il-bidu fis-sehh ta' dan l-Att ghandhom jigu trasferiti ghal gor-registru l-gdid u jkollhom sehh bhallikieku dawn tnizzlu fuq ir-registru b' mod konformi ma' l-artikolu 13 ta' dan l-Att.

Effetti tar-registrazzjoni: kontravvenzjoni.

92. (1) Mal-bidu fis-sehh ta' dan l-Att, l-artikoli 9 sa 12 ta' dan l-Att ghandhom japplikaw ghar-rigward ta' marka registrata ezistenti u bla hsara ghas-subartikolu (2) ta' dan l-artikolu, l-artikolu 14 ta' dan l-Att ghandu japplika ghar-rigward ta' xi kontravvenzjoni ta' marka registrata ezistenti li ssir wara l-bidu fis-sehh ta' dan l-Att.

(2) Wara l-bidu fis-sehh ta' dan l-Att ma tkunx kontravvenzjoni ta' -

(a) marka registrata ezistenti, jew

(b) *trademark* registrata li l-elementi distintivi taghha huma l-istess jew sostanzjalment l-istess bhala dawk ta' marka registrata ezistenti u li tkun registrata ghall-istess oġġetti jew servizzi,

jekk dawn ikompli b'xi uzu li ma jkunx ammonta ghal kontravvenzjoni tal-marka registrata ezistenti taht il-Ligi l-Qadima.

93. L-artikolu 16 ta' dan l-Att ghandu japplika ghal oggetti, materjal jew hwejjeġ kontravvenjenti sew jekk dawn ikunu saru qabel jew wara l-bidu fis-sehh ta' dan l-Att.

Oggetti, materjal
jew
hwejjeġ
kontravvenjenti.

94. (1) L-artikolu 28 ta' dan l-Att ghandu japplika ghal licenzji moghtija qabel il-bidu fis-sehh ta' dan l-Att, iżda biss ghar-rigward ta' kontravvenzjonijiet li jsiru wara l-bidu fis-sehh tieghu.

Drittijiet u rimedji
ta' detentur ta'
licenza jew
utent awtorizzat.

(2) Il-paragrafu 12 ta' l-Iskeda 2 ta' dan l-Att ghandu japplika biss dwar kontravvenzjonijiet li jsiru wara l-bidu fis-sehh ta' dan l-Att.

95. Id-dispożizzjonijiet ta' l-artikolu 22 ta' dan l-Att ghandhom japplikaw sa mill-bidu fis-sehh ta' dan l-Att ghal xi marka registrata eżistenti li taghha żewġ persuni jew iżjed kienu minnufih qabel il-bidu fis-sehh ta' l-Att registrati bhala proprjetarji solidali.

Komproprjetà ta'
marka registrata.

96. (1) L-artikolu 23 ta' dan l-Att ghandu japplika ghal transazzjonijiet u grajjiet li jiġru wara l-bidu fis-sehh ta' dan l-Att ghar-rigward ta' marka registrata eżistenti; u l-Liġi l-Qadima ghandha tkompli tapplika ghar-rigward ta' transazzjonijiet u grajjiet li jiġru qabel il-bidu fis-sehh taghha.

Assenjament eċċ.
ta' marka registrata.

(2) Registrazzjonijiet eżistenti taht l-artikoli 98 u 100 ta' l-Ordinanza dwar il-Protezzjoni tal-Proprjetà Industrijali ghandhom jiġu trasferiti mal-bidu fis-sehh ta' dan l-Att ghal għor-registru l-ġdid u jkollhom sehh bhallikieku dawn saru taht l-artikolu 24 ta' dan l-Att.

(3) Applikazzjoni ghal registrazzjoni ta' trasferiment taht l-artikoli 98 u 100 ta' l-Ordinanza dwar il-Protezzjoni tal-Proprjetà Industrijali li tkun ghadha pendenti quddiem il-Kontrollur mal-bidu fis-sehh ta' dan l-Att ghandha tiġi trattata bhala applikazzjoni ghal registrazzjoni ta' trasferiment taht l-artikolu 24 ta' dan l-Att u ghandha timxi skond hekk:

Iżda l-Kontrollur jista' jehtieġ lill-applikant jemenda l-applikazzjoni tieghu sabiex din tkun konformi mal-htigiet ta' dan l-Att.

(4) Applikazzjoni ghal registrazzjoni ta' trasferiment taht l-artikoli 98 u 100 ta' l-Ordinanza dwar il-Protezzjoni tal-Proprjetà Industrijali li jkun gie deċiż dwarha mill-Kontrollur iżda mhux finalizzata qabel il-bidu fis-sehh ta' dan l-Att ghandu jsir minnha taht il-Liġi l-Qadima; u s-subartikolu (2) ta' dan l-artikolu ghandu jkun japplika ghar-rigward ta' kull tniżżil riżultanti fir-registru.

(5) Meta, qabel il-bidu fis-sehh ta' dan l-Att, persuna tkun saret intitolata b'assenjazzjoni jew trasmissjoni ghal xi marka registrata

eżistenti iżda ma tkunx irregistrat it-titolu tagħha, kull applikazzjoni għal registrazzjoni ta' trasferiment wara l-bidu fis-sehh tiegħu għandha ssir taht l-artikolu 24 ta' dan l-Att.

Licenzar ta' *trademark* registrata.

97. L-artikoli 26 u 27(2) ta' dan l-Att għandhom japplikaw biss għar-rigward ta' licenzi mogħtijin wara l-bidu fis-sehh ta' dan l-Att.

Applikazzjonijiet għar-registrazzjoni li għadhom pendenti.

98. (1) Applikazzjoni għar-registrazzjoni ta' marka taht il-Liġi l-Qadima li tkun pendenti mal-bidu fis-sehh ta' dan l-Att għandha tiġi trattata taht il-Liġi l-Qadima, bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, u, meta tiġi registrata, l-marka għandha tiġi trattata għall-ghanijiet ta' din it-Taqsima bħala marka registrata eżistenti.

(2) Is-setgha tal-Ministru taht l-artikolu 65 ta' dan l-Att li jagħmel regoli li jkunu jirregolaw il-prattika u l-proċedura, u għar-rigward tal-hwejjeġ imsemmija fis-subartikolu (2) ta' dak l-artikolu, hija eżerċitabbli għar-rigward ta' dik l-applikazzjoni; u jista' jsir provvediment differenti għal dawk l-applikazzjonijiet minn dak li jsir għal applikazzjonijiet oħra.

Konverżjoni ta' applikazzjoni pendenti.

99. (1) F'każ ta' applikazzjoni għar-registrazzjoni pendenti li ma tkunx ġiet reklamata taht l-artikolu 87 ta' l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrijali qabel il-bidu fis-sehh ta' dan l-Att, l-applikant jista' jagħti avviż lill-Kontrollur fejn jitlob li r-registrabilità tal-marka tiġi stabbilita skond il-provvedimenti ta' dan l-Att.

(2) L-avviż għandu jkun fih il-forma preskritta, ikollu miegħu d-dritt li għandu jithallas u jingħata mhux iżjed tard minn sitt xhur wara l-bidu fis-sehh ta' dan l-Att.

(3) Kull avviż debitament mogħti għandu jkun irrevokabbli u għandu jkollu l-effett li l-applikazzjoni għandha tiġi trattata bħallikieku tkun saret minnufih wara l-bidu fis-sehh ta' dan l-Att.

Trademarks registrati skond il-klassifika l-qadima.

100. Il-Kontrollur jista' jeżerċita s-setghat mogħtija b'regoli taht l-artikolu 57 ta' dan l-Att sabiex jiżgura li xi marki registrati eżistenti li ma jkunux konformi mas-sistema ta' klassifika preskritta taht l-artikolu 32 ta' dan l-Att jingiebu konformi ma' dik is-sistema.

Talba għal prijorità minn applikazzjoni barranija.

101. L-artikolu 33 ta' dan l-Att għandu japplika għal applikazzjoni għal registrazzjoni taht dan l-Att li tkun saret wara l-bidu fis-sehh ta' dan l-Att minkejja li l-applikazzjoni taht il-Konvenzjoni tkun saret qabel il-bidu fis-sehh.

102. (1) L-artikolu 38 (1) ta' dan l-Att japplika ghar-rigward tar-registrazzjoni ta' marka b'mod konformi u skond rikors magħmul wara l-bidu fis-seħħ ta' dan l-Att; u l-Liġi l-Qadima għandha tkompli tapplika f'kull każ iehor.

Għal kemm iddum registrazzjoni u t-tigdid tagħha.

(2) L-artikoli 38 (2) u 39 ta' dan l-Att għandhom japplikaw meta t-tigdid ikollu jsir fl-1 ta' Jannar, 2001 jew wara; u l-Liġi l-Qadima għandha tkompli tapplika f'kull każ iehor.

(3) F'kull każ minn dawn id-data tal-hlas tad-dritt mhix rilevanti.

103. Fl-artikolu 32 tal-Kodiċi tal-Kummerċ, il-kliem "l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrijali" għandhom jiġu sostitwiti bil-kliem "l-Att sabiex jirregola t-*Trademarks*".

Emenda tal-Kodiċi tal-Kummerċ, Kap. 13.

104. (1) Is-subartikolu (1) ta' l-artikolu 70 ta' l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrijali għandu jiġi sostitwit b'dan li ġej:

Emenda ta' l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrijali, Kap. 29.

"(1) Min ikun debitament jipprezenta applikazzjoni għall-protezzjoni ta' disinn jew mudell ta' manifattura f'pajjiż membru ta' l-Organizzazzjoni Dinjija tal-Kummerċ jew f'pajjiż membru tal-Konvenzjoni ta' Pariġi, ikollu jedd għall-prijorità għall-iskop ta' registrazzjoni ta' l-istess disinn jew mudell ta' manifattura taht din l-Ordinanza għal perjodu ta' sitt xhur mid-data tal-prezentazzjoni ta' l-ewwel applikazzjoni bhal dik:

Izda xejn f'dan l-artikolu ma jagħti jedd lil sid id-disinn jew mudell ta' manifattura li jitlob danni għall-vjolazzjoni li ssir qabel id-data tar-registrazzjoni effettiva tad-disinn jew mudell tiegħu f'Malta."

(2) In-nota marginali ta' l-istess artikolu 70 għandha tiġi sostitwita bil-kliem "Pretensjoni ta' prijorità."

(3) It-Taqsima III ta' l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrijali hi b'dan imhassra, u kull riferenza għal *trademarks* fit-Taqsima IV u fit-Taqsima V tagħha għandha titqies bhallikieku din ma saritx.

SKEDA 1: MARKI KOLLETTIVI

Ġenerali.

1. Il-provvedimenti ta' dan l-Att japplikaw ghal marki kollettivi bla hsara ghal dawn id-dispożizzjonijiet li ġejjin li jistgħu, b'regolamenti, jiġu emendati mill-Ministru.

Sinjali li minnhom tista' tkun tikkonsisti marka kollettiva.

2. Għar-rigward ta' marka kollettiva, ir-riferenza fit-tifsira ta' "*trademark*" fl-artikolu 2 fid-distinzjoni ta' oġġetti jew servizzi ta' impriża waħda minn dawk ta' impriži oħra għandha tiftiehem bhala riferenza għad-distinzjoni ta' oġġetti jew servizzi ta' membri ta' l-assoċjazzjoni li tkun il-proprjetarja tal-marka minn dawk ta' impriži oħra.

Indikazzjoni ta' oriġni ġeografika.

3. Minkejja l-artikolu 4 (1)(ċ), marka kollettiva li tkun tikkonsisti f' sinjali jew indikazzjonijiet li jistgħu jservu, fil-kummerċ, biex isemmu l-oriġni ġeografika ta' l-oġġetti jew tas-servizzi tista' tiġi registrata:

Iżda, l-proprjetarju ta' marka bħal dik ma jkollux jedd jipprojbixxi l-użu tas-sinjali jew indikazzjonijiet skond kull Prattika Onesta fi Hwejjeg Industrijali jew Kummerċjali partikolarment minn persuna li jkollha jedd tuża isem ġeografiku.

Marka ma għandhiex tiżgwiċa dwar ix-xorta jew is-sinjifikat tagħha.

4. (1) Marka kollettiva ma għandhiex tiġi registrata jekk il-pubbliku x'aktarx li jiġi żgwidat dwar ix-xorta jew is-sinjifikat tal-marka, b'mod partikolari jekk din x'aktarx li tiftiehem bhala xi haġa oħra li mhux marka kollettiva.

(2) Il-Kontrollur jista' skond hekk jehtieg li marka li dwarha ssir applikazzjoni għar-reġistrazzjoni tkun tinkludi xi indikazzjoni li tkun marka kollettiva; u minkejja d-dispożizzjonijiet ta' l-artikolu 36 (2), applikazzjoni tista' tiġi emendata sabiex din tkun thares kull htiega bħal dik.

Regolamenti li jirregolaw l-użu ta' marka kollettiva.

5. Applikant għal reġistrazzjoni ta' marka kollettiva għandu jippreżenta għand il-Kontrollur regolamenti li jkunu jirregolaw l-użu tal-marka li jispeċifikaw lill-persuni li jkunu awtorizzati jużaw il-marka, il-kondizzjonijiet tas-shubija fl-assoċjazzjoni u, meta dawn ikunu jeżistu, l-kundizzjonijiet għall-użu tal-marka, kif ukoll kull sanzjoni kontra l-użu hażin u kull htiega oħra li r-regolamenti għandhom ikunu jharsu hekk kif jista' jiġi stabbilit b'regoli magħmulin mill-Ministru.

Approvazzjoni ta' regolamenti mill-Kontrollur.

6. (1) Ma ghandhiex tigi registrata marka kollettiva kemm-il darba r-regolamenti li jirregolaw l-użu tal-marka -

(a) ma jkunux konformi mal-paragrafu 5 (2) u kull htieġa ohra imposta permezz ta' regoli, u

(b) ma jkunux kuntrarju ghal *public policy* jew ghall-prinċipji aċċettati ta' moralità.

(2) L-applikazzjoni ghandha titqies li tkun ġiet irtirata jekk qabel tmiem xi perijodu li jista' jiġi preskritt wara d-data ta' l-applikazzjoni ghar-registrazzjoni ta' marka kollettiva, l-applikant jonqos milli jipprezenta ghand il-Kontrollur ir-regolamenti tiegħu u jhallas id-dritt preskritt.

7. (1) Il-Kontrollur ghandu jqis jekk il-htigiet imsemmija fil-paragrafu 6 (1) jkunux ġew imharsa jew le.

(2) Jekk il-Kontrollur jkun jidhirlu li dawk il-htigiet ma jkunux tharsu, huwa ghandu jgharraf lill-applikant u jagħtih opportunità, f'dak il-perijodu li l-Kontrollur jista' jispeċifika, li jagħmel il-kummenti tiegħu jew inkella jipprezenta r-regolamenti emendati.

(3) Jekk l-applikant jonqos milli jissodisfa lill-Kontrollur li dawk il-htigiet ikunu tharsu, jew li jipprezenta regolamenti emendati sabiex dawn jitharsu, jew jonqos milli jirrispondi qabel tmiem il-perijodu speċifikat, il-Kontrollur ghandu jiċhad l-applikazzjoni.

(4) Jekk il-Kontrollur ikun jidhirlu li dawk il-htigiet, u l-htigiet l-ohra ghar-registrazzjoni, jkunu tharsu, huwa ghandu jilqa' l-applikazzjoni u jmexxi skond l-artikolu 37.

Ir-regolamenti jkunu miftuħa għall-ispezzjon.

8. Ir-regolamenti li jirregolaw l-użu ta' marka kollettiva registrata ghandhom ikunu miftuħa għall-ispezzjon pubbliku bl-istess mod bħalma jkun ir-registru.

Emendar tar-regolamenti.

9. Emenda tar-regolamenti li jirregolaw l-użu ta' marka kollettiva registrata ma jkollhiex seħħ kemm-il darba u sakemm ir-regolamenti emendati ma jiġux ipprezentati ghand il-Kontrollur u milqughin minnu.

Kontravvenzjoni: drittijiet ta' utenti awtorizzati.

10. Id-dispożizzjonijiet tas-subartikolu (6) ta' l-artikolu 10 u tas-subartikolu (2) ta' l-artikolu 19 japplikaw dwar utent awtorizzat ta' marka kollettiva registrata l-istess bħalma japplikaw ghar-rigward ta' detentur ta' licenza ta' *trademark*.

11. (1) Dawn id-dispożizzjonijiet li ġejjin ikollhom seħħ għar-rigward tal-jeddijiet ta' utent awtorizzat għar-rigward tal-kontravvenzjoni ta' marka kollettiva registrata.

(2) Utent awtorizzat ikollu jedd, bla hsara għal kull ftehim għall-kuntrarju bejnu u l-proprjetarju, li jagħmel talba lill-proprjetarju biex jibda proċedimenti ta' kontravvenzjoni dwar kull haġa li toqot l-interessi tiegħu.

(3) Jekk il-proprjetarju jirrifjuta milli jagħmel hekk, jew jonqos milli jagħmel hekk fi zmien xahrejn wara li tkun saritlu t-talba, l-utent awtorizzat jista' jibda l-proċedimenti f'ismu bħallikieku kien il-proprjetarju.

(4) Meta jinbdew proċedimenti ta' kontravvenzjoni bis-saħha ta' dan il-paragrafu, l-utent awtorizzat ma jistax, mingħajr il-permess tal-Qorti, jipproċedi bl-azzjoni kemm-il darba l-proprjetarju ma jidholx fil-kawża.

(5) Fi proċedimenti ta' kontravvenzjoni mibdija mill-proprjetarju ta' marka registrata kollettiva, kull telf imġarrab jew li x'aktarx jiġġarrab minn utenti awtorizzati għandu jitqies mill-Qorti li għandha tagħti dawk l-ordnijiet li tqis xierqa għar-rigward tad-disponiment u d-distribuzzjoni ta' xi somma mogħtija bhala rimedju għall-kontravvenzjoni.

Raġunijiet għar-revoka tar-reġistrazzjoni.

12. Minbarra r-raġunijiet għar-revoka li hemm provdut dwarhom fl-artikolu 42, ir-reġistrazzjoni ta' marka kollettiva tista' tiġi revokata minhabba f'li -

(a) l-mod kif tkun intużat il-marka mill-proprjetarju jkun ikkaġunaha li x'aktarx tiżgwida lill-pubbliku bil-mod imsemmi fil-paragrafu 4 (1), jew

(b) l-proprjetarju jkun naqas milli josserva, jew milli jiżgura l-osservanza tar-regolamenti li jirregolaw l-użu tal-marka, jew

(ċ) tkun saret emenda tar-regolamenti u r-regolamenti -

(i) ma jibqgħux konformi mal-paragrafu 5, jew

(ii) jkunu jmorru kuntrarju għall-*public policy* jew għall-prinċipji aċċettati tal-moralità.

Raġunijiet għall-invalidità tar-reġistrazzjoni.

13. Minbarra r-raġunijiet għall-invalidità provduti fl-artikolu 43, ir-reġistrazzjoni ta' marka kollettiva tista' tiġi ddikjarata invalida minhabba f'li l-marka kienet registrata b'kontravvenzjoni tad-dispożizzjonijiet tal-paragrafu 4 (1) jew 6(1) ta' din l-Iskeda.

SKEDA 2: MARKI TA' ĊERTIFIKAZZJONI

Ġenerali.

1. Il-provvedimenti ta' dan l-Att japplikaw ghal marki ta' ċertifikazzjoni bla hsara ghal dawn id-dispożizzjonijiet li ġejjin li jistgħu, b'regolamenti, jiġu emendati mill-Ministru.

Sinjali li minnhom tista' tkun tikkonsisti marka ta' ċertifikazzjoni.

2. Għar-rigward ta' marka ta' ċertifikazzjoni, ir-riferenza fit-tifsira ta' "trademark" fl-artikolu 2 fid-distinzjoni ta' oġġetti jew servizzi ta' impriża wahda minn dawk ta' impriži oħra għandha tiftiehem bhala riferenza għad-distinzjoni ta' oġġetti jew servizzi li huma ċertifikati minn dawk li mhumiex.

Indikazzjoni ta' oriġni ġeografika.

3. Minkejja l-artikolu 4 (1)(ċ), marka ta' ċertifikazzjoni jekk din tkun tikkonsisti f'sinjali jew indikazzjonijiet li jistgħu jservu, fil-kummerċ, biex isemmu l-oriġni ġeografika ta' l-oġġetti jew tas-servizzi tista' tiġi registrata:

Izda, l-proprjetarju ta' dik il-marka ma jkollux jedd jipprojbixxi l-użu tas-sinjali jew indikazzjonijiet skond kull Prattika onesta fi hwejjeġ industrijali jew kummerċjali (b'mod partikolari, minn persuna li jkollha jedd tuża isem ġeografiku).

Xorta tan-negozju tal-proprjetarju.

4. Marka ta' ċertifikazzjoni ma għandhiex tiġi registrata jekk il-proprjetarju jiġġestixxi negozju li jinvolvi l-provvista ta' oġġetti jew servizzi tax-xorta speċifikata.

Marka ma għandhiex tiżgwida dwar ix-xorta jew is-sinjifikat tagħha.

5. (1) Marka ta' ċertifikazzjoni ma għandhiex tiġi registrata jekk il-pubbliku x'aktarx li jiġi żgwidat dwar ix-xorta jew is-sinjifikat tal-marka, b'mod partikolari jekk din x'aktarx li tiftiehem bhala xi haġa oħra li mhux marka ta' ċertifikazzjoni.

(2) Il-Kontrollur jista' skond hekk jehtieġ li marka li dwarha ssir applikazzjoni għar-registrazzjoni tkun tinkludi xi indikazzjoni li tkun marka ta' ċertifikazzjoni, u minkejja d-dispożizzjonijiet ta' l-artikolu 36 (2), applikazzjoni tista' tiġi emendata sabiex din tkun thares kull htiega bħal dik.

Regolamenti li jirregolaw l-użu ta' marka ta' ċertifikazzjoni.

6. Applikant għal registrazzjoni ta' marka ta' ċertifikazzjoni għandu jipprezenta għand il-Kontrollur regolamenti li jkunu jirregolaw l-użu tal-marka li jispeċifikaw min ikun awtorizzat juża l-marka, l-karatteristiċi li għandhom jiġu ċertifikati bil-marka, kif

ghandu jaghrbel dawk il-karatteristiċi l-korp li jiċċertifika u jissorvelja l-użu tal-marka, id-drittijiet (jekk ikun hemm) li għandhom jithallsu f'dak li għandu x'jaqsam mat-thaddim tal-marka u l-proċeduri għar-risolviment ta' tilwimiet u kull htieġa oħra li r-regolamenti għandhom ikunu jharsu kif jista' jiġi stabbilit b'regoli magħmulin mill-Ministru.

Approvazzjoni ta' regolamenti, eċċ.

7. (1) Ma għandhiex tiġi reġistrata marka ta' ċertifikazzjoni kemm-il darba -

(a) ir-regolamenti li jirregolaw l-użu tal-marka -

(i) ma jkunux konformi mal-paragrafu 6 (2) u kull htieġa oħra imposta permezz ta' regoli, u

(ii) ma jkunux kuntrarju għal *public policy* jew għall-prinċipji aċċettati ta' moralità, u

(b) l-applikant ikun kompetenti biex jiċċertifika l-oġġetti jew is-servizzi li għalihom tkun se tiġi reġistrata l-marka.

(2) L-applikazzjoni għandha titqies li tkun giet irtirata jekk qabel tmiem kull perijodu li jista' jiġi preskritt wara d-data ta' l-applikazzjoni għar-reġistrazzjoni ta' marka ta' ċertifikazzjoni, l-applikant jonqos milli jippreżenta għand il-Kontrollur ir-regolamenti tiegħu filwaqt li jhallas id-dritt preskritt.

8. (1) Il-Kontrollur għandu jqis jekk il-htigiet imsemmija fil-paragrafu 7 (1) jkunux ġew imħarsa jew le.

(2) Jekk il-Kontrollur jkun jidhirlu li dawk il-htigiet ma jkunux tharsu, huwa għandu jgħarraf lill-applikant u jagħtih opportunità, f'dak il-perijodu li l-Kontrollur jista' jispeċifika, li jagħmel il-kummenti tiegħu jew inkella jippreżenta r-regolamenti emendati.

(3) Jekk l-applikant jonqos milli jissodisfa lill-Kontrollur li dawk il-htigiet ikunu tharsu, jew li jippreżenta regolamenti emendati sabiex dawn jitharsu, jew jonqos milli jirrispondi qabel tmiem il-perijodu speċifikat, il-Kontrollur għandu jiċhad l-applikazzjoni.

(4) Jekk il-Kontrollur ikun jidhirlu li dawk il-htigiet, u l-htigiet għar-reġistrazzjoni, jkunu tharsu, huwa għandu jilqa' l-applikazzjoni u jmexxi skond l-artikolu 37.

Ir-regolamenti jkunu miftuħa għall-ispezzjon.

9. Ir-regolamenti li jirregolaw l-użu ta' marka ta' ċertifikazzjoni reġistrata għandhom ikunu miftuħa għall-ispezzjon pubbliku bl-istess mod bħalma jkun ir-reġistru.

Emendar tar-regolamenti.

10. Emenda tar-regolamenti li jirregolaw l-użu ta' marka ta' ċertifikazzjoni reġistrata ma jkollhiex sehh kemm-il darba u sakemm ir-regolamenti emendati ma jiġux ipprezentati għand il-Kontrollur u milqughin minnu.

Kunsens għall-assenjazzjoni ta' marka ta' ċertifikazzjoni reġistrata.

11. L-assenjazzjoni jew trasmissjoni oħra ta' marka ta' ċertifikazzjoni reġistrata mhix effettiva mingħajr il-kunsens tal-Kontrollur.

Kontravvenzjoni: drittijiet ta' utenti awtorizzati.

12. Id-dispożizzjonijiet tas-subartikolu (6) ta' l-artikolu 10 u tas-subartikolu (2) ta' l-artikolu 19 japplikaw dwar utent awtorizzat ta' marka ta' ċertifikazzjoni reġistrata l-istess bħalma japplikaw għar-rigward ta' detentur ta' liċenza ta' *trademark*.

13. Fi proċedimenti ta' kontravvenzjoni mibdija mill-proprjetarju ta' marka reġistrata ta' ċertifikazzjoni kull telf imġarrab jew li x'aktarx jiġġarrab minn utenti awtorizzati għandu jitqies mill-Qorti li għandha tagħti dawk l-ordnijiet li tqis xierqa għar-rigward tad-disponiment u d-distribuzzjoni ta' kull ammont mogħti bħala rimedju għall-kontravvenzjoni.

Raġunijiet għar-revoka tar-reġistrazzjoni.

14. Minbarra r-raġunijiet għar-revoka li hemm provdut dwarhom fl-artikolu 42, ir-reġistrazzjoni ta' marka ta' ċertifikazzjoni tista' tiġi revokata minhabba f'li -

(a) l-proprjetarju jkun beda jiġġestixxi dak in-negozju b'kontravvenzjoni tal-paragrafu 4,

(b) l-mod kif tkun intużat il-marka mill-proprjetarju jkun ikkaġunaha li x'aktarx tiżgwida lill-pubbliku bil-mod imsemmi fil-paragrafu 5 (1),

(ċ) l-proprjetarju jkun naqas milli josserva, jew milli jiżgura l-osservanza tar-regolamenti li jirregolaw l-użu tal-marka,

(d) tkun saret emenda tar-regolamenti u r-regolamenti -

(i) ma jibqghux konformi mal-paragrafu 6, jew

(ii) jkunu jmorru kuntrarju għall-*public policy* jew għall-prinċipji aċċettati tal-moralità, jew

(e) l-proprjetarju ma jkunx għadu iktar kompetenti li jiċcertifika l-oġġetti jew is-servizzi li għalihom il-marka tkun reġistrata.

Raġunijiet għall-invalidità tar-registrazzjoni.

15. Minbarra r-raġunijiet għall-invalidità provduti fl-artikolu 43, ir-registrazzjoni ta' marka ta' ċertifikazzjoni tista' tiġi ddikjarata invalida minhabba f'li l-marka kienet registrata b'kontravvenzjoni tad-dispożizzjonijiet tal-paragrafu 4, 5 (1) jew 7 (1) ta' din l-Iskeda.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 316 tas-16 ta' Ġunju, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

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I assent.

(L.S.)

GUIDO DE MARCO
President

23rd June, 2000

ACT No. XVI of 2000

AN ACT to regulate Trademarks

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I : PRELIMINARY

1. This Act may be cited as the Trademarks Act, 2000, and shall come into force on such date as the Minister responsible for the protection of Industrial Property may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof. Short title and commencement.

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

“business” includes a trade or profession;

“Comptroller” means the Comptroller of Industrial Property and includes any other person appointed to exercise all or any of the powers and perform all or any of the duties of the Comptroller;

“infringement proceedings” in relation to a registered trademark, includes proceedings under article 16;

“Minister” means the Minister responsible for the protection of Industrial Property;

“Paris Convention” means the convention referred to in article 49 of this Act;

“prescribed” means prescribed by this Act or by any regulations made thereunder;

“publish” means make available to the public, and references to publication in relation to registration, are to publication under article 37(4);

“register” means the register of trademarks kept under this Act and includes the register of trademarks kept under the Industrial Property (Protection) Ordinance, partly repealed by this Act;

Cap. 29.

“trade” includes any business or profession;

“trademark” means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings. A trademark may, in particular, consist of words (including personal names), figurative element, letters, numerals or the shape of goods or their packaging:

Provided that for the purpose of this Act “any sign capable of being represented graphically” includes any sign capable of being put down in words.

(2) (a) References in this Act to a trademark include, unless the context otherwise requires, reference to a collective mark or certification mark referred to respectively in articles 45 and 46.

(b) References in this Act to use (or any particular description of use) of a trademark or of a sign identical with, similar to or likely to be mistaken for a trademark, include use (or that description of use) otherwise than by means of a graphic representation.

PART II : REGISTERED TRADEMARKS

Introductory

Property right.

3. A registered trademark is a property right obtained by the registration of the trademark under this Act. The proprietor of a registered trademark has the rights and remedies provided by this Act.

Grounds for refusal of registration

Absolute grounds for refusal.

4. (1) The following shall not be registered as trademarks -

(a) signs which do not fall within the definition of trademarks in article 2;

(b) trademarks which are devoid of any distinctive character;

(c) trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services;

(d) trademarks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade:

Provided that a trademark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it in Malta.

(2) A sign shall not be registered as a trademark if it consists exclusively of —

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

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

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

(3) A trademark shall not be registered if it is -

(a) contrary to public policy or to accepted principles of morality, or

(b) of such a nature as to deceive the public or likely to deceive the public as to the nature, quality or geographical origin of the goods or service or in any other manner.

(4) A trademark shall not be registered if or to the extent that its use is prohibited in Malta by any enactment or rule of law.

(5) A trademark shall not be registered in the cases specified, or referred to, in article 5.

(6) A trademark shall not be registered if, or to the extent that, the application is made in bad faith.

Specially protected emblems.

5. (1) A trademark which consists of or contains -
- (a) the arms, or any of the principal armorial bearings of the arms appertaining to the President or the Roman Catholic Archbishop of Malta, or any insignia or device so nearly resembling such arms or any such armorial bearing as to be likely to be mistaken for them or it,
 - (b) a representation of the Presidential or Episcopal flags,
 - (c) a representation of the President or the Archbishop, or any colourable imitation thereof, or
 - (d) words, letters or devices likely to lead persons to think that the applicant either has or recently has had Presidential or Episcopal patronage or authorization,

shall not be registered unless it appears to the Comptroller that consent has been given by or on behalf of the President or the Archbishop.

(2) A trademark which consists of a representation of the national flag of Malta shall not be registered.

(3) A trademark which contains a representation of the national flag of Malta shall not be registered if it appears to the Comptroller that the use of the trademark would be misleading or grossly offensive.

(4) A trademark shall not be registered in the cases specified in article 51 or article 52:

Provided that the Minister may by regulation extend the applicability of the provisions of this subarticle to apply *mutatis mutandis* in respect of religions other than the Roman Catholic Apostolic Religion.

Relative grounds for refusal of registration.

6. (1) A trademark shall not be registered if it is identical with an earlier trademark and the goods or services for which the trademark is applied for are identical with the goods or services for which the earlier trademark is protected.

(2) A trademark shall not be registered if because it is either identical with an earlier trademark and is to be registered for goods or services similar to those for which the earlier trademark is protected, or it is similar to an earlier trademark and is to be registered for goods or services identical with or similar to those for which the earlier trademark is protected, there exists a likelihood of confusion on the part of the public, including the likelihood of association by the public with the earlier trademark:

Provided that the mere association without the likelihood of confusion shall not prevent a mark from being registered.

(3) A trademark which -

(a) is identical with or similar to an earlier trademark, and

(b) is to be registered for goods or services which are not similar to those for which the earlier trademark is protected,

shall not be registered if, or to the extent that, the earlier trademark has reputation in Malta and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trademark.

(4) A trademark shall not be registered if, or to the extent that, its use in Malta is liable to be prevented -

(a) by virtue of any rule of law protecting an unregistered trademark or other sign used in the course of trade, or

(b) by virtue of an earlier right other than those referred to in paragraph (a) hereof or in subarticles (1) to (3) in particular by virtue of the law of copyright, or registered designs.

A person thus entitled to prevent the use of a trademark is referred to in this Act as “the proprietor of an earlier right” in relation to the trademark.

(5) Nothing in this article prevents the registration of a trademark where the proprietor of the earlier trademark or the proprietor of an earlier right consents to the registration.

7. (1) In this Act an “earlier trademark” means -

Meaning of “earlier trademark”.

(a) a registered trademark, which has a date of application for registration earlier than that of the trademark in question, taking account, where appropriate, of the priorities claimed in respect of the trademarks,

(b) a trademark which, at the date of application for registration of the trademark in question or (where appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention as a well-known trademark.

(2) Subject to its being so registered, references in this Act to an earlier trademark includes a trademark in respect of which an application for registration has been made and which, if registered, would be an earlier trademark by virtue of subarticle 1(a).

(3) A trademark as is referred to in subarticle (1)(a) whose registration expires shall continue to be taken into account in determining the registrability of a later mark for a period of one year after the expiry thereof. However, if the Comptroller is satisfied that there was no bona fide use of the mark during the two years immediately preceding the expiry no account shall be taken of the expired mark.

Power to remove relative grounds for refusal of registration.

8. (1) The Minister may make regulations providing that a trademark shall not be refused registration on a ground mentioned in article 6.

(2) Such regulations may make such consequential provision as appears to the Minister appropriate with respect to —

(a) the carrying out by the Comptroller of searches of earlier trademarks, and

(b) the persons by whom an application for declaration of invalidity may be made on the grounds specified in article 43(2).

(3) Regulations making such provision as is mentioned in subarticle (2)(a) may direct that the provisions of article 35 in so far as they require a search to be carried out shall not have effect.

(4) Regulations making such provision as is mentioned in subarticle (2)(b) may provide that article 43(3) in so far as it provides that any person may make an application for a declaration of invalidity shall have effect subject to the provisions of the order.

(5) Regulations under this article may contain such transitory provisions as appear to the Minister to be appropriate.

Effects of a registered trademark

Rights conferred by a registered trademark.

9. (1) The proprietor of a registered trademark has exclusive rights in the trademark. Such rights are infringed by such use of the trademark in Malta as is specified in article 10 without the consent of the proprietor.

(2) Any reference in this Act to the infringement of a registered trademark shall be deemed to be a reference to any such infringement of the rights of the proprietor.

(3) The rights of the proprietor have effect from the date of registration reckoned in accordance with article 37(3):

Provided that -

(a) no infringement proceedings may be begun before the date on which the trademark is in fact registered; and

(b) no offence under article 72 shall be committed by anything done before the date of publication of the registration.

10. (1) A person infringes a registered trademark if he uses in the course of trade a sign which is identical with the trademark in relation to goods or services which are identical with those for which it is registered. Infringement of a registered trademark.

(2) A person infringes a registered trademark if he uses in the course of trade a sign where because -

(a) the sign is identical with the trademark and is used in relation to goods or services similar to those for which the trademark is registered, or

(b) the sign is similar to the trademark and is used in relation to goods or services identical with or similar to those for which the trademark is registered,

there exists a likelihood of confusion on the part of the public, including the likelihood of association with the trademark:

Provided that the mere association without the likelihood of confusion shall not be considered as constituting an infringement.

(3) A person infringes a registered trademark if he uses in the course of trade a sign which -

(a) is identical with or similar to the trademark, and

(b) is used in relation to goods or services which are not similar to those for which the trademark is registered,

where the trademark has a reputation in Malta and the use of the sign, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark.

(4) For the purposes of this article a person uses a sign if, in particular, he -

- (a) affixes it to the goods or the packaging thereof;
- (b) offers or exposes goods for sale, puts them on the market or stocks them for those purposes under the sign, or offers or supplies services under the sign;
- (c) imports or exports goods under the sign; or
- (d) uses the sign on business papers or in advertising.

(5) A person who applies a registered trademark to material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, shall be treated as a party to any use of the material which infringes the registered trademark if when he applied the mark he knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

(6) Nothing in the preceding provisions of this article shall be construed as preventing the use of a registered trademark by any person for the purpose of identifying goods or services as those of the proprietor or a licensee.

However, any such use otherwise than in accordance with honest practices in industrial or commercial matters shall be treated as infringing the registered trademark if the use without due cause takes unfair advantage of, or is detrimental to, the distinctive character or repute of the trademark.

Limits on effect of a registered trademark.

11. (1) A registered trademark is not infringed by the use of another registered trademark in relation to goods or services for which the latter is registered.

(2) A registered trademark is not infringed by -

- (a) the use by a person of his own name or address,
- (b) the use of indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services, or

(c) the use of the trademark where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts:

Provided the use is in accordance with honest practices in industrial or commercial matters.

(3) (a) A registered trademark is not infringed by the use in the course of trade in Malta of an earlier right.

(b) For the purposes of this subarticle an “earlier right” means an unregistered trademark or other sign continuously used in relation to goods or services by a person or his predecessor in title from a date prior to whichever is the earlier of -

(i) the use of the first-mentioned trademark in relation to those goods or services by the proprietor or his predecessor in title, or

(ii) the registration of the first-mentioned trademark in respect of those goods or services in the name of the proprietor or his predecessor in title; and

(iii) an earlier right shall be regarded as applying if, or to the extent that, its use is protected by virtue of any rule of law.

12. (1) A registered trademark is not infringed by the use of the trademark in relation to goods which have been put on the market in Malta under that trademark by the proprietor or with his consent.

Exhaustion of rights conferred by a registered trademark.

(2) Subarticle (1) shall not apply where there exist legitimate reasons for the proprietor to oppose further dealings in the goods in particular but without prejudice to the generality hereof, where the condition of the goods has been changed or impaired after they have been put on the market.

13. (1) An applicant for registration of a trademark, or the proprietor of a registered trademark, may -

Registration subject to disclaimer or limitation.

(a) disclaim any right to the exclusive use of any specified element of the trademark, or

(b) agree that the rights conferred by the registration shall be subject to a specified territorial or other limitation.

(2) The Comptroller may disclaim any right to the exclusive use of any specified element of the trademark.

(3) The Minister may make rules providing for the publication and entry in the register of a disclaimer or limitation.

(4) Where the registration of a trademark is subject to a disclaimer or limitation, the rights conferred by article 9 shall be restricted accordingly.

Infringement proceedings

Action for infringement.

14. (1) Subject to the provisions of articles 28 and 29, an infringement of a registered trademark is actionable by the proprietor of the trademark by writ of summons to be filed in the First Hall of the Civil Court.

(2) In an action for infringement all such relief as is available in respect of the infringement of any other property right shall be available to the plaintiff.

Order for erasure, etc. of offending sign.

15. (1) Where a person is found to have infringed a registered trademark, the Court may make an order requiring him -

(a) to cause the offending sign to be erased, removed or obliterated from any infringing goods, material or articles in his possession, custody or control, or

(b) if it is not reasonably practicable for the offending sign to be erased, removed or obliterated, to secure the destruction of the infringing goods, material or articles in question.

(2) If an order under subarticle (1) is not complied with, or it appears likely to the Court that such an order would not be complied with, the Court may order that the infringing goods, material or articles be delivered to such person as the Court may direct for erasure, removal or obliteration of the sign, or for destruction, as the case may be.

Order for delivery up of infringing goods, material or articles.

16. (1) The proprietor of a registered trademark may apply to the Court for an order for the delivery up to him, or such other person as the Court may direct, of any infringing goods, material or articles which a person has in his possession, custody or control in the course of a business.

(2) An application shall not be made after the end of the period specified in article 18; and no order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under article 19.

(3) A person to whom any infringing goods, material or articles are delivered up in pursuance of an order under this article shall, retain them pending the decision of the Court under article 19.

(4) Nothing in this article affects any other power of the Court.

17. (1) In this Act the expressions “infringing goods”, “infringing material” and “infringing articles” shall be construed in accordance with the following subarticles of this article.

Meaning of
“infringing goods,
material or articles”.

(2) Goods are “infringing goods”, in relation to a registered trademark, if they or their packaging bear a sign identical or similar to that mark and -

(a) the application of the sign to the goods or their packaging is an infringement of the registered trademark, or

(b) the goods are proposed to be imported into Malta and the application in Malta, of the sign, to them or their packaging would be an infringement of the registered trademark, or

(c) the sign has otherwise been used in relation to the goods in such a way as to infringe the registered trademark.

(3) Material is “infringing material”, in relation to a registered trademark, if it bears a sign identical or similar to that mark and -

(a) it is used for labelling or packaging goods, as a business paper, or for advertising goods or services, in such a way as to infringe the registered trademark, or

(b) it is intended to be so used and such use would infringe the registered trademark.

(4) “Infringing articles”, in relation to a registered trademark, means articles -

(a) which are specifically designed or adapted for making copies of a sign identical or similar to that mark, and

(b) which a person has in his possession, custody or control, knowing or having reason to believe that they have been used or are to be used to produce infringing goods or material.

Period after which remedy of delivery up not available.

18. (1) An application for an order under article 16 may not be made after the end of the period of six years from -

(a) in the case of infringing goods, the date on which the trademark was applied to the goods or their packaging,

(b) in the case of infringing material, the date on which the trademark was applied to the material, or

(c) in the case of infringing articles, the date on which they were made,

except as provided in the following subarticle.

(2) If during the whole or part of that period the proprietor of the registered trademark is prevented by fraud or concealment from discovering the facts entitling him to apply for an order, an application may be made at any time before the end of the period of six years from the date on which he could with reasonable diligence have discovered those facts.

Order as to disposal of infringing goods, material or articles.

19. (1) Where infringing goods, material or articles have been delivered up in pursuance of an order under article 16, an action by writ of summon may be brought before the Court by any party interested —

(a) for an order that they be destroyed or forfeited to such person as the Court may think fit, or

(b) for a decision that no such order should be made.

(2) In considering its decision, the Court shall consider whether other remedies available in an action for infringement of the registered trademark would be adequate to compensate the proprietor and any licensee to protect their interests.

(3) The Court shall order the service of the writ on persons having an interest in the goods, material or articles, and any person having an interest shall be entitled —

(a) to appear in proceedings for an order under this article, whether or not he was served with a notice, and

(b) to appeal against any order made, whether or not he appeared at first instance, and any such order shall not take effect until the end of the period within which an appeal may be filed or, if before the end of that period an appeal is so filed, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in the goods, material or articles, the Court shall make such order as it thinks fit.

(5) If the Court decides that no order should be made under this article, the person in whose possession, custody or control the goods, material or articles were before being delivered up is entitled to their return.

20. (1) Where a person threatens another with proceedings for infringement of a registered trademark other than -

Remedy for
groundless threats
of infringement
proceedings.

(a) use of the mark on goods or their packaging,

(b) the importation of goods to which, or to the packaging of which, the mark has been applied, or

(c) the supply of services under the mark,

any person aggrieved may bring proceedings for relief under this article by writ of summons before the Civil Court, First Hall.

(2) The relief which may be applied for is any of the following -

(a) a declaration that the threats are unjustified,

(b) an injunction against the continuance of the threats,

(c) damages in respect of any loss he may have sustained by the threats,

and the plaintiff is entitled to such relief unless the defendant shows that the acts in respect of which proceedings were threatened constitute, or if done would constitute, an infringement of the registered trademark concerned.

(3) Where the defendant shows that the acts in respect of which proceedings were threatened constitute or would constitute an infringement of the registered trademark, the plaintiff shall nevertheless be entitled to relief if he shows that the registration of the trademark is invalid or liable to be revoked.

(4) The mere notification that a trademark is registered, or that an application for registration has been made, does not constitute a threat of proceedings for the purposes of this article.

Registered trademark as object of property

Nature of a registered trademark.

21. A registered trademark is the personal property of its owner.

Co-ownership of a registered trademark.

22. (1) Where a registered trademark is granted to two or more persons jointly, each of them is entitled, subject to any agreement to the contrary, to an equal undivided share in the registered trademark.

(2) The following provisions apply where two or more persons are co-proprietors of a registered trademark, by virtue of subarticle (1) or otherwise.

(3) Subject to any agreement to the contrary, each co-proprietor is entitled, personally or through his agents, to do for his own benefit and without the consent of or the need to account to any other co-proprietor, any act which would otherwise amount to an infringement of the registered trademark.

(4) Notwithstanding the provisions of subarticle (3) a co-proprietor may not without the consent of the other or others -

(a) grant a licence to use the registered trademark, or

(b) assign or cede control of his share in the registered trademark.

(5) Infringement proceedings may be brought by any co-proprietor, but a co-proprietor may not, without the leave of the Court, proceed with the action unless the other, or each of the other co-proprietors, is joined in the suit.

A co-proprietor who is thus joined in the suit shall not be liable for any costs in the action.

Nothing in this subarticle affects the making of any precautionary warrant on the application of a single co-proprietor.

(6) Nothing in this article affects the rights and obligations of trustees or personal representatives, or their rights and obligations as such.

23. (1) A registered trademark is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or moveable property. Transmission of a registered trademark.

It is so transmissible either in connection with the goodwill of a business or independently.

(2) An assignment or other transmission of a registered trademark may be partial and limited so as to apply -

(a) in relation to some but not all of the goods or services for which the trademark is registered, or

(b) in relation to the use of the trademark in a particular manner or a particular locality.

(3) An assignment of a registered trademark is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be a personal representative.

(4) Nothing in this Act shall be construed as affecting the assignment or other transmission of an unregistered trademark as part of the goodwill of a business.

24. (1) On application being made to the Comptroller by - Registration of transactions affecting a registered trademark.

(a) a person claiming to be entitled to an interest in or under a registered trademark by virtue of a registrable transaction, or

(b) any other person claiming to be affected by such a transaction,

the prescribed particulars of the transaction shall be entered in the register.

(2) The following are registrable transactions —

(a) an assignment of a registered trademark or any right in it;

(b) the grant of a licence under a registered trademark;

(c) the transfer of a registered trademark by testamentary disposition;

(d) an order of a Court or other competent authority transferring a registered trademark or any right in or under it.

(3) Until an application has been made for registration of the prescribed particulars of a registrable transaction -

(a) the transaction is ineffective as against a person acquiring in good faith a conflicting interest in the registered trademark, and

(b) a person claiming to be a licensee by virtue of the transaction shall not have the protection of article 28 or 29.

(4) Where a person becomes the proprietor or a licensee of a registered trademark by virtue of a registrable transaction, he shall not be entitled to damages or an account of profits in respect of any infringement of the registered trademark occurring after the date of the registrable transaction and before the prescribed particulars of the transaction are registered, unless:

(a) an application for registration of the prescribed particulars of the transaction is made before the end of the period of six months beginning with the date of the transaction, or

(b) the Court is satisfied that it was not practicable for such an application to be made before the end of that period and that an application was made as soon as practicable thereafter.

(5) The Minister may make regulations prescribing rules as to -

(a) amendment of registered particulars relating to a licence so as to reflect any alteration of the terms of the licence, and

(b) the removal of such particulars from the register -

(i) where it appears from the registered particulars that the licence was granted for a fixed period and that period has expired;

(ii) where no such period is indicated and, after such period as may be prescribed, and after the Comptroller has notified the parties of his intention to remove the particulars from the register and the parties have not indicated their agreement that such particulars should not be removed for such period as the parties shall have agreed and indicated to the Comptroller;

(c) the amendment or removal from the register of particulars relating to a security interest on the application of, or with the consent of, the person entitled to the benefit of that interest.

25. The provisions of article 21 to 24 apply *mutatis mutandis* in relation to an application for the registration of a trademark in the same manner in relation to a registered trademark.

Application for registration of a trademark as an object of property.

26. (1) A licence to use a registered trademark may be general or limited. A limited licence may in particular, apply -

Licensing of a registered trademark.

(a) in relation to some but not all the goods or services for which the trademark is registered, or

(b) in relation to use of the trademark in a particular manner or a particular locality.

(2) Unless the licence provides otherwise, it is binding on a successor in title to the grantor's interest, and references in this Act to doing anything with, or without, the consent of the proprietor of a registered trademark shall be construed accordingly.

(3) Where the licence so provides, a sub-licence may be granted by the licensee; and references in this Act to a licence or licensee include a sub-licence or sub-licensee.

27. (1) In this Act an "exclusive licence" means a licence (whether general or limited) authorising the licensee to the exclusion of all other persons, including the person granting the licence, to use a registered trademark in the manner authorised by the licence.

Exclusive licences.

(2) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

28. (1) The provisions of this article shall apply with respect to the rights of a licensee in relation to infringement of a registered trademark:

General provisions as to the rights of licensees in case of infringement.

Provided that they shall not apply where or to the extent that, in accordance with article 29(1) an exclusive licensee has a right to bring proceedings in his own name.

(2) A licensee is entitled, unless his licence provides otherwise, to call on the proprietor of the registered trademark to take infringement proceedings in respect of any matter which affects 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 licensee may bring the proceedings in his own name as if he were the proprietor.

(4) Where infringement proceedings are brought by a licensee by virtue of this article, the proprietor shall be joined in the suit.

(5) In infringement proceedings brought by the proprietor of a registered trademark any loss suffered or likely to be suffered by licensees shall be taken into account by the Court which shall give such directions as it thinks fit with regard to the disposal and distribution of any sum awarded as a remedy for the infringement.

Exclusive licensee
having right and
remedies of
assignee.

29. (1) An exclusive licence may provide that the licensee shall have, to such extent as may be provided by the licence, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

Where or to the extent that such provision is made, the licensee shall be entitled, subject to the provisions of the licence and to the following provisions of this article, to bring infringement proceedings in his own name against any person other than the proprietor.

(2) The rights and remedies of an exclusive licensee are concurrent with those of the proprietor of the registered trademark; and references in this Act to the proprietor of a registered trademark relating to infringement shall be construed accordingly.

(3) In an action brought by an exclusive licensee under this article a defendant may avail himself of any defence which would have been available to him if the action had been brought by the proprietor of the registered trademark.

(4) Where proceedings for infringement of a registered trademark are brought by the proprietor or by the exclusive licensee relating to an infringement in respect of which they have concurrent right of action, the proprietor or, as the case may be, the exclusive licensee who are not the plaintiff shall be joined in the suit.

(5) (a) Where an action for infringement of a registered trademark relating to an infringement in respect of which the proprietor and an exclusive licensee have concurrent right of action is brought:-

(i) the Court shall in assessing damages take into account-

(1) the terms of the licence, and

(2) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(ii) no account of profits shall be ordered to be made if an award of damages has been made, or an account of profits has been ordered, in favour of either of them in respect of the infringement; and

(iii) the Court shall, if an account of profits has been ordered, apportion subject to any agreement between them, the profits between them as the Court considers just.

(b) The provisions of this subarticle apply whether action is brought by the proprietor alone, or it is brought by the proprietor and the exclusive licensee; and if they are not both parties the Court may give such directions as it deems fit with regard to the disposal and distribution of any sum awarded as remedy for the infringement.

(6) The proprietor of a registered trademark shall notify any exclusive licensee who has a concurrent right of action before applying for an order under article 16; and the Court may on the application of the licensee make such order under that article as it thinks fit having regard to the terms of the licensee.

(7) The provisions of subarticles (4) to (6) shall be without prejudice to any agreement to the contrary between the exclusive licensee and the proprietor.

Application for a registered trademark

30. An application for registration of a trademark shall be made to the Comptroller in such manner as may be prescribed. Application for registration.

31. (1) The date of filing of an application for registration of a trademark is the date on which the prescribed elements are furnished to the Comptroller by the applicant: Date of filing.

Provided that where the elements are furnished on different days, the date of filing shall be the date on which the last element is so furnished.

(2) References in this Act to the date of application for registration shall be construed as a reference to the date of filing of the application.

Classification of trademarks.

32. (1) Goods and services shall be classified for the purposes of the registration of trademarks according to such system of classification as may be prescribed.

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

Priority

Claim to priority of Convention application.

33. (1) A person who has duly filed an application for protection of a trademark in a country which is a member of the World Trade Organisation or a party to the Paris Convention, hereinafter in this Act referred to as a "Convention application", or his successor in title, has a right to priority, for the purposes of registering the same trademark under this Act for any or all of the same goods or services for which such an application has been filed, for a period of six months from the date of filing of the first such application.

(2) If the application for registration under this Act is made within such six-month period —

(a) the relevant date for the purposes of establishing which rights take precedence shall be the date of filing of the first Convention application, and

(b) the registrability of the trademark shall not be affected by any use of the mark in Malta in the period between that date and the date of the application under this Act.

(3) (a) Any filing which in a country which is a member of the World Trade Organisation or is a party to the Paris Convention is under its legislation or any international agreement to which such country is a party, treated as if it were a regular national filing, shall be treated as giving rise to the right of priority.

(b) For the purposes of this subarticle "regular national filing" means a filing which is adequate to establish the date on which the application was filed in that country, whatever may be the subsequent application.

(4) A subsequent application concerning the same goods or services as the first Convention application, filed in the same Convention country, shall be considered the first Convention application (the filing date of which is the starting date of the period of priority), if at the time of the subsequent application -

(a) the previous application has been withdrawn, abandoned or refused, without having been laid open to public inspection and without leaving any rights outstanding, and

(b) it has not yet served as a basis for claiming a right of priority,

and the previous application may not thereafter serve as a basis for claiming a right of priority.

(5) Provision may be made by rules as to the manner of claiming a right to priority on the basis of a Convention application.

(6) A right to priority arising as a result of a Convention application may be assigned or otherwise transmitted, either with the application or independently.

34. (1) The Minister may make regulations conferring on a person who has duly filed an application for protection of a trademark in a country or territory in relation to which the Maltese Government is a party to a treaty, convention, arrangement or engagement for the reciprocal protection of trademarks, a right to priority, for the purpose of registering the same trademark under this Act for any or all of the same goods or services, for a such period as may be specified in the application from the date of filing of that application.

Claim to priority from other relevant overseas application.

(2) Such regulations may make provisions similar to those contained in article 33 in relation to Convention applications or such other provision as appears to the Minister to be appropriate.

Registration procedure

35. (1) The Comptroller shall examine whether an application for registration of a trademark satisfies the requirements of this Act and for that purpose he shall carry out a search, to such extent as he considers necessary, of earlier trademarks.

Examination of application.

(2) If it appears to the Comptroller that the requirements for registration are not met, he shall inform the applicant and give him an opportunity to make representations or to amend the application within such period as the Comptroller may specify.

(3) If the applicant fails to satisfy the Comptroller that those requirements are met, or to amend the application so as to meet them, or fails to respond before the end of the specified period, the Comptroller shall refuse the application.

(4) If it appears to the Comptroller that the requirements for registration are met, he shall accept the application as eligible for registration.

Withdrawal,
restriction or
amendment of
application.

36. (1) The applicant may at any time withdraw his application or restrict the goods or services covered by the application.

(2) Save as provided in subarticle (1), an application may be amended, at the request of the applicant, only by correcting -

- (a) the name or address of the applicant,
- (b) errors of wording or of copying, or
- (c) obvious mistakes,

and then only where the correction does not substantially affect the identity of the trademark or extend the goods or services covered by the application.

Registration.

37. (1) Where an application has been accepted as eligible for registration, the Comptroller shall register the trademark, unless it appears to him having regard to matters coming to his notice after he accepted the application that it was accepted in error.

(2) A trademark shall not be registered and the application shall be deemed to be withdrawn unless any fee prescribed in respect of any action taken before the registration is paid within the prescribed period.

(3) A trademark when registered shall be registered as of the date of filing of the application for registration, and that date shall be deemed for the purposes of this Act to be the date of registration.

(4) On the registration of a trademark the Comptroller shall publish the registration in the prescribed manner and issue to the applicant a certificate of registration.

Duration, renewal and alteration of registered trademark

38. (1) A trademark shall be registered for a period of ten years from the date of registration. Duration of registration.

(2) Registration may be renewed in accordance with article 39 for further periods of ten years.

39. (1) The registration of a trademark may be renewed at the request of the proprietor, subject to the payment of the prescribed renewal fee not more than 6 months before the date of expiry. Renewal of registration.

(2) The Minister may by regulation make rules providing that the Comptroller informs the proprietor of a registered trademark, before the expiry of the registration, of the date of expiry and the manner in which the registration may be renewed.

(3) Without prejudice to subarticle (1) a request for renewal must be made, before the expiry of the registration:

Provided that, the request may be made and the fee paid within such further period as may be prescribed, in which case a prescribed additional renewal fee must also be paid within that period.

(4) Renewal shall take effect from the expiry of the previous registration.

(5) If the registration is not renewed in accordance with the above provisions, the Comptroller shall remove the trademark from the register.

(6) Provision may be made by rules for the restoration of the registration of a trademark which has been removed from the register, subject to such conditions (if any) as may be prescribed.

(7) The renewal or restoration of the registration of a trademark shall be published in the prescribed manner.

40. (1) A registered trademark shall not be altered in the register, during the period of registration or on renewal. Alteration of a registered trademark.

(2) Nevertheless, the Comptroller may, at the request of the proprietor, allow the alteration of a registered trademark where the mark includes the proprietor's name or address and the alteration is limited to the alteration of that name or address and does not substantially affect the identity of the mark.

(3) Provision shall be made by rules for the publication of any such alteration and the making of objections by any person claiming to be affected by it.

Surrender, revocation and invalidity

Surrender of a registered trademark.

41. (1) A registered trademark may be surrendered by the proprietor in respect of any or all of the goods or services for which it is registered.

(2) Provision may be made by rules -

(a) as to the manner and effect of a surrender, and

(b) for protecting the interests of other persons having a right in the registered trademark.

Revocation of registration.

42. (1) The registration of a trademark may be revoked on any of the following grounds -

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in Malta, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for such non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for such non-use;

(c) that, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered;

(d) that in consequence of the use made of it by the proprietor or with his consent, it is liable to mislead the public in relation to the goods or services for which it is registered, particularly as to the nature, quality or geographical origin of those goods or services.

(2) For the purposes of subarticle (1) use of a trademark includes the use in a form differing in such elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in Malta includes affixing the trademark to goods or to the packaging of goods in Malta solely for export purposes.

(3) The registration of a trademark shall not be revoked on the ground mentioned in paragraphs (a) or (b) of subarticle (1) if such use as is referred to in those paragraphs is commenced or resumed after the expiry of the five-year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five-year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application is likely to be made.

(4) An application for revocation may be made by writ of summons before the First Hall, Civil Court by any person.

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trademark is registered, revocation shall be limited to those goods or services.

(6) Where the registration of a trademark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from -

- (a) the date of the application for revocation, or
- (b) if grounds for revocation existed at an earlier date, such earlier date.

43. (1) The registration of a trademark may be declared invalid on the ground that the trademark was registered in breach of article 4 or any of the provisions referred to in that article.

Grounds for
invalidity of
registration.

Where the trademark was registered in breach of subarticle (1)(b), (c) or (d) of that article, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

(2) The registration of a trademark may, unless the proprietor of that earlier trademark or other earlier right has consented to the registration, be declared invalid on the ground -

- (a) that there is an earlier trademark in relation to which the conditions set out in article 6 (1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in article 6 (4) is satisfied.

(3) An application for a declaration of invalidity may be made by any person, by writ of summons before the First Hall of the Civil Court.

(4) In the case of bad faith in the registration of a trademark, the Comptroller himself may apply to the Court for a declaration of the invalidity of the registration.

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trademark is registered, the trademark shall be declared invalid with regard to those goods or services only.

(6) Where the registration of a trademark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made:

Provided that this shall not affect transactions past and closed.

Effect of
acquiescence.

44. (1) Where the proprietor of an earlier trademark or other earlier right being aware of the use of a registered trademark in Malta, has acquiesced to such use for a continuous period of five years, he shall cease to be entitled to any right on the basis of that earlier trademark or other right -

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

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

unless the registration of the later trademark was applied for in bad faith.

(2) In the cases referred to in subarticle (1), the proprietor of the later trademark is not entitled to oppose the use of the earlier trademark or, as the case may be, the exploitation of the earlier right, notwithstanding that the earlier trademark or right may no longer be invoked against his later trademark.

Collective marks

Collective marks.

45. (1) A collective mark is a mark distinguishing the goods or services of members of an association which is the proprietor of the mark from those of other undertakings.

(2) The provisions of this Act apply to collective marks subject to the provisions of Schedule 1 to this Act.

Certification marks

46. (1) A certification mark is a mark indicating that the goods or services in connection with which it is used are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics.

Certification marks.

(2) the provisions of this Act apply to certification marks subject to the provisions of Schedule 2.

PART III : INTERNATIONAL MATTERS

International registration

47. In this Part -

The Madrid Protocol.

“the Madrid Protocol” means the Protocol relating to the Madrid Agreement concerning the International Registration of Marks adopted at Madrid on 27 June, 1989;

“the International Bureau” has the meaning given by Article 2(1) of that Protocol; and

“international trademark (Malta)” means a trademark which is entitled to protection in Malta under that Protocol.

48. (1) The Minister may by Order make such provisions as may be necessary for giving effect in Malta to the provisions of the Madrid Protocol or any other regional or international registration systems concerning trademarks and without prejudice to the generality of the foregoing.

Power to make provision giving effect to Madrid Protocol.

The Order may, in particular, be made with respect to -

(a) the making of applications for international registrations by way of the Industrial Property Office as office of origin;

(b) the procedures to be followed where the basic Malta application or registration fails or ceases to be in force;

(c) the procedures to be followed where the Industrial Property Office receives from the International Bureau a request for extension of protection to Malta;

(d) the effects of a successful request for extension of protection to Malta;

(e) the transformation of an application for an international registration, or an international registration, into a national application for registration;

(f) the communication of information to the International Bureau;

(g) the payment of fees and amounts prescribed in respect of applications for international registrations, extensions of protection and renewals.

(2) Without prejudice to the generality of subarticle (1), provision may be made by regulations under this article applying in relation to “an international trademark (Malta)” the provisions of article 20 and of articles 72 to 86 of this Act.

The Paris Convention

The Paris
Convention.

49. (1) In this Part -

(a) “the Paris Convention” means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised or amended from time to time, and

(b) “Convention country” means a country, other than Malta, which is a party to that Convention.

(2) The Minister may make regulations to make provision, as appear to him appropriate in consequence of any revision or amendment of the Paris Convention after the passing of this Act to enable Malta to comply with any provisions of such amendment, and such regulations may in particular provide that any of the provisions of Part II of this Act shall no longer apply or shall apply with such amendments as may be required.

Protection of well-
known trademarks:
Article 6 bis.

50. (1) References in this Act to a trademark which is entitled to protection under the Paris Convention as a well-known trademark are to a mark which is well-known in Malta as being the mark of a person who is a national of a Convention country, or is domiciled in, or has a real and effective industrial or commercial establishment in a Convention country, whether or not that person carries on business, or has any goodwill, in Malta, and reference to the proprietor of such a mark shall be construed accordingly.

(2) Subject to the provisions of article 44, the proprietor of a trademark which is entitled to protection under the Paris Convention as a well-known trademark is entitled to restrain by injunction the use in Malta of a trademark which, or the essential part of which, is identical or similar to his mark, in relation to identical or similar goods or services, where the use is likely to cause confusion.

(3) Nothing in subarticle (2) shall affect the continuation of any bona fide use of a trademark begun before the coming into force of this article.

51. (1) A trademark which consists of or contains the flag of a Convention country shall not be registered without the authorisation of the competent authorities of that country, unless it appears to the Comptroller that use of the flag in the manner proposed is permitted without such authorisation.

National emblems,
etc., of Convention
countries:
Article 6ter.

(2) A trademark which consists of or contains the armorial bearing or any other State emblem of a Convention country which is protected under the Paris Convention shall not be registered without the authorisation of the competent authorities of that country.

(3) A trademark which consists of or contains an official sign or hallmark indicating control and warranty adopted by a Convention country shall not, where the sign or hall mark is protected under the Paris Convention, be registered in relation to goods or services of the same, or a similar kind, as those in relation to which it indicates control and warranty, without the authorisation of the competent authorities of the country concerned.

(4) The provisions of this article relative to national flags and other State emblems, and official signs or hallmarks apply equally to anything which from a heraldic point of view imitates any such flag or other emblem, or sign or hallmark.

(5) Nothing in this article prevents the registration of a trademark on the application of a national of a country who is authorised to make use of a State emblem or official sign or hallmark, of that country, notwithstanding that it is similar to that of another country.

(6) Where by virtue of this article the authorisation of the competent authorities of a Convention country is or would be required for the registration of a trademark, those authorities are entitled to restrain any use of the mark in Malta without their authorisation.

Emblems, etc. of
certain international
organisations:
Article 6 *ter*.

52. (1) This article applies to the armorial bearing, flags or other emblems, and the names and their abbreviations, of international intergovernmental organisations of which one or more Convention countries are members.

(2) A trademark which consists of or contains any such emblem, abbreviation or name which is protected under the Paris Convention shall not be registered without the authorisation of the international organisation concerned, unless it appears to the Comptroller that the use of the emblem, abbreviation or name in the manner proposed —

(a) is not such as suggests to the public that a connection exists between the organisation and the trademark, or

(b) is not likely to mislead the public as to the existence of a connection between the user and the organisation.

(3) The provisions of this article relative to emblems of an international organisation apply equally to anything which from a heraldic point of view imitates any such emblem.

(4) Where by virtue of this article the authorisation of an international organisation is or would be required for the registration of a trademark, that organisation is entitled to restrain any use of the mark in Malta without its authorisation.

(5) Nothing in this article affects the right of a person whose bona fide use of the trademark in question began before 1 January 2000.

Notification under
Article 6*ter* of the
Convention.

53. (1) For the purposes of article 51 State emblems of a Convention country (other than the national flag), and official signs or hallmarks, shall be regarded as protected under the Paris Convention only if, or to the extent that -

(a) the country in question has notified Malta in accordance with Article 6*ter*(3) of the Convention that it desires to protect that emblem, sign or hallmark,

(b) the notification remains in force, and

(c) Malta has not objected to it in accordance with Article 6*ter*(4) or any such objection has been withdrawn.

(2) For the purposes of article 52 the emblems, abbreviations and names of an international organisation shall be regarded as protected under the Paris Convention only if, or to the extent that -

(a) the organisation in question has notified Malta in accordance with Article 6ter(3) of the Convention that it desires to protect that emblem, abbreviation or name,

(b) the notification remains in force, and

(c) Malta has not objected to it in accordance with Article 6ter (4) or any such objection has been withdrawn.

(3) Notification under Article 6ter (3) of the Paris Convention shall have effect only in relation to applications for registration made more than two months after the receipt of the notification.

(4) The Comptroller shall keep and make available for public inspection by any person, as prescribed in the regulations, a list of the state emblems and official signs or hallmarks, and the emblems, abbreviations and names of international organisations, which are for the time being protected under the Paris Convention by virtue of notification under Article 6ter (3).

54. (1) The following provisions apply where an application for registration of a trademark is made by a person who is an agent or representative of a person who is the proprietor of the mark in a Convention country.

Acts of agent or representative:
Article 6septies.

(2) The proprietor may by writ of summons before the First Hall of the Civil Court:

(i) demand a declaration of invalidity of the registration: or

(ii) demand the rectification of the register so as to substitute his name as the proprietor of the registered trademark.

(3) The proprietor may restrain any use of the trademark in Malta which is not authorised by him.

(4) Subarticles (2) and (3) shall not apply if, or to the extent that, the agent or representative shows that his actions were authorised by the proprietor.

(5) An application under subarticle (2) must be made within three years of the proprietor becoming aware of the registration; and no injunction shall be granted under subarticle (3) in respect of a use in which the proprietor has acquiesced for a continuous period of three years or more.

**PART IV : ADMINISTRATIVE AND OTHER
SUPPLEMENTARY PROVISIONS**

The register

Maintenance and
content of register.

55. (1) (a) The Comptroller shall maintain a register of trademarks.

(b) References in this Act to “the register” are to that register; and references to registration, in particular, in the expression “registered trademark”, are, unless the context otherwise requires, to registration in that register.

(2) There shall be entered in the register in accordance with this Act -

(a) registered trademarks,

(b) such particulars as may be prescribed of registrable transactions affecting a registered trademark, and

(c) such other matters relating to registered trademarks as may be prescribed.

(3) The register shall be kept in such manner as may be prescribed, and provision shall in particular be made for -

(a) public inspection of the register, and

(b) the supply of certified or uncertified copies, or extracts, of entries in the register.

Rectification or
correction of the
register.

56. (1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register:

Provided that an application for rectification may not be made in respect of a matter affecting the validity of the registration of a trademark.

(2) An application for rectification may be made either to the Comptroller or to the Court:

Provided that if proceedings concerning the trademarks in question are pending before the Court -

(a) the application must be made to the Court; and

(b) if the application is made to the Comptroller, he may at any stage of the proceedings refer the application to the Court.

(3) Except where the Comptroller or the Court directs otherwise the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.

(4) The Comptroller may, on request made in the prescribed manner by the proprietor of a registered trademark, or a licensee, enter any change in his name or address as recorded in the register.

(5) The Comptroller may remove from the register any matter appearing to him to have ceased to have effect.

57. (1) The Minister may by regulations make rules empowering the Comptroller to do such things as may be necessary to implement any amended or substituted classification of goods or services for the purposes of the registration of trademarks, and without prejudice to the generality of the aforesaid provision may in particular be made for the amendment of existing entries on the register so as to accord with the new classification.

Adaptation of entries to new classification.

(2) Any such power of amendment shall not be exercised so as to extend the rights conferred by the registration, except where it appears to the Comptroller that compliance with this requirement would involve undue complexity and that any extension would not be substantial and would not adversely affect the right of any person.

(3) The rules may moreover empower the Comptroller -

(a) to require the proprietor of a registered trademark, within such time as may be prescribed, to file a proposal for amendment of the register, and

(b) to cancel or refuse to renew the registration of the trademark in the event of his failing to do so.

(4) Any such proposal shall be advertised, and may be opposed, in such manner as may be prescribed.

Powers and duties of the Comptroller

58. The Comptroller may require the use of such forms as he may direct for any purpose relating to the registration of a trademark or any other proceeding before him under this Act.

Power to require use forms.

Information about applications and registered trademarks.

59. (1) Subject to such restrictions as the Minister may by regulations impose after publication of the registration of a trademark, the Comptroller shall on request provide a person with such information and permit him to inspect such documents relating to the registered trademark, as may be specified in the request.

Any such request must be made in such manner and be accompanied by such fee as may be prescribed.

(2) Before publication of registration of a trademark, documents or information constituting or relating to the application shall not be published by the Comptroller or communicated by him to any person except -

- (a) in such cases and to such extent as may be prescribed, or
- (b) with the consent of the applicant.

Exclusion of liability in respect of official acts.

60. (1) The Comptroller shall not be taken to warrant the validity of the registration of a trademark under this Act or under any treaty, convention, arrangement or engagement to which Malta is a party.

(2) The Comptroller is not subject to any liability by reason of, or in connection with, any examination required or authorised by this Act, or any such treaty, convention, arrangement or engagement, or any report or other proceedings consequent on such examination.

(3) No action shall lie against an officer of the Comptroller in respect of any matter for which, by virtue of this article, the Comptroller is not liable.

Legal proceedings and appeals

Registration to be *prima facie* evidence of validity.

61. In all legal proceedings relating to a registered trademark (including proceedings for rectification of the register) the registration of a person as proprietor of a trademark shall be *prima facie* evidence of the validity of the original registration and of any subsequent assignment or other transmission of it.

Certification of validity of contested registration.

62. (1) If in proceedings before the Court the validity of the registration of a trademark is contested and it is found by the Court that the trademark is validly registered, the Court shall give judgement accordingly.

(2) Where the Court has given such a judgement and in subsequent proceedings -

(a) the validity of the registration is again questioned, and

(b) the proprietor obtains a final order or judgement in his favour, he shall be entitled to his costs unless the Court directs otherwise.

63. (1) In proceedings before the Court involving a demand for - Comptroller's appearance in proceedings involving the register.

(a) the revocation of the registration of a trademark,

(b) a declaration of the invalidity of the registration of a trademark, or

(c) the rectification of the register,

the Comptroller shall be notified with the proceedings and shall be entitled to appear and to be heard if so directed by the Court.

(2) Unless otherwise directed by the Court, the Comptroller may, instead of appearing, file in the record of the case a statement in writing signed by him, giving particulars of -

(a) any proceedings before him in relation to the matter in issue,

(b) the grounds of any decision given by him affecting it,

(c) the practice of the Industrial Property Office in like cases, or

(d) such matters relevant to the issues and within his knowledge as Comptroller as he thinks fit;

and the statement shall be deemed to form part of the evidence in the proceedings.

64. (1) Any decision of the Comptroller under this Act, may be appealed from, before the Court of Appeal composed in the manner provided in subarticle (6) of article 41 of the Code of Organization and Civil Procedure by application within fifteen days of service of the Comptroller's decision. Appeals from the Comptroller's decision.

(2) For the purposes of subarticle (1) of this article "decision" means any act, other than such acts as may by regulations be prescribed, done by the Comptroller in exercise of a discretion vested in him by or under this Act.

(3) The Minister may make rules governing appeals to the Court of Appeal under this Act, and presenting a scale of costs and fees in relation to such appeals.

Rules, fees, hours of business, etc.

Power of Minister to make rules.

65. (1) The Minister responsible for the protection of industrial property may make regulations for the better administration of this Act, making such rules as are required by any provisions of this Act, prescribing anything authorised or required by any provision of this Act to be prescribed, and generally for regulating practice and procedure under this Act, and in particular provision may be made —

(a) with regard to the manner of filing of applications and other documents;

(b) requiring and regulating the translation of documents and the filing and authentication of any translation;

(c) with regard to the service of documents;

(d) authorising the rectification of irregularities of procedure;

(e) prescribing time limits for anything required to be done in connection with any proceeding under this Act;

(f) providing for the extension of any time limit so prescribed, or specified by the Comptroller whether or not such time limit has already expired.

Fees.

66. (1) There shall be paid in respect of applications and other matters under this Act such fees as may be prescribed.

(2) Provision may be made by rules as to -

(a) the payment of a single fee in respect of two or more matters, and

(b) the circumstances, if any, in which a fee may be repaid or remitted.

Hours of business and business days.

67. (1) The Comptroller may give directions specifying the hours of business of the Industrial Property Office for the purpose of the transaction by the public of business under this Act, and the days which are business days for that purpose.

(2) Business done on any day after the specified hours of business, or on a day which is not a business day, shall be deemed to have been done on the next business day; and where the time for doing anything under this Act expires on a day which is not a business day, that time shall be extended to the next business day.

(3) Directions under this article may make different provision for different classes of business and shall be published in the prescribed manner.

Trademark agents

68. Except as may otherwise be prescribed, any act required or authorised by this Act to be done by or in respect of a person in connection with the registration of a trademark, or any procedure relating to a registered trademark, may be done by or in respect of an agent authorised by that person in writing. Recognition of agents.

69. (1) The Minister may make rules requiring the keeping of a register of persons who act as agent for the purpose of applying for or obtaining the registration of trademarks; and in this Act a “registered trademark agent” means a person whose name is entered in the register kept under this article. The register of trademark agents/attorneys.

(2) The Minister may make rules regulating the registration of persons as registered trademark agents, and may in particular -

(a) require the payment of such fees in connection with such registration as may be prescribed, and

(b) authorise in such cases as shall be specified the erasure from the register of the name of any person registered as a registered trademark agent or the suspension of such a registration.

(3) Only registered persons may -

(a) carry on a business under any name or other description which contains the words “registered trademark agent”; or

(b) in the course of a business otherwise describe or hold himself out, or permit themselves to be described or held out, as registered trademark agents.

70. The provisions of article 588 of the Code of Organization and Civil Procedure shall apply with regard to registered trademark agents as it applies with respect to Advocates and legal procurators. Privilege for communication with registered trademark agents.

Power of
Comptroller to
refuse to deal with
certain agents.

71. The Comptroller may, in accordance with such rules as may be prescribed refuse to recognize as agent in respect of any business under this Act -

(a) a person who not being a registered trademark agent shall have falsely posed as such;

(b) a person whose name has been erased from and not restored to, or who is suspended from, the register of trademark agent on the ground of misconduct;

(c) a person who is found to have been guilty of such conduct as would, in the case of an individual registered in the register of trademark agents, render him liable to have his name erased from the register on the ground of misconduct;

(d) a partnership or body corporate of which one of the partners or directors is a person whom the registrar could refuse to recognize under paragraph (a), (b) or (c) above.

PART V : CRIMINAL OFFENCES

Offences

Unauthorised use of
trademark, etc. in
relation to goods.

72. (1) Any person who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor -

(a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trademark, or

(b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign, or

(c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b), or

(d) applies a sign identical to, or likely to be mistaken for, a registered trademark to material intended to be used-

(i) for labelling or packaging goods,

(ii) as a business paper in relation to goods, or

(iii) for advertising goods, or

(e) uses, in the course of a business material bearing such a sign for labelling or packaging goods, or as a business paper in relation to goods, or for advertising goods, or

(f) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under paragraph (e), or

(g) (i) makes an article specifically designed or adapted for making copies of a sign of or to make a sign likely to be mistaken for, a registered trademark, or

(ii) has such an article in his possession, custody or control in the course of a business,

knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods,

shall be guilty of an offence against this article.

(2) A person does not commit an offence against this article unless -

(a) the goods to which the offence refers are goods in respect of which the trademark is registered, or

(b) the trademark has a reputation in Malta and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trademark.

(3) It is a defence for a person charged with an offence against this article to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trademark.

(4) A person guilty of an offence under this article shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine (*multa*) of not more than LM10,000 or to both such fine and imprisonment.

73. (1) Any person who knowing or having reason to believe that it is false:-

Falsification of register, etc.

(a) makes, or causes to be made, a false entry in the register of trademarks; or

(b) makes, or causes to be made, anything falsely purporting to be a copy of an entry in the register, or

(c) produces or tenders or causes to be produced or tendered in evidence any such thing,

shall be guilty of an offence against this article.

(2) A person guilty of an offence against this article shall be liable on conviction to imprisonment for a term not exceeding two years or a fine (*multa*) of not more than Lm5,000 or to both such fine and imprisonment.

Falsely representing trademark as registered.

74. (1) It shall be an offence against this article for a person -

(a) falsely to represent that a mark is a registered trademark, or

(b) to make a false representation as to the goods or services for which a trademark is registered,

knowing or having reason to believe that the representation is false.

(2) For the purposes of this article, the use in Malta in relation to a trademark -

(a) of the word “registered”, or

(b) of any other word or symbol importing a reference, express or implied, to registration,

shall be deemed to be a representation as to registration under this Act unless it is shown that the reference is to registration elsewhere than in Malta and that the trademark is in fact so registered for the goods or services in question.

(3) A person guilty of an offence against this article shall be liable on conviction to a fine (*multa*) of not more than Lm5,000.

Unauthorised use of certain devices, emblems, etc.

75. (1) A person shall not without the authority of the President use in connection with any business any device, emblem or title in such a manner as to be calculated to lead to the belief that he is employed by, or supplies goods or services to, the President.

(2) Any person who contravenes the provisions of subarticle (1) of this article shall be guilty of an offence against this article and shall on conviction be liable to a fine (*multa*) of not more than Lm3,000.

76. The Court may, moreover, in the cases referred to in article 73, on the demand of the prosecution, order that the machinery or other industrial means or contrivances used in contravention of the rights of the proprietors of the trademarks, the infringing articles, and the apparatus destined for their production, be forfeited, wholly or in part, and delivered to the holder of the trademark, without prejudice to any other right to relief under this Act.

Delivery up of infringing articles, etc.

77. Pending any proceedings for any one of the offences referred to in this Part, any Magistrate, if he is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of, or in relation to which the offence has been committed, are in any house or premises of the accused, or are in his possession or under his control in any other place, may, by a warrant under his hand, direct any officer of the Police to be named in the warrant, to enter any house, premises or place, also to be named therein, and there to search for, seize, and remove such goods or things.

Powers of magistrates.

78. If the owner of any goods or things, which, if he were convicted of any of the offences referred to in this Part, would be liable to forfeiture, is unknown or cannot be found, any Magistrate may in the like manner and in the circumstances required in the last preceding article, issue the said warrant.

Where owner of goods is unknown.

79. The goods and things so seized shall be produced before the Court of Magistrates sitting as a court of criminal judicature, and such Court shall determine whether they are liable to forfeiture under this Act.

Forfeiture of things seized.

80. (1) In the case referred to in article 78, the Court shall order the issue of banns which shall be published twice, with an interval of at least eight days, in the Government Gazette, and posted up at the entrance of the building wherein the Court sits, and in any other place which the court may deem fit, stating that the goods or things seized shall be forfeited, unless at the time and place named in the banns the owner of such goods or things or other person interested in such goods or things attends before the Court at the time and place indicated in the banns and shows cause to the contrary.

Procedure where owner is unknown.

(2) If the owner or any person on his behalf, or other person interested in the said goods or things, fails to attend at the time and place named in the banns to show cause to the contrary, it shall be lawful for the Court to direct that such goods or things or any of them be forfeited.

Award of compensation to parties in good faith.

81. The Court may direct that the goods or things so forfeited be destroyed or disposed of, after the trademarks or other trade descriptions have been obliterated from them, and may also direct that, out of the net proceeds which may be realized by the disposal of such goods or things and up to the amount thereof, any persons who, being in good faith, were injured by the forfeiture, be awarded compensation for any loss caused to them.

Limitation of criminal actions.

82. Criminal actions under this Act shall be barred by the lapse of three years from the day on which the act constituting the offence was committed, if the person to whose prejudice the act was committed, had no previous knowledge thereof, in all other cases the period of limitation shall be one year from the day on which such person became aware of that act.

Use of forged marks.

83. The provisions relating to the use of forged marks shall not apply to the use of any mark of manufacture or description used in trade to indicate goods of a particular class, or the manufacture thereof by any particular method, where, at the time of the promulgation of this Act, such mark of manufacture or description was lawfully and generally applied for the above-mentioned purpose:

Provided that where such mark of manufacture or description includes the name of a place or country and the goods are not produced in the place or country indicated in the mark of manufacture or description so used, the provisions of this article shall not apply, unless there is added to the mark of manufacture or description, immediately before or after the name of the said place or country, in an equally conspicuous manner, the name of the place or country in which the goods were actually made or produced, and unless there is also stated that the goods were made or produced in that place or country.

Person falsely representing himself as a registered trademark agent.

84. Any person who falsely claims to be a registered trademark agent when he is not so registered in accordance with article 69 of this Act, shall be guilty of an offence against this article and shall in conviction be liable to a fine (*multa*) of not more than LM500.

Right to damages not affected.

85. The provisions of this Part shall apply without prejudice to the right of any person to claim damages in consequence of any Act constituting an offence.

86. No proceedings shall be instituted against any person in the service of another person, if, he shows that in good faith, he acted in obedience to the instructions of his employer, and, on being questioned by the Police, gives full information relating to his employer and of the facts of the case as known to him.

Employer and employee.

PART VI : GENERAL PROVISIONS

87. In any civil proceedings under this Act if a question arises as to the use to which a registered trademark has been put, the burden of proof that a particular use has been made shall lie on the proprietor.

Burden of proving use of trademark.

88. Civil actions under this Act shall be barred by the lapse of five years in all cases in which no other period within which such actions may be brought is fixed in this Act.

Limitations of civil action.

PART VII : TRANSITORY PROVISIONS

89. (1) In this Part -

Interpretation.

“existing registered mark” means a trademark, registered under the Industrial Property (Protection) Ordinance immediately before the commencement of this Act;

Cap. 29.

“former register” means the register kept under the Old Law;

“new register” means the register kept under this Act;

“Old Law” means the Industrial Property (Protection) Ordinance and any other enactment or rule of law applying to existing registered marks immediately before the commencement of this Act.

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(2) For the purposes of this Part -

(a) an application shall be treated as pending on the commencement of this Act if it was made but not finally determined before commencement, and

(b) the date on which it was made shall be taken to be the date of filing under the Old Law.

Existing registered marks.

90. (1) Existing registered marks shall, on the commencement of this Act, be transferred to the new register and subject to the provisions of this Part, shall have effect as if they were registered under this Act.

(2) Existing registered marks registered as a series under article 91(2) and 91(3) of the Ordinance shall be similarly registered in the new register.

(3) In any other case notes indicating that existing registered marks are associated with other marks shall cease to have effect on the commencement of this Act.

Proceedings under the Old Law.

91. (1) Proceedings under the Old Law which are pending on the commencement of this Act shall be dealt with under the Old Law and any necessary alteration pursuant to such proceedings shall be made to the new register.

(2) A disclaimer or limitation entered on the former register in relation to an existing registered mark immediately before the commencement of this Act shall be transferred to the new register and have effect as if entered on the register in pursuance of article 13 of this Act.

Effects of registration: infringement.

92. (1) Upon the coming into force of this Act articles 9 to 12 of this Act shall apply in relation to an existing registered mark and subject to subarticle (2) hereof, article 14 of this Act shall apply in relation to any infringement of an existing registered mark committed after the commencement of this Act.

(2) After the coming into force of this Act, it shall not be an infringement of -

(a) an existing registered mark, or

(b) a registered trademark of which the distinctive elements are the same or substantially the same as those of an existing registered mark and which is registered for the same goods or services,

to continue with any use which did not amount to infringement of the existing registered mark under the Old Law.

Infringing goods, material or articles.

93. Article 16 of this Act shall apply to infringing goods, material or articles whether made before or after the commencement of this Act.

94. (1) Article 28 of this Act shall apply to licences granted before the commencement of this Act, but only in relation to infringements committed after its commencement. Rights and remedies of licensee or authorised user.

(2) Paragraph 12 of Schedule 2 of this Act shall apply only in relation to infringements committed after the commencement of this Act.

95. The provisions of article 22 of this Act shall apply as from the commencement of this Act to an existing registered mark of which two or more persons were immediately before the commencement of this Act registered as joint proprietors. Co-ownership of a registered mark.

96. (1) Article 23 of this Act shall apply to transactions and events occurring after the commencement of this Act in relation to an existing registered mark; and the Old Law shall continue to apply in relation to transactions and events occurring before its commencement. Assignment, etc. of a registered mark.

(2) Existing entries under articles 98 and 100 of the Industrial Property (Protection) Ordinance shall be transferred on the commencement of this Act to the new register and have effect as if made under article 24 of this Act.

(3) An application for registration of an assignment under articles 98 and 100 of the Industrial Property (Protection) Ordinance which is pending before the Comptroller on the commencement of this Act shall be treated as an application for registration of an assignment under article 24 of this Act and shall be acted upon accordingly:

Provided that the Comptroller may require the applicant to amend his application so as to conform with the requirements of this Act.

(4) An application for registration of an assignment under articles 98 and 100 of the Industrial Property (Protection) Ordinance which has been determined by the Comptroller but not finalised before the commencement of this Act shall be dealt with under the Old Law; and sub-paragraph (2) above shall apply in relation to any resulting entry in the register.

(5) Where, before the commencement of this Act, a person has become entitled by assignment or transmission to an existing registered mark but has not registered his title, any application for registration of an assignment after its commencement shall be made under article 24 of this Act.

97. Articles 26 and 27(2) of this Act shall apply only in relation to licences granted after the commencement of this Act. Licensing of a registered mark.

Pending applications for registration.

98. (1) An application for registration of a mark under the Old Law which is pending on the commencement of this Act shall be dealt with under the Old Law, subject to the other provisions of this article, and, when registered, the mark shall be treated for the purposes of this Part as an existing registered mark.

(2) The power of the Minister under article 65 of this Act to make rules regulating practice and procedure, and in relation to the matters mentioned in subarticle (2) of that article, is exercisable in relation to such an application; and different provision may be made for such applications from that made for other applications.

Conversion of pending application.

99. (1) In the case of a pending application for registration which has not been advertised under article 87 of the Industrial Property (Protection) Ordinance before the commencement of this Act, the applicant may give notice to the Comptroller claiming to have the registrability of the mark determined in accordance with the provisions of this Act.

(2) The notice must be in the prescribed form, be accompanied by the appropriate fee and be given no later than six months after the commencement of this Act.

(3) Notice duly given shall be irrevocable and shall have the effect that the application shall be treated as if made immediately after the commencement of this Act.

Trademarks registered according to old classification.

100. The Comptroller may exercise the powers conferred by rules under article 57 of this Act to ensure that any existing registered marks which do not conform to the system of classification prescribed under article 32 of this Act are brought in conformity with such system.

Claim to priority from overseas application.

101. Article 33 of this Act shall apply to an application for registration under this Act made after the commencement of this Act notwithstanding that the Convention application was made before commencement.

Duration and renewal of registration.

102. (1) Article 38(1) of this Act applies in relation to the registration of a mark in pursuance of an application made after the commencement of this Act; and the Old Law shall continue to apply in any other case.

(2) Articles 38(2) and 39 of this Act shall apply where the renewal falls due on or after 1st January, 2001; and the Old Law shall continue to apply in any other case.(3) In either case the date of payment of the fee shall be immaterial.

103. In article 32 of the Commercial Code, for the words “the Industrial Property (Protection) Ordinance” there shall be substituted the words “the Act to regulate Trademarks”.

Amendment to the
Commercial Code,
Cap. 13.

104. (1) Subarticle (1) of article 70 of the Industrial Property (Protection) Ordinance shall be substituted with the following:

Amendment to the
Industrial Property
(Protection)
Ordinance,
Cap. 29.

“(1) A person who has duly filed an application for protection of a design or model of manufacture in a country which is a member of the World Trade Organisation or a party to the Paris Convention, has a right to priority for the purposes of registering the same design or model of manufacture under this Ordinance for a period of six months from the date of filing of the first such application:

Provided that nothing contained in this article shall entitle the proprietor of the design or model of manufacture to recover damages for infringement happening prior to the date of the actual registration of his design or model in Malta.”.

(2) The marginal note to the said article 70 shall be substituted with the words “Claim to priority”.

(3) Part III of the Industrial Property (Protection) Ordinance is hereby repealed, and every reference to trademarks in Part IV and Part V thereof, shall be deemed as if it were not made.

SCHEDULE 1 : COLLECTIVE MARKS

General

1. The provisions of this Act apply to collective marks subject to the following provisions which may, by regulations, be amended by the Minister.

Signs of which a collective mark may consist

2. In relation to a collective mark the reference in the definition of “trademark” in article 2 to distinguishing goods or services of one undertaking from those of other undertakings 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.

Indication of geographical origin

3. Notwithstanding article 4(1)(c), a collective mark which consists of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may be registered:

Provided that 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 particularly by a person who is entitled to use a geographical name.

Mark not to be misleading as to character or significance

4. (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 construed as something other than a collective mark.

(2) The Comptroller may accordingly require that a mark in respect of which application is made for registration includes some indication that it is a collective mark; and notwithstanding the provisions of article 36(2), an application may be amended so as to comply with any such requirement.

Regulations governing use of collective mark

5. An applicant for registration of a collective mark must file with the Comptroller regulations governing the use of the mark specifying the persons authorised to use the mark, the conditions of membership of the association and, where they exist, the conditions for the use of the mark, as well as any sanctions against misuse and any further requirements with which the regulations have to comply as may be established by any rule made by the Minister.

Approval of regulations by Comptroller

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

(a) comply with paragraph 5(2) and any further requirements imposed by rules, and

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

(2) The application shall be deemed to be withdrawn if before the end of any period as may be prescribed after the date of the application for registration of a collective mark, the applicant fails to file the regulations with the Comptroller and pay the prescribed fee.

7. (1) The Comptroller shall consider whether the requirements mentioned in paragraph 6(1) are met.

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

(3) If the applicant fails to satisfy the Comptroller that those 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 Comptroller shall refuse the application.

(4) If it appears to the Comptroller that those requirements, and the other requirements for registration, are met, he shall accept the application and shall proceed in accordance with article 37.

Regulations to be open to inspection

8. The regulations governing the use of a registered collective mark shall be open to public inspection in the same way as the register.

Amendment of regulations

9. An amendment of the regulations governing the use of a registered collective mark is not effective unless and until the amended regulations are filed with the Comptroller and accepted by him.

Infringement: rights of authorised users

10. The provisions of subarticle (6) of article 10 and of subarticle (2) of article 19 apply in relation to an authorised user of a registered collective mark as in relation to a licensee of a trademark.

11. (1) The following provisions have effect as regards the rights of an authorised user in relation to infringement of a registered collective mark.

(2) An authorised user is 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 affects his interests.

(3) If the proprietor refuses to do so, or fails to do so within two months after being called upon, the authorised user may bring the proceedings in his own name as if he were the proprietor.

(4) Where infringement proceedings are brought by virtue of this paragraph, the authorised user may not, without the leave of the Court, proceed with the action unless the proprietor is joined in the suit.

(5) In infringement proceedings brought by the proprietor of a registered collective mark any loss suffered or likely to be suffered by authorised users shall be taken into account by the Court which shall give such directions as it thinks fit with regard to the disposal and distribution of any sum awarded as a remedy for infringement.

Grounds for revocation of registration

12. Apart from the grounds of revocation provided for in article 42, the registration of a collective mark may be revoked on the ground -

(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 paragraph 4(1), or

(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 has been made so that the regulations -

(i) no longer comply with paragraph 5, or

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

Grounds for invalidity of registration

13. Apart from the grounds of invalidity provided for in article 43, the registration of a collective mark may be declared invalid on the ground that the mark was registered in breach of the provisions of paragraph 4(1) or 6(1) of this Schedule.

SCHEDULE 2 : CERTIFICATION MARKS

General

1. The provisions of this Act apply to certification marks subject to the following provisions which may, by regulations, be amended by the Minister.

Signs of which a certification mark may consist

2. In relation to a certification mark the reference in the definition of "trademark" in article 2 to distinguishing goods or services of one undertaking from those of other undertakings shall be construed as a reference to distinguishing goods or services which are certified from those which are not.

Indication of geographical origin

3. Notwithstanding article 4(1)(c), a certification mark which consists of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may be registered:

Provided that the proprietor of such a mark is not 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).

Nature of proprietor's business

4. 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.

Mark not to be misleading as to character or significance

5. (1) A certification 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 Comptroller may accordingly require that a mark in respect of which application is made for registration includes some indication that it is a certification mark, and notwithstanding the provisions of article 36(2), an application may be amended so as to comply with any such requirement.

Regulations governing use of certification mark

6. An applicant for registration of a certification mark must file with the Comptroller regulations governing the use of the mark specifying the person authorised to use the mark, the characteristics to be certified by the mark, how the certifying body is to test those characteristics and to supervise the use of the mark, the fees (if any) to be paid in connection with the operation of the mark and the procedures for resolving disputes and any further requirements with which the regulations have to comply as may be established by any rule made by the Minister.

Approval of regulations, etc.

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

(a) the regulations governing the use of the mark -

(i) comply with paragraph 6(2) and any further requirements imposed by rules, 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) The application shall be deemed to be withdrawn if before the end of any period as may be prescribed after the date of the application for registration of a certification mark, the applicant fails to file the regulations with the Comptroller and pay the prescribed fee.

8. (1) The Comptroller shall consider whether the requirements mentioned in paragraph 7(1) are met.

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

(3) If the applicant fails to satisfy the Comptroller that those 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 Comptroller shall refuse the application.

(4) If it appears to the Comptroller that those requirements, and the requirements for registration are met, he shall accept the application and shall proceed in accordance with article 37.

Regulations to be open to inspection

9. The regulations governing the use of a registered certification mark shall be open to public inspection in the same way as the register.

Amendment of regulations

10. An amendment of the regulations governing the use of a registered certification mark is not effective unless and until the amended regulations are filed with the Comptroller and accepted by him.

Consent to assignment of registered certification mark

11. The assignment or other transmission of a registered certification mark is not effective without the consent of the Comptroller.

Infringement: right of authorised users

12. The provisions of subarticle (6) of article 10 and of subarticle (2) of article 19 apply in relation to an authorized user of a registered certificate mark as in relation to a licensee of a trademark.

13. In infringement proceedings brought by the proprietor of a registered certification mark any loss suffered or likely to be suffered by authorised users shall be taken into account by the Court which shall give such directions as it thinks fit with regard to the disposal and distribution of any sum awarded as a remedy for infringement.

Grounds for revocation of registration

14. Apart from the grounds of revocation provided for in article 42, the registration of a certification mark may be revoked on the ground -

(a) that the proprietor has begun to carry on such a business in contravention of paragraph 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 paragraph 5(1),

(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 paragraph 6, or

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

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

Grounds for invalidity of registration

15. Apart from the grounds of invalidity provided in article 43, the registration of a certification mark may be declared invalid on the ground that the mark was registered in breach of the provisions of paragraph 4, 5(1) or 7(1) of this Schedule.

Passed by the House of Representatives at Sitting No. 316 of the 16th June, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives