

TRADE AND MERCHANDISE MARKS RULES, 1959

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TRADE AND MERCHANDISE MARKS RULES, 1959

In exercise of the powers conferred by section 133 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) read with S.22 of the General Clauses Act, 1897 (10 of 1897), the Central Government is

pleased to make the following rules, the same having been previously published as required by sub-section (1) of the first mentioned section, namely:-

PART 1 PART 1

CHAPTER 1 PRELIMINARY

1. Short title and commencement :-

(1) These rules may be called the Trade and Merchandise Marks Rules, 1959.

(2) They shall come into force on the date on which the Act comes into force.

2. Definitions :-

In these rules, unless the context otherwise requires,-

(a) "Act" means the Trade and Merchandise Marks Act, 1958 (43 of 1958);

(b) "agent" means a person authorised under section 123;

(c) "application for registration of a trade mark" includes the trade mark contained in it;

(d) "appropriate office of the Trade Marks Registry" means the relevant office of the Trade Marks Registry as specified in rule 4;

(e) "form" means a form set forth in either the Second or the Third Schedule;

(f) "journal" means the Trade Marks Journal;

(g) "notified date" means the date on which the rules come into force;

(h) "principal place of business in India" means the relevant place in India as specified in rule 3;

(i) "registered trade marks agent" means a trade marks agent whose name is actually on the Register of Trade Marks Agents maintained under rule 146;

(j) "schedule" means a Schedule to the rules;

(k) "section" means a section of the Act;

(l) "Specification" means the designation of goods in respect of which a trade mark or a registered user or a trade mark is registered or proposed to be registered;

(m) all other words and expressions used but not defined in the rules and defined in the Act shall have the meanings assigned to them in the Act.

3. Principal place of business in India :-

"Principal place of business in India" means-

(i) where a person carries on business in the goods concerned in a trade mark-

(a) if the business is carried on in India at only one place, that place;

(b) if the business is carried on in India at more places than one, the place mentioned by him as the principal place of business in

India;

(ii) where a person is not carrying on a business in the goods concerned in a trade mark-

(a) if he is carrying on any other business in India at only one place, that place;

(b) if he is carrying on any other business in India at more places than one, the place mentioned by him as the principal place of business in India; and

(iii) where a person does not carry on any business in India but has a place of residence in India, then such place of residence in India.

4. Appropriate office of the Trade Marks Registry :-

The "appropriate office of the Trade Marks Registry" for the purposes of making an application for registration of a trade mark under section 18 or for giving notice of opposition under section 21 or for filing an application for rectification under sections 46 , Rule 47(4) or Rule 56 or for any other proceedings under the Act and the rules shall be-

(a) in relation to a trade mark on the Register of Trade Marks at the notified date, the office of the Trade Marks Registry within whose territorial limits-

(i) the principal place of business in India of the registered proprietor of the trade mark as entered in the register at such date is situate;

(ii) where there is no entry in the register as to the principal place of business in India of the registered proprietor, the place mentioned in the address for service in India as entered in the register at such date is situate;

(iii) In the case of jointly registered proprietors, the principal place of business in India of the proprietor whose name is entered first in the register as having such place of business in India at such date is situate;

(iv) where none of the jointly registered proprietors is shown in the register as having a principal place of business in India, the place mentioned in the address for service in India of the joint proprietors as entered in the register at such date, is situate;

(v) if no principal place of business in India of the registered proprietor of the mark or in the case of joint registration, of any of the joint proprietors of the mark, is entered in the register, and the register does not contain any address for service in India, the place of the office of the Trade Marks Registry where the application for registration of the trade mark was made, is situate; and

(b) in relation to a trade mark for which an application for registration is pending at the notified date or is made on or after the notified date, the office of the Trade Marks Registry within whose territorial limits-

(i) the principal place of business in India of the applicant as disclosed in his application or, in the case of joint applicants, the principal place of business in India of the applicant whose name is first mentioned in the application, as having such place of business is situate;

(ii) where neither the applicant nor any of the joint applicants, as the case may be, has a principal place of business in India, the place mentioned in the address for service in India as specified in the application is situate.

**5. Jurisdiction of appropriate office not altered by change
In the principal place of business or address for service :-**

No change in the principal place of business in India or in the address for service in India, as the case may be,

(a) of a registered proprietor or of any of the jointly registered proprietors in relation to any trade mark on the register at the notified date, made or effected subsequent to that date or,

(b) of an applicant for registration or of any of the joint applicants for registration in relation to any trade mark for which an application for registration is either pending at the notified date or is made on or after that date, made or effected subsequent to that date or to the date of filing of such application, as the case may be,

shall affect the jurisdiction of the appropriate office of the Trade Marks Registry.

6. Entry of the appropriate office in the Register :-

In respect of every trade mark on the register at the notified date or registered thereafter the Registrar shall cause to be entered in the register the appropriate office of the Trade Marks Registry and the Registrar may, at any time, correct any error in the entry so made.

7. Transfer of pending applications and proceedings to appropriate offices of the Trade Marks Registry :-

Every application and proceeding pending before the Registrar at the notified date in relation to a trade mark shall be deemed to have been transferred to the appropriate office of the Trade Marks Registry.

8. Leaving of documents, etc :-

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(1) Save as otherwise provided in sub-rule (2), all applications, notices, statements or other documents or any fees authorised or required by the Act or the rules to be made, served, left or sent or paid at or to the Trade Marks Register in relation to a trade mark on the Register of Trade Marks on the notified date or for which an application for registration is pending on, or is made on or after the notified date, shall be made, served, left or sent or paid to the

appropriate office of the Trade Marks Registry.

(2) Documents or fees authorised or required by the Act or the rules to be sent or paid maybe sent or paid at or to either the appropriate office or the head office of the Registry in the following matters-

(a) communication and other documents including affidavits in relation to an application filed for registration of a trade mark;

(b) excess space fee for advertisement in the Trade Marks Journal;
and

(c) applications or request on Forms TM-12, TM-14, TM-17, TM-19, TM-20, TM-21, TM-22, TM-23, TM-24, TM-25, TM-28, TM-29, TM-30, TM-31, TM-32, TM-33, TM- 34, TM-35, TM-36, TM-37, TM-38, TM-40, TM-46, TM-47, TM-50, TM-54, TM-55, TM-58 and TM-59.]

9. Documents etc. filed or left not at the appropriate office

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¹ [Subject to the provisions of Rule 8, where any application], notice, statements or other document or any fee authorised or required by the Act or the rules is made, served, left or sent or paid, at or to an office which is not the appropriate office of the Trade Marks Registry, the Registrar shall return such application, notice, statement or document or fee to the person concerned.

1. Substituted for "Where any application" by the Trade and Merchandise Marks (Amend- ment) Rules, 1985, w.e.f. 1-3-1985.

10. Issue of notices etc :-

Any notice or communication relating to any application, matter or proceeding under the Act or the rules shall ordinarily be issued from the appropriate office of the Trade Marks Registry but may, nevertheless, be issued from any office of the Trade Marks Registry.

11. Fees :-

(1) The fees to be paid in respect of applications, oppositions, registration and other matters under the Act and the rules shall be those specified in the First Schedule, hereinafter referred to as the prescribed fees.

(2) Where in respect of any matter a fee is required to be paid under the rules, the form or the application or the request of the petition, therefor, shall be accompanied by the prescribed fee.

(3) Fees may be paid in cash or sent by money order address to the Registrar of Trade Marks or by postal order or by a bank draft issued by, or by a cheque drawn on and guaranteed by, a scheduled bank as defined in the Reserve Bank of India Act, 1934 (2 of 1934) or at the discretion of the Registrar by a cheque drawn on such bank even though not so guaranteed, and if sent through posts shall be deemed to have been paid at the time when the money order or the properly addressed and prepaid letter containing the postal order, or bank draft or cheque would be delivered in the ordinary course of post.

(4) Postal orders shall be crossed and made payable to the Registrar at the appropriate office of the Trade Marks Registry and bank drafts and cheques shall also be similarly crossed and made payable to the Registrar but they shall be drawn on a scheduled bank at the place where the appropriate office of the Trade Marks Registry is situate.

(5) Where a fee is payable in respect of the filing of a document, the date on which the entire fee is paid shall be deemed to be the date of filing of the document.

(6) Where any fee paid by a party is ordered to be returned by the Registrar under any of the provisions of the Act or the rules the amount may be refunded by money order in which event money

order commission shall be deductible from such amount.

12. Forms :-

(1) The forms set forth in the Second and the Third Schedules shall be used in all cases to which they are applicable and may be modified as directed by the Registrar to meet other cases.

(2) Any form, when filed at the Trade Marks Registry, shall be accompanied by the prescribed fee.

13. Size, etc. of documents :-

(1) Subject to any other directions that may be given by the Registrar, all applications, notices statements, or other documents except trade marks, authorised or required by the Act or the rules to be made, served, left or sent, at or to the Trade Marks Registry or with or to the Registrar or the Central Government, shall be written, typewritten, lithographed or printed in Hindi or in English in large and legible characters with deep permanent ink upon strong paper, and except in the case of affidavits, on one side only, of size of approximately 33 centimetres by 20 centimetres and shall have on the left hand part thereof a margin of not less than 4 centimetres.

(2) Duplicate documents including copies of trade marks shall be filed at the Trade Marks Registry, if at any time required by the Registrar.

14. Signing of documents :-

(1) A document purporting to be signed by a partnership shall be signed by at least one of the partners and a document purporting to be signed by a body corporate shall be signed by director or by the secretary or other principal officer of the body corporate. The capacity in which an individual signs a document on behalf of a partnership or a body corporate shall be stated below his signature.

(2) Signatures to any documents if written in characters other than Roman, or if not legible shall be accompanied by a transliteration in English and in block capitals.

15. Service of documents :-

(1) All applications, notices, statements, papers having representations affixed thereto, or other documents authorised or required by the Act or the rules to be made, served, left or sent, at or to the Trade Marks Registry or with or to the Registrar or the Central Government, or any other person may be sent through the post by a prepaid letter.

(2) Any application or any document so sent shall be deemed to have been made, served, left or sent at the time when the letter containing the same would be delivered in the ordinary course of post.

(3) In proving such sending it shall be sufficient to prove that the letter was properly addressed and put into the post.

16. Particulars of address etc. of applicants and other persons :-

(1) Names and addresses of the applicants and other persons shall be given in full, together with their nationality, calling, and such

other particulars as are necessary for identification.

(2) In the case of a firm the full name and nationality of every partner thereof shall be stated.

(3) In the case of foreign applicants and persons having no principal place of business in India, their addresses in their home country shall be given in addition to their address for service in India.

(4) In the case of a body corporate or firm, the country of incorporation or the nature of registration, if any, as the case may be, shall be given.

17. Statement of principal place of business in India in an application :-

(1) Every application for registration of a trade mark shall state the principal place of business in India, if any, of the applicant or in the case of joint applicants, of such of the joint applicants as have a principal place of business in India.

(2) Subject to the provisions of rule 18, Rule 19 and Rule 21, any written communication addressed to an applicant, or in the case of joint applicants to a joint applicant, in connection with the registration of a trade mark, at the address of his principal place of business in India given by him in the application shall be deemed to be properly addressed.

18. Address for service :-

(1) An address for service in India shall be given,

(a) by every applicant for registration of a trade mark who has no principal place of business in India;

(b) in the case of joint applicants for registration of a trade mark if none of them has a principal place of business in India;

(c) by the proprietor of a trade mark who had his principal place of business in India at the date of making the application for registration but has subsequently ceased to have such place; and

(d) by every applicant in any proceeding under the Act or the rules and every person filing a notice of opposition, who do not have a principal place of business in India.

(2) Any written communication addressed to a person as aforesaid at an address for service in India given by him shall be deemed to be properly addressed.

(3) Unless an address for service in India as required in sub-rule (1) is given, the Registrar shall be under no obligation to send any notice that may be required by the Act or the rules and no subsequent order or decision in the proceedings shall be called in question on the ground of any lack or non-service of notice.

19. Address for service in application and opposition proceedings :-

An applicant for registration of a trade mark or an opponent filing a notice of opposition may notwithstanding that he has a principal place of business in India, if he so desires, furnish the Registrar with an address in India to which communications in relation to the application or opposition proceedings only may be sent. Such address of the applicant or the opponent shall be deemed, unless subsequently cancelled, to be the actual address of the applicant or the opponent, as the case may be, and all communications and documents in relation to the application or notice of opposition may

be served by leaving them at, or sending them by post to such address of the applicant or the opponent, as the case may be.

20. Non-availability of an address for service :-

The Registrar may, at any time when a doubt arises as to the continued availability of an address for service in India entered in the register, request the person for whom it is entered, by letter directed to any other address entered in the register or if no such address is entered in the register to the address at which the Registrar considers that the letter would reach him, to confirm the address for service in India and if within three months of making such a request the Registrar receives no such confirmation, he may strike the entry in the register of the address for service in India and require such person to furnish a fresh address for service in India, or his address at the principal place of business in India, if he has any at that time.

21. Agency :-

(1) The authorisation of an agent for the purpose of section 123 shall be executed on Form TM-48 or in such other written form as the Registrar may deem sufficient and proper.

(2) In the case of such authorisation, service upon the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so authorising him; all communications directed to be made to such person in respect of the proceeding or matter may be addressed to such agent, and all appearances before Registrar relating thereto may be made by or through such agent.

(3) In any particular case the Registrar may require the personal signature or presence of an applicant, opponent, proprietor, registered user or other person.

22. Classification of goods :-

For the purposes of the registration of trade marks and of the rules goods shall be classified in the manner specified in the Fourth Schedule,

23. Preliminary advice by Registrar as to distinctiveness :-

An application for preliminary advice by the Registrar under subsection (1) of section 103 shall be made on Form TM-55 in respect of any goods comprised within any one class in the Fourth Schedule, accompanied by three representations of the trade mark.

24. Request to Registrar for search :-

(1) Any person may request the Registrar, on Form TM-54, to cause a search to be made in respect of specified goods classified in any one class in the Fourth Schedule to ascertain whether any mark is on record which resembles a trade mark of which three representations accompany the form. The Registrar shall cause such search to be made and the result thereof communicated to the person making the request.

(2) If, within three months from the date of the communication of the result of the search aforesaid, an application is made for the registration of the trade mark in question, and the Registrar takes objection on the ground that the mark resembles a mark, which was not disclosed in the search but was on record on the last of the dates on which the search was made, the applicant shall be entitled, on giving notice of withdrawal of the application within the period mentioned in rule 40, to have repaid to him any fee paid on the filing of the application.

¹ [(3) Any person may request the Registrar, on Form TM-60 to cause a search to be made and for issue of certificate under subsection (1) of Section 45 of the Copyright Act, 1957 (14 of 1957) to the effect that no trade mark identical with or deceptively similar to such artistic work, as sought to be registered as copyright under the Copyright Act, 1957 (14 of 1957) has been registered as a trade mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958) in the name of, or that no application has been made under that Act for such re-registration by any person other than the applicant.]

1. Inserted by the Trade and Merchandise Marks (Amendment) Rules, 1990, w.e.f. 12-5-1990

CHAPTER 2 PROCEDURE FOR REGISTRATION OF TRADE MARKS APPLICATION FOR REGISTRATION OF TRADE MARKS

25. Form and signing of application :-

(1) An application to the Registrar for the registration of a trade mark shall be signed by the applicant or his agent.

(2) For a trade mark other than a certification or defensive trade mark, the application shall be made on Form TM-1 [***].

26. Application to be confined to one class, etc :-

(1) Every application for the registration of a trade mark shall be in respect of goods comprised in one class only of the Fourth Schedule: [Provided that if any goods are not specified in any of the classifications, in such case the classification of those goods shall be determined by the Registrar in his own discretion.]

(2) In the case of an application for registration in respect of all the goods included in a class or of a large variety of goods in a class, the Registrar may refuse to accept the application unless he is satisfied that the specification is justified by the use of the mark which the applicant has made or intends to make if and when it is registered.

(3) Applications for the registration of the same trade mark in different classes shall be treated as separate and distinct applications, and in all cases where a trade mark is registered under the same official number for goods in more than one class, whether on conversion of the specification under rule 105 or

otherwise, the registration in respect of the goods included in each separate class shall be deemed to be a separate registration for all the purposes of the Act.

27. Statement of user in applications :-

An application to register a trade mark shall, unless the trade mark is proposed to be used, contain a statement of the period during which, and the person by whom it has been used in respect of the goods mentioned in the application. The Registrar may require the applicant to file an affidavit testifying to such user with exhibits showing the mark as used.

28. Representation of mark :-

Every application for the registration of a trade mark, and where additional copies of the application are required every such copy, shall contain a representation of the mark in the space provided on the application form for that purpose. Where the representation exceeds such space in size, the representation shall be mounted upon linen, tracing cloth or such other material as the Registrar may consider suitable. Part of the mounting shall be affixed in the space aforesaid and the rest may be folded.

29. Additional representations :-

Every application for the registration of a trade mark shall, except as hereinafter provided, be made in triplicate and shall be accompanied by ten additional representations of the mark. The representations of the mark on the application and each of its copies and the additional representations shall correspond exactly with one another. The additional representations shall in all cases be noted with the specification and class of goods for which registration is sought, the name and address of the applicant, together with the name and address of his agent, if any, the period of use, if any, and such other particulars as may from time to time be required by the Registrar and shall be signed by the applicant or his agent.

30. Representations to be durable and satisfactory :-

(1) All representations of trade marks shall be of a durable nature, and each additional representation required to be filed with an application for registration shall be mounted on a sheet of strong paper of the size of approximately 33 centimetres by 20 centimetres, leaving a margin of not less than 4 centimetres on the left hand part of the sheet.

(2) If the Registrar is dissatisfied with any representation of a mark he may at any time require another representation satisfactory to him to be substituted before proceedings with the application.

31. Specimens of the mark in exceptional cases :-

(1) Where representation of a trade mark cannot be given in the manner set forth in rule 30, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the Registrar may think most convenient.

(2) The Registrar may also in exceptional cases deposit in the Trade Marks Registry a specimen or copy of any trade mark which cannot conveniently be shown by a representation and may refer thereto in the register in such manner as he may think fit.

32. Series of trade marks :-

Where an application is made for the registration of a series of trade marks under sub-section (3) of section 15 , copies of representation of each trade mark of the series shall accompany the application in the manner set forth in rules 28 and 29.

33. Transliteration and translation :-

(1) Where a trade mark contains a word or words in characters other than Devanagari or Roman, there shall, unless the Registrar otherwise directs, be endorsed on the application form and copies

thereof and on each of the accompanying representations, a sufficient transliteration and translation to the satisfaction of the Registrar of each of such words, and every such endorsement shall state the language to which the word belongs and shall be signed by the applicant or his agent.

(2) Where a trade mark contains a word or words in a language other than Hindi or English, the Registrar may ask for an exact translation thereof together with the name of the language, and such translation and name, if he so requires, shall be endorsed and signed as aforesaid.

34. Names and representations of living persons or persons recently dead :-

Where the name or representation of any person appears on a trade mark the applicant shall, if the Registrar so requires, furnish him with the consent in writing of such person in case he is living or, in case his death took place within twenty years prior to the date of the application for registration of the trade mark, of his legal representative, as the case may be, to the use of the name or representation and in default of such consent the Registrar may refuse to proceed with the application for registration of the mark.

35. Name or description of goods on a mark :-

(1) Where the name or description of any goods appears on a trade mark, the Registrar may refuse to register such mark in respect of any goods other than the goods so named or described.

(2) Where the name or description of any goods appears on a trade mark, which name or description in use varies, the Registrar may permit the registration of the mark for those and other goods on the applicant giving an undertaking that the name or description will be varied when the mark is used upon goods covered by the specification other than the named or described goods. The undertaking so given shall be included in the advertisement of the

application in the Journal under section 20 .

36. Applications under reciprocal arrangements :-

Every application claiming priority under section 131 by reason of an application to register the trade mark having been made in a convention country, so declared under sub-section (1) of section 131 , which country shall be named, shall state the date of that application and the applicant shall furnish a certificate by the Registrar or other registering authority of that country or shall otherwise verify the application made therein to the satisfaction of the Registrar,

37. Acknowledgement of receipt of applications :-

Every application for the registration of a trade mark in respect of any goods shall, on receipt, be acknowledged by the Registrar. The acknowledgement shall be by way of return of one of the additional representations of the trade mark filed by the applicant along with his application with the official number of the application duly entered thereon.

38. Search :-

Upon receipt of an application for the registration of a trade mark in respect of any goods the Registrar shall cause a search to be made amongst the registered trade marks and amongst the pending applications for the purpose of ascertaining whether there are on record in respect of the same goods or description of goods any marks identical with or deceptively similar to the mark sought to be registered and the Registrar may cause the search to be renewed at any time before the acceptance of the application but shall not be bound to do so.

39. Objection to acceptance. Hearing :-

(1) If, on consideration of the application and of any evidence of use or of distinctiveness or of any other matter which the applicant may or may be required to furnish, the Registrar has any objection to the acceptance of the application or proposes to accept it subject

to such conditions, amendments, disclaimers, modifications or limitations as he may think right to impose, the Registrar shall communicate such objection or proposal in writing to the applicant.

(2) If within three months from the date of the communication mentioned in sub-rule (1), the applicant does not amend his application according to the proposal aforesaid, or submit his observations to the Registrar or apply for a hearing, the application shall be deemed to have been abandoned.

40. Notice of withdrawal of application for registration :-

A notice of withdrawal of an application for the registration of a trade mark under sub-section (2) of section 103 , or sub-rule (2) of rule 24, for the purpose of obtaining repayment of any fee paid on the filing of the application, shall be given in writing within three months from the date of the communication mentioned in sub-rule (1) of rule 39.

41. Decision of Registrar :-

(1) The decision of the Registrar under rule 39 or rule 44 after a hearing, or without a hearing if the applicant has duly communicated his observations in writing and has stated that he does not desire to be heard, shall be communicated to the applicant in writing, and if the applicant intends to appeal from such decision he may within one month from the date of such communication apply on Form TM-15 to the Registrar requiring him to state in writing the grounds of, and the materials used by him in arriving at, his decision.

(2) In a case where the Registrar makes any requirements to which the applicant does not object the applicant shall comply therewith before the Registrar issues a statement in writing under sub-rule (1).

(3) The date when the statement in writing under sub-rule (1) is

sent shall be deemed to be the date of the Registrars decision for the purpose of appeal.

42. Disclaimer :-

The Registrar may require an applicant as a condition of acceptance of his application to agree to such disclaimer as the Registrar may think fit and the disclaimer so agreed to shall be indicated in the advertisement of the application in the Journal under sub-section (1) or (2) of section 20 in order that the public generally may understand what the applicants rights, if his trade mark is registered, will be.

43. Correction and amendment of application :-

An applicant for registration of a trade mark may, whether before or after acceptance of his application but before the registration of the mark, apply on Form TM-16 accompanied by the prescribed fee for the correction of any error in or in connection with his application or any amendment of his application.

44. Withdrawal of acceptance by the Registrar :-

(1) If, after the acceptance of an application but before the registration of the trade mark, the Registrar has any objection to the acceptance of the application on the ground that it was accepted in error, or that the mark ought not to have been accepted in the circumstances of the case, or proposes that the mark should be registered only subject to conditions or limitations, or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted, the Registrar shall communicate such objection in writing to the applicant.

(2) Unless within two months from the date of the communication mentioned in sub-rule (1) the applicant amends his application to comply with the requirements of the Registrar or applies for a hearing, the acceptance of the application shall be deemed to be withdrawal by the Registrar, and the application shall proceed as if

it had not been accepted.

(3) Where the applicant intimates the Registrar within the period mentioned in sub-rule (2) that he desires to be heard, the Registrar shall give notice to the applicant of a date when he will hear him. Such appointment shall be for a date at least 15 days after the date of the notice, unless the applicant consents to a shorter notice. The applicant may state that he does not desire to be heard and submit such submissions as he may consider desirable.

(4) The Registrar may, after hearing the applicant, on considering the submissions, if any, of the applicant, pass such orders as he may deem fit.

45. Application for registration of a defensive trade mark :-

An application for the registration of a defensive trade mark under section 47 shall be made on Form TM-3 and shall be accompanied by a statement of case setting forth full particulars of the facts on which the applicant relies in support of his application, verified by an affidavit made by the applicant. The applicant may send, with this affidavit or subsequently, such other evidence as he may desire to furnish, and the Registrar shall consider the whole of the evidence before deciding the application. In all other respects and where they are appropriate and it is not otherwise stated, the rules shall apply to such application as they apply to applications for the registration of ordinary trade marks.

46. Manner of advertisement :-

An application for the registration of a trade mark required or permitted to be advertised by sub-section (1) of section 20 or to be re-advertised by sub-section (2) of that section shall be advertised in the Journal during such times and in such manner as the Registrar may direct. If no representation of the trade mark be included in the advertisement of the application, the Registrar shall mention in such advertisement the place or places where a specimen or representation of the trade mark may be inspected.

47. Fee and printing block :-

. . For the purposes of advertisement or re-advertisement in the Journal as mentioned in rule 46 the applicant shall pay ¹[for excess space, if] the prescribed fee and may be required to supply a printing block (or more than one, if necessary) or the trade mark satisfactory to the Registrar of such dimensions as may from time to time be approved or directed by the Registrar, or shall supply such information or other means of advertising the trade mark as may be required by the Registrar; and the Registrar, if dissatisfied with the printing block supplied by the applicant or his agents, may require a fresh block before proceeding with the advertisement or re-advertise- ment, as the case may be: ² [* * *]

1. Inserted by the Trade and Merchandise Marks (Amendment) Rules, 1985, w.e.f. 1-3-1985.

2. Proviso omitted by the Trade and Merchandise Marks (Amendment) Rules, 1985, w.e.f. 1-3-1985. Prior to its omission, the proviso read as under : "Provided that the fee payable in respect of an application for which directions as to advertisement or re-advertisement have been issued by the Registrar before the notified date shall be those, if any, prescribed under the rules in force before that date."

48. Advertisement of series :-

Where an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in sub-section (3) of section 15 , the applicant may be required to supply a printing block (or more than one, if necessary) satisfactory to the Registrar of any or each of the trade marks constituting the series; or the Registrar may, if he thinks fit, insert with the advertisement of the application a statement of the manner in which the several trade marks differ from one another.

49. Notification of correction or amendment of application

:-

(1) In the case of an application to which clause (b) of sub-section (2) of section 20 applies, the Registrar may, if he so decides, instead of causing the application to be advertised again, insert in the Journal a notification setting out the number of the application,

the class in which it was made, the name and address of the principal place of business in India, if any, of the applicant or where the applicant has no principal place of business in India his address for service in India, the number of the Journal in which it was advertised and the correction or amendment made in the application.

(2) If the amendment aforesaid involves an amendment of the trade mark, the Registrar may, for the purpose of the notification, call on the applicant to supply a printing block of the mark as amended satisfactory to the Registrar.

50. Request to Registrar for particulars of advertisement of a mark :-

Any person may request the Registrar on Form TM-58 to be informed of the number, date and page of the Journal in which a trade mark specified in the form was advertised and the Registrar shall furnish such particulars to the person making the request.

51. Notice of opposition :-

(1) A notice of opposition to the registration of a trade mark under sub-section (1) of section 21 shall be given in triplicate on Form TM-5 within three months from the date of the advertisement or re-advertisement, as the case may be, of the application for registration in the Journal. The notice shall include a statement of the grounds upon which the opponent objects to the registration. If the registration is opposed on the ground that the trade mark in question resembles marks already on the register, the registration numbers of such trade marks and the dates of the Journals in which they have been advertised shall be set out.

(2) An application for an extension of the period within which a notice of opposition to the registration of a trade mark may be given, shall be made on Form TM-44 accompanied by the Prescribed fee. Such period of extension shall not exceed one month in the aggregate.

52. Counter-statement :-

The counter-statement required by sub-section (2) of section 21 shall be sent in triplicate on Form TM-6 within two months from the receipt by the applicant of the copy of the notice of opposition and shall set out what facts, if any, alleged in the notice of opposition, are admitted by the applicant. A copy of the counter-statement shall be served by the Registrar on the person giving notice of opposition.

53. Evidence in support of opposition :-

(1) Within two months from the service on him of a copy of the counter-statement by the Registrar, the opponent shall either leave with the Registrar such evidence by way of affidavit as he may desire to adduce in support of his opposition or shall intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition. He shall deliver to the applicant copies of any evidence that he leaves with the Registrar under this sub-rule.

(2) If an opponent takes no action under sub-rule (1) within the time therein prescribed, he shall, unless the Registrar otherwise directs, be deemed to have abandoned his opposition.

54. Evidence in support of application :-

Within two months from the receipt by the applicant of the copies of affidavits in support of the opposition or of the intimation that the opponent does not desire to adduce any evidence in support of his opposition, the applicant shall leave with the Registrar such evidence by way of affidavit as he desires to adduce in support of his application and shall deliver to the opponent copies thereof or shall intimate to the Registrar and the opponent that he does not desire to adduce any evidence but intends to rely on the facts

stated in the counter-statement and/or on the evidence already left by him in connection with the application in question. In case the applicant relies on any evidence already left by him in connection with the application, he shall deliver to the opponent copies thereof.

55. Evidence in reply by opponent :-

Within one month from the receipt by the opponent of the copies of the applicants affidavits, the opponent may leave with the Registrar evidence by affidavit in reply and shall deliver to the applicant copies thereof. This evidence shall be confined to matters strictly in reply.

56. Further Evidence :-

No further evidence shall be left on either side; but in any proceedings before the Registrar, he may at any time, if he thinks fit, give leave to either the applicant or the opponent to leave any evidence upon such terms as to costs or otherwise as he may think fit.

57. Exhibits :-

Where there are exhibits to affidavits filed in an opposition a copy or impression of each exhibit shall be sent to the other party on his request and at his expense, or, if such copies or impressions cannot conveniently be furnished the originals shall be left with the Registrar in order that they may be open to inspection. The original exhibits shall be produced at the hearing unless the Registrar otherwise directs.

58. Translation of documents :-

Where a document in a language other than Hindi or English is referred to in the notice of opposition, counter-statement or an affidavit filed in an opposition, an attested translation thereof in Hindi or English shall be furnished in duplicate.

59. Hearing and decision :-

(1) Upon completion of the evidence (if any), the Registrar shall give notice to the parties of a date when he will hear the

arguments in the case. Such appointment shall be for a date at least one month after the date of the notice, unless the parties consent to a shorter notice. Within fourteen days from the receipt of the notice, any party who intends to appear shall so notify the Registrar on Form TM-7. Any party who does not so notify the Registrar within the time last aforesaid may be treated as not desiring to be heard and the Registrar may act accordingly.

(2) The decision of the Registrar shall be notified to the parties in writing.

60. Security for costs :-

The security for costs which the Registrar may require under sub-section (6) of section 21 may be fixed at any amount which he may consider proper; and such amount may be further enhanced by him at any stage in the opposition proceedings.

61. Procedure for giving notice :-

The notice which the Registrar is required by sub-section (3) of section 23 to give to an applicant, shall be sent on Form 0-1 to the applicant at the address of his principal place of business in India or if he has no principal place of business in India at the address for service in India stated in the application but if the applicant has authorised an agent for the purpose of the application, the notice shall be sent to the agent and a duplicate thereof to the applicant. The notice shall specify twenty-one days time from the date thereof or such further time as the Registrar may allow, for completion of the registration.

62. Entry in the Register :-

(1) As soon as may be after the expiration of three months from the date of the advertisement or re-advertisement, as the case may be, in the Journal of any application for the registration of a trade mark, the Registrar shall, subject to the provisions of sub-section (1) of section 23 ¹ [* * *] enter the trade mark in the register.

(2) The entry of a trade mark in the register shall specify the date of the registration, the goods in respect of which it is registered, and all particulars required by sub-section (1) of section 6 including-

(a) the address of the principal place of business in India, if any, of the proprietor of the trade mark or in the case of a jointly owned trade mark, of such of the joint proprietors of the trade mark as have a principal place of business in India.

(b) where the proprietor of the trade mark has no place of business in India his address for service in India as entered in the application for registration together with his address in his home country.

(c) in the case of a jointly owned trade mark, where none of the joint proprietors has a principal place of business in India, the address for service in India as given in the application together with the address of each of the joint proprietors in his home country.

(d) particulars of the trade, business, profession, occupation or other description of the proprietor or, in the case of a jointly owned trade mark, of the joint proprietors of the trade mark as entered in the application for registration.

(e) particulars affecting the scope of the registration or the rights conferred by the registration, and

(f) the appropriate office of the Trade Marks Registry in relation to the trade mark.

1. Words "and upon payment of the prescribed fee on Form TM-11" omitted by Trade and Merchandise Marks (Amendment) Rules, 1985, w.e.f. 1-3-1985.

63. Associated marks :-

(1) Where a trade mark is registered as associated with any other marks, the Registrar shall note in the register in connection with the first mentioned mark the registration numbers of the marks with which it is associated and shall also note in the register in connection with each of the associated marks the registration number of the first-mentioned mark as being a mark associated therewith.

(2) An application under sub-section (4) of section 16 to dissolve the association as respects any of the trade marks registered as associated trade marks shall be made on Form TM-14 and shall include statement of the grounds of the application.

64. Death of applicant before registration :-

In case of death of any applicant for the registration of a trade mark after the date of his application and before the trade mark has been entered in the register, the Registrar may, on proof of the applicants death and on proof of the transmission of the interest of the deceased person, substitute in the application his successor in interest in place of the name of such deceased applicant and the application may proceed thereafter as so amended.

65. Certificate of registration :-

(1) The certificate of registration of a trade mark to be issued by the Registrar under sub-section (2) of section 23 shall be on Form 0-2 with such modification as the circumstances of any case may require; and the Registrar shall annex a copy of trade mark to the certificate.

(2) the certificate of registration referred to in sub-rule (1) shall not be used in legal proceedings or for obtaining registration abroad.

(3) The Registrar may issue a duplicate or further copies of the certificate of registration on request by the registered proprietor on Form TM-59 accompanied by the prescribed fee. An unmounted representation of the mark exactly as shown in the form of application for registration thereof at the time of registration shall accompany such request in case a printing block had been furnished for the advertisement of such application.

CHAPTER 3 RENEWAL OF REGISTRATION AND RESTORATION

66. Renewal of Registration :-

An application for the renewal of the registration of a trade mark shall be made on Form TM-12 and may be made at any time not more than six months before the expiration of the last registration of the trade mark.

67. Notice before removal of trade mark from register :-

At a date not less than one month and not more than two months before the expiration of the last registration of a trade mark, if no application on Form TM- 12 for renewal of the registration together with the prescribed fee has been received, the Registrar shall notify the registered proprietor or in the case of a jointly registered trade mark each of the joint registered proprietors and each registered user, if any, in writing on Form 0-3 of the approaching expiration at the address of their respective principal places of business in India as entered in the register or where such registered proprietor or registered user has no principal place of business in India at his address for service in India entered in the register.

68. Advertisement of removal of trade mark from the register :-

If at the expiration of the last registration of a trade mark the renewal fee has not been paid the Registrar may remove the trade mark from the register and advertise the fact forthwith in the Journal,

69. Restoration and renewal of registration :-

An application for the restoration of a trade mark to the register

and renewal of its registration under sub-section (4) of section 25 , shall be made on Form TM- 13, within one year from the expiration of the last registration of the trade mark accompanied by the prescribed fee.

70. Notice and advertisement of renewal and restoration :-

Upon the renewal or restoration and renewal of registration, a notice to that effect shall be sent to the registered proprietor and every registered user and the renewal or restoration and renewal shall be advertised in the Journal.

CHAPTER 4 ASSIGNMENT AND TRANSMISSION

71. Application for entry of assignment or transmission :-

An application to register the title of a person who becomes entitled by assignment or transmission to a registered trade mark shall be made on Form TM-24 or TM-23 according as it is made by such person alone or conjointly with the registered proprietor.

72. Particulars to be stated in application :-

An application under rule 71 shall contain full particulars of the instrument, if any, under which the applicant or, in the case of a joint application, the person other than the registered proprietor claims to be entitled to the trade mark; and such instrument or a duly certified copy thereof shall be produced at the Trade Marks Registry for inspection at the time of application. The Registrar may require and retain an attested copy of any instrument produced for inspection in proof of title, but such copy shall not be open to public inspection.

73. Case accompanying application :-

Where a person applying under rule 71 for registration of his title, does not establish his claim under any document or instrument which is capable in itself of furnishing proof of his title, he shall, unless the Registrar otherwise directs, either upon or with the application, state a case setting forth the full particulars of the facts upon which his claim to be proprietor of the trade mark is based, and showing that the trade mark has been assigned or transmitted to him. If the Registrar so requires, the case shall be verified by an affidavit on Form TM-18.

74. Proof of title :-

The Registrar may call upon any person who applies to be registered as proprietor of a registered trade mark to furnish such proof or additional proof of title as he may require for his satisfaction.

75. Impounding of Instruments :-

If in the opinion of the Registrar any instrument produced in proof of title of a person is not properly or sufficiently stamped, the Registrar shall impound and deal with it in the manner provided by Chapter IV of the Indian Stamp Act, 1899.

76. Assignments involving transmission of moneys outside India :-

If there is in force any law regulating the transmission of moneys outside India, the Registrar shall not register the title of a person who becomes entitled to a trade mark by an assignment which involves such transmission except on production of the permission of the authority specified in such law for such transmission.

77. Application for Registrars direction as to advertisement of an assignment of a trade mark without goodwill of the business :-

(1) An application for directions under section 41 shall be made on Form TM-20 and shall state the date on which the assignment was made. The application shall give particulars of the registration in the case of a registered trade mark, and in the case of an unregistered mark shall show the mark and give particulars including user of the registered as well as of the unregistered trade mark that has been assigned there with in accordance with sub-section (2) of section 38 . The Registrar may call for any evidence or further information and if he is satisfied with regard to the various matters he shall issue directions in writing with respect to the advertisement of the assignment.

(2) The Registrar may refuse to consider such an application in a case to which section 40 applies, unless his approval has been

obtained under the said section and a reference identifying the Registrars notification of approval is included in the application.

(3) A request for an extension of the period within which the application mentioned in sub-rule (1) may be made shall be on Form TM-21.

78. Application for entry of assignment without goodwill :-

An application under rule 71 relating to an assignment of a trade mark in respect of any goods shall state-

(a) whether the trade mark had been or was used in the business in any of those goods; and

(b) whether the assignment was made otherwise than in connection with the goodwill of that business,

and if both those circumstances subsisted, then the applicant shall leave at the Trade Marks Registry a copy of the directions to advertise the assignment, obtained upon application under rule 77, and such proof, including copies of advertisements or otherwise, as the Registrar may require, to show that his directions have been fulfilled and if the Registrar is not satisfied that the directions have been fulfilled, he shall not proceed with the application.

79. Separate registrations :-

Where pursuant to an application under rule 71, and as the result of a division and separation of the goods of a registration or a division and separation of places or markets, different persons become registered separately under the same registration number as subsequent proprietors of a trade mark, each of the resulting separate registrations in the names of those different persons shall be deemed to be a separate registration for all the purposes of the Act.

80. Registrars certificate or approval as to certain assignment and transmissions :-

Any person who desires to obtain the Registrars certificate under sub-section (2) of section 39 or his notification of approval under

section 40 shall send to the Registrar with his application on Form TM-17 or Form TM-19, as the case may be, a statement of case in duplicate setting out the circumstances and a copy of any instrument or proposed instrument effecting the assignment or transmission. The Registrar may call for any evidence or further information that he may consider necessary and the statement of case shall be amended if required to include all the relevant circumstances and shall, if required, be verified by an affidavit. The Registrar, after hearing (if so required) the applicant and any other person whom the Registrar may consider to be interested in the transfer, shall consider the matter and issue a certificate thereon or a notification in writing of approval or disapproval thereof, as the case may be, to the applicant and shall also inform such other person accordingly. Where a statement of case is amended, three copies thereof in its final form shall be left at the Trade Marks Registry. The Registrar shall seal a copy of the statement of case in its final form to the certificate or notification.

81. Registration of assignment to company under section 45 :-

For the purposes of sub-section (3) of section 45 , the period within which a company may be registered as the subsequent proprietor of a registered trade mark upon application made under rule 71 shall be six months from the date of advertisement in the Journal of the registration of the trade mark or such further period not exceeding six months as the Registrar may allow on application being made on Form TM-25 by the applicant for registration of title or the registered proprietor, as the case may be, at any time before or during the period for which the extension can be allowed.

CHAPTER 5 REGISTERED USERS

82. Application for registration as registered user :-

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(1) An application to the Registrar for the registration under section 49 of a person as a registered user of a registered trade mark shall be made jointly by that person and the registered proprietor of the trade mark on Form TM-28 and shall be accompanied by the following documents -

(a) the agreement in writing or a duly authenticated copy thereof, entered into between the registered proprietor and the proposed registered user with respect to the permitted use of the trade mark;

(b) the documents and correspondence, if any, mentioned in the agreement referred to in clause (a) or duly authenticated copies thereof;

(c) agreements, if any, or duly authenticated copies thereof, entered into between the registered proprietor and the proposed registered user requiring the proposed registered user to purchase from the registered proprietor or his nominees or prohibiting him from purchasing except from the registered proprietor or his nominees, any materials whether for the purpose of manufacturing the goods in respect of which the use of the trade mark is to be permitted or otherwise, or containing or providing for any conditions as regards the price at which such goods should be sold or the maintenance of particular prices for such goods.

(2) There shall also be filed alongwith the application an affidavit made by the registered proprietor or by some person authorised to the satisfaction of the Registrar to act on his behalf testifying to the genuineness of the documents accompanying the application and containing:

(a) the particulars and statements required by clause (ii) of subsection (1) of section 49 ;

(b) the precise relationship between the registered proprietor and the proposed registered user, if any; for instance, whether their relationship is as managing agent and managed company, or as principal and subsidiary company or whether there is common control between their business;

(c) a statement as to the goods in which the registered proprietor is dealing, together with details as to whether the trade mark which is

the subject of the application has been used by him in the course of trade before the date of the application and if so the amount and duration of such user;

(d) a statement as to whether the registered proprietor had acquired title to the trade mark by way of assignment and if so whether he had acquired any other trade marks by the same assignment and how he had dealt with such other marks;

(e) a statement as to whether the registered proprietor had, before the date of the application for registration as registered user, allowed the use of the trade mark by any person and if so by whom;

(f) a statement whether or not the proposed permitted use is intended solely in relation to goods for export from India.

(3) The registered proprietor and the proposed registered user shall also produce and file such other documents and furnish such other evidence and information as may be required in that behalf by the Registrar.

(4) No application shall be entertained unless the same has been filed within eighteen months from the date of the agreement referred to in clause (a) of sub-rule (1).

(5) Notwithstanding anything contained in sub-rule (1), where more than one application for registration as registered user is made by the same registered proprietor and the same proposed registered user in respect of trade marks covered by the same agree- ment, the documents mentioned in sub-rule (1) may be filed with any one of the applications and a cross reference to such documents given in the other application or applications.

83. Particulars to be stated in the agreement :-

. The agreement referred to in clause (a) of sub-rule (1) of the last foregoing rule shall-

(a) set out the particulars specified in sub-clauses (a) to (d) of clause (ii) of sub-section (1) of section 49 ;

(b) disclose the terms as to royalty and other remuneration payable to the registered proprietor by the proposed registered user for the permitted use of the trade mark;

(c) provide means for bringing the permitted use to an end when the relationship between the parties or the control by the registered proprietor over the permitted user ceases;

(d) contain a condition that when the registered trade mark is used by the proposed registered user in relation to his goods, other than goods for export, the mark shall be so described as clearly to indicate that it is being used only by way of permitted use.

84. Refusal to forward by Registrar an application for non-compliance with the rules :-

.

(1) No application for registration shall be forwarded by the Registrar to the Central Government unless the requirements of rule 82 and rule 83 are complied with.

(2) Where the Registrar refuses to forward the application he shall inform the applicants in writing his reasons thereof.

85. Consideration by the Central Government :-

. The Central Government, on receipt of an application for registration as registered user forwarded to it by the Registrar under sub-section (2) of section 49 , shall, if satisfied that the

application and the accompanying documents comply with the provisions of the Act and the Rules, consider whether the application should be allowed having regard to the matters specified in sub-section (3) of that section, and in doing so may take into account all or any of the following matters :-

(1) whether the permitted use if allowed would contravene the policy of the Act which is to prevent trafficking in trade marks;

(2) whether the registered proprietor has registered the trade mark without any bona fide intention to use it in relation to his goods in the course of trade or solely or mainly for the purpose of permitting others to use it under agreement for registered user; and

(3) whether the registered proprietor has acquired title to the trade mark by assignment without any bona fide intention to use it in relation to his goods in the course of trade or solely or mainly for the purpose of permitting others to use it under agreements for registered user. Explanation I.-For considering the bona fides of the registration of the trade mark under clause (2) regard shall be had inter alia to - (a) whether the goods for which the trade mark is registered are similar to or are different from the goods in which the registered proprietor has been trading or dealing before the registration of the mark; (b) whether the registered proprietor has ever used the mark in question in relation to his goods in the course of trade before the date of the agreement for registered user, and if so, the amount and duration of such user; (c) whether the terms as to royalty and other remuneration payable by the proposed registered user are reasonable taking into account the expenses which the registered proprietor is likely to incur in exercising control over the permitted use. Explanation II-for considering the bona fides of the acquisition of title under clause (3) regard shall be had, besides the matters set out in Explanation I, to the following further matter, namely, whether the registered proprietor has obtained assignment of other registered trade marks and if so, whether he has dealt with such other marks by way of assignment or registered user.

86. Hearing before issuing direction to refuse an application

or to accept it conditionally :-

(1) Before the Central Government decides to direct the Registrar to refuse an application for registration as registered user or to accept the application subject to any conditions, restrictions or limitations, it shall give notice thereof in writing to the applicants through the Registrar. The notice shall state the grounds on which the Central Government proposes to issue such direction and shall inform the applicants that they are entitled to be heard.

(2) Unless within two months from the receipt of the notice mentioned in sub-rule (1) the registered proprietor and the proposed registered user apply for a hearing through the Registrar, the Central Government may direct the Registrar to refuse the application or to accept it conditionally, as the case may be.

(3) If the registered proprietor and the proposed registered user apply for a hearing, the Central Government shall appoint a time for the hearing and shall give them not less than a months notice of the time so appointed.

(4) After hearing the registered proprietor and the proposed registered user, the Cental Government shall decide whether to give direction to the Registrar to accept the application or to refuse it or to accept it conditionally.

(5) The Registrar shall, on receipt of the directions of the Central Government, communicate in writing his order on the application to the applicants and to other registered users of the mark, if any.

87. Entry in the register :-

.

(1) Where the Central Government directs the Registrar under sub-section (3) of section 49 to accept an application for registration as

registered user, the Registrar shall register the proposed registered user as registered user in accordance with such directions.

(2) The entry of a registered user in the register shall state the date on which the application for registration of registered user was made, which date shall be deemed to be the date of registration as registered user of the person mentioned in the entry. The entry shall also state, in addition to the particulars and statements mentioned in clause (ii) of sub-section (1) of section 49 , the name, description and principal place of business in India of the registered user and if he does not carry on) business in India his address for service in India.

87A. Registration not to imply authorisation to transmit money outside India :-

. The registration as registered user of a trade mark, shall not be deemed to imply an approval of the agreement in so far as it relates to the transmission of any money, as consideration for the use of the said trade mark, to any place outside India.

88. Notification of registration as registered user :-

. A notification in writing of the registration of a registered user shall be sent by the Registrar to the registered proprietor of the trade mark, to the registered user and to every other registered user whose name is entered in relation to the same trade mark and shall also be inserted in the Journal.

89. Registered proprietors application to vary entry :-

. An application by the registered proprietor of a trade mark for the variation of the registration of a registered user of that trade mark under clause (a) of sub- section (1) of section 52 shall be made on Form TM-29 and shall be accompanied by a statement of the grounds on which it is made, and where the registered user in question consents, by the written consent of the registered user.

90. Cancellation of registration of registered user :-

.

(1) An application for the cancellation of the registration of a registered user under clause (b) or clause (c) or clause (d) of sub-section (1) of section 52 shall be made on Form TM-30 or Form TM-31, as the case may be, and shall be accompanied by a statement of the grounds on which it is made.

(2) In case of the registration of a registered user for a period, in accordance with sub- clause (d) of clause (ii) of sub-section (1) of section 49 , the Registrar shall cancel the entry of the registered user at the end of that period. Where some or all the goods are omitted from those in respect of which a trade mark is registered, the Registrar shall at the same time omit them from those specifications of registered users of the trade mark in which they are comprised. The Registrar shall notify every cancellation or omission under this sub-rule to the registered users whose permitted use is affected thereby and to the registered proprietor of the trade mark.

(3) The Registrar shall also cancel every registration made before the commencement of the Act of a registered user after the expiration of three years from such commencement.

91. Power of the Registrar to require information for enforcing quality control :-

.

(1) The Registrar may at any time or from time to time require the registered proprietor or the registered user of a trade mark to furnish him with such information as he may require for satisfying himself that the stipulations in the agreement between the registered proprietor and the registered user, regarding the quality of the goods in relation to which the trade mark is to be used are being enforced or being complied with.

(2) Where any such information as is referred to in sub-rule (1) is not furnished within the time allowed by the Registrar, the Registrar may presume that the stipulation in the agreement

regarding the quality of goods is not being enforced, or is not complied with.

92. Procedure on application to vary entry or cancel registration :-

.

(1) The Registrar shall notify in writing applications under section 52 to the registered proprietor and each registered user (not being the applicant in either case) of the trade mark.

(2) Any person notified under sub-ruled) who intends to intervene in the proceedings, shall within one month of the receipt of such notification give notice to the Registrar on Form TM-32 to the effect and shall send therewith a statement of the grounds of his intervention, the Registrar shall thereupon serve or cause to be served copies of such notice and statement on the other parties, namely, the applicant, the registered proprietor, the registered user whose registration is the subject-matter of the proceeding in question and any other registered user who intervenes.

(3) In the case of any application made under clause (b) of sub-section (1) of section 52 or under sub-clause (i) of clause (c) or under clause (d) of that sub-section, the applicant and any person notified under sub-rule (1) may, within such time or times as the Registrar may appoint, leave evidence in support of his case, and the Registrar after giving the parties an opportunity of being heard, may accept or refuse the application or accept it subject to any conditions, amendments, modifications or limitations he may think right to impose and shall inform the parties in writing accordingly.

(4) In the case of an application for varying any registration under clause (a) of sub-section (1) of section 52 or cancelling any registration on any of the grounds mentioned in sub-clause (ii) or sub clause (iii) or sub-clause (iv) of clause (c) of that sub-section, the Registrar shall forward such application together with any notice on Form TM-32 and statement of case filed under sub-rule

(2) to the Central Government and shall dispose of the application as directed by the Central Government and also inform the parties in writing accordingly.

93. Registered users application under section 57(2) :-

. Applications under sub-section (2) of section 57 shall be made on Form TM-16 or Form TM-33 or Form TM-34 or Form TM-50 as may be appropriate by a registered user of a trade mark or by such person as may satisfy the Registrar that he is entitled to act in the name of a registered user; and the Registrar may require such evidence by affidavit or otherwise as he may think fit as to the circumstances in which the application is made.

CHAPTER 6 RECTIFICATION AND CORRECTION OF REGISTER ALTERATION OR RECTIFICATION OF REGISTER

94. Application to rectify or remove a trade mark from the register :-

An application to the Registrar under section 46 , Rule 47(4) or Rule 56 for the making, expunging or varying of any entry relating to a trade mark in the register shall be made in duplicate on Form TM-26 and shall be accompanied by statement in duplicate setting out fully the nature of the applicants interest, the facts upon which he bases his case and the relief which he seeks. Where the application is made by a person who is not the registered proprietor of the trade mark in question, the application and the statement aforesaid shall be left at the Trade. Marks Registry in triplicate. In case there are registered users, such application and statements shall be accompanied by as many copies thereof as there are registered users. A copy each of the application and statement shall be transmitted forthwith by the Registrar to the registered proprietor and to each of the registered users and to any other person who appears from the register to have an interest in the trade mark.

95. Further Procedure :-

Within two months from the receipt by a registered proprietor of the copy of the application mentioned in rule 94 he shall send to the Registrar on Form TM- 6 a counter-statement in triplicate of the

grounds on which the application is contested and if he does so the Registrar shall serve a copy of the counter-statement on the person making the application. The provisions of rule 53 to Rule 60 shall thereafter apply mutatis mutandis to the further proceedings on the application. The Registrar shall not, however, rectify the register or remove the mark from the register merely because the registered proprietor has not filed a counter-statement. In any case of doubt any party may apply to the Registrar for directions.

96. Intervention by third parties :-

Any person, other than the registered proprietor, alleging interest in a registered trade mark in respect of which an application is made under rule 94 may apply on Form TM-27 for leave to intervene, stating the nature of his interest, and the Registrar may refuse or grant such leave after hearing (if so required) the parties concerned, upon such conditions and terms including undertakings or conditions as to security for cost as he may deem fit to impose.

97. Rectification of the register by the Registrar of his own motion :-

(1) The Notice, which the Registrar is required to give under subsection (4) of section 56 , shall be sent in writing to the registered proprietor, to each registered user, if any, and to any other person who appears from the register to have any interest in the trade mark, and shall state the grounds on which the Registrar proposes to rectify the register and shall also specify the time, not being less than one month from the date of such notice, within which an application for a hearing shall be made.

(2) Unless within the time specified in the notice aforesaid, any person so notified sends to the Registrar a statement in writing setting out fully the facts upon which he relies to meet the grounds stated in the notice or applies for a hearing, he may be treated as not desiring to take part in the proceedings and the Registrar may act accordingly.

(3) If the Registrar decides to rectify the register he shall communicate his decision in writing to the registered proprietor and

to each registered user, if any.

98. Alteration of address in register :-

. .

(1) A registered proprietor or a registered user of a trade mark, the address of whose principal place of business in India or whose address in his home country, the case may be, is changed so that the entry in the register is rendered incorrect, shall forthwith request the Registrar on Form TM-34 to make the appropriate alteration of the address in the register, and the Registrar shall alter the register accordingly if he is satisfied in the matter.

(2) A registered proprietor or a registered user of a trade mark, whose address for service in India entered in the register is changed, whether by discontinuance of the entered address or otherwise, so that the entry in the register is rendered incorrect, shall forthwith request the Registrar on Form TM-50 to make the appropriate alteration of the address in the register, and the Registrar shall alter the register accordingly if he is satisfied in the matter.

(3) A registered proprietor or a registered user of a trade mark the address of whose principal place of business in India ,¹ [* * *] or whose address for service in India is altered by a public authority, so that the changed address designates the same premises as entered in the register, may make the aforesaid request to the Registrar on Form TM- 34 or TM-50, as the case may be, and if he does so he shall leave therewith a certificate of the alteration given by the said authority. If the Registrar is satisfied as to the facts of the case, he shall alter the register accordingly but shall not require any fees to be paid on the forms, notwithstanding the provisions of sub-rule (2) of rule 11 or sub-rule (2) of rule 12.

(4)

(i) Where a registered proprietor makes a request under sub-rule (1), (2) or (3), he shall serve a copy of the request on the registered user or users, if any, and inform the Registrar accordingly.

(ii) where the request aforesaid is made by a registered user, he shall serve a copy thereof on the registered proprietor and other registered users, if any, and inform the Registrar that he had done so.

(5) In case of the alteration of the address of a person entered in the register as the address for service in India of more than one registered proprietor or registered user of trade marks, the Registrar may, on proof that the said address is the address of the applicant and if satisfied that it is just to do so, accept an application from the person on Form TM-50, amended so as to suit the case, for the appropriate alteration of the entries of his address as the address for service in the several registrations, particulars of which shall be given in the Form and may alter the entries accordingly.

(6) All applications under this rule on Form TM-50 shall be signed by the registered proprietor or the registered user, as the case may be, or by an agent expressly authorised by him for the purpose of such an application, unless in exceptional circumstances the Registrar otherwise allows.

1. Words "or whose address in his home country" omitted by the Trade and Merchandise Marks (Amendment) Rules, 1991, w.e.f. 9-12-1991.

99. Application under section 57(1) :-

. Where an application has been made under sub-section (1) of section 57 for the alteration of the register by correction, change, cancellation or striking on goods or for the entry of a disclaimer or memorandum, the Registrar may require the applicant to furnish such evidence by affidavit or otherwise as the Registrar may think fit, as to the circumstances in which the application is made. Such

application shall be made on Form TM-16, TM-33, TM-34, TM-35, TM-36, TM-37 or TM-50 as may be appropriate and a copy thereof shall be served by the applicant on the registered user or users, if any, under the registration of the trade mark in question and to any other person who appears from the register to have an interest in the trade mark.

100. Advertisement of certain applications :-

(1) Where application is made under clause (e) of sub-section (1) of section 57 on Form TM-37 to enter a disclaimer or memorandum relating to a trade mark, the

(2) The Registrar shall, after considering the application and the statement aforesaid and hearing the parties, if so required, decide to allow or refuse the application and shall communicate his decision in writing to the applicant as well as any other party to the proceedings.

101. Alteration of registered trade-mark :-

. Where a person applies under section 58 for leave to add to or alter his registered trade-mark, he shall make his application in writing on Form TM-38 and shall furnish twelve copies of the mark as it will appear when so added to or altered. A copy of the application and of the mark so amended or altered shall be served by the applicant on every registered user, if any.

102. Advertisement before decision and opposition, etc :-

(1) The Registrar shall consider the application and shall, if it appears to him expedient, advertise the application in the Journal before deciding it. (2) Within three months from the date of advertisement under sub-rule (1), or within such further period, not exceeding one month in the aggregate, as the Registrar may allow, any person may give notice of opposition to the application on Form TM-39 and may also send therewith a statement of his

objections. The notice and the statement, if any, shall be sent in triplicate. In case there are any registered users under the registration of the trade mark in question, such notice and statement shall also be accompanied by as many copies thereof as there are registered users. A copy each of the notice and statement shall be transmitted forthwith by the Registrar to the registered proprietor and to each registered user, if any, and within two months from the receipt by the registered proprietor of such copies he shall send to the Registrar on Form TM-6 a counter-statement in triplicate of the grounds on which the opposition is contested. If the registered proprietor sends such a counter-statement the Registrar shall serve a copy thereof on the person giving notice of opposition and the provisions of rule 53 to Rule 60 shall apply mutatis mutandis to the further proceedings on the opposition. The Registrar shall not refuse the application merely because the registered proprietor has not filed a counter-statement. In any case of doubt any party may apply to the Registrar for directions.

(3) If there is no opposition within the time specified in sub-rule (2), the Registrar shall, after hearing the applicant if he so desires, allow or refuse the application and shall communicate his decision in writing to the applicant.

103. Decision - Advertisement - Notification :-

If the Registrar decides to allow the application he shall alter the mark in the register accordingly and insert in the Journal a notification that the mark has been altered. If the application has not been advertised under rule 102, he shall also advertise in the Journal the trade marks as altered.

104. Printing block and fee for advertisement :-

. . In connection with an application to alter a registered trade mark the Registrar may at any time call on the applicant to supply a printing block satisfactory to the Registrar and suitable for advertising the mark with the addition or alteration as aforesaid, together with the prescribed fee, ¹ [for excess space, if any,] if in the opinion of the Registrar an advertisement describing in words the addition or alteration would not be likely to be understood by

persons interested in the matter.

1. Inserted by the Trade and Merchandise Marks (Amendment) Rules, 1985, w.e.f. 1-3-1985.

105. Re-classification in respect of existing registration :-

(1) On the classification set forth in the Forth Schedule being amended, the registered proprietor of a trade mark may apply to the Registrar on Form TM- 40 for the conversion of the specification relating to his trade mark, so as to bring that specification into conformity with the amended classification. The application shall include arequest for the like conversion of the specification in respect of any registered users under that registration, and the registered proprietor shall serve a copy of the application on the registered user or users of the trade mark, if any.

(2) The Registrar shall, thereupon, notify in writing to the registered proprietor and to the registered user or users, if any, a proposal showing the form which, in the Registrars view, the amendment of the register should take in consequence of the proposed conversion. Two or more registrations of a trade mark having the same date and in respect of goods which fall within the same class under the amended or substituted classification, may be amalgamated upon conversion in accordance with this rule.

(3) The proposal referred to in sub-rule (2) shall be advertised in the Journal.

(4) Notice of opposition to such proposal shall be given on Form TM-41 in triplicate within one month from the date of the advertisement and shall be accompanied by a statement in triplicate showing how the proposed amendment would contravene the provisions of sub-section (1) of section 59 . Where there are any registered users under the registration of the trade mark in question, such notice and statement shall also be accompanied by as many copies thereof as there are registered users. The Registrar shall forthwith send a copy each of the notice and the statement to

the registered proprietor and to each registered user, if any, and within two months from the receipt by him of such copies the registered proprietor may send to the Registrar on Form TM-6 a counter-statement in triplicate setting out fully the grounds on which the opposition is contested. If the registered proprietor sends such counter-statement the Registrar shall serve a copy thereof on the person giving notice of opposition and the further procedure for the disposal of the opposition shall be regulated by the provisions of rule 53 to Rule 60 mutatis mutandis. In any case of doubt, any party may apply to the Registrar for directions.

(5) If there is no opposition within the time specified in sub-rule (4), or in case of opposition if the conversion of the specification is allowed, the proposal as allowed shall be advertised in the Journal, and all necessary entries shall be made in the register. The date when such entries are made in the register shall be recorded therein. Any entry made in the register in pursuance of this sub-rule shall not affect the date of the renewal of registration under section 25 which shall be determined in the same manner as before the allowance of the conversion.

CHAPTER 7 MISCELLANEOUS

106. Extension of time :-

.

(1) An application for extension of time under section 101 [not being a time expressly provided in the Act or prescribed by rule 81 or by sub-rule (4) of Rule 82 or a time for the extension of which provision is made in the rules] shall be made on Form TM-56.

(2) Upon an application made under sub-rule (1) the Registrar, if satisfied that the circumstances are such as to justify the extension of the time applied for, may, subject to the provisions of the rules where a maximum time limit is prescribed and subject to such conditions as he may think fit to impose, extend the time and notify the parties accordingly and the extension maybe granted though the time for doing the act or taking the proceeding for which it is applied for has already expired.

107. Exercise of discretionary power of Registrar :-

. The time within which a person entitled under section 98 to an opportunity of being heard shall exercise his option of requiring to be heard shall, save as otherwise expressly provided in the Act or the rules, be one month from the date of a notice which the Registrar shall give to such person before determining the matter with reference to which such person is entitled to be heard. If within that month such person is required to be heard, the Registrar shall appoint a date for the hearing and shall give 10 days notice thereof.

108. Notification of decision :-

. The decision of the Registrar in the exercise of any discretionary power given to him by the Act or the rules shall be notified to the person affected.

109. Amendments and correction of irregularity in procedure :-

.

(1) Any document or drawing or other representation of a trade mark may be amended, and any irregularity in procedure which, in the opinion of the Registrar, may be obviated without detriment to the interests of any person, may be corrected, if the Registrar thinks fit and on such terms as he may direct.

(2) The Registrar may require the amendment of any application or representation of a trade mark or any other document or the addition of any matter thereto in order to bring it in accordance with the formal requirements of the Act.

110. Directions not otherwise prescribed :-

. Where in the opinion of the Registrar, it is necessary for the proper prosecution or completion of any proceedings under the Act or the rules for a person to perform an act, file a document or

produce evidence, which is not provided for by the Act or the rules, the Registrar may by notice in writing require the person to perform the Act, file the document or produce the evidence, specified in the notice.

111. Hearings :-

..

(1) In relation to a trade mark for which an application for registration is made on or after the notified date, the application as well as any proceeding under the Act and the rules shall, in the event of a hearing becoming necessary, be heard at the office of the Trade Marks Registry at which such application was made under sub- section (3) of section 18 , or at such place within the territorial jurisdiction of that office as the Registrar may deem proper.

(2) In relation to a trade mark for which an application for registration is pending before the Registrar at the notified date, the hearing, if any, in respect of such application or any proceeding under the Act and the rules shall be taken at the appropriate office of the Trade Marks Registry or at such place within the territorial jurisdiction of that office as the Registrar may deem proper.

(3) In relation to a trade mark on the Register of Trade Marks at the notified date, the hearing, if any, in respect of any proceeding under the Act and the rules shall take place at the appropriate office of the Trade Marks Registry or at such place within the territorial jurisdiction of that office as the Registrar may deem proper.

(4) Where an officer exercising the powers of the Registrar who has heard any matter under the Act or the rules, has reserved orders thereon, is transferred from one office of the Registry to another or reverts to another appointment before passing an order or rendering decision thereon, he may, if the Registrar so directs, pass the order or render the decision as if he had continued to be the officer in the office of the Registry where the matter was heard.

112. Costs in uncontested cases :-

. Where any opposition duly instituted under the rules is not contested by the applicant, the Registrar in deciding whether costs should be awarded to the opponent shall consider whether the proceedings might have been avoided if reasonable notice had been given by the opponent to the applicant before the notice of opposition was filed.

113. Exception to rule 112 :-

[. Notwithstanding anything in rule 112, costs in respect of fees specified under entries 7, 9 and 10 of the First Schedule and of all stamps used on and affixed to affidavits used in the proceedings shall follow the event.]

114. Scale of costs :-

. Subject to the provisions of rule 112 and rule 113, in all proceedings before the Registrar the Registrar may, save as otherwise expressly provided by the Act, award such costs, not exceeding the amount admissible therefor under the Sixth Schedule, as he considers reasonable having regard to all the circumstances of the case.

115. Application for review of Registrars decision :-

. An application to the Registrar for the review of his decision under clause (c) of section 97 shall be made on Form TM-57 within one month from the date of such decision or within such further period not exceeding one month thereafter as the Registrar may on request allow, and shall be accompanied by a statement setting forth the grounds on which the review is sought. Where the decision in question concerns any other person in addition to the applicant, such application and statement shall be left in triplicate and the Registrar shall forthwith transmit a copy each of the application and statement to the other person concerned. The Registrar may, after giving the parties an opportunity of being heard, reject or grant the application, either unconditionally or subject to any conditions or limitations, as he thinks fit.

116. Form, etc., of Affidavits :-

.

(1) The Affidavits required by the Act and the rules to be filed at the Trade Marks Registry or furnished to the Registrar, unless otherwise provided in the Second Schedule, shall be headed in the matter or matters to which they relate, shall be drawn up in the first person, and shall be divided into paragraphs consecutively numbered; and each paragraph shall, as far as practicable, be confined to one subject. Every affidavit shall state the description and the true place of abode of the person making the same shall bear the name and address of the person filing it and shall state on whose behalf it is filed.

(2) Where two or more persons join in an affidavit, each of them shall depose separately to such facts which are within his personal knowledge and those facts shall be stated in separate paragraphs.

(3) Affidavits shall be taken-

(a) in India-before any Court or person having by law authority to receive evidence, or before any officer empowered by such Court as aforesaid to administer oaths or to take affidavits;

(b) in any country or place outside India - before a diplomatic or consular officer, within the meaning of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 , of such country or place, or before a notary public, or before a judge or magistrate, of the country or place.

(4) The person before whom an affidavit is taken shall state the date on which and the place where the same is taken and shall affix his seal, if any, or the seal of the Court to which he is attached, thereto and sign his name and description at the end thereof.

(5) Any affidavit purporting to have affixed, impressed or subscribed thereto or thereon the seal or signature of any person authorized by sub-rule (3) to taken an affidavit, in testimony of the affidavit having been taken before him, may be admitted by the

Registrar without proof of the genuineness of the seal or signature or of the official character of that person.

(6) Alterations and interlineations shall, before an affidavit is sworn or affirmed, be authenticated by the initials of the person before whom the affidavit is taken.

(7) Where the deponent is illiterate, blind or unacquainted with the language in which the affidavit is written, a certificate by the person taking the affidavit that the affidavit was read, translated or explained in his presence to the deponent, that the deponent seemed perfectly to understand it and that the deponent made his signature or mark in his presence, shall appear in the jurat.

(8) Every affidavit filed before the Registrar in connection with any of the proceedings under the Act or the rules shall be duly stamped under the law for the time being in force.

117. Inspection of documents :-

The documents mentioned in sub-section (1) of section 125 shall be available for inspection at the head office of the Trade Marks Registry. A copy of the register and such of the other documents mentioned in section 125 , as the Central Government may by notification in the Official Gazette direct, shall be available for inspection at each branch office of the Trade Marks Registry. The inspection shall be on payment of the prescribed fee and at such times on all the days on which the offices of the Trade Marks Registry are not closed to the public, as may be fixed by the Registrar.

118. Distribution of copies of Journal and other documents :-

. The Central Government may direct the Registrar to distribute the Journal and any other document which it may consider necessary, to such places as may be fixed by the Central Government in consultation with the State Governments and notified from time to

time in the Official Gazette.

119. Certified copies of documents :-

. The Registrar may furnish certified copies of any entry in the register or certified copies of any documents referred to in sub-section (1) of section 125 or of any decision or order of the Registrar, or give a certificate [other than a certificate under sub-section (2) of section 23] - as to any entry, matter or thing which he is authorised or required by the Act or the rules to make or do, upon receipt from any person of an application therefore on Form TM-46 accompanied by the prescribed fee. The Registrar shall not be obliged to include in any certificate or certified copy a copy of any mark unless he is furnished by the applicant with a copy thereof suitable for the purpose.

120. Certificate for use in obtaining registration abroad :-

.
(1) Where a certificate relating to the registration of a trade mark is desired for use in obtaining registration in any territory outside India the Registrar shall include in the certificate a copy of the mark and may require the applicant for the certificate to furnish him with a copy of the mark suitable for the purpose, and if the applicant fails to do so, the Registrar may refuse to issue the certificate.

(2) Where a trade mark is registered without limitation of colour, the copy of the mark to be included in the certificate, may be either in the colour in which it appears upon the register or in any other colour or colours and it shall be stated in the certificate that the trade mark is registered without limitation of colour.

(3) The Registrar may state in the certificate such particulars concerning the registration of the mark as may seem fit to him, and may omit therefrom references to any disclaimers appearing in the register. The purpose for which the certificate is issued shall be stated therein.

121. Time for appeal :-

. An appeal to a High Court from any decision of the Registrar under the Act or the rules shall be made within three months from the date of such decision or within such further time as the High Court may allow.

122. Application made to the High Court to be served on the Registrar :-

A copy of every application to a High Court under the Act shall be served on the Registrar.

123. Certificate of validity to be noted :-

. Where a High Court has certified as provided in section 119 with regard to the validity of a registered trade mark the registered proprietor thereof may request the Registrar on Form TM-47 to add to the entry in the register a note that the certificate of validity has been granted in the course of the proceedings, particulars of which shall be given in the request. An officially certified copy of the certificate shall be sent with the request, and the Registrar shall record a note to that effect in the register and publish the note in the Journal.

124. Return of exhibits and printing blocks :-

.

(1) Where the exhibits produced in any matter or proceeding under the Act or the rules or the printing block supplied for the purpose of advertisement in the Journal are no longer required in the Trade Marks Registry, the Registrar may call upon the party concerned to take back the exhibits or the printing block, as the case may be, within a time specified by him and if the party fails to do so, such exhibits or printing block, as the case may be, shall be destroyed.

(2) Where, before the notified date any printing blocks have been supplied for the purpose of advertisement in the Journal or any exhibits have been produced in any proceeding, the Registrar may, if satisfied that it is no longer necessary to retain them, cause them to be destroyed, after the expiration of one year from the notified date.

125. Destruction of records :-

. Where an application for the registration of a trade mark has been withdrawn/ abandoned or refused or a trade mark has been removed from the register, the Registrar may, at the expiration of twelve years after the application is withdrawn or is abandoned or is refused or after the trade mark is removed from the register, as the case may be, destroy all or any of the records relating to the application or the trade mark concerned.

PART 2 PART 1

PART 3 PART 1

PART 4 PART 1

PART 5 PART 1

PART 6 REPEAL

181. Repeal :-

. Trade Marks Rules, 1942, the Cotton Yarn and Cotton Thread (Marking) Rules, 1948 and the Stamping of Piece goods and the Testing of Yarns Rules, 1949 are hereby repealed without prejudice to anything done under such rules before the coming into force of the rules.

SCHEDULE 1

Fees

THE FIRST SCHEDULE [See rule 11] No. \ On what payable \ \ Amount Rs. P.
Corres of \ pending entry \ \ Form (1) \ (2) \ (3) \ (4) (4) number 1. On application not otherwise charged to register a trade mark for a specification of goods included in one class (Section 18) 300.00 TM-12. On application to register a textile mark, other than a certification trade mark, consisting exclusively of numerals or letters or any combination thereof for a specification of goods included in one item of the Fifth Schedule under Rule 140 200.00 TM-13. On application to register a series of trade marks under section 15 for a specification of goods included in one class 200.00 TM-1 4. On application to register a defensive trade mark under Section 47 for a specification of goods included in one class \300.00 200.00 200.00 500.00 \ TM-3 18 5. On application under section 62 to register a certification trade mark for a specification of goods included in one class \ 500.00 \ TM-4 6. On a request under rule 41(1) to state grounds of decision \ 50.00 \ TM-15 7. On a notice of opposition under section 21(1) for each application opposed \ 250.00 \ TM-5 8. On application for extension of time for filing notice of opposition under section 21(1) \ \ 20.00 \ TM-44 9. On a counter-statement in answer to a notice of opposition under section 21, for each application opposed, or in answer to an application under any of the

the documents mentioned in section 125(1)- (a) relating to any particular trade mark for every hour or part thereof 50.00 (b) search of indexes mentioned in section 124 for every hour or part thereof 50.00 58. For copying of documents, (photocopy or typed) for every page or part thereof in excess of one page 1.00 per page (subject to a minimum of Rs. 5.00) 59. On request for a duplicate or further copy of certificate 50.00 TM-59 60. For extra space in the journal for advertisement or re-advertisement in cases where the printing block for the trade mark exceeds 5 centimeters in breadth or depth or in breadth and depth- For up to 10 centimetres or part thereof over 5 centimetres in breadth 50.00 For up to 10 centimetres or part thereof over 5 centimetres in depth 50.00 61. On application for registration as a trade marks agent under rule 151 50.00 TMA-1 62. For registration of a person as a trade marks agent under rule 153 100.00 63. For continuance of the name of a person in the Register of Trade Marks Agents under rule 154- For every year (excluding the first year) to be paid on the 1st April, in each year 100.00 For the first year to be paid alongwith the fee for registration, in the case of a person registered at any time between the 1st April, and 30th September. 100.00 N.B. : A year for this purpose will commence on the 1st day of April and end on the 31st day of March following 64. On application for restoration of the name of a person to the Register of Trade Marks Agents under rule 156 100.00 TMA-2 plus continuance fee under entry No. 63. 65. On application for an alteration of any entry in the Register of Trade Marks Agents under rule 157 20.00 TMA-3 66. For each addition to the registered entry of a trade mark that may be associated with a newly registered mark 20.00 1[67. For search and Issue of certificate under rule 24(3) 700.00 TM-60] 19

SCHEDULE 2

SCHEDULE

XXX XXX XXX

SCHEDULE 3

Forms to be used by the Registrar and the Central Government

SCHEDULE 4

THE SCHEDULE

CLASSIFICATION OF GOODS - NAMES OF THE CLASSES (Parts of an article or apparatus are, in general, classified with the actual article or apparatus, except where such parts constitute articles included in other classes). 1. Chemical products used in industry, science, photography, agriculture, horticulture, forestry; manures (natural and artificial); fire extinguishing compositions: tempering substances and chemical preparations for soldering, chemical substances for preserving goodstuffs; tanning substances, adhesive substances used in industry. 2. Paints, varnishes, lacquers, preservatives against rust and against deterioration of wood; coloring matters, dyestuffs; mordants; resins; metals in foil and powder form for painters and decorators. 3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices. 4. Industrial oils and greases (other than edible oils and fats and essential oils), lubricants, dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers nightlights and wicks. 5. Pharmaceutical, veterinary and sanitary substances; infants and invalids foods, plasters, material for bandaging, materials for stopping teeth, dental wax; disinfectants; preparation for killing weeds and destroying vermin. 6. Unwrought and partly wrought common metals and their

alloys; anchors anvils, bells, rolled and cast building materials; rails and other metallic materials for railway tracks; chains (except driving chains for vehicles); cables and wires (non-electric); locksmiths work; metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in non-precious metal not included in other classes; ores. 7. Machines and machine tools; motors (except for vehicles); machine couplings and belting (except for vehicles); large size agricultural implements; incubators. 8. Hand tools and instruments; cutlery, forks and spoons; side arms. 9. Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signalling, check- ing (supervision) life-saving and teaching apparatus and instruments; coin or counter- freed apparatus; talking machines: cash registers; calculating machines; fire-extinguishing apparatus. 10. Surgical, medical, dental and veterinary instruments and apparatus (including artificial limbs, eyes and teeth). 11. Installations for lighting, heating, steam generating, cooking, refrigerating, drying ventilating, water supply and sanitary purposes. 12. Vehicles; apparatus for locomotion by land, air or water. 13. Firearms, ammunition and projectiles; explosive substances; fire works. 14. Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons). Jewellery, precious stones: horological and other chronometric instruments. 15. Musical instruments (other than talking machines and wireless apparatus). 16. Paper and paper articles, cardboard and cardboard articles; printed matter; newspa- pers and periodicals, books; book-binding material; photographs; stationery, adhesive materials (stationery); artists materials; paint brushes; typewriters and office requisites (other than furniture); instructions and teaching material (other than apparatus); playing cards; (printers) type and cliches (stereotype). 17. Gutta percha, India rubber, balata and substitutes, articles made from these substances and not included in other classes; materials for packing stopping or insulating; asbestos, mica and their products; hose pipes (non-metallic); plastics in the form of sheets, blocks, rods and tubes being for use in manufactures. 18. Leather and imitations of leather and articles made from these materials and not included in other classes; skins; hides; trunks and travelling bags, umbrellas parasols and walking sticks; whips, harness and saddlery. 19. Building materials, natural and artificial stone cement lime mortar, plaster and gravel; pipes of earthenware or cement; road making materials, asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots. 20. Furniture, mirrors, picture frames; articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, and substitutes for all these materials. 21. Small domestic utensils and containers (not of precious metal nor coated therewith); combs and sponges; brushes (other than paint brushes): brush making materials; instruments and material for cleaning purposes; steelwool; glassware, porcelain and earthenware not included in other classes. 22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks; padding and stuffing materials (hair, capoc, feathers, seaweed, etc.); raw fibrous textile materials. 23. Yarns, threads. 24. Tissues (Piecegoods); bed and table-covers; textile articles not included in other classes. 25. Clothing including boots, shoes and slippers. 26. Lace and embroidery, ribands and braid; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers. 27. Carpets, rugs, mats and matting; linoleums and other materials for covering floors; wall hangings (non-textile). 28. Games and playthings; gymnastic and sporting articles (except clothing); ornaments and decorations for Christmas trees. 29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies; jams; eggs; milk and

other dairy products; edible oils and fats; preserves, pickles. 30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking - powder; salt, mustard; pepper, vinegar, sauces, spices; ice. 31. Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals; malts. 32. Beer, ale and porter; mineral and aerated waters and other non-alcoholic drinks; syrups and other preparations for making beverages. 33. Wines, spirits and liquours. 34. Tobacco, raw or manufactured; smokers articles; matches.

SCHEDULE 5

List of items of textile goods referred to in rule 140.

THE FIFTH SCHEDULE No. of item 1. Grey Longcloth, Shirtings, Cellular, Limbric, Poplin, Sheetings, Printers \ \ and Leopard cloth-Including all abovementioned grey cloths with no \ \ colour in the body except a woven coloured heading. 2. Grey Drills, Jeans and Duck-Including only greycloth and not striped drills with grey grounds. 3. Grey Twills-See note under item 1. 4. Grey Salitha, T-Cloths and Domestic-See note under item 1. 5. Grey Coarse Cloth-See note under item 1. 6. Grey Chadars of Plain Weave and Khadi Chadars-Including all chadars \ \ Of plain weave with no colour in the body but with or without a woven coloured heading or fancy heading, but not including Check Chadars and striped Chadars. 7. Grey Chadars of Twill Weave-Including only grey twill chadars with no colour in the body except a woven coloured heading. 8. Grey Dhoties including Tahmad-[This item relates only to grey ground dhoties (of all dimensions) with or without artificial silk, coloured yarn, folded yarn, or printed borders and headings.] 9. Grey Saries and Scarves and Sari Cloth-Including only grey ground Saries (of all dimensions) with or without artificial silk, coloured yarn or printed borders and headings and sari cloth in piece length but not including Saries with striped or check grounds, and dyed and printed saries. 10. Grey Dosuti-See note under item 1. 11. \ Grey jaconets, Jagannathi, Mulls and Mulmulls-See note under item 1. 12. \ Grey Pagree Cloth-See note under item 1. 13. \ Grey Matting Weave and Canvas including filter Cloth-See note under item 1. 14. \ Sambura Cloth-Grey Drill with red and black headings and coloured runner in the centre. 15. \ Whole Grey Dobby Cloth and Doria-See note under item 1. 16. \ Bleached Longcloth, Shirtings, Cellular, Limbric, Poplin, Sheetings and Printers-Including all the above mentioned plain cloths with no colour in the body except a woven coloured heading. 17. \ Bleached Drills, Jeans and Duck-See note under item 16. 18. \ Bleached Twills-See note under item 16. This item does not include Striped Twills on bleached ground. 19. \ Bleached T-Cloths and Domestic-See note under item 16. 20. \ Bleached Coarse Cloth-See note under item 16. 21. \ Bleached Chadars-Including chadars of plain and twill weave. 22. \ Bleached Mulls, jaconets and Nainsooks-See note under item 16. 23. \ Bleached Madapollams and Cambrics-See note under item 16. 24. \ Bleached Dhoties including Tahmad-This item relates only to plain bleached ground dhoties (of all dimensions) with artificial silk, coloured yarn, folded yarn or printed borders and headings. 25. \ Bleached Saries and Scarves-Including only plain bleached ground Saries (of all dimensions) with artificial silk, coloured yarn or printed borders and headings, but not including Saries with stripes or checks and dyed and printed Saries. 26. \ Bleached Dosuti-See note under item 16. 27. \ Bleached Voiles and Muslins-See note under item 16. 28. \ Bleached Dorias and Fancies-including bleached cloth with bleached folded yarn stripes or checks. 29. \ Bleached Matting Weave and Canvas-See note under item 16. 30. \ Bleached Pagree Cloth-See note

under item 16. 31. \ Embroidered Voiles, Muslins, etc., Bleached. 32. \ Bleached Flannel and Flannelettes and all bleached cloths raised on one side and Cotton Velvet. 33. \ Dyed Longcloth, Shirtings, Cellular, Limbric, Poplin and Sheetings-Including the above-mentioned cloths dyed in the piece. 34. \ Dyed Drills-See note under item 33. This item also includes coloured warp or weft drills. 35. \ Dyed Twills-See note under item 33. 36. \ Dyed T-Cloths and Domestics-See note under item 33. 37. \ Dyed Coarse Cloth-See note under item 33. 38. \ Dyed Chadars-See note under item 33. 39. \ Dyed Dhoties including Tahmad, Saries and Shawls-This item includes dhoties, saries or shawls dyed in the piece. 40. \ Dyed Fancies-Including fancies with single colour warp or weft fancies or printed yarn in the warp or weft or both. 41. \ Dyed Pagree Cloth-See note under item 33. 42. \ Dyed Voiles-Including bordered voiles. 43. \ Dyed Flannelettes-Including Grey and self-coloured flannelettes and all dyed cloths raised on one side and cotton velvet. 44. \ Dyed Mulls. 45. \ Dyed Umbrella Cloth. 46. \ Coatings and Trouserings (including Sholapuri, Madras, Cloth, Sunproof cloth. Tussore, Kashmir Cloth, Serges, Thana Cloth, Tweeds, Mazri, Malatia and Corduroy).-In addition to the goods enumerated above, this item includes cotton dyed coatings and coatings with artificial silk in the warp or in the weft as stripes or checks, either alone or in combination with dyed cotton yarn. 47. \ Striped Drills and Jeans and Striped Twills-Including striped drills or twills with grey, bleached or coloured ground. 48. \ Bed Ticking-With coloured warp and grey or bleached weft. 49. \ Striped Coarse Cloth-Including both grey and bleached grounds. 50. \ Striped Shirtings, Striped Susis and Striped Zephyrs.-Including striped shirtings, etc., with grey, bleached or coloured ground but not including artificial silk striped goods. 51. \ Check shirtings, Check Susis and Check Zephyrs.-See note under item 50. 52. \ Check Chadars-Including plain check chadar and twill check-chadar on grey, bleached or coloured grounds. 53. \ Lungis and Sarongs. 54. \ Woven coloured Saries and Scarves.- (This includes saries and scarves with striped or check grounds, but does not include saries and scarves in which there is artificial silk in the body of the cloth). 55. \ Check Cholas and Gumchas. 56. \ Artificial Silk Striped Shirtings-This includes (a) artificial silk shirtings with an artificial silk warp and weft; (b) an artificial silk warp; or (c) artificial silk only in stripes, either alone or in combination with coloured cotton yarn. 57. \ Artificial Silk Check Shirtings-On grey, white and coloured grounds. 58. \ Artificial Silk Brocades and "All Over Styles." 59. \ Artificial Silk Dhoties, Saries and Scarves and Sari Cloth- (This item includes dhoties and saries in which an artificial silk warp or weft or both are used. It does not include dhoties, etc. in which artificial silk is used, only in the borders). 60. \ Crepe Cloth-Grey, bleached and dyed. This item also includes crepe cloth yarn printed. 61. \ Dyed and Striped Dosuti-Including striped Dosuti bleached in the piece. 62. \ Printed Dhoties, Shawls, Rumals, Saries and other printed garments.- Including Voile saries also. 63. \ Printed longcloth. Shirtings, Cellular, Limbric, Poplins and Sheetings.- Grey, bleached and dyed grounds. 64. \ Striped, Check and printed Flannelettes. 65. \ Pure Silk Saries. 66. \ Leno and Mockleno, Bandage Cloth-Grey, bleached, dyed or striped including Gauze Cloth also. 67. \ Terry Towels including towelling cloth-Grey, bleached, dyed, printed, striped or checked. 68. \ Huckaback towels including towelling cloth,-Grey, bleached, dyed, printed, striped or checked. 69. \ Honey Comb Towels including towelling cloth.-Grey, bleached, dyed, printed, striped or checked. 70. \ All other Towels including towelling cloth. 71. \ (a) Dusters, Handkerchiefs, Rumals and Glass Cloth (serviettes). \ (b) Table cloth and table covers, napkins. 72. \ Dobby and Jacquard Chadars, Bedspreads, Quilts and Counterpanes including Suzni.-Grey, bleached, or coloured. 73. \ Blankets and Malida Cloth.-All types, including cotton and wool union blankets : and shawls (not

dyed or printed) or lohis of any fibres. 74. \ Durries and carpets including Satranji (floor carpets). 75. \ Dyed and Coloured Canvas.-Dyed or woven coloured. 76. \ Artificial Silk Zephyrs, Alpaca, Crepe, etc.-Plain and Fancy grounds (whole colour and unstriped). 77. \ Motor Hood Cloth. 78. \ Buckrum Cloth-Grey, bleached and dyed. 79. \ Striped Voiles-Bleached and/or dyed in the piece. 80. \ Printed Voiles-Grey, bleached and dyed. 81. \ Mookta Cloth-This cloth is woven with cotton warp and flax weft. 82. \ Artificial Silk Tapestry and Upholstering Fabrics, including cotton furnishing fabrics and casement cloths.-Grey, bleached dyed and printed. 83. \ Bedford Cord.-Bleached and dyed. 84. \ Printed Crepe-Grey, bleached or dyed grounds. 85. \ Pure Silk Coatings-Plain, striped or checked. This item also includes coatings made of artificial fibres, filaments and yarns. 86. \ Pure Silk Shirtings-Plain, striped or checked. 87. Printed Drills, Twills and Jeans. 88. Corded Voiles.-Bleached coloured, printed and bordered. 89. Printed Boski-Artificial Silk warp, weft or both. 90. Artificial Silk striped Voiles.-Grey, bleached and dyed voiles with artificial silk stripes in the body of the cloth. 91. Bordered Voiles.-Bleached, dyed and printed (with or without artificial silk border). 92. Artificial Silk Satins.-Including satins made from 100 per cent silk or artificial silk in the warp or weft. 93. Check Voiles.-Grey, bleached and dyed. (This item contains cotton voiles with grey, bleached or coloured grounds with check designs all over the body of the cloth). 94. Grey Flannelettes-Including all grey cloths raised on one side and cotton velvet.

SCHEDULE 6

Scale of costs allowable In rule 114 proceedings before the Registrar

THE SIXTH SCHEDULE Entry \ Matter in respect \ Amount No. of which costs to be awarded \ 1. \ For one days hearing involving examination of witnesses \ Rs. 100 2. \ For one days hearing when there is no examination of witnesses \ Rs.50 3. \ For adjournment of hearing granted on the petition of any party \ Rs. 20 plus cost for resummoning the other parties witnesses who were due to be examined \ on the day. 4. \ For striking out scandalous matter from an affidavit \ Rs. 16 5. \ For attendance of witnesses- \ \ Subsistence allowance.... Travelling allowance.... \ Rs. 50 (vide note below) The fare by rail or steamer for the first class or the \ \ second class each way and if there is no rail or \ \ steamer communication \ \ 0.50 np. or 0.25 np. per km. depending upon the rank and status of the witness.