

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 385.

Trade Marks.

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Justice at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 385.

Trade Marks Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 385.

Trade Marks Act.

Being an Act relating to trade marks.

PART 1.—PRELIMINARY.

1.—Interpretation.

(1) In this Act, unless the contrary intention appears—

“assignment” means assignment by act of the parties concerned;

“the commencement date” means—

(a) as regards Section 104, Part XIV and the Act to the extent that allows the operation of Part XIV—18 October 1979; and

(b) as regards the balance of the Act—8 May, 1980;

“the Court” means the National Court;

“the expiration of the last registration”, in relation to a registered trade mark or to a registered user of a trade mark, means the date of the expiration of—

(a) the original registration of the trade mark; or

(b) the original registration of the registered user, or the last renewal of that registration, as the case may be;

“goods” includes services, and where goods are to be compared with services, or vice versa, the expression “of the same description as” is to be construed as “closely related to”;

“limitations” means limitations of the right to the exclusive use of a trade mark given by the registration of the trade mark, including limitations of that right as to—

(a) mode of use; or

(b) use within a particular area within Papua New Guinea; or

(c) use in relation to goods to be exported to a market outside Papua New Guinea;

“mark” includes a device, brand, heading, label, ticket, name, signature, word, letter or numeral, or any combination of them;

“permitted use”, in relation to a registered trade mark means the use of the trade mark by a registered user of the trade mark—

(a) in relation to goods—

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

(ii) in respect of which the trade mark remains registered; and

(iii) for which he is registered as a registered user; and

(b) which complies with any conditions or restrictions to which his registration is subject;

“the Register” means the Register of Trade Marks established under Section 6;

“registered proprietor”, in relation to a trade mark, means the person for the time being entered in the Register as proprietor of the trade mark;

“registered trade mark” means a trade mark that is registered under this Act;

“registered user” means a person who is registered as such under Section 64;

“the Registrar” means the Registrar of Trade Marks appointed under Section 3;

“this Act” includes the regulations;

“trade mark” means a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connexion in the course of trade between the goods and a person who has the right, either as proprietor or as registered user, to use the mark whether with or without an indication of the identity of that person;

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

“word” includes an abbreviation of a word.

(2) In this Act—

(a) references to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark; and

(b) references to the use of a mark in relation to goods shall be construed as references to the use of the mark on, or in physical or other relation to, goods.

(3) For the purposes of this Act, a trade mark shall be deemed to be deceptively similar to another trade mark if it so nearly resembles that other trade mark as to be likely to deceive or cause confusion.

2. Application to the State.

This Act binds the State.

PART II.—ADMINISTRATION.

3. Office of Registrar.

(1) For the purposes of this Act, the Minister—

(a) shall appoint a Registrar of Trade Marks; and

(b) may appoint such Deputy Registrars of Trade Marks and other officers as he considers necessary.

(2) A Deputy Registrar of Trade Marks may, subject to the directions of the Registrar, exercise any power or carry out any function of the Registrar.

(3) The appointment of a Deputy Registrar of Trade Marks does not affect the exercise of a power or the performance of a function by the Registrar.

4. Seal.

(1) The Registrar shall have and use as his seal of office a seal in such form as the Minister determines.

(2) In pursuance of his statutory duties and functions, the Registrar may affix, or cause to be affixed, a facsimile of his signature which shall be deemed to be the signature of the Registrar.

- (3) All courts, Judges and persons acting judicially shall take judicial notice of—
- (a) a signature of any person who holds or has held the office of Registrar, or Deputy Registrar and of the fact that that person holds or has held that office; and
 - (b) the seal of the Registrar.

5. Powers of Registrar.

- (1) The Registrar may, for the purposes of this Act—
- (a) summon witnesses; and
 - (b) receive evidence on oath, whether orally or otherwise; and
 - (c) require the production of documents or articles; and
 - (d) award costs against a party to proceedings before him.
- (2) The Registrar may, on such terms as to costs or otherwise as he thinks just—
- (a) whether for the purpose of correcting a clerical error or an obvious mistake or otherwise—permit the amendment of an application for the registration of a trade mark, a notice of opposition or other document lodged at his office; or
 - (b) for the purpose of correcting a clerical error or an obvious mistake—amend an entry in the Register.

(3) An amendment of an application shall not be permitted under Subsection (2) if the amendment would substantially affect the identity of the trade mark as specified in the application before amendment.

- (4) Where the Registrar is of the opinion that any document submitted to him—
- (a) contains any matter contrary to law; or
 - (b) by reason of any omission or misdescription has not been duly completed; or
 - (c) does not comply with the requirements of this Act; or
 - (d) contains any error, alteration or erasure,

he may refuse to receive or register the document and request that the document be appropriately amended or completed or re-submitted, or that a fresh document be submitted in its place.

PART III.—THE REGISTER.

6. Register of Trade Marks.

(1) The Registrar shall establish and maintain a Register of Trade Marks in which shall be entered particulars of all registered trade marks and such other matters as are prescribed.

(2) The Register shall be divided into two parts, which shall be known as Part A and Part B respectively.

7. Trusts not to be entered.

A notice of trust, express, implied or constructive, shall not be entered in the Register or be received by the Registrar.

8. Inspection.

The Register shall be available for inspection by any person, on payment of the prescribed fee during such hours as the office of the Registrar is open for public business.

9. Certificates, etc.

Subject to this Act, the Registrar may—

- (a) issue copies of or extracts from entries in the Register or other documents or publications in his office, certified under his hand and seal; and
- (b) certify under his hand and seal that an entry, act, matter or thing required or authorized by or under this Act to be made or done, or required by this Act not to be done, has or has not been made or done, as the case may be.

10. Register, etc., to be evidence.

(1) The Register is evidence of all matters required or authorized by this Act to be entered in it.

(2) A certified copy or extract issued by the Registrar under Section 9 is admissible in evidence in all courts and proceedings without further proof or production of the original.

(3) A certificate of the Registrar under Section 9 is evidence of the statements contained in the certificate.

11. Alteration of Register.

(1) The Registrar may, on application by the registered proprietor, amend or alter the Register by—

- (a) correcting an error in the entry of a trade mark in the Register; or
- (b) entering a change of name, address or description of the registered proprietor; or
- (c) cancelling the entry of a trade mark in the Register; or
- (d) amending the specification of the goods in respect of which the trade mark is registered but so that the amendment does not in any way extend the rights given by the registration; or
- (e) entering a disclaimer or memorandum relating to the trade mark that does not in any way extend the rights given by the registration of the trade mark.

(2) A person who is aggrieved by the decision of the Registrar under this section may appeal to the Court.

(3) The Registrar may, on application by a registered user of a trade mark, correct an error, or enter a change, in the name, address or description of the registered user.

12. Alteration of registered trade mark.

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

(2) The Registrar may require an application under this section to be advertised in such manner as is prescribed.

(3) Any person may, within the prescribed time, give notice to the Registrar of opposition to the application and shall serve a copy of such notice on the applicant.

(4) The Registrar may require the applicant or the opponent to appear before him and give evidence or further explanation in regard to the application or the opposition.

(5) The Registrar shall consider the application and the opposition (if any) and shall decide the matter.

(6) A person who is aggrieved by the decision of the Registrar under this section may appeal to the Court.

(7) Where leave to alter the trade mark is granted, the Registrar shall alter the Register accordingly and notice of the alteration shall be advertised in such manner as is prescribed and the advertisement shall include a representation of the trade mark as altered unless such representation has already been advertised in such manner in an advertisement under Subsection (2).

13. Rectification of Register by Court.

(1) Subject to this Act, the Court may, on the application of the Registrar or a person aggrieved, order the rectification of the Register by—

- (a) making an entry wrongly omitted to be made; or
- (b) deleting or amending an entry wrongly made or wrongly remaining; or
- (c) inserting a condition or limitation that ought to be inserted; or
- (d) correcting an error or defect.

(2) On the application of the Registrar or of a person aggrieved, the Court may make such order as it thinks fit for the purpose of cancelling or varying a registration on the ground of failure to observe, or contravention of, a condition or limitation entered in the Register.

(3) The power to order rectification of the Register conferred by this section includes power to order the removal of a registration from Part A to Part B of the Register.

(4) The Registrar shall not make an application to the Court under this section unless he considers the application is desirable in the public interest.

(5) Notice of an application under this section (other than an application by the Registrar) shall be given to the Registrar, who may appear and be heard, and shall appear if so directed by the Court.

(6) An office copy of an order made under this section shall be served on the Registrar who shall, on receipt of the order, take such steps as are necessary to give effect to the order.

14. Non-use of trade mark.

(1) Subject to this Act, the Court may, on application by a person aggrieved, order that a trade mark be removed from the Register in respect of any of the goods in respect of which it is registered, on the ground—

- (a) that the trade mark was registered without an intention in good faith on the part of the applicant for registration that it should be used in relation to those goods by him or, if it was registered under Section 35(1) by the corporation or registered user concerned and that there has in fact been no use in good faith of the trade mark in relation to those goods by the registered proprietor or a registered user of the trade mark for the time being earlier than one month before the application; or
- (b) that, up to one month before the application, a continuous period of not less than three years had elapsed during which the trade mark was a registered trade mark and during which there was no use in good faith of the trade mark in relation to those goods by the registered proprietor or a registered user of the trade mark for the time being.

(2) Except where an applicant has been permitted under Section 26 to register a substantially identical or deceptively similar trade mark in respect of the goods to which the application relates, or the Court is of the opinion that the applicant can properly be permitted to register such a trade mark, the Court may refuse an application made under Subsection (1) in relation to any goods if there has been before the relevant date or during the relevant period, as the case may be, use in good faith by the registered proprietor, or a registered user of the trade mark for the time being, in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(3) Where, in relation to goods in respect of which a trade mark is registered—

- (a) the matters referred to in Subsection (1)(b) are shown as far as regards failure to use the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in Papua New Guinea (otherwise than for export from Papua New Guinea), or in relation to goods to be exported to a particular market outside Papua New Guinea; and
- (b) a person has been permitted under Section 26 to register a substantially identical or deceptively similar trade mark in respect of those goods under a registration extending to use in relation to goods to be sold, or otherwise traded in, in that place (otherwise than for export from Papua New Guinea), or in relation to goods to be exported to that market, or the Court is of the opinion that that person might properly be permitted to register such a trade mark,

the Court may, on application by that person, direct that the registration of the first-mentioned trade mark shall be subject to such conditions or limitations as the Court thinks proper for ensuring that the registration shall cease to extend to use of the trade mark in relation to goods to be sold, or otherwise traded in, in that place (otherwise than for export from Papua New Guinea), or in relation to goods to be exported to that market.

(4) An applicant is not entitled to rely, for the purposes of Subsection (1)(b) or (3) on failure to use a trade mark if the failure is shown to have been due to special circumstances in the trade and not to an intention not to use or to abandon the trade mark in relation to the goods to which the application relates.

(5) An office copy of an order under this section shall be served on the Registrar who shall take such steps as are necessary to give effect to the order.

PART IV.—REGISTRABLE TRADE MARKS.

15. Registrable trade marks: Part A.

- (1) A trade mark is registrable in Part A of the Register if it contains or consists of—
- (a) the name of a person represented in a special or particular manner; or
 - (b) the signature of the applicant for registration or of some predecessor in his business; or
 - (c) an invented word; or
 - (d) a word—
 - (i) not having a direct reference to the character or quality of the goods in respect of which registration is sought; and
 - (ii) not being, according to its ordinary meaning, a geographical name or a surname; or
 - (e) any other distinctive mark.

(2) A name, signature or word (not being a name, signature or word specified in Subsection (1)(a), (b), (c) or (d)) is not registrable in Part A of the Register unless it is, by evidence, shown to be distinctive.

(3) A trade mark may be registered in Part A of the Register in respect of any goods notwithstanding the registration of the trade mark, or of a part or parts of the trade mark, in Part B of the Register, in the name of the same person, in respect of the same or different goods.

16. Registrable trade marks: Part B.

(1) A trade mark is registrable in Part B of the Register if it is distinctive, or is not distinctive but is capable of becoming distinctive, of goods in respect of which registration of the trade mark is sought and with which the applicant for registration is or may be connected in the course of trade.

(2) A trade mark may be registered in Part B of the Register in respect of any goods notwithstanding the registration of the trade mark, or of a part or parts of the trade mark, in Part A of the Register, in the name of the same person, in respect of the same or different goods.

17. Distinctiveness.

(1) For the purposes of this Act, a trade mark is not distinctive of the goods of a person unless it is adapted to distinguish goods with which that person is or may be connected in the course of trade from goods in respect of which no such connexion subsists, either generally or, where the trade mark is sought to be registered, or is registered, subject to conditions or limitations in relation to use, subject to those conditions or limitations.

(2) In determining whether a trade mark is distinctive, regard may be had to the extent to which—

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

(3) Where—

- (a) an application for registration of a trade mark has been made by a person; and
- (b) before the date of the application the trade mark was used by a person other than the applicant under the control of, and with the consent and authority of, the applicant; and
- (c) an application has been made by the applicant and that other person for registration of that other person as a registered user of the trade mark; and
- (d) the Registrar is satisfied that that other person is entitled to be registered as a registered user of the trade mark immediately after registration of the trade mark,

the Registrar may, for the purpose of determining whether the trade mark is distinctive of the goods of the applicant, treat use of the trade mark by that other person as equivalent to use of the trade mark by the applicant.

18. Coloured trade marks.

(1) A trade mark may be limited, in whole or in part, to one or more colours and in that case the fact that the trade mark is so limited shall be taken into consideration for the purpose of determining whether the trade mark is distinctive.

(2) In so far as a trade mark is registered without limitation as to colour it shall be deemed to be registered for all colours.

19. Prohibited marks.

A mark—

- (a) the use of which would be likely to deceive or cause confusion; or
- (b) the use of which would be contrary to law; or
- (c) which comprises or contains scandalous or otherwise offensive matter; or
- (d) which would otherwise be not entitled to protection in a court of justice,

shall not be registered as a trade mark.

20. Registration of certain marks may be refused.

(1) The Registrar may refuse to accept an application for the registration of a trade mark which contains or consists of any of the following marks or a mark so nearly resembling any of those marks as to be likely to be taken for that mark:—

- (a) the word or words "Patent", "Patented", "By Royal Letters Patent", "Registered", "Registered Design", "Copyright", "To counterfeit this is a forgery", or a word or words or symbol or symbols to the like effect; or
- (b) a representation of the Sovereign or of a member of the Royal Family; or
- (c) a representation of—
 - (i) the Royal Arms, crests, armorial bearings, insignia or devices; or
 - (ii) any of the Royal crowns; or
 - (iii) the national flag of a part of the Queen's dominions; or
- (d) the word "Royal" or any other word, or any letters or device, likely to lead persons to think that the applicant has or has had Royal or Government patronage or authority; or
- (e) a representation of the National Flag, National Emblem, National Motto or National Seal or of the flag, emblem, motto or seal of a province; or
- (f) a representation of the flag or emblem of a city or town or local government body or of a statutory body or instrumentality in Papua New Guinea; or
- (g) a mark prescribed as being, for the purposes of this section, a prohibited mark.

(2) The regulations may provide that a mark to which Subsection (1) applies (not being a registered trade mark or a mark in use in good faith as a trade mark) shall not be used as a trade mark or as a part of a trade mark, either at all or without the consent of the Minister.

21. Names of living persons or persons recently deceased.

(1) Where a person makes an application for registration of a trade mark which consists of or includes the name or a representation of a living person or of a person believed by the Registrar to be living, the Registrar may require the applicant to furnish him with the consent of that person to the name or representation appearing on the trade mark before he proceeds with the registration of the trade mark.

(2) Where a person makes an application for registration of a trade mark which consists of or includes the name or a representation of a person recently dead, or of a person believed by the Registrar to be recently dead, the Registrar may require the applicant to furnish him with the consent of the legal representative of the deceased person

to the name or representation appearing on the trade mark before he proceeds with the registration of the trade mark.

22. Trade marks to be registered for certain goods.

(1) A trade mark shall be registered in respect of any or all of the goods comprised in a prescribed class of goods.

(2) Where a question arises as to the class in which goods are comprised, that question shall be decided by the Registrar and the decision of the Registrar is not subject to appeal and shall not be called in question in an appeal or other proceedings under this Act.

23. Disclaimers.

(1) Where a trade mark—

(a) contains parts that are not separately registered in the name of the proprietor as trade marks, or are not the subject of separate applications by the proprietor for registration as trade marks; or

(b) contains matter that is common to the trade or is otherwise not distinctive, the Registrar or the Court, in deciding whether the trade mark may be registered or remain on the Register, may in his or its discretion require as a condition that the proprietor—

(c) disclaim any right to the exclusive use of any of those parts, or of that matter; or

(d) make such other disclaimer as the Registrar or the Court considers to be proper for the purpose of defining the rights of the proprietor under the registration.

(2) A disclaimer under Subsection (1) does not affect the rights of the proprietor of the trade mark that do not arise out of the registration of the trade mark.

24. Identical and similar marks.

(1) Subject to this Act, a trade mark is not capable of registration by a person in respect of goods if it is substantially identical with or deceptively similar to a trade mark which is registered, or is the subject of an application for registration, by another person in respect of the same goods or of goods of the same description, unless the date of registration of the first-mentioned trade mark is, or will be, earlier than the date of registration of the second-mentioned trade mark.

(2) The Registrar may defer acceptance of the application for registration of the trade mark first mentioned in Subsection (1) until the trade mark second mentioned in that subsection has been registered.

25. Rival claims to proprietorship.

Where each of several persons claims to be the proprietor of a trade mark, the Registrar may refuse to accept an application for registration by any of them until their respective rights have been determined by the Court.

26. Concurrent use.

(1) In case of honest concurrent use or of other special circumstances which, in the opinion of the Registrar, make it proper to do so, the Registrar may permit the registration of trade marks which are substantially identical or deceptively similar, or, but for the honest concurrent use or other special circumstances would be deceptively similar, for the same or

different goods, by more than one proprietor subject to such conditions and limitations (if any) as the Registrar imposes.

(2) Where a person has, by himself or his predecessors in business, continuously used a trade mark before the use, or before the date of registration, whichever is the earlier, of another registered trade mark by the registered proprietor of that other trade mark, by his predecessors in business or by a registered user of that trade mark, the Registrar shall not refuse to register the first-mentioned trade mark by reason of the registration of that other trade mark.

27. Jointly owned trade marks.

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

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

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

(2) Subject to Subsection (1) this Act does not authorize the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors of the trade mark.

28. Associated trade marks.

(1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods—

- (a) is substantially identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or goods of the same description; or
- (b) so nearly resembles such a trade mark as to be likely to deceive or cause confusion if used by a person other than the proprietor,

the Registrar may, at any time, require that the trade marks shall be entered in the Register as associated trade marks.

(2) On application made by the registered proprietor of two or more associated trade marks, the Registrar may, if he is satisfied that there would be no likelihood of deception or confusion being caused, dissolve the association with respect to one or more of those trade marks and amend the Register accordingly.

(3) A person who is aggrieved by the decision of the Registrar under Subsection (1) or (2), may appeal to the Court.

29. Assignment of associated trade marks.

Associated trade marks are assignable or transmissible only as a whole and not separately, but, subject to this Act, they shall for all other purposes be deemed to have been registered as separate trade marks.

30. Use of trade marks.

(1) Where, under this Act, use of a trade mark is required to be proved for any purpose, the Registrar or the Court may, if and so far as he or it thinks right, accept use of

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

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

31. Series of trade marks.

(1) Where a person, who claims to be the proprietor of several trade marks for the same goods or for goods of the same description within a single class, seeks to register those trade marks and the trade marks, although they resemble each other in material particulars, differ in respect of—

- (a) statements or representations as to the goods in respect of which the trade marks are used or proposed to be used; or
- (b) statements or representations as to number, price, quality or names of places; or
- (c) other matter which is not distinctive and does not substantially affect the identity of the trade marks; or
- (d) colour,

or in respect of any two or more of those matters, the trade marks may be registered as a series in one registration.

(2) All the trade marks in a series of trade marks registered under Subsection (1) shall be deemed to be, and shall be registered as, associated trade marks.

PART V.—APPLICATIONS FOR REGISTRATION.

32. Application for registration.

(1) A person who claims to be the proprietor of a trade mark may apply to the Registrar in the prescribed manner for the registration of that trade mark in Part A or Part B of the Register.

(2) An application under this section shall specify the goods in respect of which registration of the trade mark is sought.

(3) An application under this section shall not be made in respect of goods comprised in more than one class.

33. Acceptance or refusal of applications.

(1) The Registrar, if he is satisfied that—

- (a) the application complies with the requirements of this Act; and
- (b) the trade mark is capable of registration under this Act; and
- (c) there is no other lawful ground of objection to the application,

may accept an application under Section 32 for registration of a trade mark either without conditions or limitations or subject to such conditions or limitations as he sees fit.

(2) If the Registrar is not satisfied that the requirements of Subsection (1) have been complied with, he may—

- (a) refuse to accept the application altogether; or

(b) require the application to be amended to his satisfaction so as to remove the grounds of objection within such time as he allows.

(3) An application shall not be amended under Subsection (2) in such a manner that the amendment would substantially affect the identity of the trade mark before amendment.

(4) Where the Registrar requires an application to be amended under Subsection (2) and the application is not amended within the time allowed, the Registrar may refuse to accept the application.

(5) In the case of an application for registration of a trade mark in Part A of the Register, the Registrar may, with the consent of the applicant, instead of refusing to accept the application, treat the application as an application for registration in Part B of the Register and deal with the application accordingly.

(6) Where, after the acceptance of an application for registration of a trade mark but before the registration of the trade mark, the Registrar is satisfied—

(a) that the application has been accepted in error; or

(b) that, in the special circumstances of the case, the trade mark should not be registered, or should be registered subject to conditions or limitations, or to additional or different conditions or limitations,

he may withdraw the acceptance and proceed as if the application had not been accepted.

(7) An applicant who is aggrieved by a decision of the Registrar—

(a) to accept an application subject to such conditions and limitations as he sees fit under Subsection (1); or

(b) to refuse an application under Subsection (2)(a),

may appeal to the Court.

(8) The Registrar is entitled to appear and be heard on the hearing of the appeal and shall appear if so directed by the Court.

34. Division of application.

(1) Where a part of a trade mark which is the subject of an application for registration is separately registrable as a trade mark, the applicant may, before the application has been accepted or refused, make a further application for the registration of that part in respect of goods in relation to which the first-mentioned application was made.

(2) A further application made under Subsection (1) shall, if the Registrar so directs, be deemed to have been lodged on the date on which the first-mentioned application was lodged.

(3) Where an application has been made for registration of a trade mark in respect of certain goods and, before the application has been accepted or refused, the applicant has made a further application for the registration of that trade mark in respect of goods included in the description of goods in respect of which the first-mentioned application was made, the Registrar may direct that the further application shall be deemed to have been lodged on the date on which the first-mentioned application was lodged.

35. Application where trade mark is to be used by assignee or registered user.

(1) An application for the registration of a trade mark may be accepted, and the trade mark may be registered, notwithstanding that the applicant does not use or propose to use the trade mark—

- (a) where the Registrar is satisfied that a corporation is about to be constituted and that the applicant intends to assign the trade mark to the corporation with a view to the use by the corporation of the trade mark in relation to the goods in respect of which registration is sought; or
- (b) where an application has been made for the registration of a person as a registered user of the trade mark and the Registrar is satisfied that—
 - (i) the proprietor intends the trade mark to be used by that person in relation to those goods; and
 - (ii) that person will be registered as a registered user of the trade mark immediately after registration of the trade mark.

(2) Where a trade mark is registered under Subsection (1) in the name of an applicant who relies on an intention to assign to a corporation, then, unless within the prescribed or within such further period, not exceeding six months, as the Registrar allows, the corporation has been registered as the proprietor of the trade mark in respect of the goods in respect of which the trade mark is registered, the registration shall cease to have effect at the expiration of that period and the Registrar shall amend the Register accordingly.

36. Application to lapse on refusal.

Where the Registrar refuses to accept an application for the registration of a trade mark he shall give written notice of the refusal to the applicant and, subject to any appeal from the Registrar's decision, the application shall lapse.

37. Advertisement of acceptance.

- (1) On acceptance of an application for the registration of a trade mark the Registrar shall give written notice of the acceptance to the applicant.
- (2) The applicant shall cause the acceptance to be advertised in the prescribed manner.

38. Withdrawal of application.

An applicant for the registration of a trade mark may, at any time before the trade mark is registered, withdraw his application.

PART VI.—OPPOSITION TO REGISTRATION.**39. Interpretation of Part VI.**

In this Part, unless the contrary intention appears—

- “applicant” means a person who has made an application to the Registrar for the registration of a trade mark;
- “notice of opposition” means a notice given in accordance with Section 40(1);
- “opponent” means a person who has given notice of opposition in accordance with Section 40(1).

40. Notice of opposition.

(1) A person may, within three months after the date of advertisement of the acceptance of an application for the registration of a trade mark, or within such further

period as the Registrar, on application made to him within the first-mentioned period, allows, give notice to the Registrar in the prescribed manner of opposition to the registration of the trade mark.

(2) The opponent shall serve a copy of the notice of opposition on the applicant on or before the date on which the notice is given to the Registrar.

(3) The applicant may, within three months after the date of service on him of the copy of notice of opposition, lodge with the Registrar in the prescribed manner a counter statement in support of his application.

(4) The applicant shall serve a copy of the counter statement on the opponent on or before the date on which the counter statement is lodged with the Registrar.

(5) The Registrar may require the opponent or the applicant to appear before him and give evidence or further explanation in respect of the opposition or the application.

(6) Subject to Section 41, the Registrar shall, after the expiration of a period of three months from the date on which the notice of opposition is given to him, or such further period, not exceeding three months, as the Registrar on the application of the opponent or the applicant allows, determine the opposition and decide—

- (a) to register the trade mark without conditions or limitations; or
- (b) to register the trade mark subject to such conditions or limitations as he thinks fit; or
- (c) to refuse to register the trade mark.

(7) In determining the opposition the Registrar may take into account a ground of objection whether relied on by the opponent or not.

(8) A person who is aggrieved by a decision of the Registrar under Subsection (6), may appeal to the Court.

41. Opposition may be referred to Court.

(1) At any time after notice of opposition to the registration of a trade mark has been given to him the Registrar may, and on the application of both the opponent and the applicant shall, refer the matter to the Court for determination.

(2) In determining the opposition the Court may take into account a ground of objection whether relied on by the opponent or not.

(3) On determination of the opposition the Court may order—

- (a) that the trade mark may be registered without conditions or limitations; or
- (b) that the trade mark may be registered subject to such conditions or limitations as it thinks fit; or
- (c) that registration of the trade mark be refused.

(4) An office copy of an order made under this section shall be served on the Registrar, who shall, on receipt of the order, take such steps as are necessary to give effect to the order.

42. Security for costs.

If a person giving notice of opposition does not reside in or carry on business in the country the Court may order him to give security for costs within a specified time, and if the order is not complied with the opposition shall lapse.

43. Withdrawal of opposition.

Opposition to the registration of a trade mark may be withdrawn by the opponent at any time before the opposition is determined by the Registrar or by the Court.

PART VII.—REGISTRATION AND EFFECT OF REGISTRATION.**44. Registration of trade mark.**

(1) Subject to Section 33(6), after the expiration of the period allowed under Section 40(1), if no notice of opposition to the registration of a trade mark has been given to the Registrar, or if such notice has been withdrawn, the Registrar shall register the trade mark in the appropriate part of the Register.

(2) Subject to Section 33(6), where notice of opposition to the registration of a trade mark is given to the Registrar in accordance with Section 40(1), and the decision of the Registrar or of the Court in determining the opposition is that the trade mark should be registered, the Registrar shall, after expiration of the period allowed for appeal from that decision, register the trade mark in the appropriate part of the Register.

45. Date of registration.

Subject to this Act, on the registration of a trade mark the date of lodgement of the application for its registration with the Registrar shall be deemed to be the date of registration and the trade mark shall be deemed, for the purposes of this Act, to have been a registered trade mark from that date.

46. Duration of registration.

(1) The registration of a trade mark shall be for a period of 10 years.

(2) The registration of a trade mark may be renewed from time to time in accordance with this Act.

47. Words used as name or description of article or substance.

(1) Subject to this section, the registration of a trade mark does not become invalid by reason only of the use, after the date of the registration, of a word or words which the trade mark contains or of which it consists, as the name or description of an article or substance.

(2) Subsections (3), (4) and (5) have effect where—

(a) there is a well-known and established use of a word as the name or description of an article or substance by a person or persons carrying on a trade in that article or substance, not being use in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark; or

(b) the article or substance was formerly manufactured under a patent, a period of two years or more after the patent has ceased has elapsed, and the word is the only practicable name or description of the article or substance.

(3) If the trade mark consists solely of that word, the registration of the trade mark, so far as regards registration in respect of the article or substance or of any goods of the same description, shall be deemed for the purposes of Section 13 to be an entry wrongly remaining in the Register.

(4) If the trade mark contains that word and other matter, the Court, in deciding whether the trade mark shall remain in the Register, so far as regards registration in respect of the article or substance or of any goods of the same description, may, in the case of a decision in favour of the trade mark remaining in the Register, require as a condition that

the proprietor shall disclaim any right to the exclusive use of that word in relation to that article or substance or to any goods of the same description, but no such disclaimer affects any rights of the proprietor of the trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

(5) For the purposes of any other legal proceedings relating to the trade mark—

(a) if the trade mark consists solely of that word—all rights of the registered proprietor to the exclusive use of the trade mark; or

(b) if the trade mark contains that word and other matter all rights of the registered proprietor to the exclusive use of that word,

in relation to the article or substance or to any goods of the same description, shall be deemed to have ceased on the date at which the use mentioned in Subsection (2)(a) first became well-known and established, or at the expiration of the period of two years mentioned in Subsection (2)(b).

48. Powers of registered proprietors.

(1) Subject to this Act the registered proprietor of a trade mark has, subject to any rights appearing from the Register to be vested in some other person, power to assign the trade mark and to give good discharges for any consideration for the assignment.

(2) Equities in respect of a trade mark may be enforced in like manner as in respect of other personal property.

49. Rights given by registration.

(1) Subject to this Act, the registration of a trade mark in Part A or Part B of the Register, if valid, gives to the registered proprietor of the trade mark the right to the exclusive use of the trade mark in relation to the goods in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

(2) The rights acquired by the registration of a trade mark are subject to any conditions or limitations to which the registration is subject.

(3) Where two or more persons are proprietors of registered trade marks, which are substantially identical or deceptively similar, whether for the same or different goods, rights of exclusive use of either of those trade marks are not (except so far as their respective rights have been defined by the Registrar or a court) acquired by any one of those persons as against any other of those persons by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users) as he would have if he were the sole registered proprietor.

50. Registration evidence of validity.

In legal proceedings relating to a registered trade mark, including applications under Section 13, the original registration of the trade mark and the registration of any assignment or transmission of the trade mark shall be deemed to be valid unless the contrary is shown.

51. Limitation on removal of trade mark.

In legal proceedings relating to a trade mark registered in Part A of the Register including applications under Section 13 instituted after the expiration of three years from the date of registration, the trade mark shall not be removed from the Register, or be held invalid on the ground that it was not a registrable trade mark under Section 15, unless it is proved that it was not, at the commencement of the proceedings, distinctive of the goods of the registered proprietor.

52. Registration conclusive after 10 years.

In legal proceedings relating to a trade mark registered in Part A of the Register, including applications under Section 13, the original registration of the trade mark under this Act shall, after the expiration of 10 years from the date of the original registration, be taken to be valid in all respects, unless it is shown—

- (a) that the original registration was obtained by fraud; or
- (b) that the trade mark offends against the provisions of Section 19; or
- (c) that the trade mark was not, at the commencement of the proceedings, distinctive of the goods of the registered proprietor.

53. Infringement of trade marks.

(1) A registered trade mark is infringed by a person who, not being the registered proprietor of the trade mark or a registered user of the trade mark using by way of permitted use, uses a mark which is substantially identical with, or deceptively similar to the trade mark, in the course of trade, in relation to goods in respect of which the trade mark is registered.

(2) In an action for infringement of a trade mark registered in Part B of the Register (not being an infringement occurring by reason of an act referred to in Section 54), an injunction or other relief shall not be granted to the plaintiff if the defendant establishes to the satisfaction of the Court that the use of the mark of which the plaintiff complains is not likely to deceive or cause confusion or to be taken as indicating a connexion in the course of trade between the goods in respect of which the trade mark is registered and a person having the right, either as registered proprietor or as registered user, to use the trade mark.

54. Infringement by breach of certain restrictions.

(1) In this section, references in relation to goods, to the registered proprietor, to a registered user and to the registration of a trade mark shall be construed, respectively, as references to the registered proprietor of the trade mark, to a registered user of the trade mark and to the registration of the trade mark, in respect of those goods, and "on" includes, in relation to goods, a reference to physical relation to the goods.

(2) Where by notice on goods or on the container of goods, the registered proprietor or a registered user of a trade mark registered in Part A or Part B of the Register makes a statement prohibiting the doing of an act to which this section applies, a person who, being the owner for the time being of the goods, does that act, or authorizes it to be done in relation to the goods in the course of trade or with a view to a dealing with the goods in the course of trade, infringes the trade mark unless—

- (a) at the time when that person agreed to buy the goods he acted in good faith without notice that the statement appeared on the goods; or
 - (b) he became the owner of the goods by virtue of a title derived from another person who had so agreed to buy the goods.
- (3) The acts to which this section applies are—
- (a) the application of the trade marks on goods after they have suffered alteration to their state, condition, get-up or packing; and
 - (b) in a case in which the trade mark is on the goods and there is also other matter on the goods, being matter indicating a connexion in the course of trade between the proprietor or registered user and the goods—the removal

or obliteration (whether wholly or partially), of the trade mark unless that other matter is wholly removed or obliterated; and

- (c) in a case in which the trade mark is on the goods—
 - (i) the alteration, partial removal or partial obliteration of the trade mark; and
 - (ii) the application of some other trade mark to the goods; and
 - (iii) the addition to the goods of other matter, in writing or otherwise, that is likely to injure the reputation of the trade mark.

55. Acts not constituting infringement.

(1) Notwithstanding anything in this Act, the following acts do not constitute an infringement of a trade mark: —

- (a) the use in good faith by a person of his own name or the name of his place of business, or the name, or the name of the place of business of any of his predecessors in business; and
- (b) the use in good faith by a person of a description of the character or quality of his goods; and
- (c) the use by a person of a trade mark in relation to goods in relation to which that person has, by himself or his predecessors in business, continuously used the trade mark from a date before—
 - (i) the use of the registered trade mark by the registered proprietor, by his predecessors in business or by a registered user of the trade mark; or
 - (ii) the registration of the trade mark,whichever is the earlier; and
- (d) the use of the trade mark by a person in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement or might for the time being be so used, if the use of the trade mark is reasonably necessary in order to indicate that the goods are so adapted, and neither the purpose nor the effect of the use of the trade mark is to indicate, otherwise than in accordance with the facts, a connexion in the course of trade between any person and the goods; and
- (e) the use of a trade mark, being one of two or more registered trade marks, which are substantially identical in exercise of the right to the use of that trade mark given by registration as provided by this Act.

(2) Where a trade mark is registered subject to conditions or limitations, the trade mark is not infringed by the use of the trade mark in any manner in relation to goods to be sold or otherwise traded in in a place, in relation to goods to be exported to a market, or in any other circumstances, to which, having regard to those conditions or limitations, the registration does not extend.

56. Relief in infringement actions.

The relief which a Court may grant in an action or proceeding for infringement of a registered trade mark includes an injunction, subject to such terms (if any) as the Court thinks fit, and, at the option of the plaintiff, either damages or an account of profits.

57. Evidence of trade usage.

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

58. Jurisdiction of Court.

Jurisdiction is, by this section, conferred on the Court to hear and determine an action or proceeding for the infringement of a trade mark, but this section does not deprive another court of jurisdiction which it possesses to hear and determine such an action or proceeding.

59. Passing off actions.

In an action for passing off arising out of the use by the defendant of a registered trade mark of which he is the registered proprietor or a registered user, being a trade mark substantially identical with, or deceptively similar to, the trade mark of the plaintiff, damages shall not be awarded against the defendant if he satisfies the court—

- (a) that at the time he commenced to use the trade mark he was unaware and had no reasonable means of ascertaining that the trade mark of the plaintiff was in use; and
- (b) that when he became aware of the existence and nature of the plaintiff's trade mark he immediately ceased to use the trade mark in relation to goods in relation to which it was used by the plaintiff.

PART VIII.—RENEWAL OF REGISTRATION.

60. Renewal of registration.

Subject to this Act, the Registrar shall, on application in the prescribed manner by the registered proprietor, renew the registration of a trade mark for a further period of 10 years from the expiration of the last registration of that trade mark.

61. Procedure on expiry of registration.

(1) At the prescribed time before the expiration of the registration of a trade mark the Registrar shall send notice to the registered proprietor of the date on which the registration will expire and the conditions as to payment of fees and otherwise on which the renewal of the registration may be obtained.

(2) If, at the expiration of the prescribed time the conditions referred to in Subsection (1) have not been complied with, the Registrar may remove the trade mark from the Register.

62. Restoration of removed trade mark.

(1) Where a trade mark has been removed from the Register under Section 61(2) the Registrar may within 12 months of the date of expiration of the registration of that trade mark, if he is satisfied that it is just to do so, restore the trade mark to the Register and renew its registration, either generally or subject to such conditions or limitations as he sees fit to impose, for a further period of 10 years from the expiration of the last registration.

(2) A person who is aggrieved by a decision of the Registrar under Subsection (1) may appeal to the Court.

(3) Section 95 does not apply in relation to Subsection (1).

63. Status of un-renewed trade mark.

Where a trade mark has been removed from the Register under Section 61(2) the trade mark shall, for the purpose of an application for registration by another person, for a period of 12 months next after the expiration of the last registration, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that—

- (a) there has been no use in good faith of the trade mark during the two years immediately preceding the expiration of the last registration; or
- (b) no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

PART IX.—REGISTERED USERS.**64. Registered users.**

(1) Subject to this section, a person other than the registered proprietor of a trade mark may be registered as a registered user of that trade mark for all or any of the goods in respect of which the trade mark is registered.

(2) An application for the registration of a person as the registered user of a trade mark shall be made to the Registrar in the prescribed manner by the registered proprietor of the trade mark and the proposed registered user and shall be accompanied by such further documents, information or evidence as is required under the regulations or by the Registrar.

(3) Subject to this Act, where the requirements of Subsection (2) have been complied with, the Registrar may register the proposed registered user as a registered user of the trade mark for all or any of the goods in respect of which the application is made and subject to such conditions or restrictions as the Registrar thinks appropriate.

(4) The Registrar may refuse to register a person as a registered user of a trade mark for all or any of the goods in respect of which an application is made if, in his opinion, such registration would be contrary to the public interest.

(5) The Registrar shall not register a person as a registered user of a trade mark if it appears to him that the registration would tend to facilitate trafficking in the trade mark.

(6) The Registrar may determine that the registration of a person as a registered user of a trade mark shall be for such period as, having regard to the information supplied to him, he thinks fit, but such period shall not extend beyond the date of expiration of the current period of registration of the trade mark.

(7) The Registrar may determine that, on the registration of a person as a registered user of a trade mark, the period of the registration shall be deemed to have commenced on the date on which the application for the registration was lodged with the Registrar, and that person shall be deemed to have been a registered user of the trade mark from that date.

(8) The Registrar shall, if so required by an applicant under Subsection (2), ensure that any document, information or evidence furnished for the purpose of that application, other than matter entered in the Register, is not disclosed to any other person except by order of the Court.

65. Expiration of registration of registered user.

Subject to Section 67(1)(b) the registration of a person as a registered user of a trade mark shall expire on the date of expiration of the registration of the trade mark or such earlier date as may be determined by the Registrar under Section 64(6).

66. Renewal of registration of registered user.

(1) The registration of a person as registered user of a trade mark may be renewed from time to time in accordance with this Act.

(2) At the prescribed time before the expiration of the registration of a person as a registered user of a trade mark, the Registrar shall send notice to the registered user and to the registered proprietor of the trade mark of the date on which the registration will expire and the conditions as to payment of fees or otherwise on which renewal of the registration may be obtained.

(3) If the conditions referred to in Subsection (2) are complied with the Registrar may renew the registration for such period as he thinks fit commencing from the date of expiration of the last registration, but the period shall not extend beyond the date of expiration of the current period of registration of the trade mark.

(4) Where a trade mark that has been removed from the Register under Section 61(2) is restored to the Register under Section 62, the registration of a person as a registered user of that trade mark may be renewed under this section as of the date of expiration of the last registration.

67. Variation, etc., of registration.

(1) Without affecting the operation of Section 13, the registration of a person as a registered user—

- (a) may be varied by the Registrar, on the application of the registered proprietor and the registered user, with respect to the goods for which, or any conditions or restrictions subject to which, the registration has effect; or
- (b) may be extended by the Registrar, on the application of the registered proprietor and the registered user, for such period not exceeding three years, as the Registrar thinks fit, but such period shall not extend beyond the date of expiration of the current registration of the trade mark; or
- (c) may be cancelled by the Registrar on the application of the registered proprietor or of the registered user; or
- (d) may be cancelled by the Registrar on the application of a person on the ground—
 - (i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion; or
 - (ii) that the registered proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration or that the circumstances have materially changed since the date of the registration; or
 - (iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(2) An application under this section shall be made in the prescribed manner and shall be accompanied by such further documents, information or evidence as is required under the regulations or by the Registrar.

(3) The Registrar may, instead of determining an application under Subsection (1)(d) refer the application to the Court and the Court shall hear and determine the application.

(4) An office copy of an order of the Court made under Subsection (3) shall be served on the Registrar, who shall, on receipt of the order, take such steps as are necessary to give effect to the order.

68. Cancellation of registration.

The Registrar shall cancel the registration of a person as a registered user of a trade mark for any goods in respect of which the trade mark is no longer registered.

69. Effect of permitted use.

(1) The permitted use of a registered trade mark shall be deemed to be use by the registered proprietor of the trade mark and shall be deemed not to be use by a person other than the registered proprietor for the purposes of Section 14 and for any other purpose for which use by the registered proprietor of the trade mark is material under this Act.

(2) Where—

- (a) a person is registered as a registered user of a trade mark; and
- (b) there has been previous use (whether before or after the commencement of this Act) of the trade mark by that person; and
- (c) that use is in relation to goods in respect of which that person is registered and, where he is registered subject to conditions or restrictions—
 - (i) that use complied substantially with those conditions or restrictions; or
 - (ii) did not so comply but was not such as to be contrary to the public interest,

Subsection (1) has effect as if that previous use had been permitted use.

(3) The registration of a person as a registered user of a trade mark, or the use by that person of the trade mark as a registered user, does not prejudice any of the rights arising at common law of the person who is the registered proprietor of the trade mark.

(4) For the purpose of determining the rights arising at common law of the person who is the registered proprietor of a trade mark, the use of the trade mark by a registered user shall be deemed to be use by that person and shall be deemed not to be use by a person other than that person.

70. Infringement proceedings.

(1) Subject to any agreement subsisting between the registered user of a trade mark and the registered proprietor of the trade mark, the registered user is entitled to call on the registered proprietor to take proceedings for infringement of the trade mark, and, if the registered proprietor refuses or neglects to do so within two months after being so called on, the registered user may institute proceedings for infringement in his own name as if he were the registered proprietor and shall make the registered proprietor a defendant.

(2) A registered proprietor added as a defendant under Subsection (1) is not liable for costs unless he enters an appearance and takes part in the proceedings.

71. Rights not assignable.

This Part does not confer on the registered user of a trade mark an assignable or transmissible right to use of that trade mark.

72. Appeal.

A person who is aggrieved by a decision of the Registrar under this Part may appeal to the Court.

PART X.—ASSIGNMENT OF TRADE MARKS.

73. Assignment and transmission of trade marks.

(1) Subject to this section, a registered trade mark may be assigned or transmitted with or without the goodwill of the business concerned in the goods in respect of which the trade mark is registered or of some of those goods.

(2) Subject to Subsections (3), (4) and (5) an assignment of a registered trade mark without goodwill is invalid if—

- (a) the trade mark was not at any time in use in good faith in Papua New Guinea by the assignor or his predecessor in title; or
- (b) a substantially identical or deceptively similar trade mark continues to be used by the assignor, after the assignment in relation to other goods, where—
 - (i) there exists a connexion in the course of trade between those goods and the assignor; and
 - (ii) those goods are—
 - (A) of the same description as those in respect of which the trade mark has been assigned; or
 - (B) of such a description that the public is likely to be deceived by the use of the trade mark by the assignor and assignee on their respective goods.

(3) Subsection (2)(a) does not apply where—

- (a) the trade mark was registered with the intention that it should be assigned to a corporation to be formed and the trade mark has been so assigned; or
- (b) the trade mark was registered with the intention that a person should be permitted to use it as a registered user and a registered user has been registered in respect of the trade mark within six months after the registration of the trade mark and has used the trade mark within that period.

(4) An assignment of a trade mark is not invalid if, at the date of the institution of proceedings in which the validity of the assignment is called in question, the trade mark has come to denote to the public a connexion in the course of trade between the goods and the assignee to the exclusion of all other persons or, if the registration is limited to a particular area, to the exclusion of all other persons within that particular area.

(5) An assignment of a trade mark shall not be held to be invalid except in proceedings instituted within three years after the registration of the assignment.

(6) If goods bearing a registered trade mark are purchased or acquired by a person, the sale of or other dealing in those goods by that person, or by a person claiming under or through him, is not an infringement of the trade mark by reason only of the trade mark having been assigned by the registered proprietor to some other person after the purchase or acquisition of those goods.

(7) All rights subsisting in a trade mark (being a registered trade mark) whether under this Act or otherwise, shall be deemed to be assigned on the registration of the assignment of the trade mark.

74. Registration of assignment.

(1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall make application in the prescribed manner to the Registrar to register his title, and the Registrar shall, on receipt of the application and of proof of title to his

satisfaction register that person as the proprietor of the trade mark in respect of goods in respect of which the assignment or transmission has effect and cause particulars of the assignment or transmission to be entered in the Register.

(2) A person who is aggrieved by a decision of the Registrar under Subsection (1) may appeal to the Court.

(3) Except in the case of an appeal under this section or of an application under Section 13, a document or instrument in respect of which no entry has been made in the Register in accordance with Subsection (1) is not, unless the Court otherwise directs, admissible in evidence in a court in proof of a title to a registered trade mark.

PART XI.—PROTECTION OF TRADE MARKS.

75. Forgery, etc., of trade marks.

(1) A person who—

- (a) forges a registered trade mark; or
- (b) falsely applies a registered trade mark to goods; or
- (c) makes a die, block, machine or instrument for the purpose of forging, or of being used for forging, a registered trade mark; or
- (d) disposes of or has in his possession a die, block, machine or instrument for the purpose of forging, or of being used for forging, a registered trade mark,

is guilty of an offence.

Penalty: A fine not exceeding K2 000.00 or imprisonment for a term not exceeding three years¹.

(2) It is a defence in proceedings for an offence against Subsection (1) if the defendant proves that he acted without intent to defraud.

76. Selling, etc., of goods with false marks.

(1) A person who sells or exposes for sale, or has in his possession for sale or for the purpose of trade or manufacture, goods to which a forgery of a registered trade mark is applied or to which a registered trade mark is falsely applied, is guilty of an offence.

Penalty: A fine not exceeding K500.00¹.

(2) It is a defence in proceedings for an offence against Subsection (1) if the defendant proves that he acted without intent to defraud.

77. Importing goods with false marks.

A person who knowingly imports into the country goods to which a forgery of a registered trade mark is applied or to which a registered trade mark is falsely applied, is guilty of an offence.

Penalty: A fine not exceeding K500.00¹.

78. Forfeiture of goods.

A person convicted of an offence against Section 75, 76 or 77 is liable, in addition to the punishment provided by those sections to forfeit to the State all goods by means of which, or in relation to which, the offence was committed.

¹See, also, Section 78.

79. Aiding and abetting offences.

(1) A person who aids, abets, counsels or procures, or is in any way, directly or indirectly, knowingly concerned in or party to the commission of an act outside Papua New Guinea which if it were committed in Papua New Guinea, would be an offence against this Act, is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(2) Subsection (1) does not affect the operation of the Criminal Code.

80. Forgery of trade mark.

(1) A person shall be deemed to forge a registered trade mark—

- (a) if, without the assent of the registered proprietor of the trade mark or of a registered user of the trade mark, or the authority of this Act, he makes the trade mark or a mark substantially identical with it; or
- (b) if he falsifies a registered trade mark, whether by alteration, addition, effacement or otherwise.

(2) In a prosecution for forging a trade mark, the burden of proving the assent of the registered proprietor or registered user lies on the defendant.

81. When trade mark deemed applied.

(1) For the purposes of this section—

“covering” includes a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper;

“label” includes a band or ticket.

(2) A trade mark shall be deemed to be applied to goods if it is woven in, impressed on, worked into, or annexed or affixed to, the goods.

(3) A trade mark shall be deemed to be applied to goods where—

- (a) it is applied to the goods themselves; or
- (b) it is applied to a covering, label, reel or thing in or with which the goods are sold or exposed or had in possession for a purpose of trade or manufacture; or
- (c) it is used in a manner likely to lead to the belief that it refers to or describes or designates the goods; or
- (d) it is used in a sign, advertisement, invoice, wine list, catalogue, business letter, business paper, price list or other commercial document and goods are delivered to a person in pursuance of a request or order made by reference to the trade mark as so used.

(4) A registered trade mark shall be deemed to be falsely applied to goods if, without the assent of the registered proprietor of the trade mark or of a registered user of the trade mark or the authority of this Act, the trade mark or a mark substantially identical with it is applied to the goods.

(5) In a prosecution for falsely applying a registered trade mark to goods, the burden of proving the assent of the registered proprietor or a registered user lies on the defendant.

PART XII.—APPEALS.

82. Powers of Court.

On the hearing of an appeal under this Act, the Court may—

- (a) admit further evidence, either orally or on affidavit or otherwise; and
- (b) permit the examination and cross-examination of witnesses, including witnesses who gave evidence orally or on affidavit or otherwise to the Registrar; and
- (c) order an issue of fact to be tried in such manner as it directs; and
- (d) affirm, reverse or modify the decision, determination or direction appealed from; and
- (e) give such judgement, or make such order, as in all the circumstances it thinks fit, or refuse to make an order; and
- (f) order a party to pay costs to another party.

83. Intervention by the Registrar.

The Court may grant to the Registrar leave to intervene in an appeal.

84. Special cases.

The Court may state a case or reserve a question for the consideration of the Supreme Court, or may direct that a case or question be argued before the Supreme Court.

PART XIII.—MISCELLANEOUS.

85. Use of trade mark for export trade.

(1) The application in Papua New Guinea of a trade mark to goods to be exported from Papua New Guinea and any other act done in Papua New Guinea in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within Papua New Guinea, would constitute use of a trade mark in Papua New Guinea, shall, for the purposes of this Act, be deemed to constitute use of the trade mark in relation to those goods.

(2) Subsection (1) shall be deemed to have had effect in relation to an act done before the commencement date as it has effect in relation to an act done after that date, but does not affect a determination of a court which has been made before that date or the determination of an appeal from a determination so made.

86. Trade mark not deceptive in certain cases.

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

87. Disobedience to summons, etc., to be treated as contempt of Court.

(1) Where—

- (a) a person fails to appear in obedience to a summons of the Registrar, or to produce a document or article in accordance with a requirement of the Registrar; or
- (b) a person who appears before the Registrar as a witness refuses to be sworn or to make an affirmation, or to produce a document or article or to answer a question which he is lawfully required to produce or answer,

the Registrar may certify the failure or refusal under his hand to the Court.

(2) Where the Registrar gives a certificate under Subsection (1), the Court may enquire into the case and—

- (a) order the person to comply with the requirement of the Registrar within such period as is fixed by the Court; or
- (b) where the Court is satisfied that the failure or refusal was without lawful excuse—punish the person in like manner as if he had been guilty of contempt of the Court, and, if it sees fit, also make an order under Paragraph (a).

88. Recovery of costs.

Costs awarded by the Registrar may, in default of payment, be recovered in a court of competent jurisdiction as a debt due by the person against whom the costs were awarded to the person in whose favour they were awarded.

89. Certificate of validity.

In an action or proceeding in which the validity of the registration of a trade mark is unsuccessfully disputed, the Court may certify that the validity of the registration of the trade mark came in question and, if the Court so certifies, then, in a subsequent action or proceeding in which the validity of the registration of the trade mark is disputed, the registered proprietor of the trade mark, on obtaining a final order or judgement in his favour, is entitled, unless the court trying the action or proceeding otherwise directs, to have his full costs, charges, and expenses as between solicitor and client.

90. Groundless threats.

(1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding for infringement of a trade mark which is registered, or alleged by the first-mentioned person to be registered, or some other like proceeding, a person aggrieved may, whether the person making the threats is or is not the registered proprietor or the registered user of the trade mark—

- (a) bring any action against the first-mentioned person; and
- (b) obtain a declaration to effect that the threats are unjustifiable and an injunction against the continuance of the threats; and
- (c) recover such damages (if any) as he has sustained,

unless the first-mentioned person satisfies the court that the trade mark is registered and that the acts in respect of which the proceedings were threatened constitute, or, if done, would constitute, an infringement of the trade mark.

(2) Subsection (1) does not apply if the registered proprietor of the trade mark, or a registered user acting in pursuance of Section 70(1) with due diligence commences and prosecutes an action against the person threatened for infringement of the trade mark.

(3) This section does not render a lawyer liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) Jurisdiction is, by this section, conferred on the Court to hear and determine an action under this section, but this section does not deprive another court of jurisdiction which it possesses to hear and determine such an action.

91. Counter-claim by defendant.

The defendant in an action or proceeding under Section 90 may apply, by way of counter-claim, for relief to which he would be entitled in a separate action in respect of an infringement by the plaintiff of the trade mark to which the threats relate and in that case the provisions of this Act with respect to an action for infringement of a trade mark are, with the necessary modifications, applicable in relation to that action.

92. Description of registered trade mark.

In an indictment, information, pleading or proceeding in relation to a registered trade mark, it is not necessary to set out a copy or facsimile of the trade mark or a description of it, but the trade mark may be referred to as a registered trade mark and identified by its registered number.

93. Fees.

(1) There shall be paid to the Registrar such fees as are prescribed.

(2) Where—

- (a) a fee is payable in respect of the doing of an act by the Registrar—the Registrar shall not do that act until the fee has been paid; or
- (b) a fee is payable in respect of the doing of an act by a person other than the Registrar—the act shall be deemed not to have been done until the fee has been paid; or
- (c) a fee is payable in respect of the lodging of a document—the document shall be deemed not to have been lodged until the fee has been paid.

94. Extension of time.

Where, by this Act, a time is specified within which an act or thing is to be done, the Registrar may, unless otherwise expressly provided, extend the time either before or after its expiration.

95. Costs of Registrar¹.

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

96. Address of registered proprietor or registered user.

(1) The address of the registered proprietor and the address of any registered user of a trade mark, as appearing for the time being in the Register, shall for all purposes under

¹See Section 62(3).

this Act be deemed to be the address of the registered proprietor or the registered user, as the case may be.

(2) The registered proprietor and each registered user of a trade mark shall from time to time notify the Registrar in writing of any change in his address and the Registrar shall alter the Register accordingly.

97. Address for service.

(1) Notwithstanding Section 96 the registered proprietor and each registered user of a trade mark shall have an address for service, being an address in Papua New Guinea at which documents under this Act may be served on him personally or on a person specified by him on his behalf, which shall be entered in the Register.

(2) The registered proprietor and each registered user of a trade mark shall from time to time notify the Registrar in writing of any change in his address for service and the Registrar shall alter the Register accordingly.

(3) In addition to any other method of service provided for by or under this Act or any other law, a document may be served on a registered proprietor or a registered user of a trade mark by leaving it at, or sending it by post to, the address for service of the registered proprietor or the registered user, as the case may be, notified in the Register.

(4) An address for service stated in an application or notice of opposition shall, for the purposes of the application or notice of opposition be deemed to be the address of the applicant or the opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or the opponent, as the case may be.

98. Declaration by person under disability.

If a person is by reason of infancy, lunacy or other disability, incapable of making a declaration or doing anything required or permitted by this Act, the guardian or committee of the incapable person, or if there is no such guardian or committee, a person appointed by a court possessing jurisdiction in respect of the property of incapable persons, on the petition of a person on behalf of the incapable person or of some other person interested in the making of the declaration or the doing of the thing, may make the declaration (or a declaration as nearly corresponding to the declaration as the circumstances permit) and may do that thing, in the name and on behalf of the incapable person and all acts so done are, for the purposes of this Act, as effectually done as if they had been done by the incapable person and that person had not been incapable at the time of the making of the declaration or the doing of the thing.

99. Death of party to proceeding.

If a person who is party to a proceeding under this Act (not being a proceeding in a court) dies pending the proceeding, the Registrar may—

- (a) on request, and on proof to his satisfaction of the transmission of the interest of the deceased person—substitute in the proceeding his successor in interest in his place; or
- (b) if he is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties—permit the proceeding to continue without the substitution of his successor in interest.

100. Adaptation of classification.

(1) The regulations may make provision for the amendment of the Register, whether by making, expunging or varying entries in the Register, for the purpose of adapting the designation in the Register of the goods or classes of goods in respect of which trade marks are registered to any amended or substituted classification of goods which is prescribed.

(2) An amendment for the purpose referred to in Subsection (1) shall not be made if it would have the effect of adding goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of goods.

(3) Subsection (2) does not have effect in relation to goods as to which the Registrar is satisfied—

- (a) that compliance with that subsection in relation to those goods would involve undue complexity; and
- (b) that the addition or antedating, as the case may be, would not affect a substantial quantity of goods and would not substantially prejudice the right of any person.

(4) A proposal for the amendment of the Register for the purpose referred to in Subsection (1)—

- (a) shall be notified to the registered proprietor of the trade mark affected; and
- (b) shall be advertised in such manner as is prescribed; and
- (c) may be opposed before the Registrar by a person aggrieved on the ground that the proposed amendment contravenes the provisions of this section.

(5) A person who is aggrieved by a decision of the Registrar under this section may appeal to the Court.

101. Security for costs.

Where a person who appeals to the Court under this Act does not reside or carry on business in Papua New Guinea, the Court may require that person to give security for the costs of the appeal, and in default of security being given to the satisfaction of the Court, the appeal may be dismissed.

102. Service of orders on appeal.

(1) Where by this Act provision is made for the service on the Registrar of a judgement or order of a court, and an order is made by a court on appeal from the judgement or order, a person in whose favour the order on appeal is made is not entitled to enforce the order until he has served on the Registrar an office copy of the order.

(2) On the service on him of an order, under Subsection (1), the Registrar shall make such entries (if any) in the Register, or take such other action (if any), as the case requires.

103. Falsely representing registration of trade mark.

(1) For the purposes of this section, the use in Papua New Guinea, in relation to a trade mark, of the word "registered", or of some other word referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration under this Act, except—

- (a) where that word is used in physical association with other words delineated in characters at least as large as those in which that word is delineated, and

indicating that the reference is to registration as a trade mark under the law of a country outside Papua New Guinea, being a country under the law of which the registration referred to is in force; or

- (b) where that word (being a word other than the word "registered") is of itself such as to indicate that the reference is to such registration as is referred to in Paragraph (a); or
- (c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside Papua New Guinea and in relation to goods to be exported to that country.

(2) A person who makes a representation to the effect—

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

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

104. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, or for the conduct of any business relating to the office of the Registrar, and in particular—

- (a) for providing for the destruction of documents relating to trade marks the registration of which has ceased; and
- (b) for prescribing penalties of fines not exceeding K500.00 for offences against the regulations.

PART XIV.—TRANSITIONAL

105. Interpretation of Part XIV.

(1) In this Part—

"applicant to whom this Part applies" in relation to an application means the proprietor of a trade mark—

- (a) who applies to the Registrar for the registration of that trade mark within a period of 12 months from the commencement date, and
- (b) who shows to the satisfaction of the Registrar that he was—
 - (i) on the relevant date, the registered proprietor; or

- (ii) on the relevant date or subsequent to the relevant date and before the commencement date the successor in title of the registered proprietor,

of that trade mark in and for Papua New Guinea in respect of the same goods to which his application relates by virtue of the registration in Part A or Part B of the Australian Register at that date;

“application” means an application for the registration of a trade mark under this Act;

“the Australian Act” means the *Trade Marks Act 1955* of Australia;

“the Australian Register” means the Register of Trade Marks kept at the Trade Marks Office under the *Trade Marks Act 1955* of Australia;

“the relevant date” means 15 September 1975.

(2) For the purposes of this Part, a person is deemed not to have been registered in the Australian Register as the registered proprietor of a trade mark in respect of any goods at the relevant date if his registration as such in respect of those goods was not entered in the Australian Register at that date, notwithstanding that, by virtue of the provisions of the Australian Act, he may be deemed by that Act to have been so registered by that date in consequence of an entry made in the Australian Register after that date.

(3) Where, on the relevant date, a firm or partnership was registered in Part A or Part B of the Australian Register as the proprietor of a trade mark, all the persons who were on that date the proprietors of the firm or the members of the partnership shall be deemed, for the purposes of this Part, to have been registered jointly as the proprietors of the trade mark in the Australian Register at that date.

106. Priority given to certain applications.

(1) Notwithstanding any provision of this Act—

- (a) where an application is made by an applicant to whom this Part applies, the Registrar shall give priority to the registration of the trade mark, the subject of that application, over that of any applicant for the registration of a substantially identical or deceptively similar trade mark in respect of the same goods or goods of the same description who is not an applicant to whom this Part applies; and

- (b) on acceptance of an application made by an applicant to whom this Part applies, the Registrar may register the trade mark in the appropriate Part of the Register without advertisement of the acceptance of the application and the provisions of Part VI do not apply to the application.

(2) Subsection (1) applies to an application only where the rights of the applicant in respect of the trade mark would, as a consequence of the registration of the trade mark, in no way extend beyond the rights held by the applicant in respect of that trade mark in Papua New Guinea on the relevant date.

(3) The Registrar may defer acceptance of any application made by a person who is not an applicant to whom this Part applies until after the expiration of a period of 12 months from the commencement date, or he may accept the application and determine any opposition to the application within that period, but may defer registration of the trade mark until after the expiration of that period.

(4) Subject to Subsections (5) and (6), all trade marks registered in accordance with this section shall be deemed to have been registered from 16 September 1975.

(5) Notwithstanding the provisions of Subsection (4) no action for infringement of, or passing off a trade mark registered under this section shall lie in respect of the period from 16 September 1975 to the day before the commencement date.

(6) The provisions of Subsection (5) do not derogate from or affect any common law rights.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 385

Trade Marks Regulation.

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3. Preparation and lodgement of documents.
4. Classification of goods.

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5. Application to amend or alter Register.
6. Application to alter registered trade mark.

PART III.—PROHIBITED MARKS, ASSOCIATION.

7. Prohibited marks.
8. Dissolution of associated marks.

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11. Advertisement of acceptance.

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12. Notice of opposition.

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- FORM 3.—Application to Alter a Registered Trade Mark under Section 12 of the Act.
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- FORM 9.—Application for Variation or Extension of Registration of Registered User.

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FORM 10.—Application for Cancellation of Registration of Registered User.

FORM 11.—Application by Person Entitled by Assignment or Transmission to Registered Trade Mark for Registration.

SCHEDULE 2.—Requirements in Relation to Documents and Representations of Trade Marks.

SCHEDULE 3.—Classification of Goods.

SCHEDULE 4.—Fees.

SCHEDULE 5.—Prohibited Marks.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 385

Trade Marks Regulation.

PART I.—FEES, FORMS, DOCUMENTS, CLASSIFICATION.

1. Fees.

The fees payable under the Act are as specified in Schedule 4.

2. Error in Office of Registrar.

Item 1 of Schedule 4 does not apply to a correction necessitated solely by error or omission in the Office of the Registrar.

3. Preparation and lodgement of documents.

Where a document received at the Office of the Registrar is not in accordance with whichever of the forms specified in Schedule 1 is applicable or does not comply with the requirements specified in Schedule 2, he may—

- (a) treat the document as not having been lodged at the Office; or
- (b) treat the document as having been so lodged, but require the applicant to make such alterations as are necessary; or
- (c) return the document to the applicant with a statement indicating the requirements which have not been complied with.

4. Classification of goods.

Each of the Classes of Goods specified in Schedule 3 is a prescribed class of goods for the purposes of Section 22(1) of the Act.

PART II.—AMENDMENT, ALTERATION OF REGISTER.

5. Application to amend or alter Register.

An application under Section 11(1) or (3) of the Act shall be in Form 2.

6. Application to alter registered trade mark.

- (1) An application under Section 12(1) of the Act shall be in Form 3.
- (2) The prescribed time for the purposes of Section 12(3) of the Act is three months from the date of advertisement of the application.
- (3) A notice of opposition shall be in Form 5.
- (4) The person giving notice of opposition shall serve a copy of the notice on the applicant on or before the date of giving notice and shall indicate this fact in Form 5.

PART III.—PROHIBITED MARKS, ASSOCIATION.

7. Prohibited marks.

- (1) Each of the marks specified in Schedule 5 is a prohibited mark.
- (2) A mark specified in Schedule 5, not being a mark in use in good faith as a trade mark, shall not be used as a trade mark or part of a trade mark after 1 November 1979.

8. Dissolution of associated marks.

An application under Section 28(2) of the Act shall be in writing and shall contain a statement setting out the grounds on which the applicant relies.

PART IV.—APPLICATION FOR REGISTRATION.**9. Application for registration of trade mark.**

(1) An application under Section 32(1) of the Act shall be in Form 4 and shall be submitted together with eight representations of the trade mark each measuring, unless otherwise allowed, 80mm x 60mm.

(2) One copy of the representations referred to in Subsection (1) shall be fixed in the space provided for that purpose in the application form and the other seven copies attached to the form, except that—

- (a) where the trademark is in ordinary Roman typescript—the copy that is required to be fixed in the space in the form, may, instead of being so fixed, be typed or printed in that space; or
- (b) where by virtue of the nature of the trademark, the representations can only be conveniently reproduced in a larger size—the representations shall be mounted or printed on linen or other suitable material and attached to the form.

(3) The Registrar may, if he considers that a representation of a trade mark is on or mounted on material which will not, in the course of time, preserve the features of the trade mark, require the applicant to furnish a further representation of the trade mark mounted on a material specified by the Registrar.

(4) The Registrar may at any time before registration of the trade mark require further representations of the trade mark to be lodged.

(5) The prescribed period for the purposes of Section 35(2) of the Act is the period of six months after the date on which notification of the registration of the trade mark is advertised in the National Gazette.

(6) In the case of an application relying on Section 35(1)(b) of the Act, the applicant shall—

- (a) attach an application for registration of a registered user to the first-mentioned application; or
- (b) lodge an application for registration of a registered user within three months from the date of the first-mentioned application.

(7) In the case of an application under Part XIV. of the Act, the application shall indicate—

- (a) the number of the registration in Australia on which it is based; and
- (b) the proprietorship of the registration on 15 September, 1975; and
- (c) the existence of any conditions or restrictions relevant to Section 106(2) of the Act,

and shall, subject to Subsection (8), be accompanied by an extract from the Australian Register of Trade Marks, certified by the Australian Registrar, or his delegate, evidencing the matters referred to in this subsection.

(8) The Registrar may allow an extension of time of three months from the date of lodgement of the application for lodging the extract from the Australian Register under Subsection (7).

10. Registrar may issue notice that application be amended, etc.

By virtue of Sections 33 and 104 of the Act, the Registrar may issue a notice to the applicant requiring that the application be amended to his satisfaction so as to remove specified grounds of objection within a period of six months from the date of the notice or within such further period, not exceeding three months, as the Registrar allows, otherwise the Registrar may refuse to accept the application.

11. Advertisement of acceptance.

(1) For the purposes of Section 37(2) of the Act the prescribed manner is authorization of the Registrar by the applicant to advertise the acceptance in the National Gazette.

(2) The Registrar may require the applicant to furnish to him such material as he requires.

PART V.—OPPOSITION TO REGISTRATION.

12. Notice of opposition.

A notice of opposition under Section 40 of the Act shall be in Form 5.

PART VI.—REGISTRATION AND RENEWAL.

13. Registration to be notified.

The Registrar shall, as soon as practicable after the registration of a trade mark—

- (a) publish a notification of the registration in the National Gazette; and
- (b) forward to the registered proprietor a certificate of registration in Form 1.

14. Application for renewal.

(1) An application for renewal under Section 60 of the Act shall be made within the period of six months which ends on the date of the expiration of the last registration of the trade mark and shall be in Form 6.

(2) Where the trade mark is used at the date of application for renewal in an altered form, the applicant for renewal shall attach an application for amendment under Section 10.

15. Registrar to send note of expiration of registration.

The Registrar shall, under Section 61 of the Act, send to the registered proprietor of a Trade Mark notification of the date of the expiration of that registration six months before that date.

PART VII.—REGISTERED USERS

16. Registered users.

An application for registration as a registered user of a trade mark under Section 64(2) of the Act shall be in Form 7.

17. Application for renewal of registered user.

(1) An application under Section 66 of the Act shall be made by the registered proprietor in Form 8.

(2) The registered proprietor shall give notice in accordance with Section 45 of the application for renewal to the registered user.

(3) For the purposes of Section 66(2) of the Act the prescribed time is six months.

18. Application for variation or extension: Registered user.

An application for the variation or extension of the registration of a registered user of a trade mark under Section 67(1)(a) or (b) of the Act shall be made, by the registered proprietor and the registered user, in Form 9.

19. Application for cancellation of registered user.

(1) An application for cancellation under Section 67(1)(c) or (d) of the Act shall be in Form 10.

(2) The applicant shall give notice, in accordance with Section 45, of the application for cancellation to the registered proprietor and registered user.

PART VIII.—ASSIGNMENT.

20. Registration of Assignment.

An application for registration of an assignment under Section 74(1) of the Act shall be in Form 11.

PART IX.—PRACTICE AND PROCEDURE IN OPPOSITION CASES.

21. Interpretation of Part IX.

(1) In this Part—

“applicant” means a person who has made the request or application in respect of which a person has given a notice of opposition;

“counter-statement” means a short formal statement indicating the intention of the applicant to resist the opposition and continue the application;

“notice of opposition” means a notice of opposition in relation to which this Regulation applies;

“opponent” means a person who has lodged a notice of opposition.

(2) In this Part a requirement that a person is to lodge declarations, or to serve copies of declarations, on which he relies in support of, or in answer to, an opposition shall, in a case in which it is not practicable to include in, or annex to, a declaration any material on which the person relies, be construed as including a requirement that the person is to lodge that material or serve copies of that material, as the context requires.

22. Application of Part IX.

This Part applies where a notice of opposition has been given under the Act.

23. Opponent's evidence in support.

An opponent shall—

- (a) serve on the applicant, within three months after the notice of opposition has been lodged at the Office of the Registrar, a copy of each of the declarations on which he relies in support of his opposition; and
- (b) within 21 days after the copies of the declarations have been served—lodge the declarations at the Office of the Registrar with a written statement indicating the place at which, and the date on which, the copies of the declarations were served.

24. Applicant's evidence in answer.

An applicant shall—

- (a) serve on the opponent, within three months after the date on which the declarations of the opponent were served, a copy of each of the declarations on which he relies in answer to the opposition; and
- (b) within 21 days after the copies of the declarations are served—lodge the declarations at the Office of the Registrar with a written statement indicating—
 - (i) the place at which, and the date on which, the copies of the declarations of the opponent were served on him; and
 - (ii) the place at which, and the date on which, the copies of his declarations were served on the opponent.

25. Opponent's evidence in reply.

An opponent—

- (a) may serve on the applicant, within three months after the date on which the copies of the declarations of the applicant were served on him, a copy of each of the declarations on which he relies in reply to the declarations of the applicant; and
- (b) shall, within 21 days after the copies of the declarations are served—lodge the declarations at the Office of the Registrar with a written statement indicating the place at which, and the date on which, the copies of the declarations were served.

26. Statement if declarations in reply not to be lodged.

Where an opponent does not intend to reply to the applicant's declarations within the time specified in Section 25, the opponent shall lodge at the Office of the Registrar a written notice to that effect and, if a notice is so lodged, serve a copy on the applicant.

27. Further evidence to be by leave or special leave.

- (1) An opponent or applicant may not adduce further evidence except—
 - (a) by leave of the Registrar, if the parties agree in writing to further evidence being adduced; or
 - (b) by special leave of the Registrar granted on an application made for that purpose.
- (2) An application for special leave under Subsection (1)(b) shall, unless it is made at the hearing, be in writing.

(3) The person making the application shall lodge with the application a declaration setting out the grounds on which the application is made and the nature of the further evidence which it is desired to lodge.

(4) The person making the application shall—

- (a) within 14 days after the making of the application, serve a copy of the application and a copy of the declaration on the other party to the proceedings; and
- (b) if the copies are served after the making of the application—lodge at the Office of the Registrar a written statement indicating the place at which, and the day on which, the copies of the application and the declaration were served on the other party.

(5) The other party shall, if he intends to oppose the application, give to the Registrar and to the person making the application notice of his intention to do so within 14 days after the date on which the copies of the application and the declaration were served on him.

(6) Where special leave to adduce further evidence is granted, the other party shall be entitled to reply to the further evidence.

(7) The Registrar shall notify the parties of his decision on the application for special leave.

28. Procedure where special leave granted.

(1) Where the Registrar grants special leave to a party to adduce further evidence, that party shall—

- (a) serve on the other party, within one month after the date on which he received notification that special leave has been granted, a copy of the further evidence; and
- (b) within 21 days after the copy of the further evidence is served lodge the further evidence at the Office of the Registrar with a written statement indicating the place at which, and the date on which, the copy was served.

(2) Where the other party desires to adduce evidence in reply to the further evidence, that party shall—

- (a) serve, within one month after the date on which the copy of the further evidence referred to in Subsection (1)(a) was served on him, a copy of the evidence on which he proposes to rely in reply to the further evidence, on the party who obtained special leave to adduce further evidence; and
- (b) within 21 days after the copy of the declaration is served—lodge the evidence in reply at the Office of the Registrar with a written statement indicating the place at which, and the date on which, a copy of the evidence in reply was so served.

29. Fixing time and place for hearing.

The Registrar may fix a date for hearing at any stage in the proceedings and, in particular, he may fix a date for hearing where a party fails to take a procedural step or when the cause of the proceedings have been unduly prolonged.

30. Hearing.

(1) The Registrar shall hear the applicant and the opponent, if they desire to be heard, at the time and place fixed under Section 29.

(2) The Registrar may, if he thinks fit, adjourn the hearing from time to time and from place to place.

31. Notification of Registrar's decision.

The Registrar shall forward a copy of his decision to each of the parties to the opposition.

32. Costs.

(1) Where, in proceedings in relation to which this Part applies, the Registrar awards costs against a party to the proceedings, the costs shall be taxed, allowed and certified by an officer of the Office of the Registrar appointed by the Registrar for the purpose.

(2) A taxation of costs is subject to review by the Registrar.

PART X.—PRACTICE AND PROCEDURE IN CASES OTHER THAN OPPOSITION CASES.**33. Procedure in proceedings other than opposition proceedings.**

Where the Act or this Regulation authorizes the Registrar to hear and decide an application or matter not being an opposition, the practice and procedure to be followed for the purposes of enabling the application or matter to be decided shall be the practice and procedure which the Registrar, on an application made to him for that purpose, directs to be followed.

PART XI.—FORMAL REQUIREMENTS IN RELATION TO EVIDENCE.**34. Evidence.**

Notwithstanding anything in Part IX the Registrar may require a person who has made a declaration, to attend before him to give evidence orally on oath instead of, or in addition to, the evidence contained in the declaration and may allow the person to be cross-examined on his declaration.

35. Documents in a foreign language.

Where a document is in a foreign language, a translation of the document verified in such manner as the Registrar directs shall be furnished for the Registrar's use.

36. Declarations and affidavits.

(1) In this section—

“consular officer” has the same meaning as in the Vienna Convention on Consular Relations; and

“member of the diplomatic staff” has the same meaning as in the Vienna Convention on Diplomatic Relations.

(2) A declaration required by the Act or this Regulation to be lodged at the Office of the Registrar or furnished to the Registrar shall—

(a) be entitled in the matter in respect of which the declaration is made; and

(b) be drawn in the first person; and

(c) state the description and true place of business or abode of the declarant; and

- (d) be divided into paragraphs, each of which shall be numbered consecutively and shall, as far as practicable, be confined to one subject; and
 - (e) have endorsed on it the name and address of the person who lodges it and the name of the person on whose behalf it is lodged.
- (3) A declaration may be made—
- (a) in Papua New Guinea—before a Commissioner for Oaths; and
 - (b) in a part of Her Majesty's dominions other than Papua New Guinea—before a Judge, Magistrate, Commissioner for Oaths, Notary Public, a Commissioner for Affidavits, or a member of the diplomatic staff or a consular officer of the Papua New Guinea mission or a person authorized by the law of that part to administer oaths or take declarations; and
 - (c) in any other place—before a Judge of a court the jurisdiction of which is unlimited, one of Her Majesty's Consuls or Vice-Consuls, a Notary Public, or a member of the diplomatic staff or a consular officer of the Papua New Guinea mission.
- (4) The title of the person before whom the declaration is made and the date when and the place where it was taken or made shall be stated on the declaration.
- (5) The Registrar may take notice of the signature to a declaration and of the signature of the person before whom it is made without proof of the signatures or of the fact that the person before whom the declaration is made holds the office stated on the declaration.

PART XII.—MISCELLANEOUS.

37. Office hours.

The Office of the Registrar shall be open for business on those hours and days specified in the *Public Service Act*.

38. Translations.

Where an application is made for the registration of a trade mark which contains words in a language other than the English language or in Pisin or Hiri Motu or words in characters other than Roman characters, the applicant shall at the same time as he lodges his application, furnish to the Registrar—

- (a) a translation in the English language of those words; and
- (b) a transliteration in Roman characters of those characters.

39. Execution of documents.

(1) A document lodged with the Registrar under the Act or this Regulation, in relation to a trade mark, shall be signed or authenticated by the applicant, or opponent, or by his agent.

(2) An agent referred to in Subsection (1) shall act only on the written authority of the applicant or opponent unless that agent is—

- (a) a lawyer practising in Papua New Guinea; or
- (b) a legal practitioner practising in a State or Territory of Australia; or
- (c) a patent attorney registered under the *Patents Act* 1952, or a trade marks agent registered under the *Trade Marks Act* 1955, of Australia.

(3) An applicant or opponent who is a corporation shall sign or authenticate the document referred to in Subsection (1) or execute the authority referred to in Subsection (2) in a manner binding on the corporation.

40. Requirements as to agency.

(1) Where an agent is not a person referred to in Section 39(2)(a), (b) or (c), the Registrar may require that agent to produce to him evidence of his authority to act for the applicant or opponent.

(2) Notwithstanding that an agent required under Section 39(2) to act only on the written authority of the applicant or opponent has so acted, the Registrar may, in his discretion, refuse to receive a document signed or authenticated by that agent if he is of the opinion that—

- (a) the agent is otherwise not competent to act for the applicant or opponent; or
- (b) professional responsibility cannot be fixed on the agent.

41. Time within which applications for extensions of time are to be lodged.

An application for an extension of time under this Regulation shall be in writing and shall be lodged at the Office of the Registrar—

- (a) before the expiration of the time sought to be extended; or
- (b) if the Registrar is satisfied that special circumstances existed which prevented the application being made before that time—within such time as the Registrar allows.

42. Where requirement cannot be complied with.

Where, under this Regulation, a person is required to do an act or thing, to sign a document, to make a declaration, to produce to or leave with the Registrar or at the Office of the Registrar any document or evidence and the Registrar is satisfied that that person is, for reasonable cause unable to comply with the requirement, the Registrar may, subject to such terms as he directs, dispense with the requirement.

43. Certification of copies.

Where a person is required by the Act or this Regulation to lodge a copy of a document, the person shall certify as to the truth and correctness of the document so lodged in such manner as the Registrar desires.

44. Address for service.

(1) Where, in a form in Schedule 1, provision is made for a statement of an address for service, the person completing the form shall state an address in Papua New Guinea at which documents under the Act or this Regulation may be served on him personally or on a person specified in the form on his behalf.

(2) A person may, by written notice lodged at the Office of the Registrar, change his address for service to an address specified in the notice.

(3) Where proceedings in relation to which Part IX. applies are pending, a person who has given notice under Subsection (2) shall serve a copy of the notice on all persons interested in the proceedings.

(4) Notwithstanding Subsection (1), in relation to an application for registration of a trade mark lodged on or after 18 October 1979 but not later than 31 December 1980 by an agent referred to in Section 39(2)(b) or (c), on behalf of an applicant, the address, in

Australia, of that agent, may be stated in the application as the address for service of documents under the Act or this Regulation.

45. Notification of service.

(1) Where a person is required by the Act or this Regulation (other than Part IX.) to serve on another party a copy of a document, the first-mentioned person shall serve the copy on the party before applying to the Registrar or taking such other action as is prescribed by the Act or this Regulation and the service shall be notified by endorsement on the appropriate form.

(2) Documents shall be served either by registered mail with acknowledgement of receipt or by such other method as is prescribed.

46. Reasons for decision.

(1) The Registrar shall, on the written request of a person affected by a decision of the Registrar, furnish to that person a concise statement of the grounds on which the decision was made.

(2) An elaboration of the statement under Subsection (1) shall be required only in the case of an appeal to the Court.

47. Destruction of documents.

(1) The Registrar may order the destruction of documents relating to trade marks the registration of which has ceased not less than 25 years before the date of the order.

(2) Subsection (1) does not authorize the destruction of—

(a) the Register; or

(b) documents considered by the Registrar or by any State authority concerned with the preservation of archives, to be of legal or historical interest.

48. Directions or action by the Registrar not otherwise prescribed.

(1) The Registrar may prescribe any matter, give any direction or take any action, which is not otherwise prescribed and which is not inconsistent with this Regulation which is necessary or convenient for carrying out or giving effect to this Regulation.

(2) The Registrar may notify or publish any matter in the National Gazette which is necessary or convenient for carrying out or giving effect to this Regulation.

SCHEDULE 1.

PAPUA NEW GUINEA.
Trade Marks Act.

Act, Sec. 9.
Reg., Sec.13.

Form 1.

CERTIFICATE OF REGISTRATION OF TRADE MARK.

1. Registration No.:	2. Date of registration: 19.	Registered until	19
4. Class No.	5. Part	of Register.	
6. Goods:			
7. Proprietor of trade mark:			
8. Conditions and limitations (if any):			
9. Representation of trade mark:			

Certified to be a true extract from the Register.

REGISTRAR'S SEAL.
Registrar of Trade Marks.

Trade Marks

PAPUA NEW GUINEA.

Trade Marks Act.

Act, Sec. 11.

Form 2.

Reg., Sec. 5.

APPLICATION FOR AMENDMENT OR ALTERATION OF THE REGISTER UNDER SECTION 11 OF THE ACT.

FOR OFFICIAL USE

FEE:
ITEM 5

(a) Insert the full name of the individual, firm or corporation making application. If a corporation, firm or analogous body is making application, indicate the State or country of incorporation or registration. The names of all parties in a firm must be given in full.

Application is made by (a)

(b) Insert the full trade or business address of the applicant.

whose trade or business address is (b)

(c) Insert the number of the Registered Trade Mark.

for amendment or alteration of the Register in respect of Registered Trade Mark No. (c)

on the following grounds

The amendment or alteration sought is

My/our address for service in Papua New Guinea is

Signature.

Dated

19

Trade Marks

Ch. No. 385

PAPUA NEW GUINEA.

Trade Marks Act

Act, Sec. 12.

Form 3.

Reg., Sec. 6.

APPLICATION TO ALTER A REGISTERED TRADE MARK UNDER SECTION 12 OF THE ACT.

FEE:
ITEM 6

(a) Insert the full name of the individual, firm or corporation making application. If a corporation, firm or analogous body is making application, indicate the State or country of incorporation or registration. The names of all parties in a firm must be given in full.

Application is made by (a)

(b) Insert the full trade or business address of the applicant.

whose trade or business address is (b)

(c) Insert the No. of the Registered Trade Mark

for alteration of Registered Trade Mark No. (c)

on the following grounds

Eight (8) copies of a representation of the trade mark as it will appear if the alterations are made are attached

Trade Marks

My/our address for service in Papua New Guinea is

[Redacted address box]

Signature.

Dated 19

PAPUA NEW GUINEA.

Trade Marks Act.

Act, Sec. 32.

Form 4.

Reg., Sec. 9.

APPLICATION FOR REGISTRATION OF TRADE MARK.

FOR OFFICIAL USE

FEE:
ITEM(S) 11 (12)

REPRESENTATION OF MARK

One representation, 80mm x 60mm, to be fixed within the space and seven others of this size are to be attached to this Form. Representations of a large size may be folded but must then be mounted on linen or other suitable material and attached to this Form.

Application is made for Registration in Part * of the Register of the accompanying Trade Mark

in class

(a) Specify the goods. Only goods included in one and the same class should be specified. A separate application Form is required for each class.

in respect of (a)

(b) Insert the full name of the individual, firm or corporation making the application. If a corporation, firm or analogous body is making application indicate the State or country of incorporation or registration. The names of all partners in a firm must be given in full.

in the name of (b)

(c) Insert the full trade or business address of the applicant.

whose trade or business address is (c)

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(d) Insert the trading style (if any)

trading as (d)

(e) Strike out the words which are inapplicable.

by whom it is (e)(i) proposed to be/being used or (ii) to be used by an assignee/a registered user (f)

(f) For additional matter, if required, for example, name of assignee under Section 35(1)(a); name of registered user under Section 35(i)(b);** a further application under the provision of Section 34 of the Act (the parent application should be indicated); or an application made under the provisions of Part XIV of the Act***

My/our address for service in Papua New Guinea is

By virtue of Section 37(2) of the Act, the Registrar is authorised to advertise this application, if accepted.

Signature

Dated

19

*Insert "A" or "B" according to the registration desired.

**If the application is made under the provisions of Section 35(1)(b) of the Act, in order to satisfy the Registrar concerning intention to use, either attach an application for registration of a registered user or lodge such an application for registration of a registered user within three months from the date of the present application.

***If the application is made under the provisions of Part XIV of the Act, indicate—

- (i) the number of the registration in Australia on which it is based;
- (ii) the proprietorship of the registration on 15th September 1975; and
- (iii) the existence of any conditions or restrictions relevant to the provisions of Section 106(2) of the Act.

Attach an extract from the Australian Register, certified by the Australian Registrar, or his delegate, evidencing the matters referred to above.

NOTICE OF OPPOSITION UNDER SECTION 12 OR 40 OF THE ACT.

FOR OFFICIAL USE

FEE:
ITEM 7

(a) Insert the full name of the individual, firm or corporation giving notice. If a corporation, firm or analogous body is giving notice, indicate the State or country of incorporation or registration. The names of all parties in a firm must be given in full.

Notice of opposition is given by (a)

(b) Insert the full trade or business address of the individual etc., giving notice

whose trade or business address is (b)

(c) State which Section

under Section 12 in respect of Registered Trade Mark No.

or

under Section 40 in respect of application No.

(d) Attach full statement if space insufficient

on the following grounds (d)

My/our address for service in Papua New Guinea is

(e) Insert date.

A copy of this notice was served on Regulation Section 6 or 12.

(e) on the proprietor/applicant in accordance with

Signature.

Dated

19

Trade Marks

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PAPUA NEW GUINEA

Trade Marks Act.

Act. Sec. 60.

Form 6.

Reg. Sec. 14.

APPLICATION FOR RENEWAL OF REGISTRATION OF TRADE MARK.

FOR OFFICIAL USE

FEE:
ITEM 14

(a) Insert the full name of the individual, firm or corporation making application. If a corporation, firm or analogous body is making application, indicate the State or country of incorporation or registration. The names of all parties in a firm must be given in full.

Application is made by (a)

(b) Insert the full trade or business address of the applicant.

whose trade or business address is (b)

(c) Insert the number of the Registered Trade Mark.

for renewal of Registered Trade Mark No. (c)

(d) Insert the date of the Registered Trade Mark.

dated (d)

(e) Strike out either "now" or "not". If now used in an altered form, attach an application to amend under Section 12 of the Act.

The Trade Mark is now/not used in an altered form (e)

My/our address for service in Papua New Guinea is

Signature.

Dated

19

APPLICATION FOR REGISTRATION OF REGISTERED USER.

FOR OFFICIAL USE

FEE:
ITEM 16

(a)/(a)¹ Insert the full names of the individual, firm or corporation making application. If a corporation, firm or analogous body is making application, indicate the State or country of incorporation or registration. The names of all parties in a firm must be given in full.

Application is made by (a)

[Empty box for applicant name]

(b)/(b)¹ Insert the full trade or business address of the applicant.

whose trade or business address is (b)

[Empty box for business address]

and by (a)¹

[Empty box for second applicant name]

whose trade or business address is (b)¹

[Empty box for second business address]

(c) Insert the number of the Registered Trade Mark.

for registration of (a)¹ as registered user in respect of Registered Trade Mark No. (c)

[Empty box for registered trade mark number]

in respect of all the goods for which the mark is registered

(d) If registration is to be in respect of certain goods only, set these goods out here, or on an attached sheet, if necessary.

or in respect of certain of the goods for which the mark is registered (d)

[Empty box for goods description]

Trade Marks

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(e) Insert the appropriate period.

Registration as user is to be without limit of period

or

for the following period (e)

[Empty box for registration period]

(f) Insert restriction(s) if any

The proposed Registered User is to be the sole Registered User.

or the following restriction(s) as to application for registration as Registered User apply (f)

[Empty box for restrictions]

(g) Insert details of relationship(s), if any, for example, holding company/subsidiary; licensor/licensee contract as to prescribed standards of quality, and/or degree of control.

The relationship, existing or proposed, between the Registered Proprietor and the proposed Registered User and/or the degree of control to be exercised is as follows (g)

[Empty box for relationship details]

My/our address for service in Papua New Guinea is

[Empty box for address]

Signature. —Registered Proprietor

Dated 19 .

Signature. —Proposed Registered User

Dated 19 .

Trade Marks

PAPUA NEW GUINEA.

Trade Marks Act.

Act, Sec. 66.

Form 8.

Reg., Sec. 17.

APPLICATION FOR RENEWAL OF
REGISTRATION OF REGISTERED USER.

FOR OFFICIAL USE

FEE:
ITEM 17

(a)/(a)¹ Insert the full name of the individual, firm or corporation making application. If a corporation, firm or analogous body is making application, indicate the State or country of incorporation or registration. The names of all parties in a firm must be given in full.

Application is made by (a)

(b)/(b)¹ Insert the full trade or business address of the applicant.

whose trade or business address is (b)

for renewal of the registration of (a)¹

whose trade or business address is (b)¹

(c) Insert the number of the Registered Trade Mark.

as Registered User in respect of Registered Trade Mark No. (c)

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(d) Insert relevant changes in respect of goods etc.

There is no change in respect of the goods, restriction(s), if any, or relationship(s), if any, and/or degree of control

or

the following changes apply (d)

--

(e) Insert the appropriate period.

Registration as user is to be without limit of period

or

for the following period (e)

--

My/our address for service in Papua New Guinea is

--

(f) Insert date.

A copy of this application was served on with Regulation Section 45.

(f) on the Registered User in accordance

Signature—
Registered Proprietor.

Dated 19

APPLICATION FOR VARIATION OR EXTENSION OF REGISTRATION OF REGISTERED USER.

FOR OFFICIAL USE

FEE
ITEM 18

(a)/(a)¹ Insert the full name of the individual, firm or corporation making application. If a corporation, firm or analogous body is making application, indicate the State or country of incorporation. The names of all parties in a firm must be given in full.

Application is made by (a)

[Empty box for applicant name]

(b)/(b)¹ Insert the full trade or business address of the applicant.

whose trade or business address is (b)

[Empty box for applicant address]

for variation or extension of the registration of (a)¹

[Empty box for registration details]

whose trade or business address is (b)¹

[Empty box for address details]

(c) Insert the number of the Registered Trade Mark.

as Registered User in respect of Registered Trade Mark No. (c)

[Empty box for registered user details]

Trade Marks

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(d) Set out reasons justifying the variation or extension sought.

on the following grounds (d)

--

(e) Set out details of variation or extension sought.

The variation or extension sought is as follows (e)

--

My/our address for service in Papua New Guinea is

--

Signature—
Registered Proprietor

Dated 19 .

Signature—
Registered User

Dated 19 .

APPLICATION FOR CANCELLATION OF REGISTRATION OF REGISTERED USER.

FOR OFFICIAL USE

FEE
ITEM 19

(a) Insert the full name of the individual, firm or corporation making application. If a corporation, firm or analogous body is making application, indicate the State or country of incorporation or registration. The names of all parties in a firm must be given in full.

Application is made by (a)

[Empty box for applicant name]

(b) Insert the full trade or business of the applicant.

whose trade or business address is (b)

[Empty box for trade/business address]

(c) Insert full name and other details sufficient to identify the Registered User.

for cancellation of the following Registered User (c)

[Empty box for Registered User details]

(d) Insert the number of the Registered Trade Mark.

in respect of Registered Trade Mark No. (d)

[Empty box for Registered Trade Mark No.]

(e) Set out reasons justifying the cancellation: Section 67(1)(c) or (d) of the Act.

on the following grounds (e)

[Empty box for reasons for cancellation]

(f) Insert date

My/our address for service in
Papua New Guinea is

[Redacted address box]

A copy of this application was served on (f) on the Registered User and the Registered Proprietor in accordance with Regulation Section 45.

Signature.

Dated

19

Trade Marks

PAPUA NEW GUINEA.B

Trade Marks Act.

Act, Sec. 74.

Form 11.

Reg., Sec. 20.

APPLICATION BY PERSON ENTITLED BY ASSIGNMENT OR TRANSMISSION TO REGISTERED TRADE MARK FOR REGISTRATION.

FOR OFFICIAL USE

FEE:
ITEM 20

(a) Insert the full name of the individual, firm or corporation making application. If a corporation, firm or analogous body is making application, indicate the State or country of incorporation or registration. The names of all parties in a firm must be given in full.

Application is made by (a)

[Empty box for applicant name]

(b) Insert the full trade or business address of the applicant.

whose trade or business address is (b)

[Empty box for business address]

(c) Insert the number of the Registered Trade Mark.

to register title to Registered Trade Mark No. (c)

[Empty box for trade mark number]

(d) Set out details of assignment or transmission.

by virtue of (d)

My/our address for service in Papua New Guinea is

Documentary proof of title is attached.

Signature.

Dated

19

SCHEDULE 2.

Reg., Sec. 3.

REQUIREMENTS IN RELATION TO DOCUMENTS AND REPRESENTATIONS OF TRADE MARKS.

DOCUMENTS.

1. Documents shall be written in the English language on durable white paper of good quality, the thickness of 300 sheets of which is not less than 25mm.
2. The sheets of paper shall be of International A4 size.
3. The contents of a document shall be written on one side only in a carbonaceous or other permanent ink on which bleaching agents do not have any effect.
4. The contents of a document may be handwritten provided that the writing is large and legible, or printed provided that the type is not less than Pica (12 point).
5. A document may be a carbon copy or a photographic re-production provided that it is clear and legible and also is not subject to fading or discolouration.
6. A document shall have margins of not less than 25mm on the left-hand side and 12mm on the right-hand side.
7. Where a document comprises of more than two sheets, the sheets shall be bound together securely and each sheet shall have a margin of not less than 25mm on the side on which it is bound in addition to any space required for binding.
8. Where a document comprises of more than 20 sheets it shall be securely bound inside a durable and flexible cover.

REPRESENTATIONS OF TRADE MARKS.

9. The standard of printing or reproduction of a representation submitted together with the application shall be such that the trade mark may be printed, from and true to the representations supplied of that trademark, in the National Gazette using those techniques available to the Papua New Guinea Government Printer.

SCHEDULE 3.

Act. Sec. 22(1).

Reg., Sec. 4.

CLASSIFICATION OF GOODS.

Class No.	Examples of goods included in classes.
1.	Chemical products used in industry, science, photography, agriculture, horticulture, forestry; artificial and synthetic resins; plastics in the form of powders, liquids or pastes, for industrial use; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry.
2.	Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colouring matters, dye-stuffs; mordants; natural 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, edible 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; material for stopping teeth, dental wax; disinfectants; preparations 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, horse-shoes; nails and screws and other goods in non-precious metal not included in other classes; ores.
7.	Machines and machine tools; motors (except for land vehicles); machine couplings and belting (except for land 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, checking (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; explosives substances; fireworks.
14.	Precious metals and their alloys and goods in, or coated with, precious metals (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, newspapers and periodicals, books; bookbinding material; photographs, stationery, adhesive materials (stationery); artists' materials, paint brushes; typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; (printers') type and cliches (stereotype).
17.	Gutta percha, indiarubber, balata and substitutes, articles made from these substances and not included in other classes; plastics in the form of sheets, blocks and rods, being for use in manufacture; materials for packing, stopping or insulating; asbestos, mica, and their products; hose pipes (non-metallic).
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.

CLASSIFICATION OF GOODS—*continued.*

Class No.	Examples of goods included in classes.
19.	Building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; roadmaking materials, asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots.
20.	Furniture, mirrors, picture frames, articles (not included in other classes) consisting of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, and other substitutes for all these materials, or of plastics.
21.	Small domestic utensils and containers (not of, or coated with, precious metal); combs and sponges; brushes (other than paint brushes), brushmaking materials; instruments and material for cleaning purposes; steelwool; unworked or semi-worked glass (including glass used in building); glassware, porcelain and earthenware not included in other classes.
22.	Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks; padding or stuffing materials (hair, kapok, feathers, seaweed, etc); raw fibrous textile materials.
23.	Yarns, threads.
24.	Tissues (piece goods); bed and table covers; textile articles not included in other classes.
25.	Clothing, including boots, shoes and slippers.
26.	Lace and embroidery; ribbons 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 existing floors; wall hangings (non-textile).
28.	Games and playthings; gymnastics 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-powders; 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, malt.
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 liqueurs.
34.	Tobacco, raw or manufactured; smokers' articles; matches.
Class No.	Services included in classes.
35.	Advertising and business.
36.	Insurance and financial.
37.	Construction and repair.
38.	Communication.
39.	Transport and storage.
40.	Material treatment.
41.	Education and entertainment.
42.	Miscellaneous.

SCHEDULE 4.

Reg., Sec. 1.

FEES.

Item No.	Matter.	Fees. K
1.	On lodging application under Section 5(2) —in the case of a clerical error or obvious mistake in any other case	5.00 15.00
2.	For certified copy of certificate of registration	10.00
3.	For photographic copies of, or extracts from, the Register or other documents in the possession of the Registrar	1.00 per sheet
4.	For certificate of Registrar under Section 9	10.00
5.	On lodging application under Section 11 —for the correction of, or change (where there is no change in proprietorship), in the name or address of a registered proprietor and where the application is made in relation to more than one trade mark, the change in such case being the same —in any other case	5.00 2.00 15.00
6.	On lodging application under Section 12 to alter a regis- tered trade mark and where application is made at the same time to alter more than one trade mark of the same proprietor, the alteration in each case being the same —for each additional mark	25.00 10.00
7.	On lodging notice of opposition under Section 12 or Sec- tion 40	15.00
8.	On lodging evidence in opposition proceedings —for each evidential stage	15.00
9.	For each entry in the Register of association of a trade mark	5.00
10.	On lodging application for disassociation under Section 28(2)	15.00
11.	On lodging application to register a trade mark or a series of trade marks	15.00
12.	On lodging application to register a trade mark or a series of trade marks where representation exceeds 80mm x 60mm in size (in addition to application fee payable)	10.00
13.	For registration of: (a) a trade mark (b) a series of trade marks— for the first mark for every other mark of the series	75.00 75.00 50.00
14.	On lodging application for renewal of registration of— (a) a trade mark (b) a series of trade marks— for the first mark for every other mark of the series	100.00 100.00 50.00
15.	On lodging application for restoration of removed trade mark under Section 62 (in addition to renewal fee payable)	50.00
16.	On lodging application for registration of a registered user and where application is made at the same time for registration of the same registered user of more than one trade mark of the same proprietor subject to the same conditions and restrictions in each case —for each additional trade mark	25.00 10.00
17.	On lodging application for renewal of registration of a registered user	15.00
18.	On lodging application for variation or extension of regis-	25.00

Trade Marks

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Item No.	Matter.	Fees. K
19.	tration of a registered user On lodging application for the cancellation of registration of a registered user	10.00
20.	On lodging application, by a person entitled by assignment or transmission to a registered trade mark, for registration and where applications are made at the same time for registration in relation to more than one trade mark and the devolution of title is the same in respect of all the trade marks	25.00
	—for each additional mark	10.00
21.	On lodging application for an extension of time—for each month or part of month applied for	20.00
22.	On lodging request to the Registrar for statement of grounds on which his decision was made	40.00
23.	For issuing summons to a witness or summons to produce documents	20.00
24.	For taxing costs	20.00
25.	Searches:	
	Where carried out by member of public	2.00 per hour (minimum charge 2.00)
	Where carried out by officer-in-charge of Register	5.00 per hour (minimum charge 5.00).

SCHEDULE 5.

Act, Sec. 20.

Reg., Sec. 7.

PROHIBITED MARKS.

1. U.N., U.N.E.S.C.O., W.H.O., F.A.O., and any similar mark suggesting a connexion with, or approval by, an agency of the United Nations.
2. Any symbol suggesting a connexion with, or approval by, the International Olympic Federation.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 385.

Trade Marks.

APPENDIX 1.

SOURCE OF THE TRADE MARKS ACT.

Part A.—Previous Legislation.

Trade Marks Act (No.39 of 1978)

as amended by—

Trade Marks (Amendment) Act 1980 (No.6 of 1980).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	1	31	31
2	2	32	32
3	3	33	33
4	4	34	34
5	5	35	35
6	6	36	36
7	7	37	37
8	8	38	38
9	9	39	39
10	10	40	40
11	11	41	41
12	12	42	42
13	13	43	43
14	14	44	44
15	15	45	45
16	16	46	46
17	17	47	47
18	18	48	48
19	19	49	49
20	20	50	50
21	21	51	51
22	22	52	52
23	23	53	53
24	24	54	54
25	25	55	55
26	26	56	56
27	27	57	57
28	28	58	58
29	29	59	59
30	30	60	60

¹Unless otherwise indicated, references are to the Act set out in Part A.

Part—Cross References—*continued.*

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
61	61	84	84
62	62	85	85
63	63	86	86
64	64	87	87
65	65	88	88
66	66	89	89
67	67	90	90
68	68	91	91
69	69	92	92
70	70	93	93
71	71	94	94
72	72	95	95
73	73	96	96
74	74	97	97
75	75	98	98
76	76	99	99
77	77	100	100
78	78	101	101
79	79	102	102
80	80	103	103
81	81	104	104
82	82	105	105
83	83	106	106

APPENDIX 2.

SOURCE OF THE TRADE MARKS REGULATION.

Part A.—Previous Legislation.

Trade Marks Regulation 1979 (No.14 of 1979)

as amended by—

Trade Marks (Amendment) Regulation 1980 (No.1 of 1980).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	2	9	11
2	3	10	12
3	5	11	13
4	6	12	14
5	7	13	15
6	8	14	16
7	9	15	17
8	10	16	18

¹Unless otherwise indicated, references are to the regulation set out in Part A.

Trade Marks

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Part—Cross References—*continued.*

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
17	19	36	38
18	20	37	39
19	21	38	40
20	22	39	41
21	23	40	42
22	24	41	43
23	25	42	44
24	26	43	45
25	27	44	46
26	28	45	47
27	29	46	48
28	30	47	49
29	31	48	50
30	32	Schedule 1	Schedule 2
31	33	Schedule 2	Schedule 3
32	34	Schedule 3	Schedule 4
33	35	Schedule 4	Schedule 5
34	36	Schedule 5	Schedule 6
35	37		

