



Trade Marks Act 1994

1994 CHAPTER 26

PART III

ADMINISTRATIVE AND OTHER SUPPLEMENTARY PROVISIONS

Legal proceedings and appeals

72 Registration to be prima facie evidence of validity

In all legal proceedings relating to a registered trade mark (including proceedings for rectification of the register) the registration of a person as proprietor of a trade mark shall be prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission of it.

73 Certificate of validity of contested registration

- (1) If in proceedings before the court the validity of the registration of a trade mark is contested and it is found by the court that the trade mark is validly registered, the court may give a certificate to that effect.
- (2) If the court gives such a certificate and in subsequent proceedings—
 - (a) the validity of the registration is again questioned, and
 - (b) the proprietor obtains a final order or judgment in his favour,he is entitled to his costs as between solicitor and client unless the court directs otherwise.

This subsection does not extend to the costs of an appeal in any such proceedings.

74 Registrar's appearance in proceedings involving the register

- (1) In proceedings before the court involving an application for—
 - (a) the revocation of the registration of a trade mark,
 - (b) a declaration of the invalidity of the registration of a trade mark, or

Status: This is the original version (as it was originally enacted).

- (c) the rectification of the register,
the registrar is entitled to appear and be heard, and shall appear if so directed by the court.
- (2) Unless otherwise directed by the court, the registrar may instead of appearing submit to the court a statement in writing signed by him, giving particulars of—
 - (a) any proceedings before him in relation to the matter in issue,
 - (b) the grounds of any decision given by him affecting it,
 - (c) the practice of the Patent Office in like cases, or
 - (d) such matters relevant to the issues and within his knowledge as registrar as he thinks fit;
and the statement shall be deemed to form part of the evidence in the proceedings.
- (3) Anything which the registrar is or may be authorised or required to do under this section may be done on his behalf by a duly authorised officer.

75 The court

In this Act, unless the context otherwise requires, “the court” means—

- (a) in England and Wales and Northern Ireland, the High Court, and
- (b) in Scotland, the Court of Session.

76 Appeals from the registrar

- (1) An appeal lies from any decision of the registrar under this Act, except as otherwise expressly provided by rules.

For this purpose “decision” includes any act of the registrar in exercise of a discretion vested in him by or under this Act.

- (2) Any such appeal may be brought either to an appointed person or to the court.
- (3) Where an appeal is made to an appointed person, he may refer the appeal to the court if—
 - (a) it appears to him that a point of general legal importance is involved,
 - (b) the registrar requests that it be so referred, or
 - (c) such a request is made by any party to the proceedings before the registrar in which the decision appealed against was made.

Before doing so the appointed person shall give the appellant and any other party to the appeal an opportunity to make representations as to whether the appeal should be referred to the court.

- (4) Where an appeal is made to an appointed person and he does not refer it to the court, he shall hear and determine the appeal and his decision shall be final.
- (5) The provisions of sections 68 and 69 (costs and security for costs; evidence) apply in relation to proceedings before an appointed person as in relation to proceedings before the registrar.

77 Persons appointed to hear and determine appeals

- (1) For the purposes of section 76 an “appointed person” means a person appointed by the Lord Chancellor to hear and decide appeals under this Act.
- (2) A person is not eligible for such appointment unless—
 - (a) he has a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) he is an advocate or solicitor in Scotland of at least 7 years' standing;
 - (c) he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing; or
 - (d) he has held judicial office.
- (3) An appointed person shall hold and vacate office in accordance with his terms of appointment, subject to the following provisions—
 - (a) there shall be paid to him such remuneration (whether by way of salary or fees), and such allowances, as the Secretary of State with the approval of the Treasury may determine;
 - (b) he may resign his office by notice in writing to the Lord Chancellor;
 - (c) the Lord Chancellor may by notice in writing remove him from office if—
 - (i) he has become bankrupt or made an arrangement with his creditors or, in Scotland, his estate has been sequestrated or he has executed a trust deed for his creditors or entered into a composition contract, or
 - (ii) he is incapacitated by physical or mental illness,or if he is in the opinion of the Lord Chancellor otherwise unable or unfit to perform his duties as an appointed person.
- (4) The Lord Chancellor shall consult the Lord Advocate before exercising his powers under this section.