

Status: Point in time view as at 31/10/1994.

Changes to legislation: There are currently no known outstanding effects for the Trade Marks Act 1994, Cross Heading: Infringement: rights of authorised users. (See end of Document for details)

SCHEDULES

SCHEDULE 1

COLLECTIVE MARKS

Commencement Information

- II** Sch. 1 wholly in force at 31.10.1994; Sch. 1 not in force at Royal Assent; Sch. 1 para. 6(2) in force for certain purposes at 29.9.1994 and at 31.10.1994 insofar as Sch. 1 not already in force by 1994/2550, arts. 2, 3(1), Sch.

Infringement: rights of authorised users

- 11 The following provisions apply in relation to an authorised user of a registered collective mark as in relation to a licensee of a trade mark—
- (a) section 10(5) (definition of infringement: unauthorised application of mark to certain material);
 - (b) section 19(2) (order as to disposal of infringing goods, material or articles: adequacy of other remedies);
 - (c) section 89 (prohibition of importation of infringing goods, material or articles: request to Commissioners of Customs and Excise).
- 12 (1) The following provisions (which correspond to the provisions of section 30 (general provisions as to rights of licensees in case of infringement)) have effect as regards the rights of an authorised user in relation to infringement of a registered collective mark.
- (2) An authorised user is entitled, subject to any agreement to the contrary between him and the proprietor, to call on the proprietor to take infringement proceedings in respect of any matter which affects his interests.
- (3) If the proprietor—
- (a) refuses to do so, or
 - (b) fails to do so within two months after being called upon,
- the authorised user may bring the proceedings in his own name as if he were the proprietor.
- (4) Where infringement proceedings are brought by virtue of this paragraph, the authorised user may not, without the leave of the court, proceed with the action unless the proprietor is either joined as a plaintiff or added as a defendant.
- This does not affect the granting of interlocutory relief on an application by an authorised user alone.
- (5) A proprietor who is added as a defendant as mentioned in sub-paragraph (4) shall not be made liable for any costs in the action unless he takes part in the proceedings.

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- (6) In infringement proceedings brought by the proprietor of a registered collective mark any loss suffered or likely to be suffered by authorised users shall be taken into account; and the court may give such directions as it thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of such users.

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