



Trade Marks Act 1938 (repealed 31.10.1994)

1938 CHAPTER 22 1 and 2 Geo 6

GENERAL AND MISCELLANEOUS

Miscellaneous

62 Change of form of trade connection not to be deemed to cause deception.

The use of a registered trade mark in relation to goods between which and the person using it any form of connection 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 his a different form of connection in the course of trade subsisted or subsists.

63 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 of them to use it except—

- (a) on behalf of both or all of them, or
- (b) in relation to an article 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 shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

Subject as aforesaid, nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Trade Marks Act 1938 (repealed 31.10.1994), Cross Heading: Miscellaneous. (See end of Document for details)

64 Trusts and equities.

- (1) There shall not be entered in the register any notice of any trust express, implied or constructive, nor shall any such notice be receivable by the Registrar.
- (2) Subject to the provisions of this Act, equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

[^{F1}64A Recognition of agents.

- (1) The person who is registered as the proprietor or registered user of a trade mark in respect of any goods may give notice in writing to the Commissioners of Customs and Excise (in this section referred to as the Commissioners)—
 - (a) that he is the proprietor or registered user of that trade mark, and
 - (b) that such goods bearing the trade mark are expected to arrive in the United Kingdom at a time and place and by a consignment specified in the notice, and
 - (c) that the use within the United Kingdom of the trade mark in relation to the goods would infringe the proprietor's exclusive right to that use, and
 - (d) that he requests the Commissioners to treat the goods as prohibited goods.
- (2) Where a notice has been given under this section in respect of any goods bearing a trade mark and has not been withdrawn and the requirements of any regulations made under this section are complied with, then, subject to the following provisions of this section, the importation into the United Kingdom of the goods shall, if the condition of paragraph (c) of the preceding subsection is satisfied, be deemed to be prohibited unless the importation is for the private and domestic use of the person importing the goods.
- (3) The Commissioners may make regulations prescribing the form in which notices are to be given under this section, and requiring a person giving such a notice, either at the time of giving the notice or at the time when the goods in question are imported, or at both those times, to furnish the Commissioners with such evidence, and to comply with such other conditions (if any), as may be specified in the regulations, and any such regulations may include such incidental and supplementary provisions as the Commissioners consider expedient for the purposes of this section.
- (4) Without prejudice to the generality of the preceding subsection, regulations made under that subsection may include provision for requiring a person who has given a notice under subsection (1) of this section, or a notice purporting to be a notice under that subsection,—
 - (a) to pay such fees in respect of the notice as may be prescribed by the regulations;
 - (b) to give to the Commissioners such security as may be so prescribed, in respect of any liability or expense which they may incur in consequence of the detention of any goods to which the notice relates, or in consequence of anything done in relation to goods so detained;
 - (c) whether any such security is given or not, to keep the Commissioners indemnified against any such liability or expense as is mentioned in the preceding paragraph.
- (5) For the purposes of [^{F2}section 17 of the ^{M1}Customs and Excise Management Act 1979] (which relates to the disposal of duties) any fees paid in pursuance of regulations made

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under this section shall be treated as money collected on account of [^{F2}duties (whether of customs or excise) charged on imported goods].

- (6) Regulations under subsection (3) of this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament].

Textual Amendments

- F1** S. 64A inserted by Trade Descriptions Act 1968 (c. 29, SIF 109:1), s. 17
F2 Words substituted by Customs and Excise Management Act 1979 (c. 2, SIF 40:1), Sch. 4 para. 12 Table Pt. I

Modifications etc. (not altering text)

- C1** S. 64A excluded by S.I. 1987/1521, art. 2

Marginal Citations

- M1** 1979 c. 2(40:1).

65 Saving for jurisdiction of courts in Scotland, Northern Ireland and Isle of Man.

Where by this Act any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, the act may under and in accordance with the rules, or in particular cases by special leave of the Board of Trade, be done by or to an agent of that person duly authorised in the prescribed manner.

66 Interpretation.

- (1) The provision of this Act conferring a special jurisdiction on the Court as defined by this Act shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Northern Ireland in any proceedings relating to trade marks; and with reference to any such proceedings in Scotland the expression “the Court” means the Court of Session; and with reference to any such proceedings in Northern Ireland the expression “the Court” means the High Court of Justice in Northern Ireland.
- (2) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man in proceedings for infringement or in any action or proceeding respecting a trade mark competent to those courts.

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Textual Amendments

- F3** S. 67 repealed by Industrial Expansion Act 1968 (c. 32, SIF 64), Sch. 4

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