

*Trade Marks.***No. 4 of 1890.****An Ordinance to amend "The Trade Marks Ordinance, 1888."***(See No. 14 of 1888.)***Preamble.**

WHEREAS it is expedient to amend "The Trade Marks Ordinance, 1888," hereinafter referred to as "the principal Ordinance": Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Amendments of Ordinance No. 14 of 1888.

1 For the definition of "a trade mark" in section 2 of the principal Ordinance beginning with the words "a trade mark must consist of" and ending with the words "any of them" shall be substituted the following:

Section 2, as to trade mark.

(1) A "trade mark" must consist of or contain at least one of the following essential particulars:

- (a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or
- (b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or
- (c) A distinctive device, mark, stamp, brand, heading, label, or ticket; or
- (d) An invented word or invented words; or
- (e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in sub-section 1 any letters, words, or figures, or combination of letters, words, or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered in the register.

(3) Provided as follows:

- (a) A person need not under sub-section 2 disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

Section 3, as to application for registration

- (b) Any special and distinctive word or words, letter, figure, or combination of letters and figures used as a trade mark before the coming into operation of this Ordinance may be registered as a trade mark under this Ordinance.

Trade Marks.

2 To section 3 of the principal Ordinance the following sub-section shall be added :

(6) When an applicant for the registration of a trade mark is out of the island at the time of making the application, he shall give the Colonial Secretary an address for service in the island, and if he fails to do so the application shall not be proceeded with until the address has been given.

3 In section 5 of the principal Ordinance, for the words "the application shall be deemed to be abandoned" shall be substituted the words "the Colonial Secretary shall give notice of the non-completion to the applicant or to his agent, and if at the expiration of fourteen days from that notice, or of such further time as the Colonial Secretary may in special cases permit, the registration is not completed, the application shall be deemed to be abandoned."

Section 5, as to limit of time for proceeding with application.

4 In section 8 of the principal Ordinance, the words "or colours" shall be added after the word "colour" in each place where that word occurs.

Section 8, as to colour of trade marks.

5 In section 9 of the principal Ordinance, after the words "local newspapers" shall be added the words "unless the Colonial Secretary refuse to entertain the application."

Section 9, as to advertisement of applications.

6 (1) (a) In sub-section 1 of section 10 of the principal Ordinance, for the words "two months" shall be substituted the words "one month, or such further time not exceeding three months as the Colonial Secretary may allow."

Section 10, as to opposition to registration.

(b) In sub-section 2 of the same section, for the words "two months" shall be substituted the words "one month."

(2) To the same section of the principal Ordinance the following sub-sections shall be added :

(5) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the Colonial Secretary may determine to be reasonable.

(6) Where the opponent is out of the island he shall give the Colonial Secretary an address for service in the island.

7 In sub-section 2 of section 15 of the principal Ordinance the following words shall be added at the beginning of the sub-section, namely, "except as aforesaid," and for the words "so nearly resembling" shall be substituted the words "having such resemblance to."

Section 15, as to restrictions on registration.

8 In section 16 of the principal Ordinance the word "exclusive" shall be omitted.

Section 16, as to restriction on registration.

Trade Marks.

Section 17, as to trade marks.

9 For sub-section 2 of section 17 of the principal Ordinance the following sub-section shall be substituted, namely :

(2) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

Provided that a person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

Section 18, as to effect of application for registration.

10 For section 18 of the principal Ordinance, the following section shall be substituted, namely :

Application for registration of a trade mark shall be deemed to be equivalent to public use of the trade mark, and the date of the application shall, for the purposes of this Ordinance, be deemed to be, and as from the twenty-second day of December, One thousand Eight hundred and Eighty-Eight, to have been the date of the registration.

Certificate as to exclusive use, and costs thereon.

11 After section 20 of the principal Ordinance the following section shall be added and numbered 20 (a), namely :

In an action for infringement of a registered trade mark the court or a judge may certify that the right to the exclusive use of the trade mark came in question, and if the court so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses, as between proctor and client, unless the court trying the subsequent action certifies that he ought not to have the same.

Section 22, as to removal of trade mark from the register.

12 (1) In sub-section 5 of section 22 of the principal Ordinance, for the words "the five years" shall be substituted the words "one year."

(2) To the same sub-section the following words shall be added, namely, "unless it is shown to the satisfaction of the Colonial Secretary that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark."

Section 25, as to entry of assignments, &c.

13 In section 25 of the principal Ordinance, after the words "subject to" shall be added the words "the provisions of this Ordinance and to."

Section 26, as to inspection.

14 In section 26 of the principal Ordinance, after the words "subject to" shall be added the words "the provisions of this Ordinance and to."

15 To section 29 of the principal Ordinance, the following sub-section shall be added, namely :

Section 29, as to correction of errors.

(d) Permit an applicant for registration of a trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the trade mark to be registered.

16 After section 39 of the principal Ordinance, the following section shall be added and numbered 39 (a), namely :

Fees.

There shall be paid, in respect of applications and registration and other matters under this Ordinance, such fees as may from time to time be prescribed by the Governor in Executive Council.

17 The principal Ordinance shall as from the commencement of this Ordinance take effect subject to the additions, omissions, and substitutions required by this Ordinance, but nothing in this Ordinance shall affect the validity of any act done, right acquired, or liability incurred before the commencement of this Ordinance.

Construction of principal Ordinance.

18 This Ordinance shall commence and come into operation on the first day of July, One thousand Eight hundred and Ninety.

Commencement of Ordinance.

19 This Ordinance may be cited as "The Trade Marks Ordinance, 1890," and this Ordinance and the principal Ordinance may be cited collectively as "The Trade Marks Ordinances, 1888 and 1890."

Short title.

26th April, 1890.
