

บรรณานุกรม

ภาษาไทย

หนังสือและวารสาร

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ภาคผนวก

British
Trade Marks Act 1938

Distinctiveness requisite for registration in Part A

Section 9.-(1) In order for a trade mark (other than a certification trade mark) to be registrable in Part A of the register, it must contain or consist of at least one of the following essential particulars:

- (a) the name of a company, individual, or firm, represented in a special or particular manner;
- (b) the signature of the applicant for registration or some predecessor in his business;
- (c) an invented word or invented words;
- (d) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;
- (e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the foregoing paragraphs (a), (b), (c) and (d), shall not be registrable under the provisions of this paragraphs except upon evidence of its distinctiveness.

(2) For purposes of this section "distinctive" means adapted, in relation to the goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid the tribunal may have regard to the extent to which-

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

Capability of distinguishing requisite for registration in Part B

Section 10.-(1) In order for a trade mark to be registrable in Part B of the register it must be capable, in relation to the goods in respect of which it is registered or proposed to be registered, of distinguishing goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(2) In determining whether a trade mark is capable of distinguishing as aforesaid the tribunal may have regard to the extent of which-

- (a) the trade mark is inherently capable of distinguishing as aforesaid; and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact capable of distinguishing as aforesaid.

(3) A trade mark may be registered in Part B notwithstanding any registration in Part A in the name of the same proprietor of the same trade mark or any part or parts thereof.

Prohibition of registration of deceptive, etc., matter

Section 11. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

Prohibition of registration of identical and resembling trade marks

Section 12.- (1) Subject to the provisions of subsection (2) of this section, no trade mark shall be registered in respect of any goods or description of goods that is identical with a trade mark belonging to a different proprietor and already in the register in respect of the same goods or description of goods, or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion, or nearly resembles a mark belonging to a different proprietor and already on the register in respect of-

- (a) the same goods,
- (b) the same description of goods, or
- (c) services or a description of services which are associated with those goods or goods of that description.

(2) In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper so to do, the Court or the Registrar may permit the registration of trade marks that are identical or nearly resemble each other in respect of the same goods or descriptions of goods by more than one proprietor in respect of-

- (a) the same goods,
- (b) the same description of goods or
- (c) goods and services or description of goods and services which are associated with each other, of marks that are identical or nearly resemble each other, subject to such conditions and limitations, if any, as the Court or

Registrar, as the case may be, may think it right to impose.

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks that are identical or nearly resemble each other, in respect of the same goods or description of goods marks that are identical or nearly resemble each other, in respect of-

- (a) the same goods,
- (b) the same description of goods, or
- (c) goods and services or descriptions of goods and services which are associated with each other, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or on an appeal (which may be brought either to the Board of Trade or to the Court at the option of the appellant) by the Board or the Court, as the case may be.

Registration in Part A to be conclusive as to validity after seven years

Section 13.- (1) In all legal proceedings relating to a trade mark registered in Part A of the register (including applications under section thirty-two of this Act) the original registration in Part A of the trade mark shall, after the expiration of seven years from the date of that registration, be taken to be valid in all respects, unless-

- (a) that registration was obtained by fraud, or
- (b) the trade mark offends against the provisions of section eleven of this Act.

(2) Nothing in subsection (1) of section five of this Act shall be construed as making applicable to a trade mark, as being a trade mark registered in Part B of the register, the foregoing provisions of this section relating to a trade mark registered in Part A of the register.

Words used as name or description of an article or substance

Section 15.- (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use, after the date of 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:

Provided that, if it is proved either-

- (a) that there is a well-known and established use of the word or words as the name or description of the article or substance by a person or persons carrying on a trade

therein, 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 (in the case of a certification trade mark) goods certified by the proprietor; or

- (b) that the article or substance was formerly manufactured under a patent (being a patent in force on, or granted after, the twenty-third day of December nineteen hundred and nineteen), that a period of two years or more after the cesser of the patent has elapsed, and that the word or words is or are the only practicable name or description of the article or substance; the provisions of the next succeeding subsection shall have effect.

(2) Where the facts mentioned in paragraph (a) or (b) of the proviso to the foregoing subsection are proved with respect to any word or words, then-

- (a) if the trade mark consists solely of that word or those words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed for the purposes of section thirty-two of this Act to be an entry wrongly remaining on the register;
- (b) if the trade mark contains that word or those words and other matter, the Court or the Registrar, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may in case of a decision in favour of its remaining on the register require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description of that word or those words, so, however, that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made; and
- (c) for the purposes of any other legal proceedings relating to the trade mark,-
 - (i) if the trade mark consists solely of that word, or those words, all rights of the proprietor, whether under the common law or by registration, to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description, or

- (ii) if the trade mark contains that word or those words and other matter, all such rights of the proprietor to the exclusive use of that word or those words in

such relation as aforesaid, shall be deemed to have ceased on the date at which the use mentioned in paragraph (a) of the proviso to the foregoing subsection first became well known and established, or at the expiration of the period of two years mentioned in paragraph (b) of that proviso.

(3) No word which is the commonly used and accepted name of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration in force at the commencement of this Act or thereafter shall, notwithstanding anything in section thirteen of this Act, be deemed for the purposes of section thirty-two of this Act to be an entry made in the register without sufficient cause, or an entry wrongly remaining on the register, as the circumstances may require:

Provided that the foregoing provisions of this subsection shall not have effect in relation to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

Removal from register and imposition of limitations on ground of non-use

Section 26.-(1) Subject to the provisions of the next succeeding section, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application by any person aggrieved to the Court or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, on the ground either-

- (a) that the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods by him, and that there has in fact been no bona fide use of the trade mark in relation to those goods by any proprietor thereof for the time being up to the date one month before the date of the application; or
- (b) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods by any proprietor thereof for the time being:

Provided that (except where the applicant has been permitted under subsection (2) of section twelve of this Act to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark) the tribunal may refuse an application made under paragraph (a) or (b) of this subsection in relation to any goods, if it is shown that there has been before the relevant date or during the relevant period, as the case may be, bona fide use of the [trade[mark by [any] the proprietor thereof for the time being in relation to [goods of the same description]-

(i) goods of the same description, or
(ii) services associated with those goods or goods of that description, being goods or, as the case may be, services in respect of which the mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered-

- (a) the matters referred to in paragraph (b) of the foregoing subsection are shown so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in the United Kingdom (otherwise than for export from the United Kingdom), or in relation to goods to be exported to a particular market outside the United Kingdom; and
- (b) a person has been permitted under subsection (2) of section twelve of this Act to register an identical or nearly resembling 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 the United Kingdom), or in relation to goods to be exported to that market, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark; on application by that person to the Court or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as the tribunal thinks proper for securing that the registration shall cease to extend to such use as last aforesaid.

(3) An applicant shall not be entitled to rely for the purposes of paragraph (b) of subsection (1), or for the purposes of subsection (2), of this section on any non-use of a trade mark that is shown to have been due to special circumstances in the trade and not to any intention not to use or abandon the trade mark in relation to the goods to which the application relates.

General power to rectify entries in register

Section 32.-(1) Any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Court or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as the tribunal may think fit.

(2) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(3) In case of fraud in the registration, assignment or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section.

(4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served in the prescribed manner on the Registrar, and the Registrar shall on receipt of the notice rectify the register accordingly.

Assignment and transmission of trade marks

Section 22. A trade mark when registered shall be assigned transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods [and the assignment of such right to use the same shall constitute the assignee a proprietor of a separate trade mark of the purpose of section twenty-one of this Act, subject to such conditions and limitations as may be imposed under that section].

UNITED STATES OF AMERICA
TRADEMARKS (LANHAM) ACT

Chapter 1052. Trade-marks registrable on principal register; concurrent registration

No trade-mark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it-

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.

(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: Provided, That if the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending or of any registration issued under this Act; (2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person

is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons.

(e) Consists of a mark which, (1) when use on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 4 hereof [15 USCS Chapter 1054], or (3) is primarily merely a surname.

(f) Except as expressly excluded in paragraphs (a), (b), (c), and (d) of this section, nothing herein shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Commissioner may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made.

Chapter 1054. Collective marks and certification marks registerable

Subject to the provisions relating to the registration of trade-marks, so far as they are applicable, collective and certification marks, including indications of regional origin, shall be registrable under this Act, in the same manner and with the same effect as are trade-marks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided herein in the case of trade-marks, except in the case of certification marks when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trade-marks.

(July 5, 1946, ch 540, Title I, Chapter 4, 60 Stat; Nov. 16, 1988, P.L. 100-667, Title I, Chapter 106, 102 Stat. 3938.)

Chapter 1062. Publication

(a) Examination and publication. Upon the filing of an application for registration and payment of the prescribed fee, the Commissioner shall

refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, or would be entitled to registration upon the acceptance of the statement of use required by section 1(d) of this Act [15 USCS Chapter 1051(d)], the Commissioner shall cause the mark to be published in the Official Gazette of the Patent and Trademark Office; Provided, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided in section 16 of this Act [15 USCS Chapter 1066], the mark if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.

(b) **Refusal of registration; amendment of application; abandonment.** If the applicant is found not entitled to registration, the examiner shall advise the applicant thereof and of the reasons therefor. The applicant shall have a period of six months in which to reply or amend his application, which shall then be reexamined. This procedure may be repeated until (1) the examiner finally refuses registration of the mark or (2) the applicant fails for a period of six months to reply or amend or appeal, whereupon the application shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unavoidable, whereupon such time may be extended.

(c) **Republication of marks registered under prior acts.** A registrant of a mark registered under the provisions of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Commissioner an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant claims the benefits of this Act for said mark. The Commissioner shall publish notice thereof with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of Section 8 of this Act [15 USCS Chapter 1058(b)]. Marks published under this

Chapter 1064. Cancellation of registration

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905:

(1) Within five years from the date of the registration of the mark under this Act.

(2) Within five years from the date of publication under section 12(c) hereof [15 USCS Chapter 1062(c)] of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905.

(3) At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 [15 USCS Chapter 1054] or of subsection (a), (b), or (c) of section 2 [15 USCS Chapter 1052(a), (b), or (c)] for a registration under this Act, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.

(4) At any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act [15 USCS Chapter 1062(c)].

(5) At any time in the case of a certification mark on the ground that the registrant (A) does not control, or is not able legitimately to exercise control over, the use of such mark, or (B) engages in the production or marketing of any goods or services to which the certification mark is applied, or (C) permits the use of the certification mark for purposes other than to certify, or (D) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in paragraphs (3) and (5) of this section any mark registered on the principal register established by this Act, and the prescribed fee shall not be required.

GERMANY

Section 10.-(1) Upon the request of the proprietor, the trade mark may at any time be canceled in the Register.

(2) The mark shall be canceled ex officio:

1. if, after expiration of the period of protection (Section 9), there has been no renewal of protection;
2. if registration of the mark should have been refused. If cancellation is requested by a third party on such ground, a fee as prescribed by the schedule of fees shall be paid at the same time; the fee may be refunded, or it may be charged to the proprietor of the trademark if the request is found to be justified. In the event of non-payment of the fee, the request shall be deemed not to have been filed.

(3) If the mark is to be canceled in accordance with paragraph (2)2, the Patent Office shall notify the proprietor in advance. If the proprietor fails to file a contesting reply within one month after service of such notification, the trademark shall be canceled. If he does file a contesting reply, the Patent Office shall decide upon the matter. If cancellation is requested by a third party, Section [35d]' of the Patent Law shall apply mutatis mutandis with regard to the costs arising from an audience or the taking of evidence.

Section 11.-(1) A third party may request cancellation of a trademark:

1. if, on the ground of an earlier application, the trademark is registered in the Trademark Register in his name in respect of identical or similar goods;
- 1a. if he has acquired rights in the mark in another country on the ground of an earlier application or use in respect of identical or similar goods and furnishes proof that the person registered as proprietor of the mark is bound, on the basis of an employment contract or other contractual relationship with him, to protect the said third party's interests in matters of trade and, notwithstanding, during the existence of the said contractual relationship, has filed an application in respect of the trademark without his consent;
2. if the business to which the trademark pertains is no longer conducted by the proprietor of the trademark;
3.
4. if the trademark has been registered in the Trademark Register for at least five years and the proprietor of the trademark has not used the trademark within the last five years before the request for cancellation, unless circumstances existed under which use during such period could not reasonably be expected. Section 5(7), sentences 2 to 4, shall be applicable mutatis mutandis.

(2) The request for cancellation shall be made by bringing an action against the person registered as proprietor of the trademark or his successor in title.



FRANCE

Law No. 91-7 of January 4, 1991, on Trademarks and Service Marks

Section 1. A trademark or service mark is a sign capable of graphic representation which serves to distinguish the goods or services of a natural or legal person.

The following, in particular, may constitute such a sign:

(a) Denominations in all forms, such as: words, combinations of words, surnames and geographical names, pseudonyms, letters, numerals, abbreviations;

(b) Audible signs such as: sounds, musical phrases;

(c) Figurative signs such as: devices, labels, seals, reliefs, holograms, logos, synthesized images; shapes, particularly those of the product or its packaging, or those that identify a service; arrangements, combinations or shades of color.

Section 2. The distinctive nature of a sign that is capable of constituting a mark shall be assessed in relation to the designated goods or services.

The following shall not be of a distinctive nature:

(a) Signs or names which in everyday or technical language simply constitute the necessary, generic or usual designation of the goods or services;

(b) Signs or names which may serve to designate a feature of the product or service, particularly the type, quality, quantity, purpose, value, geographical origin, time of production of the goods or furnishing of the services;

(c) Signs exclusively constituted by the shape imposed by the nature or function of the product or which give the product its substantial value.

Distinctive nature may be acquired by use, except in the case referred to in item (c) above.

Section 3. The following may not be adopted as a mark or an element of a mark:

(a) Signs excluded by Article 6ter of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised;

(b) Signs contrary to public policy or morality or whose use is prohibited by law;

(c) Signs liable to mislead the public, particularly as regards the nature, quality or geographical origin of the goods or services.

Section 4. Signs may not be adopted as marks where they infringe earlier rights, particularly:

(a) An earlier mark that has been registered or that is well known within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property;

(b) The name or style of a company, where there is a risk of confusion in the public mind;

(c) A trade name or signboard known throughout the national territory, where there exists a risk of confusion in the public mind;

(d) A protected appellation of origin;

(e) Authors' rights;

(f) Rights deriving from a protected industrial design;

(g) The personality rights of another person, particularly his surname, pseudonym or likeness;

(h) The name, image or repute of a local authority.

Section 11. An applicant may request that a mark be registered despite opposition thereto if he proves that the registration is indispensable to protect the mark abroad.

If opposition is subsequently upheld, the registration decision shall be revoked in whole or in part.

Section 24. The applicant for registration or the owner of a registered mark may renounce the effects of such application or such registration for all or part of the goods or services to which the mark applies.

Section 25(1) The registration of a mark that does not comply with the provisions of Sections 2 to 4 shall be null and void.

(2) The public prosecutor may institute invalidity proceedings ex officio under Sections 1, 2 and 3.

Invalidity proceedings under Section 4 may be instituted only by the owner of a prior right. However, such proceedings shall not be admissible if the mark has been registered in good faith and if he has acquiesced to its use during a period of five years.

(3) An invalidity decision shall be absolute.

Section 27(1) An owner who has not put his mark to genuine use in connection with the goods or services referred to in the registration during an uninterrupted period of five years, without good reason, shall be liable to revocation of his rights.

The following shall be assimilated to such use:

(a) Use made with the consent of the owner of the mark or, in the case of collective marks, in compliance with the regulations;

(b) Use of the mark in a modified form which does not alter its distinctive nature;

(c) Affixing of the mark on goods or their packaging exclusively for export.

Section 28. The owner of a mark shall be liable to revocation of his rights, if in consequence of his own acts, the mark has become:

(a) The common name in the trade for a product or service;

(b) Liable to mislead, particularly as regards the nature, quality or geographical origin of the product or service.

MODEL LAW
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AND ACTS OF
UNFAIR COMPETITION

Section 29: Renunciation of Registration

(1) The registered owner of a mark may renounce the registration either wholly or in respect of part of the goods or services for which the mark is registered.

(2) Renunciation must be notified in the form of a written declaration to the Trademark Office, which shall record it in the Register and publish it as soon as possible. Renunciation shall be effective only after it has been recorded.

(3) If a license to use the mark is recorded at the Trademark Office, renunciation of the registration shall be recorded only upon submission of a declaration by which the recorded licensee consents to the renunciation, unless the licensee shall have expressly waived this right in the license contract.

Section 30: Removal of Mark for Non-Use

(1) Subject to subsections (3) and (4), a mark shall be removed from the Register if its registered owner has, without legitimate reason, failed to use the mark within the country, or to cause it to be used in the country by virtue of a license, after registration, during five consecutive years preceding the allegation of non-use.

(2) Only circumstances beyond the control of the registered owner of the mark may be deemed a legitimate reason for non-use. Lack of funds shall not be considered a legitimate reason. The burden of proof regarding the allegation of non-use of the mark or the use of it shall be decided by the Court according to the circumstances of the case.

(3) The use of a mark in a form differing in elements which do not later the distinctive character of the mark in the form in which it was registered shall not be ground for removal of the mark and shall not diminish the protection granted to the mark.

(4) The use of a mark in connection with one or more of the goods or services belonging to any given class in respect of which the mark is registered shall suffice to prevent its removal in respect of all the other goods or services of the same class.

Section 31: Removal of Mark which Becomes a Generic Name

A mark shall be removed from the Register if the registered owner has provoked or tolerated its transformation into a generic name for one or more of the goods or services in respect of which the mark is registered, so that, in trade circles and the eyes of the public, its significance as a mark has been lost.

Section 32: Procedure and Effect of Removal

(1) The removal of a mark from the Register, as provided for in Sections 30 and 31, shall be ordered by the Court on the request of any person showing a legitimate interest, or of any competent authority, after having given the registered owner an opportunity to be heard.

(2) When the decision declaring total or partial removal of a mark becomes final, the registration shall be deemed, within the limits of the decision, to have ceased to have any legal effect from the completion of the event which gave rise to the removal.

Section 33: Nullity of Registration

(1) On the request of any person showing a legitimate interest, or of any competent authority, the Court, after having given the registered owner an opportunity to be heard, shall declare the registration of a mark null and void if the mark should not have been registered in view of Sections 5 or 6, provided however that grounds which no longer exist at the time of the decision shall not be taken into account.

(2) If the grounds for nullity of the registration of the mark exist in respect of only part of the goods or services for which the mark is registered, nullity of the registration shall be declared for that part only of the goods or services.

(3) Any action for a declaration of nullity based on one or more of the grounds under Section 6, subsection (1), shall be commenced within five years from the date of registration.

Section 34: Effects of Declaration of Nullity

(1) When the decision declaring total or partial nullity of a registration becomes final, the registration shall be deemed, within the limits of the decision, to have been null and void from the date of such registration.

(2) Nevertheless, where licenses have been granted, the Court may decide that nullity of the registration shall not entail the repayment of royalties paid by any licensee in so far as he has effectively profited from the license.

Section 35: Notification, Recording, and Publication, of Decisions of Removal and Nullity

When the decision ordering total or partial removal of a mark or declaring nullity of a registration becomes final, the Registrar of the Court shall notify it to the Trademark Office, which shall record it in the Register and publish it as soon as possible.

ประวัติผู้เขียน

นางสาว วรณช เชียงพุดชา เกิดที่จังหวัดกรุงเทพมหานคร เมื่อวันที่ 29 สิงหาคม 2504 สำเร็จมัธยมตอนต้นที่โรงเรียนพระหฤทัยคอนแวนต์และมัธยมตอนปลายจากโรงเรียนเตรียมอุดมศึกษา สำเร็จปริญญาตรีนิติศาสตร์บัณฑิตจากจุฬาลงกรณ์มหาวิทยาลัย เมื่อปีการศึกษา 2525 ปัจจุบันเป็นที่ปรึกษากฎหมายอยู่ที่ห้างหุ้นส่วนสามัญนิติบุคคลทิลลี่แอนด์กิบบินส์

