

TRADE MARKS.

No. 20 of 1905.

An Act relating to Trade Marks.

[Assented to 21st December, 1905.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—INTRODUCTORY.

- Short title.** 1. This Act may be cited as the *Trade Marks Act 1905*.
- Commencement.** 2. This Act shall commence on a day to be fixed by proclamation not less than four months after the passing of this Act.
- Parts.** 3. This Act is divided as follows :—
- Part I.—Introductory.
 - Part II.—Administration.
 - Division 1.—The Minister, the Registrar, and the Trade Marks Office.
 - Division 2.—The Transfer of the Administration of the State Trade Marks Acts.
 - Part III.—Registrable Trade Marks.
 - Part IV.—Registration of Trade Marks.
 - Division 1.—General.
 - Division 2.—Applications.
 - Division 3.—Opposition.
 - Division 4.—Registration and Effect of Registration.
 - Division 5.—Renewal of Registration.
 - Part V.—Assignment of Trade Marks.
 - Part VI.—The Register of Trade Marks.
 - Part VII.—Workers' Trade Marks.
 - Part VIII.—The Commonwealth Trade Mark.
 - Part IX.—Protection of Trade Marks.
 - Part X.—Miscellaneous.

4. In this Act, except where otherwise clearly intended— Definitions.

“The Court” means the High Court or the Supreme Court of the State in which the Trade Marks Office is situate or a Justice thereof.

“The Law Officer” means the Attorney-General or Crown Solicitor of the Commonwealth.

“Person” includes a body corporate and a firm and any association of persons bodies corporate or firms.

“The Register” means the Register of Trade Marks under this Act.

“Registered Trade Mark” means a trade mark registered under this Act.

“The Registrar” means the Registrar of Trade Marks.

“State Trade Marks Act” means any State Act relating to the Registration of Trade Marks.

“This Act” includes all regulations made thereunder.

5. Subject to this Act, or any Act of the Parliament, the common law of England relating to trade marks shall, after the commencement of this Act, apply throughout the Commonwealth. Application of common law.

Provided that this section shall not affect any right, privilege, obligation, or liability acquired, accrued, or incurred under the law of any State before the commencement of this Act.

6. The State Trade Marks Acts of each State shall, on the commencement of this Act, cease to apply to trade marks further than as follows :— State Trade Marks Acts to cease to apply to trade marks.

(a) The State Trade Marks Act under which a trade mark is registered shall continue to apply to that trade mark so long as the registration under that Act remains in force.

(b) Proceedings under a State Trade Marks Act, pending at the commencement of this Act, may be continued and completed under the State Trade Marks Act. Cl. Patents Act 1903, s. 6.

(c) Applications for the registration of trade marks may be received and dealt with under a State Trade Marks Act, if made by virtue of some right acquired, before the commencement of this Act, in pursuance of any International Convention for the protection of industrial property.

7.—(1.) The registration of a trade mark under a State Trade Marks Act shall cease either— Registration under State Trade Marks Acts to cease after a certain period.

(a) at the expiration of fourteen years from the commencement of this Act, or

(b) at the time when, under the State Trade Marks Act, the trade mark would, if after the commencement of this Act no fee for the continuance of its registration were paid, first become liable to removal from the register,

whichever first happens.

(2.) No fee shall be receivable nor shall any act be done after the commencement of this Act for the continuance of the registration of a trade mark under a State Trade Marks Act.

Trade marks registered under State Act may be registered under this Act.

8.—(1.) The registered proprietor of a trade mark properly registered in any State under a State Trade Marks Act may make application for the registration of his trade mark under this Act.

(2.) The application shall, subject to paragraphs (3), (4) and (5) of this section, be dealt with in the same manner as other applications for registration of trade marks.

(3.) The trade mark may be registered even if it does not contain the essential particulars required by this Act, but subject, in that case, to such conditions and limitations as to mode or place or period of user as the Registrar, Law Officer, or Court thinks fit to impose.

Cf. Patents Act 1903, s. 7.

(4.) Where the same trade mark or a nearly identical trade mark is owned or registered by another proprietor in any part of the Commonwealth in respect of the same goods, the trade mark may be registered subject to such conditions and limitations as to mode or place of user or otherwise as the Registrar, Law Officer, or Court thinks fit to impose to preserve the rights of each proprietor.

(5.) Where the trade mark or a nearly identical trade mark is common to the trade in another State, the registration under this Act shall confer no exclusive rights in that State on the registered proprietor, and that State may be excepted from the registration under this Act.

(6.) The registration of the trade mark under a State Trade Marks Act shall cease upon its registration under this Act.

Unregistered trade marks in use in States:

9.—(1.) The unregistered proprietor of a trade mark in use in any State at the commencement of this Act may make application for the registration of his trade mark under this Act.

(2.) The application shall, subject to paragraphs (3), (4), (5), and (6) of this section, be dealt with in the same manner as other applications for registration of trade marks.

(3.) The trade mark may be registered if it could have been lawfully registered under the State Trade Marks Act in force, at the commencement of this Act, in the State in which the trade mark was then used, had an application for its registration been made before the commencement of this Act.

(4.) If the trade mark does not contain the essential particulars required by this Act, it may nevertheless be registered subject to such conditions and limitations as to mode or place, or period of user, as the Registrar, Law Officer, or Court thinks fit to impose.

(5.) Where the same trade mark or a nearly identical trade mark is owned or registered by another proprietor in any part of the Commonwealth in respect of the same goods, the trade mark may be registered subject to such conditions and limitations as to mode or place of user or otherwise as the Registrar, Law Officer, or Court thinks fit to impose to preserve the rights of each proprietor.

(6.) Where the trade mark, or a nearly identical trade mark, was, at the commencement of this Act, common to the trade in another State, the registration under this Act shall confer no exclusive rights in that State on the registered proprietor, and that State may be excepted from the registration under this Act.

PART II.—ADMINISTRATION.

DIVISION 1.—THE MINISTER, THE REGISTRAR, AND THE TRADE MARKS OFFICE.

10. The Minister for Trade and Customs or other the Minister for the time being administering the Department of Trade and Customs shall be charged with the execution of this Act.

Administration.
Cf. *Patents Act*
1903, s. 9.

11.—(1.) There shall be a Registrar of Trade Marks.

Registrar.

(2.) Until the Governor-General otherwise determines the Commissioner of Patents shall be the Registrar of Trade Marks.

Ib. s. 10.

(3.) The Governor-General may appoint a Deputy Registrar of Trade Marks who shall, subject to the control of the Registrar of Trade Marks, have all the powers conferred by this Act on the Registrar.

12. For the purposes of this Act an office shall be established which shall be called the Trade Marks Office, and a sub-office shall be established in every State other than the State in which the Trade Marks Office is established.

Trade Marks
Office.
Ib. s. 12.

13. There shall be a seal of the Trade Marks Office, and impressions thereof shall be judicially noticed.

Seal of Trade
Marks Office.
Ib. s. 13.

DIVISION 2.—THE TRANSFER OF THE ADMINISTRATION OF THE STATE TRADE MARKS ACTS.

14. On the commencement of this Act, the administration of the State Trade Marks Acts of all the States shall be transferred to the Commonwealth and thereupon—

Transfer of
administration.

- (a) the State Trade Marks Acts of each State shall, so far as they have any relation to trade marks, cease to be administered by the State, and shall thereafter be administered by the Commonwealth so far as is necessary for the purpose of completing then pending proceedings and of giving effect to then existing rights, and the Registrar shall collect for each State the fees which become payable thereunder; and
- (b) all powers and functions under any State Trade Marks Act vested in the Governor of a State or in the Governor with the advice of the Executive Council of a State or in any Minister officer or authority of a State shall vest in the Governor-General or in the Governor-General in Council or in the Minister officer or authority exercising similar powers under the Commonwealth as the case requires or as is prescribed; and
- (c) all records registers deeds and documents of the Trade Marks Office of each State vested in or subject to the control of the State shall, by force of this Act, be vested in and made subject to the control of the Commonwealth.

Effect of
transfer of
administration.
Ib. ss. 18 and
19.

PART III.—REGISTRABLE TRADE MARKS.

Of what trade marks may consist.
Cf. 51 & 52 Vict. c. 50 s. 10.

15. A registrable trade mark shall consist of essential particulars with or without additional matter.

Essential particulars.
Cf. *ib.* s. 10 (1).

16. The essential particulars of a registrable trade mark shall be one or more of the following particulars:—

- (a) A name or trading style of a person printed, impressed, or woven in some particular and distinctive manner; or
- (b) A written signature or copy of a written signature of the person applying for registration thereof or some predecessor in his business; or
- (c) A distinctive device, mark, 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 used or likely to be understood in a geographical sense.

Additional matter.
Cf. *ib.* s. 10 (2).

17. The additional matter which may be added to the essential particulars of a registrable trade mark shall be—

- (a) Any letters, words, or figures; or
- (b) Any combination of letters, words, or figures, or of any of them.

Use of certain words, &c., forbidden in trade marks.

18. Except in the case of a trade mark properly registered in any State under a State Trade Marks Act, a registrable trade mark must not contain—

Cf. T.M. Regulations (Eng.) 29.

- (a) the words “Trade Mark,” “Registered,” “Registered Design,” “Copyright,” “Entered at Stationers’ Hall,” “To counterfeit this is Forgery” or words to the like effect; or
- (b) a representation of the King, the Queen, or any member of the Royal Family, or of the Royal Crown.

Use of words, &c., indicating Royal patronage.
Cf. *ib.* 30.

19. A registrable trade mark must not contain—

- (a) the word “Royal” or any word, letter, or device, indicating Royal or Government patronage; or
- (b) a representation of the Royal Arms, or of the national flag of the United Kingdom, or of the flag of the Commonwealth, or of the national arms of the United Kingdom, or of the arms or seal of the Commonwealth or any State; or

Representation of living person.

- (c) a representation of any living person without his written consent.

Mark made distinctive by user.
Cf. 5 Edw. VII. c. 15 s. 9.

20. In determining whether any particular of a trade mark is distinctive, regard may be had, in the case of a trade mark in actual use, to the extent to which user has rendered the trade mark or the particular distinctive for the goods with respect to which the trade mark is sought to be registered.

21. A trade mark may be limited in whole or in part to a particular colour or colours, and in case of any application for the registration of a trade mark the fact that the trade mark is so limited shall be taken into consideration by any tribunal in determining whether it is distinctive or not. If a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Coloured trade marks.
Cf. 5 Edw. VII c. 15 s. 10.

22.—(1.) Where any Commonwealth or State authority, or any association or person, undertakes the examination of any goods in respect of origin, material, mode or conditions of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by a mark used upon or in connexion with such goods, the Minister may, if he judges it to be to the public advantage, permit the authority association or person to register the mark as a trade mark in respect of such goods, whether the authority association or person is or is not a trader, or is or is not possessed of a goodwill in connexion with such examination and certifying.

Standardization &c., trade marks.
Cf. ib. s. 62.

(2.) When registered, the trade mark shall be deemed in all respects to be a registered trade mark, and the authority, association, or person to be the registered proprietor thereof, save that the trade mark shall not be transmissible or assignable except with the permission of the Minister.

(3.) This section shall as to conditions of manufacture apply to Commonwealth and State authorities only.

PART IV.—REGISTRATION OF TRADE MARKS.

DIVISION 1.—GENERAL.

23. A trade mark must be registered in respect of particular goods or classes of goods as prescribed.

Trade mark must be for particular goods.
Cf. ib. s. 8.

24.—(1.) If a trade mark—

- (a) contains parts not separately registered by the proprietor as trade marks, or
- (b) contains matter common to the trade or otherwise of a non-distinctive character,

Disclaimers.
Cf. ib. s. 15.

the Registrar or the Law Officer or the Court, in deciding whether the trade mark shall be entered or shall remain upon the register, may in his or its discretion require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any of those parts, or of that matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they think needful for the purpose of defining his rights under the registration.

Provided always that no such disclaimer shall affect any rights of the proprietor of the trade mark except such as depend upon its registration.

(2.) The fact that a mark or matter therein is publicly and honestly used by more than three several persons in any one State as a mark on or in connexion with similar goods shall be treated as conclusive evidence that it is common to the trade.

What matters deemed common to trade.

Identical marks. 25. Except by order of the Court, the Registrar shall not register in respect of goods a trade mark identical with one belonging to a different proprietor which is already on the register in respect of the like goods, or class of goods, or so nearly resembling such a trade mark as to be likely to deceive.

Cf. 5 Edw. VII. c. 15 s. 19.

Names, &c., of living persons.

26. Where the name or a representation of a living person or a person believed by the Registrar to be living appears on a trade mark, the Registrar may require the applicant to furnish him with the consent of that person to the name or representation appearing on the trade mark before he proceeds with the registration of the trade mark.

Registrar may refer rival claims to the Court.
Cf. ib. s. 20.

27. Where each of several persons applies to be registered as the proprietor of the same trade mark or of nearly identical trade marks in respect of the like goods or class of goods, the Registrar may refuse to register the trade mark until the rights of the applicants have been determined, and may himself submit or require the applicants to submit their rights to the Court.

Concurrent user.
Cf. ib. s. 21.

28. In case of honest concurrent user or of special circumstances the Registrar, Law Officer, or the Court may, in his or its discretion, permit the registration of the same trade mark or of nearly identical trade marks for the like goods or class of goods by more than one proprietor, subject to such conditions and limitations as to mode or place of user or otherwise as he or it thinks fit to impose.

Associated trade marks.
Cf. ib. ss. 24, 25.

29.—(1.) Where application is made for the registration of a trade mark so nearly resembling a trade mark of the applicant which is already on the register as to be likely to deceive or cause confusion if used by a person other than the applicant, the Registrar may require as a condition of registration that the trade marks shall be entered on the register as associated trade marks.

(2.) If the proprietor of a trade mark claims to be entitled to the exclusive use of any part of it separately he may, if the part satisfies all the conditions of a trade mark, register it as a separate trade mark.

(3.) When a part of a registered trade mark is registered separately, it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be entered on the register as such, and the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of the part separately registered as a trade mark.

(4.) Except for the purpose of assignment or transmission, and subject to the provisions of this Act as to use of associated trade marks, associated trade marks shall be deemed to be registered independently.

User of associated trade mark.
Cf. ib. s. 27.

30. Where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the Registrar, Law Officer, or the Court, as the case may be, may, if and so far as he or it thinks fit, accept user of an associated registered trade

mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the user of the first-mentioned trade mark.

31.—(1.) When a person claiming to be the proprietor of several trade marks, which while resembling each other in the essential particulars thereof yet differ in respect of—

Series of trade marks.
Cf. 5 Edw. VII.
c. 15 s. 26.

(a) statements of the goods for which they are respectively used or proposed to be used, or
(b) statements of number, price, quality, or names of places,
seeks to register such trade marks, they may be registered as a series in one registration.

(2.) All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

DIVISION 2.—APPLICATIONS.

32.—(1.) Any person, claiming to be the proprietor of a trade mark, may make application to the Registrar for the registration of his trade mark.

Who may apply for registration.
Cf. ib. s. 62.

(2.) The application must be made in the form prescribed and must—

Form of application.

- (a) specify the goods or class of goods in respect of which the applicant desires the trade mark to be registered ;
- (b) state what are the essential particulars of his trade mark and disclaim any right to the exclusive use of the matter added to the essential particulars of his trade mark ; and
- (c) state an address within the Commonwealth as an address for service :

Provided that an applicant need not disclaim his own name or address or the foreign equivalents thereof or that of a predecessor in business.

(3.) Separate applications must be made for the registration of a trade mark in respect of each class of goods in respect of which the applicant desires it to be registered.

33.—(1.) Every application must be lodged by being left at or sent by post to the Trade Marks Office or a sub-office.

Lodging of application.
Cf. Patents Act
1903, ss. 33 & 46

(2.) Such application shall be forthwith referred by the Registrar to an examiner, who shall ascertain and report whether the trade mark is a registrable trade mark, and whether it is identical with a trade mark already on the register under this Act or any State Trade Marks Act in respect of the like goods or class of goods, or so nearly resembles the latter trade mark as to be likely to deceive, and whether the trade mark or any matter therein is common to the trade.

(3.) Subject to this Act the Registrar may either accept the application, with or without modifications or conditions, or refuse it.

Appeal.
Cf. 46 & 47 Vict.
c. 57 s. 62 (4).

34.—(1.) An appeal shall lie to the Law Officer from any conditional acceptance or any refusal by the Registrar of the application.

(2.) The Law Officer shall hear the applicant and the Registrar, and shall decide whether and subject to what conditions or modifications (if any) the application shall be accepted.

Appeal to
Court.

(3.) An applicant aggrieved by the decision of the Law Officer may in the time and in the manner prescribed appeal to the Court.

(4.) The Court shall hear the applicant and determine whether the application ought to be refused or ought to be accepted with or without any modifications or conditions.

Direct appeal
by consent from
Registrar to
Court.

35. If the applicant so desires, he may appeal direct from the Registrar to the Court without any appeal to the Law Officer.

Advertisement.

36. If the application is accepted with or without conditions or modifications it shall forthwith be advertised in the prescribed manner.

Limit of time
for proceeding
with application.
Ib. s. 63.
51 & 52 Vict.
c. 50 s. 9.

37. If, by reason of default on the part of the applicant, the registration of a trade mark has not been completed within twelve months from the date of the lodging of the application, the Registrar shall give notice of the non-completion to the applicant, and if, at the expiration of fourteen days from that notice or such further time as the Registrar in special cases permits, the registration is not completed, the application shall be deemed to be abandoned.

DIVISION 3.—OPPOSITION.

Notice of
opposition.
Cf. 46 & 47
Vict. c. 57
s. 69 (1).

38. Any person may, within three months after the advertisement of the application or such further time not exceeding three months as the Registrar on application made within the first period of three months allows, lodge at the Trade Marks Office a notice of opposition in duplicate to the registration of the trade mark, setting out the grounds on which he relies to support his notice.

Address for
service.

39. Every notice of opposition shall state an address in Australia as an address for service.

Notice to
applicant.
Cf. ib. s. 69 (1).

40. The Registrar shall send a duplicate of the notice of opposition to the applicant.

Counter-
statement by
applicant.
Cf. ib. s. 69 (2).

41.—(1.) Within three months after the lodging of notice of opposition or such further time not exceeding three months as the Registrar on application made within such first mentioned three months allows, the applicant may lodge at the Trade Marks Office a counter-statement in duplicate, setting out the grounds on which he relies to support his application.

Failure to
lodge counter-
statement.

(2.) If the applicant fails to so lodge a counter-statement he shall be deemed to have abandoned his application, and in that event he shall not be liable for costs, but if he lodges a counter-statement and thereafter abandons his application he shall, unless the Registrar otherwise orders, pay to the opponent such costs as the Registrar allows.

(3.) The Registrar shall send a duplicate of the counter-statement to the opponent. Service of counter-statement.

42.—(1.) The Registrar shall fix a day for the hearing of the application, and shall give notice thereof to the applicant and to the opponent. Day of hearing.

(2.) On the day so fixed, or on any other day to which the hearing is adjourned, the Registrar shall hear the applicant and the opponent, and shall decide whether the application is to be refused or whether it is to be granted either with or without any modifications or conditions. Hearing.

43.—(1.) Any party aggrieved by the decision of the Registrar may in the time and in the manner prescribed appeal to the Law Officer. Appeal to Law Officer.

(2.) The Law Officer shall hear the applicant and the opponent, and may determine whether the application ought to be refused or ought to be granted with or without any modifications or conditions. Cf. 46 and 47
Vict. c. 57
s. 62 (4).

44.—(1.) Any party aggrieved by the decision of the Law Officer may in the time and in the manner prescribed appeal to the Court. Appeal to Court.

(2.) The Court shall hear the applicant and the opponent, and determine whether the application ought to be refused or ought to be granted with or without any modifications or conditions.

45. If either party so desires and gives written notice thereof the appeal shall be taken direct from the Registrar to the Court without any appeal to the Law Officer. Direct appeal from Registrar to Court.

46. If a person giving notice of opposition or appeal does not reside in Australia, the Registrar Law Officer or the Court may order him to give security for costs, and if the order is not complied with the opposition or appeal shall be deemed to be abandoned. Security for costs.

DIVISION 4.—REGISTRATION AND EFFECT OF REGISTRATION.

47. When an application for registration has been accepted and has not been opposed and the time for notice of opposition has expired, or has been opposed and has been granted, the Registrar shall register the trade mark as on the date of the lodging of the application, which date shall be deemed to be the date of the registration, and shall issue to the applicant a certificate of registration of the trade mark in the prescribed form. Date of Registration.
Cf. 5 Edw. VII.
c. 15 s. 16.

48. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act. Duration of Registration.
Ib. s. 23.

49.—(1.) Subject to this Act the person for the time being entered in the register as proprietor of a trade mark shall have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment. Rights of registered proprietor.
Cf. ib. s. 39.

(2.) No entry of any name shall affect the right of any owner of the same name to use it or its foreign equivalent. Cf. 51 & 52 Vict.
c. 50 s. 16

(3.) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Register to be *prima facie* evidence.
46 & 47 Vict.
c. 57 s. 76.

50. The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark upon the goods in respect to which it is registered and of the validity of the registration.

Registers to be conclusive evidence after five years.
Cf. *ib.* s. 76.

51. The registration of a person as proprietor of a trade mark shall, after the expiration of five years from the date of registration (in the absence of fraud) be conclusive evidence of the validity of the registration, and, subject to this Act, of his right to the exclusive use of the trade mark in respect of the goods in respect of which it is registered, upon the registered proprietor proving that he or his predecessors in title have continuously used the trade mark in respect of the goods to a substantial extent for the five years immediately preceding the commencement of the legal proceedings.

For the purposes of this section user shall be deemed to be continuous if there has been no actual interruption thereof for a longer total period than twelve months.

Unregistered trade mark.
Cf. *ib.* s. 77.

52. No person shall be entitled to institute any proceeding to prevent or recover damages for the infringement of a trade mark, unless in the case of a registrable trade mark it is registered under this Act or a State Trade Marks Act.

Infringement.

53. The rights acquired by registration of a trade mark shall be deemed to be infringed by the use, in respect of the goods in respect of which it is registered, of a mark substantially identical with the trade mark or so nearly resembling it as to be likely to deceive.

Cf. 5 Edw. VII.
c. 15 s. 43.

In an action for the infringement of a trade mark the Court, in trying the question of infringement, shall admit evidence of the usages of the trade in respect to the get-up of those goods and of any trade marks or get-up legitimately used in respect of them by other persons.

DIVISION 5.—RENEWAL OF REGISTRATION.

Renewal of registration.
Cf. *ib.* s. 29.

54. The Registrar may, on application made by the registered proprietor of a trade mark in the prescribed manner, at any date not later than fourteen years from the date of the original registration or the last renewal of registration, as the case may be (in this Division termed "the date of the last registration"), renew the registration of the trade mark for a period of fourteen years from the date of the expiry of the period of the last registration.

Procedure on expiry of period of registration.
Cf. *ib.* s. 30.

55. At the prescribed time before the expiration of fourteen years from the date of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor or his agent in Australia of the date at which the existing registration will expire and the conditions as to proof of substantial user and as to payment of fees and otherwise upon which a renewal of

such registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the trade mark from the register, but any party aggrieved shall have a right to appeal in manner prescribed.

56. Where a trade mark has been removed from the register for non-payment of the prescribed fee the Registrar may within three months from such removal if satisfied that it is just so to do restore such trade mark to the register on payment of the prescribed additional fee for renewal.

Restoration of trade mark removed for non-payment of renewal fee.
Cf. 5 Edw. VII. c. 15 s. 30.

57. Where a trade mark has been removed from the register for non-payment of the fee for renewal, it shall, nevertheless, for the purpose of any application for registration during one year next after the date of the removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bankruptcy or liquidation of the proprietor of the trade mark, 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.

Status of unrenewed trade mark.
Cf. *ib.* s. 31.

PART V.—ASSIGNMENT OF TRADE MARKS.

58. A trade mark when registered may be assigned and transmitted only in connexion with the goodwill of the business concerned in the particular goods or class of goods in respect of which it has been registered and shall be determinable with that goodwill.

Assignment and transmission of trade marks.
46 & 47 Vict. c. 57 s. 70.

59. In any case where by reason of dissolution of partnership or other cause a person ceases to carry on business, and the goodwill of the person does not pass to one successor but is divided, the Court may (subject to the provisions of this Act as to associated trade marks and series of trade marks), on the application of any of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications as it thinks necessary in the public interest.

Apportionment of marks on dissolution of partnership.
Cf. 5 Edw. VII. c. 15 s. 23.

60. Associated trade marks may be assigned or transmitted only as a whole.

Assignment of associated trade marks.
Cf. *ib.* s. 27.

PART VI.—THE REGISTER OF TRADE MARKS.

61. There shall be kept at the Trade Marks Office a Register of Trade Marks wherein shall be entered particulars of—

- (a) all registered trade marks, with the names and addresses of their proprietors, together with the date of registration and expiry thereof;
- (b) notifications of assignments and transmissions, and disclaimers; and
- (c) any other matters relating to registered trade marks which are prescribed.

Register of trade marks.
Cf. *ib.* s. 4.

Notification of assignments and transmissions.

62. Where a trade mark has been lawfully assigned or transmitted, a notification of the assignment or transmission, in the form and authenticated in the manner prescribed, may be given to the Registrar, who shall thereupon register the assignment.

Trusts not to be noticed.

Cf. 5 Edw. VII. c. 15 s. 5.

Inspection of register.

Ib. s. 7.

63. No notice of any trust, expressed implied or constructive, shall be entered in the register, or be received by the Registrar.

64. The register shall be open to the inspection of the public at all convenient times, on payment of the prescribed fee.

Certified copies to be supplied.

Ib. s. 7.

65. Certified copies of entries in the register shall be given to any person applying for them on payment of the prescribed fee.

Certified copies evidence.

Cf. 46 & 47 Vict. c. 57 s. 39.

66. Documents purporting to be copies of or extracts from the register, and to be certified by the Registrar and sealed with the seal of the Trade Marks Office, shall be admitted in evidence in all Federal and State Courts without further proof or production of the originals.

False entries in register.

Ib. s. 33.

67. No person shall wilfully—

- (a) Make any false entry in the register ; or
- (b) Make any writing falsely purporting to be a copy of an entry in the register ; or
- (c) Produce or tender in evidence any writing falsely purporting to be a copy of an entry in the register.

Penalty : Three years' imprisonment.

Correction of register.

Cf. Ib. s. 91.

Cf. 5 Edw. VII. c. 15 s. 32.

68.—(1.) The Registrar may, on request made in the prescribed manner by the registered proprietor of a trade mark, amend or alter the register by—

- (a) correcting any error in the name or address of the registered proprietor of the trade mark ; or
- (b) altering the name or address of the registered proprietor who has changed his name or address ; or
- (c) cancelling the registration of the trade mark ; or
- (d) striking out any goods or classes of goods from those in respect of which the trade mark is registered ; or
- (e) entering a disclaimer or memorandum relating to the trade mark which does not in any way extend the rights given by the registration of the trade mark.

(2.) Where the register has been amended or altered under this section the Registrar may—

- (a) cancel the certificate of registration of the trade mark, and issue a new certificate of registration ; or
- (b) make such amendments or alterations in the certificate of registration of the trade mark as are rendered necessary by the amendment or alteration of the register.

Registration of assignments, &c.

Cf. 46 & 47 Vict. c. 57 s. 87

69. Subject to the provisions of this Act, where a person becomes entitled to a registered trade mark by assignment, transmission, or otherwise, the Registrar shall on request, and on proof of title to his satisfaction, cause the name and address of the person to be entered on the register as proprietor of the trade mark.

70. The registered proprietor of a trade mark may apply to the Court for leave to add to or alter the trade mark in any manner not substantially affecting its identity, and the Court may refuse or grant the leave on such terms as it thinks fit. If leave be granted, the Registrar shall, on service of the order of leave, cause the register to be altered in accordance with the order, and shall, in the prescribed manner, advertise the trade mark as altered.

Alteration in registered trade mark.
Cf. 46 & 47 Vict. c. 57 s. 92.
Cf. 5 Edw. VII. c. 15 s. 34.

71.—(1.) Subject to this Act, the Court, on the application of any person aggrieved or of the Registrar, may order the rectification of the register by—

Rectification of register by Court.

- (a) the making of any entry wrongly omitted to be made in the register ; or
- (b) the expunging of any entry wrongly made in or remaining on the register ; or
- (c) the insertion in the register of any exception or limitation affecting the registration of a trade mark which in the opinion of the Court ought to be inserted ; or
- (d) the correction of any error or defect in the register.

Cf. 46 & 47 Vict. c. 57 s. 90.
51 & 52 Vict. c. 50 s. 23.
Cf. 5 Edw. VII. c. 15 s. 35.

(2.) The Registrar shall only make application to the Court under this section in cases where he thinks the application necessary or desirable in the public interest.

(3.) Notice of every application to the Court pursuant to this section (other than an application by the Registrar) shall be given to the Registrar, who may be heard thereon.

72.—(1.) The Court may, on the application of any person aggrieved, if it is shown that there has been no *bonâ fide* user of a trade mark for a consecutive period of three years since the date of the last registration thereof, order its removal from the register, unless it was at the date of the application in *bonâ fide* use and had been so for a period of six months immediately prior to the date of the application.

Removal of trade mark from register if no *bonâ fide* user.
Cf. 5 Edw. VII. c. 15 s. 37.

(2.) For the purpose of this section *bonâ fide* user or use means user or use of a trade mark in respect of the goods in respect of which it is registered for the purposes of trade by the proprietor of the trade mark or a predecessor in title.

73. The Registrar, upon being served with any order of the Court for the rectification of the register or for the removal of the registration of a trade mark from the register by the party seeking to enforce it, shall cause the rectification or removal to be made accordingly.

Registrar to carry out orders for rectification.

PART VII.—WORKERS' TRADE MARKS.

74.—(1.) No person shall—

- (a) falsely apply to any goods for the purpose of trade or sale; or
- (b) knowingly sell or expose for sale, or have in his possession for sale or for any purpose of trade or manufacture, any goods to which there is falsely applied ; or
- (c) knowingly import into Australia any goods not produced in Australia to which there is applied

False application of workers' trade marks prohibited.

a mark which is a distinctive device, design, symbol, or label registered by any individual Australian worker or association of Australian workers corporate or unincorporate for the purpose of indicating that articles to which it is applied are the exclusive production of the worker or of members of the association (and which mark is hereby declared to be a workers' trade mark), or any mark substantially identical with a registered workers' trade mark, or so nearly resembling it as to be likely to deceive.

(2.) The workers' trade mark is falsely applied unless in truth—

(a) the goods to which it is applied are exclusively the production of the worker or of members of the association ;
or

(b) the goods to which it is applied are in part but not exclusively the production of the worker or of members of the association, and the mark is applied in such manner as clearly to indicate that its application does not refer to, describe, or designate the parts of the goods not being the production of the worker or of members of the association ; and

(c) the mark is applied to the goods (being goods produced in Australia) by the employer for whom they are produced, or, with the authority of the employer, by the worker or a member of the association registering the mark.

(3.) In this section—

“Association” includes any number of associations acting together, and in such case the members of the “association” shall be the members of the associations which are acting together ;

“Production” means production, manufacture, workmanship, preparation, or product of labour ;

“Produced” has a meaning corresponding with “production.”

Penalty : Fifty pounds, in addition to any liability to forfeiture provided by law.

Registration. 75.—(1.) A worker or association may register a workers' trade mark in the prescribed manner and shall thereupon be deemed the registered proprietor thereof, and be entitled to institute legal proceedings to prevent and recover damages for any contravention of this Part in respect of that trade mark.

Removal from register. (2.) A workers' trade mark may be removed from the register for the causes and in the manner prescribed, and subject thereto the registration of the trade mark shall continue for fourteen years, at the expiration of which it shall cease unless renewed in the manner prescribed.

No assignment. (3.) A workers' trade mark shall not be capable of assignment either by act of the parties or by operation of law.

Non-application: (4.) Parts III., IV., V., and VI. of this Act shall not apply in relation to workers' trade marks.

(5.) A workers' trade mark shall not be registered if it is substantially identical with any registered trade mark within the meaning of this Act or so nearly resembles it as to be likely to deceive.

Deception prohibited.

76. Nothing in this Part shall be so construed as to make it lawful for any person or association or combination of persons to do any act which it would have been unlawful for such person, association, or combination of persons to do before the commencement of this Act.

Illegality not authorized.

77. This Part shall not apply to any primary products of the agricultural, viticultural (including wine-making), horticultural, dairying (including butter-making and cheese-making), or pastoral industries.

This Part not to apply to agricultural, viticultural, and similar products.

PART VIII.—THE COMMONWEALTH TRADE MARK.

78.—(1.) This Part shall apply to all goods included in or specified by a resolution passed by both Houses of the Parliament that in their opinion the conditions as to the remuneration of labour in connexion with their manufacture are fair and reasonable.

Application of Part.

(2.) A resolution shall be deemed to have been passed at the commencement of this Act by both Houses of the Parliament that the conditions as to the remuneration of labour are fair and reasonable in respect of goods which are manufactured in any part of the Commonwealth under conditions as to the remuneration of labour prescribed, required, or provided in relation to the goods, by an industrial award or order, or an industrial agreement, under an industrial law.

(3.) In this Part "an industrial law" means any Act or State Act existing at the commencement of this Act and providing for conciliation or arbitration or both conciliation and arbitration, or the determination of the remuneration of labour in connexion with industrial matters or the manufacture of goods, or any statutory modification amendment or re-enactment thereof respectively, or any Act or State Act passed after the commencement of this Act and declared by resolution of both Houses of the Parliament to be an industrial law within the meaning of this Part; and "industrial award or order" includes any determination of any Special Board or Court under an industrial law.

(4.) A resolution passed or deemed to have been passed as aforesaid may be by both Houses of the Parliament revoked in whole or in part, and thereupon this Part shall to the extent of the revocation cease to apply.

79.—(1.) The Minister may cause to be designed and registered a trade mark (in this Part called the Commonwealth Trade Mark), consisting of a distinctive device or label bearing the words "Australian Labour Conditions."

Registration of Commonwealth trade mark.

(2.) The Commonwealth trade mark shall not contain the name of or indicate any State.

(3.) Parts III., IV., V., and VI. of this Act shall not apply in relation to the Commonwealth trade mark.

Effect of registration of Commonwealth trade mark.

80.—(1.) Upon the registration of the Commonwealth trade mark, the Minister shall be deemed to be the proprietor thereof, and shall be entitled to prevent the unauthorized application of the Commonwealth trade mark.

(2.) The rights of the proprietor of the Commonwealth trade mark shall be deemed to be infringed by the unauthorized application to goods of a mark identical or substantially identical with the Commonwealth trade mark, or so nearly resembling it as to be likely to deceive.

(3.) The Minister may sue to prevent infringement of the Commonwealth trade mark.

Unauthorized application of Commonwealth trade mark.

81. The application of the Commonwealth trade mark to goods shall be deemed to be unauthorized unless—

(a) it is applied by or by direction of the first proprietor of the goods, and is so applied by the authority of the Minister ; and

(b) it is applied to goods to which this Part applies ; and

(c) the first proprietor of the goods has personally manufactured them, or has paid for the labour other than his own in connexion with their manufacture at least the minimum amount prescribed, required, or provided to be paid to persons actually making the goods by an industrial award or order, or an industrial agreement under an industrial law.

Authority of Minister.

82.—(1.) The authority of the Minister to any person to apply the Commonwealth trade mark may be given either generally or in respect of specific goods, and shall be given if in his opinion the trade mark will not be applied except as authorized by this Part.

(2.) The Minister may revoke his authority in whole or in part if in his opinion a person to whom it has been given has applied or is likely to apply the trade mark in a manner unauthorized by this Part.

Penalty for infringing Commonwealth trade mark.

83.—(1.) No person shall wilfully infringe the rights of the Minister as proprietor of the Commonwealth trade mark.

Penalty : Fifty pounds.

(2.) No person shall knowingly sell or expose for sale, or have in his possession for sale or for any purpose of trade or manufacture, any goods to which any mark is applied in infringement of the rights of the Minister as proprietor of the Commonwealth trade mark.

Penalty : Fifty pounds.

Prohibition of importation of goods to which Commonwealth trade mark applied.

84. No person shall knowingly import into Australia any goods, not manufactured or produced in Australia, to which there is applied—

(a) the Commonwealth trade mark, or

(b) a mark substantially identical with the Commonwealth trade mark, or

(c) a mark so nearly resembling the Commonwealth trade mark as to be likely to deceive.

Penalty : One hundred pounds in addition to any liability to forfeiture provided by law.

85. The Commonwealth trade mark may, on the application of the Minister, be removed from the register in the manner prescribed.

Removal from register of Commonwealth trade mark.

PART IX.—PROTECTION OF TRADE MARKS.

86. Whoever—

- (a) forges a registered trade mark ; or
- (b) falsely applies a registered trade mark to any goods ; or
- (c) makes any die, block, machine, or instrument for the purpose of forging or of being used for forging a registered trade mark ; or
- (d) disposes of or has in his possession any die, block, machine, or instrument for the purpose of forging or of being used for forging a registered trade mark,

Forgery or false application of trade marks.
Cf. 50 & 51
Vict. c. 28
s. 2 (1).

shall, unless he proves that he acted without intent to defraud, be guilty of an indictable offence, and liable to imprisonment for any term not exceeding three years.

87. Whoever sells or exposes for sale, or has in his possession for sale or for any purpose of trade or manufacture, any goods to which any forgery of a registered trade mark is applied or to which any registered trade mark is falsely applied, shall be guilty of an offence against this Act, unless he proves—

Selling, &c., goods with false marks.
Ib. s. 2 (2).

- (a) that he acted without intent to defraud ; or
- (b) that the goods were manufactured in or imported into Australia and the trade mark was applied to them before the commencement of this Act, and were held by him *bonâ fide* and without intent to defraud.

Penalty : One hundred pounds.

88. Whoever imports into Australia any goods to which any forgery of a registered trade mark is applied or to which a registered trade mark is falsely applied shall, unless he proves that he did not knowingly import the goods in contravention of this Act, be guilty of an offence against this Act.

Importing goods with false marks.

Penalty : One hundred pounds.

89. Whoever aids abets counsels or procures or is in any way knowingly directly or indirectly concerned in or privy to—

Aiding and abetting offences.

- (a) the commission of any offence against this Act ; or
- (b) the commission of any act outside Australia which if committed in Australia would be an offence against this Act,

Ib. s. 11.

shall be guilty of an offence against this Act.

Penalty : One hundred pounds.

90.—(1.) The following goods are prohibited to be imported, and, if imported, may be seized as forfeited to the King :—

Prohibition of importation of fraudulently marked goods.
Ib. s. 16.

- (a) all goods to which any forgery of a registered trade mark is applied, or to which any registered trade mark is falsely applied ; and

(b) all goods manufactured at any place outside Australia and having applied to them any trade mark being the registered trade mark of any manufacturer dealer or trader in Australia, unless the trade mark is accompanied by a definite indication of the country in which the goods were made or produced.

(2.) Subject to the regulations, the Comptroller-General, or on appeal from him the Minister, may, if in his opinion the contravention has not occurred either knowingly or negligently, permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the owner or importer upon security being given to the satisfaction of the Comptroller-General that the improper marks will be effectually removed from the goods or that the goods will be forthwith exported.

(3.) All imported goods liable to be seized under this section may be seized by any officer of Customs.

(4.) The provisions of the *Customs Act* 1901 shall apply to the seizure and forfeiture of goods under this section to the same extent as if they were prohibited imports under that Act.

(5.) Before taking any action under this section or permitting any officer of Customs to act thereunder, the Collector of Customs for the State may require any person requesting any action on the part of the Customs to give security in accordance with the regulations, but the Collector of Customs may act under this section without any request.

What deemed
forgery of trade
mark.

50 & 51 Vict.
c. 23 s. 4.

91. A person shall be deemed to forge a registered trade mark who either—

- (a) without the assent of the proprietor of the trade mark or the authority of this Act, makes it or a mark so nearly resembling it as to be likely to deceive; or
- (b) falsifies any registered trade mark, whether by alteration, addition, effacement, or otherwise.

When trade
mark deemed
applied.

Ib. s. 5 (2).

92.—(1.) A trade mark shall be deemed to be applied to any thing if it is woven in, impressed on, worked into, or annexed or affixed to, the thing.

(2.) A trade mark shall be deemed to be applied to goods if—

- (a) it is applied to the goods themselves; or
- (b) it is applied to any covering, label, reel, or thing in or with which the goods are sold or exposed or had in possession for any purpose of trade or manufacture; or
- (c) it is used in any manner likely to lead to the belief that it refers to or describes or designates the goods.

(3.) “Covering” includes any stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper; and “label” includes any band or ticket.

What deemed
false
application of
a trade mark.

Ib. s. 5 (3).

(4.) A trade mark shall be deemed to be falsely applied to goods if, without the assent of the proprietor of the trade mark or the authority of this Act, it or a mark so nearly resembling it as to be likely to deceive is applied to the goods.

93. In any indictment, information, pleading, or proceeding in relation to a registered trade mark, it shall not be necessary to set out a copy or fac-simile of the trade mark or a description of it, but the trade mark may be referred to as a registered trade mark.

Trade mark,
how described
in pleading.
50 & 51 Vict.
c. 23 s. 9.

PART X.—MISCELLANEOUS.

94. The Governor-General may make regulations, not inconsistent with this Act, prescribing the fees to be paid under this Act and all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Trade Marks Office.

Governor-General may
make
regulations.
Patents Act 1903
s. 108.

95. In addition to any other powers conferred on it by this Act, the Court may in relation to any appeal or application under this Act—

Incidental
powers of Court.
Ib. s. 111.

- (a) refuse to make any order ;
- (b) order any issue of fact to be tried in such manner as it directs ;
- (c) order any party to deliver to the Court or to the Registrar the certificate of registration of any trade mark ; and
- (d) order any party to pay costs to any other party.

96. The Registrar and the Law Officer, respectively, may for the purposes of this Act—

Powers of
Registrar and
Law Officer.
Ib. s. 14.

- (a) summon witnesses ;
- (b) require the production of documents ; and
- (c) award costs against any party to any proceeding before him.

97. No person who has been summoned to appear as a witness before the Registrar or the Law Officer shall, without lawful excuse, and after tender of reasonable expenses, fail to appear in obedience to the summons.

Penalty for
disobedience to
summons.
Ib. s. 15.

Penalty : Fifty pounds.

98. No person who appears before the Registrar or the Law Officer as a witness shall, without lawful excuse, refuse to be sworn or make an affirmation or to produce documents or to answer questions which he is lawfully required to answer.

Penalty for
refusing to give
evidence.
Ib. s. 16.

Penalty : Fifty pounds.

99. Any sum awarded for costs by the Registrar or the Law Officer may, in default of payment, be recovered in any civil court of competent jurisdiction as a debt due by the person against whom the order is made to the person in whose favour the order is made.

Recovery of
costs.

100.—(1.) In any legal proceeding in which the validity of the registration of a registered trade mark comes into question, the Court or a Justice may certify that the right to the exclusive use of the trade mark came in question and was decided in favour of the registered proprietor of the trade mark, and then in any subsequent action for infringement of the trade mark the plaintiff

Certificate of
validity.
51 & 52 Vict.
c. 50 s. 13.

on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or a Justice trying the subsequent action certifies that he ought not to have them.

(2.) In this section "Court" means any Federal Court or any superior State Court having jurisdiction to entertain an action for infringement of a trade mark, and "Justice" means a Justice of any such Court.

False representation to Registrar or officer.
Patents Act 1903
s. 112.

101. No person shall wilfully make any false statement or representation to deceive the Registrar or any officer in the execution of this Act, or to procure or influence the doing or omission of anything in relation to this Act or any matter thereunder.

Penalty : Three years' imprisonment.

Power of amendment.

102. The Registrar may at any time before registration of a trade mark permit the amendment of the application for the registration of the trade mark and may at any time permit the amendment of any notice of opposition on such terms as to costs or otherwise as he thinks just.

Exercise of discretionary power.
46 & 47 Vict.
c. 57 s. 94.

103. Where any discretionary power is by this Act given to the Registrar, he shall not exercise that power adversely to the applicant for registration of a trade mark without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Fees to be paid in advance.

104. Where any prescribed fee is payable in respect of any act or document the Registrar may refuse to permit or perform the act or to receive or issue the document as the case requires until the fee payable in respect thereof is paid.

Extension of time.

105. Where by this Act any time is specified within which any act or thing is to be done, the Registrar may, unless otherwise expressly provided, extend the time either before or after its expiration.

Applications and notices by post.
Ib. s. 97.

106. Any application, notice, or other document, authorized or required under this Act to be left, made, or given at the Trade Marks Office, or to the Registrar, or to any other person, may be sent by a prepaid letter through the post.

Address for service.

107.—(1.) Any address for service stated in any application or notice of opposition shall for all purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case requires, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them to the address for service of the applicant or opponent, as the case requires.

(2.) Any address for service may be changed by notice in writing to the Registrar.

108. If any person is, by reason of infancy lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or the regulations, then the guardian or committee (if any) of such incapable person, or if there be none any person appointed by any Federal or State Court or Justice thereof, possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of the incapable person or of any other person interested in the making of such declaration or doing such thing, may make the declaration or a declaration as nearly corresponding thereto as circumstances permit, and do the thing in the name and on behalf of the incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

Declaration by infant, lunatic, &c.
Cf. 46 & 47 Vict. c. 57 s. 99.

109. If a person who is party to a proceeding under this Act dies pending the proceeding, the Registrar may on request made in the prescribed manner, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if he is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without such substitution.

Death of party to a proceeding.

110. Subject to the regulations the Registrar may permit any agent to do, on behalf of any other person, any act in connexion with the registration of trade marks or any procedure relating thereto.

Registrar may recognise agent.
T. M. Rules (Eng.), s. 9.

111. A certificate purporting to be under the hand of the Registrar and the seal of the Trade Marks Office as to any entry, matter, or thing which he is authorized by this Act to make or do shall be *prima facie* evidence of the entry having been made and of the contents thereof, and of the matter or thing having been done or left undone.

Certificate of Registrar evidence.

112.—(1.) No person shall falsely represent that any trade mark, applied to any article sold by him, is registered.
Penalty: Five pounds.

Penalty on falsely representing a trade mark as registered.

(2.) A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered, if he sells the article with the word "registered" or any word or words expressing or implying that a registration has been obtained for the trade mark stamped, engraved, or impressed on, or otherwise applied to, the article.

Cf. 46 & 47 Vict. c. 57 s. 105.

113. No person shall without the authority of the King, or of some member of the Royal Family, or of the Governor-General, or of the Governor of a State, or of some Department of the Government of the Commonwealth or a State (proof whereof shall lie upon the person accused), assume or use in connexion with any trade business calling or profession the Royal Arms, or arms so nearly resembling them as to be likely to deceive, in such a manner as to be likely to lead other persons to believe that he is carrying on his trade business calling or profession by or under such authority.

Penalty on unauthorized assumption of Royal Arms.
Ib. s. 106.

Penalty: Twenty pounds.

Scandalous and improper marks. Cf. 46 & 47 Vict. c. 57 s. 73.

114. No scandalous design, and no mark the use of which would by reason of its being likely to deceive or otherwise be deemed disentitled to protection in a court of justice, or the use of which would be contrary to law or morality, shall be used or registered as a trade mark or part of a trade mark.

International arrangements for protection of trade marks. See 46 & 47 Vict. c. 57 s. 103. Patents Act 1903 s. 121.

115.—(1.) If upon the request of the Governor-General the King is pleased to apply to the Commonwealth any law of the United Kingdom for carrying into effect any arrangement made with the Government of any foreign State for the mutual protection of trade marks, then any person who has applied for protection for any trade mark in the United Kingdom or the Isle of Man, or in any foreign State with which the arrangement has been made, shall be entitled to registration of his trade mark under this Act in priority to other applicants, and such registration shall have the same date as the date of the original application in the United Kingdom or the Isle of Man or such foreign State as the case may be :

Provided that such application shall be made within six months from such person applying for protection in the United Kingdom or the Isle of Man or the foreign State with which the arrangement is in force :

Provided also that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Commonwealth.

(2.) The use of the trade mark in the Commonwealth during the period aforesaid shall not invalidate its registration.

(3.) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Act.

(4.) The provisions of this section shall, in the case of foreign States, apply only to those foreign States with respect to which His Majesty, by Order in Council, has before or after the commencement of this Act declared the provisions of the aforesaid law to be applicable, and so long only in the case of each such State as the order continues in force with respect to that State.

Provision for intercolonial, &c., arrangements. Cf. 46 & 47 Vict. c. 57 s. 104. Patents Act 1903 s. 122.

116.—(1.) Where it is made to appear to the Governor-General that any British possession has made satisfactory provision for the protection in that possession of trade marks registered in the Commonwealth, the Governor-General may by order apply all or any of the provisions of the last preceding section with such variations or additions (if any) as to him seem fit to trade marks registered in that British possession.

(2.) An order under this section shall, from a date to be mentioned therein, take effect as if its provisions were contained in this Act, but it shall be lawful for the Governor-General to revoke any such order.