

(3) The Director-General shall, in applying the provisions of paragraphs (a) to (e) of subsection (1), have regard to the fact that the third parties referred to therein have consented to the registration of such mark.

105. There shall not be entered in the register a notice of any Trust expressed, implied, or constructive, nor shall any such notice be receivable by the Director-General.

Trust not to be entered in register.

CHAPTER XXI

REQUIREMENTS OF APPLICATION AND PROCEDURE FOR REGISTRATION

106. (1) An application for registration of a mark shall be made to the Director-General in the prescribed form and shall contain —

Requirements of application.

- (a) a request for the registration of the mark ;
- (b) the name, address of the applicant and, if he is resident outside Sri Lanka, a postal address for service in Sri Lanka ;
- (c) five copies of a representation of the mark ;
- (d) a clear and complete list of the particular goods or services in respect of which registration of the mark is requested, with an indication of the corresponding class or classes in the international classification, as may be prescribed.

(2) Where the application is filed through an agent, it shall be accompanied by a power of attorney granted to such agent by the applicant.

107. An applicant for registration of a mark who wishes to avail himself of the priority of an earlier application filed in a Convention country shall, within six months of the date of such earlier application, append to his application a written declaration indicating the date and number of the earlier application, the name of the applicant and the country in

Right of priority.

which he or his predecessor in title filed such application and shall, within a period of three months from the date of the later application filed in Sri Lanka, furnish a copy of the earlier application certified as correct by the appropriate authority of the country where such earlier application was filed.

Temporary protection of mark exhibited at international exhibition.

108. (1) An applicant for registration of a mark who has exhibited goods bearing the mark or rendered services under the mark at an official or officially recognized international exhibition and who applies for registration of the mark within six months from the date on which the goods bearing the mark or services under the mark were first exhibited or services respectively at such exhibition, shall on request, be deemed to have applied for registration of that mark on the date on which the goods bearing the mark or the services rendered under the mark were first exhibited or rendered at such exhibition.

(2) Evidence of the exhibition of the goods bearing the mark or the services rendered under the mark shall be by a certificate issued by the appropriate Authority of the exhibition stating the date on which the mark was first used at such exhibition in connection with such goods or services.

(3) The provisions of subsections (1) and (2) shall not extend to any other period of priority claimed by the applicant.

Application fee.

109. An application for registration of a mark shall not be entertained unless the prescribed fee has been paid to the Director-General.

Examination of application as to form.

110. (1) The Director-General shall examine whether the applicant for registration of the mark satisfies the requirements specified in sections 106 and 109 and where applicable the provisions of sections 107 and 108.

(2) Where the applicant fails to comply with the provision of sections 106 and 109, the Director-General shall refuse to register the mark :

Provided however the Director-General shall first notify the applicant of any defect in the application and shall afford him an opportunity to rectify such defect within three months from the date of receipt of such notification.

(3) The date on which the applicant rectifies such defect shall be deemed to be the date of receipt of the application for registration.

(4) Where the applicant fails to comply with the provisions of section 107 or 108, the Director-General shall not, in connection with the registration of the mark, make any reference to the priority claimed.

(5) Where the applicant complies with the provisions of sections 107 and 108, the Director-General shall in connection with the registration of the mark record the priority claimed or the date of the certified use of the mark at an international exhibition.

(6) Where the Director-General refuses to register a mark, he shall, if so requested by the applicant, state in writing the grounds of his decision.

111. (1) Where the applicant complies with the provisions of sections 106 and 109, the Director-General shall examine the mark in relation to the provisions of sections 103 and 104.

Registration of mark after further examination and publication of mark.

(2) Where the mark is inadmissible under section 103 or 104 the Director-General shall notify the applicant accordingly stating in writing the grounds on which registration of the mark is refused.

(3) Where the applicant is dissatisfied with all or any of the grounds stated by the Director-General in the notification referred to in subsection (2) he may, within a period of one month from the date of such notification, make his submissions against such refusal to the Director-General, in writing .

(4) On receipt of any submissions the Director-General may inform the applicant that he has been granted a hearing and the date, time and place of such hearing.

(5) The Director-General may, after such inquiry as he thinks fit, refuse to accept the application for registration of the mark, or may accept it absolutely or subject to conditions, amendments or modifications, or to such limitations, if any, as to the mode or place of user or otherwise as he may think fit to impose.

(6) In case of any refusal or conditional acceptance of an application for registration of a mark, the Director-General shall, if required by the applicant within a period of three months from such refusal or conditional acceptance, state in writing the grounds of his decision.

(7) Where the Director-General is of the opinion that the mark is admissible under section 103 or 104 he may request the applicant to pay the prescribed fee within a prescribed period for publication of the application.

(8) The Director-General shall refuse registration of the mark where the fee for publication of the application is not paid within the prescribed period.

(9) (a) If the fee for publication is paid within the prescribed period the Director-General shall proceed to publish the application setting out the date of application, the representation of the mark, the goods or services in respect of which registration of the mark is requested with an indication of the corresponding class or classes, the name and address of the applicant and, if the applicant is resident outside Sri Lanka, a postal address for service in Sri Lanka, the priority claimed, if any, or the date of certified use of the mark at an international exhibition.

(b) Notwithstanding the provisions of subsections (7), (8) and paragraph (a) of this subsection relating to the prescribed fee and the publication, the Director-General may, at his discretion, require the applicant by notice in writing to publish an application as referred to in paragraph (a) of this subsection. Where the applicant fails or neglects to publish such application within a period of three months from the date of such notice the application may be refused.

(10) Where any person considers that the mark is inadmissible on one or more of the grounds specified in section 103 or 104 he may, within a period of three months from the date of publication of the application, give to the Director-General in the prescribed form, and together with the prescribed fee, notice of opposition to such registration stating his grounds of opposition accompanied by evidence to substantiate such grounds.

(11) Where notice of opposition has not been received by the Director-General within the period specified in subsection (10) of this section, the Director-General shall register the mark.

(12) Where, within the period specified in subsection (10) of this section notice of grounds of opposition in the prescribed form is received by the Director-General, together with the prescribed fee, he shall serve a copy of such grounds of opposition on the applicant and shall request him to present his observations on those grounds in writing accompanied by evidence to support his application within a period of three months.

(13) On receipt of the observations of the applicant the Director-General shall after hearing the parties, if he considers such hearing necessary, decide, as expeditiously as possible, whether such mark should be registered or not. If the Director-General decides that the mark can be registered, then if —

- (a) no appeal is preferred against his decision, upon the expiry of the period within which an appeal may be preferred against his decision ;
- (b) an appeal is preferred against his decision, upon the determination of such appeal,

the Director-General shall accordingly register such mark.

(14) The Director-General may allow a reasonable extension of the prescribed period within which any act has to be done or any fee has to be paid under this section.

Non completion
of registration.

112. Where, by reason of default on the part of the applicant, the registration of a mark is not completed within twelve months from the date of receipt by the Director-General of the application, the Director-General shall, after giving notice of non-completion to the applicant in writing in the prescribed form, treat the application as abandoned, unless it is completed within the time specified in that behalf in such notice.

Register of marks
and issue of
certificate.

113. (1) The Director-General shall keep and maintain a register called the “Register of Marks” wherein shall be recorded in the order of their registration, all registered marks and such other matters relating to marks as are authorized or directed by this Part to be so recorded or may from time to time be prescribed.

(2) The registration of a mark shall include a representation of the mark and shall specify its number, the name and address of the registered owner and, if the registered owner’s address is outside Sri Lanka, a postal address for service in Sri Lanka, the dates of application and registration ; if priority is validly claimed, an indication of that fact and the number, date and country of the application on the basis of which the priority is claimed, if a valid certificate has been filed relating to the use of a mark at an international exhibition, the contents of such certificate, the list of goods and services in respect of which registration of the mark has been granted with an indication of the corresponding class or classes.

(3) Upon the registration of a mark the Director-General shall issue to the registered owner thereof a certificate of registration and shall, at the request of the registered owner, send such certificate to him by registered post to his last recorded postal address in Sri Lanka, or if he is resident outside Sri Lanka to his last recorded postal address in Sri Lanka.

114. The Director-General shall cause to be published in the Gazette, in the prescribed form, all registered marks in the order of their registration, including in respect of each mark so published reference to such particulars as may be prescribed.

Publication of registered marks.

115. Any person may examine the register and may obtain certified extracts therefrom on payment of the prescribed fee.

Examination of register and certified copies.

116. Where application is made for the registration of a mark identical with or so closely resembling a mark of the applicant already on the register for the same goods or services, the same description of goods or services as to be likely to mislead or cause confusion if used by a person other than the applicant, the Director-General may require as a condition of registration that such marks shall be entered on the register as associated marks.

Associated marks.

117. Associated marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate marks :

Assignment and user of associated marks.

Provided that where under the provisions of this Part user of a registered mark is required to be proved for any purpose, the Director-General may, in so far as is considered necessary accept the user of an associated registered mark, or of the mark, with additions or alterations not substantially affecting its identity, as an equivalent for such user.

CHAPTER XXII

DURATION OF REGISTRATION OF A MARK

118. (1) Subject and without prejudice to the other provisions of this Part, registration of a mark shall expire ten years after the date of registration of such mark.

Duration of registration.