

CHAPTER XXVII

REMOVAL OF MARK

Removal of mark.

136. (1) The Court may on the application of any person showing a legitimate interest, or of any Competent Authority including the Director-General, to which the registered owner of the mark and every assignee, licensee or sub-licensee on record shall be made party, remove any registered mark from the register—

- (a) if the registered owner has, without valid grounds, failed to use the mark within Sri Lanka or cause it to be used within Sri Lanka by virtue of a licence, during five consecutive years immediately preceding the date of the application to Court ;
- (b) if the registered owner has caused, provoked or tolerated the transformation of the mark 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 in the eyes of the public its significance as a mark has been lost.

(2) In any application under paragraph (a) of subsection (1) the Court may take into account the fact that non-use of the mark was due to circumstances beyond the control of the registered owner. The Court shall not take into account the lack of funds of the registered owner as a ground for non-use of the mark.

(3) The use of a mark—

- (a) in a form differing, in elements which do not alter the distinctive character of the mark, from the form in which it was registered, shall not be a ground for removal of the mark ;
- (b) 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 the removal of the mark in respect of all the other goods or services of the same class.

137. Upon a final decision of the Court in respect of removing any registered mark from the register—

Date and effect of removal of mark.

- (1) the Court may, taking into account the date of the events and other circumstances which occasioned the removal of the mark, determine the date on which the registration of the mark shall be deemed to have ceased to have any legal effect ;
- (2) the Registrar of the Court shall communicate the decision of the Court to the Director-General who shall, if the Court decides that the mark be removed, enter in the register a record of such removal and cause the decision of Court to be published in the Gazette.

CHAPTER XXVIII

COLLECTIVE MARKS

138. (1) Subject to the provisions of this Chapter the provisions relating to marks shall apply to collective marks.

Collective marks.

(2) In relation to a collective mark, the reference in section 101 (signs of which a trade mark or service mark may consist) to distinguish goods or services of one enterprise from those of other enterprises shall be construed as a reference to distinguish goods or services of the enterprise which uses the collective mark from those of other enterprises.

(3) Notwithstanding the provisions of section 103 a collective mark may be registered which consists of a sign or indication which may serve, in trade, to indicate the geographical origin of the goods or services :

Provided, however, the owner of such a mark shall not be entitled to prohibit the use of such sign or indication in accordance with honest practices in industrial or commercial matters and in particular, by a person who is entitled to use a geographical name.