

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.

Application for
registration of
collective marks.

139. (1) An application for registration of a collective mark shall not be entertained unless in such application the mark is designated as a collective mark and the application is accompanied by a copy of conditions governing the use of the mark duly certified by the applicant.

(2) The conditions governing the use of the mark under subsection (1) shall define the common characteristics or quality of the goods or services which the collective mark shall designate, the conditions in which, and the person by whom it may be used, the exercise of effective control of the use of the mark and proper sanctions against the use of the mark contrary to such conditions. They shall contain further prescribed requirements under this section.

(3) A collective mark shall not be registered unless the conditions governing the use of the mark—

(a) comply with the provisions of subsection (2) and any requirement imposed by any regulation made thereunder ;

(b) are not contrary to public policy or accepted principles of morality.

(4) (a) An authorised user shall, subject to any agreement to the contrary between him and registered owner of the collective mark, be entitled to require the owner to take infringement proceedings in respect of any matter which affects his interests.

(b) If the owner—

(i) refuses to do so ; or

(ii) fails to do so within two months after being called upon to do so,

the authorised user may bring the proceedings in his own name as if he was the owner. The registered owner shall be made party to the action.

(c) In infringement proceedings brought by the owner of a registered collective mark, any loss suffered or likely to be suffered by any authorised user shall be taken into consideration by Court.

(5) The registration of the collective mark may be removed on the following grounds in addition to the grounds specified in section 136 :—

- (i) that the manner in which the mark has been used by the owner has caused it to become liable to mislead the public to understand or think that the mark has state patronage ;
- (ii) that the owner has failed to observe, or to secure the observance of, the conditions governing use of the mark ; or
- (iii) that an amendment of the conditions has been made so that the conditions—
 - (a) no longer comply with subsection (2) and any other condition imposed by regulation made under this Act ; or
 - (b) are contrary to public policy or to the accepted principles of morality.

(6) The registration of a collective mark shall be declared null and void in addition to the grounds of nullity specified in section 134 if it was registered in violation of the provisions of subsections (1), (2) and (3) of section 139.

140. (1) Registration of a collective mark shall be in such Part of the register as the Director-General may decide and a copy of the conditions governing the use of the mark shall be appended to the registration.

Registration and publication of collective marks.

(2) The publication of an application for a collective mark in accordance with subsection (9) of section 111 shall include a summary of the conditions to be appended to the registration.

(3) When a collective mark, is registered under subsection (1) it shall be deemed in all respects to be a registered mark.

(4) The conditions governing the use of a registered collective mark shall be open for public inspection in the same way as the register.

Changes in condition governing the use of collective marks.

141. (1) The registered owner of a collective mark shall notify the Director-General in the prescribed manner of any change or amendments effected in the conditions governing the use of the collective mark.

(2) Any notification of such change or amendment shall be recorded in the register on payment of the prescribed fee. Any such change or amendment in the condition shall be effectual only if they have been recorded.

(3) The Director-General shall cause a summary of such changes and amendments made in the conditions and recorded under subsection (2) to be published in the Gazette.

CHAPTER XXIX

CERTIFICATION MARKS

Certification marks.

142. (1) Subject to the provisions of this Chapter, provisions relating to marks shall apply to certification marks.

(2) In relation to a certification 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 another enterprise shall be construed as a reference to distinguish goods or services which are certified from those which are not certified.

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