

Protection of  
trade name.

**144.** (1) Notwithstanding the provisions of any written law providing for the registration of a trade name, such name shall be protected, even prior to or without registration, against any unlawful act committed by a third party.

(2) Any subsequent use of a trade name by a third party, whether as a trade name or as a trade mark, service mark, collective mark or certification mark or any such use of similar trade name, trade mark, service mark or collective mark or certification mark likely to mislead the public shall be deemed to be unlawful.

(3) Section 122 of this Act shall apply to trade names.

Assignment and  
transmission of  
trade names.

**145.** (1) A trade name may be assigned or transmitted together with the assignment or transmission of the enterprise or part of the enterprise identified by that name.

(2) The provisions of section 123 shall apply, *mutatis mutandis*, to trade names.

## PART VII

### CHAPTER XXXI

#### LAYOUT DESIGNS OF INTEGRATED CIRCUITS

Right to  
protection.

**146.** (1) The right to protection of a layout design shall belong to the creator of layout design. Where several persons have jointly created a layout design such persons shall be co-owners of the right to protection.

(2) The right to protection of a layout design made or created in the performance of a contract of employment or in the execution of a work shall, unless the terms of such contract of employment or contract for the execution of such work otherwise provides, belong to the employer or the person who commissioned the work, as the case may be.

**147.** (1) The protection provided under this Act shall apply to any layout design which is original. For the purposes of this section a layout design is original if —

Originality.

- (a) it has not been produced by the mere reproduction of another layout design or of any substantial part thereof; and
- (b) it is the result of an intellectual effort of a creator and is not common place among creators of layout designs and manufacturers of integrated circuits at the time of the creation of such layout design.

(2) Where a layout design consists of a combination of elements and interconnections that are common place among creators of layout designs or manufacturers of integrated circuits, such layout designs shall be protected only if the combination, taken as a whole, meets the conditions referred to in subsection (1).

**148.** (1) The protection afforded to a layout design under this Part shall not be dependent on the integrated circuit which incorporates such layout design being incorporated in an article. Subject to the provisions of subsection (2) the right holder of a layout design shall have the exclusive right to do or authorize any person to do any of the following acts :—

Scope of protection.

- (i) to reproduce whether by incorporation in an integrated circuit or otherwise, the protected layout design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in subsections (1) and (2) of section 147.
- (ii) to import, offer for sale, sell or otherwise distribute for commercial purposes, the protected layout design or an integrated circuit in which the protected layout design is incorporated or an article incorporating such an integrated circuit in so far as it does not contain an unlawfully reproduced layout design.

(2) The scope of the protection of a layout design afforded by this Part, shall not extend to—

- (i) the reproduction of the protected layout design for the purpose of evaluation, analysis, research or non profit teaching or education ;
- (ii) the incorporation in an integrated circuit of a layout design, created on the basis of such analysis, evaluation or research referred to in paragraph (i), if such layout design is itself original within the meaning of subsections (1) and (2) of section 147, or for the performance of any of the acts referred to in subsection (1) of this section in respect of such layout design ;
- (iii) the performance of any of the acts referred to in paragraph (ii) of subsection (1), where the act is performed in respect of a protected layout design, or in respect of an integrated circuit in which such layout design is incorporated, and such layout design or integrated circuit has been put on the market by, or with the consent of, the right holder; or
- (iv) the performance of any act referred to in paragraph (ii) of subsection (1) in respect of an integrated circuit incorporating an unlawfully reproduced layout design or any article incorporating such an integrated circuit, where the person performing or ordering such an act unknowingly performs or orders such an act and has no reasonable grounds of knowing at the time of acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design :

Provided however, where the person performing or ordering any act under this paragraph, is notified that such layout design is an unlawful reproduction, then such person may, perform or order any act only

with respect to the stock in hand or ordered before he was so notified and shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such layout design; or

- (v) protection under this Part shall not be available for any layout design which has been commercially exploited in or outside Sri Lanka for more than two years prior to the commencement of this Act.

**149.** (1) Protection of a layout design under this Act shall commence—

Commencement and duration of protection.

- (i) on the date of the first commercial exploitation in or outside Sri Lanka of the layout design by, or with the consent of the right holder, provided an application for protection is filed by the right holder with the Director-General within the time specified in subsection (2) of section 150 ; or
- (ii) on the filing date accorded to the application for the registration of the layout design filed by the right holder, if the layout design has not been previously exploited commercially in or out side Sri Lanka.

(2) Protection of a layout design under this Part shall terminate at the end of the tenth calendar year from the date of commencement of such protection.

**150.** (1) The application for the registration of a layout design shall be in the prescribed form, and shall be accompanied by the prescribed fee and shall be filed in the Office. A separate application shall be filed in respect of each different layout design.

Requirements of the Application.

(2) Any person may apply for registration of a layout design if such layout design has not been commercially exploited, or if exploited, in or outside Sri Lanka the application for registration shall be made before the expiry of a period of two years from the date of such exploitation.

- (3) The application shall—
- (a) contain a request for the registration of the layout design in the Register of Layout Designs and a brief and precise description thereof ;
  - (b) specify the name, address, nationality of the applicant, and if he is resident outside Sri Lanka a postal address for service in Sri Lanka ;
  - (c) be accompanied by a copy of a drawing of the layout design along with information defining the electronic function which the integrated circuit is intended to perform ; however, the application may omit such parts in the copy or drawing that relate to the manner or manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout design ;
  - (d) specify whether the layout design is exploited in or outside Sri Lanka and the date of its first commercial exploitation, if any ;
  - (e) provide particulars establishing the right to protection under section 146 ;
  - (f) be accompanied by a declaration as to the originality of the layout design ;
  - (g) be accompanied by a power of attorney granted to the agent by the applicant, where the application is made through an agent.

(4) (a) Where the applicant fails to comply with the requirements specified in subsection (3) of this section the Director-General shall, notify the applicant of the same and require him to correct the defect made in the application within a period of two months from the date of such notification.

(b) Where the applicant complies with such requirements specified in paragraph (a) of this subsection, the Director-General shall accord the date of filing as the date of receipt of the application :

Provided however, such application should contain written statement of the need for the registration of the layout design, and information whereby the identity of the applicant can be established and shall be accompanied by a copy of the drawings of the layout design.

(c) Where the applicant fails to submit drawings of a layout design with the original application, but corrects the application for the registration of the layout design within the period specified in paragraph (a), the date of receipt of the corrections shall be deemed to be the date of filing of the application. The Director-General shall by a written communication confirm the filing date of the application to the applicant.

(d) Where the applicant fails, after notification by the Director-General, to correct the application within the period specified in paragraph (a), such application shall be deemed not to have been filed.

**151.** (1) The Director-General shall maintain a Register of Layout Designs and he shall register or cause to be registered of each protected layout design, in respect of which applications for registration have been accepted.

Registration of layout design in the Register.

(2) Where any application conforms to the requirements of section 150, the Director-General shall register the layout design in the Register of Layout Designs without examination of the originality of the layout design, the applicant's right to protection or the correctness of the facts stated in the application.

(3) The Register of Layout Designs shall contain the number, title, filing date and where indicated in the application under section 150 the date of first commercial exploitation in or outside Sri Lanka of the layout design as well as the name and address of the right holder, details relating to assignment, transfer, license contract and other prescribed particulars.

(4) Any person may refer the Register of Layout Designs and obtain extracts therefrom, subject to the payment of the prescribed fee.

(5) Every registration of a layout design shall be published in the Gazette.

Right to transfer  
and rectification  
of the Register.

**152.** (1) Where the essential elements of a layout design has been taken from a layout design of another person without his consent in writing, the second mentioned person may, in writing together with all relevant material necessary to substantiate his claim and the prescribed fee, request the Director-General to transfer the application to him. Where the application has already been registered the second mentioned person may, within one year from the date of publication of such registration write to the Director-General together with all relevant material necessary to substantiate his claim and the prescribed fee, requesting the Director-General to transfer the registration to him and to rectify the entry in the register accordingly.

(2) The Director-General shall forthwith send a copy of such request to the applicant or registered right holder, as the case may be, requiring him to furnish him with a counter claim within a period of two months from the date of such notice in the prescribed manner together with any material if any in his possession to prove his ownership of the layout design in question and the prescribed fee. The applicant or the registered right holder may send the Director-General a counter claim.

(3) Where the registered right holder or the applicant fails to provide any information as required under subsection (2) of this section, within the period specified, the Director-General shall allow the request of the second mentioned person and rectify the entry in the register.

(4) If the applicant or the right holder sends a counter-claim, as provided in subsection (2), the Director-General shall after hearing both parties and taking into consideration the merits of the case, shall make his determination and notify the parties of his determination.

(5) Where after the filing of the application the person to whom the right to protection belongs, gives his consent to the filing of that application, such consent shall, for all purposes, be deemed to be effective from the date of filing of such application.

**153.** (1) A protected layout design may be assigned or transmitted and such assignment or transmission shall be in writing, signed by or on behalf of the contracting parties.

Changes in the ownership and contractual licenses.

(2) Upon a request in writing signed by or on behalf of the assignor or transferor of the layout design the Director-General shall on payment of the prescribed fee, record in the register such particulars of change of ownership and publish such change. Such change shall have no effect against third parties until such recording is made.

(3) The right holder of layout design may grant a licence to another person or enterprise authorizing it to do any or all of the acts referred to in subsection (1) of section 148. Such license contract shall be in writing and signed by or on behalf of the contracting parties. Such license contract shall upon registration of the layout design be submitted to the Director-General together with prescribed fee, who shall record or cause to be recorded the existence of such license contract in the register. A license contract shall have no effect against third parties until it is so recorded.

**154.** (1) Any person interested in a layout design registered under section 151, or an appropriate Authority including the Director-General may file an application in the Court, for the cancellation of such registration on the following grounds :—

Cancellation of a Registration of a layout design.

(a) that the layout design is not protected under sections 147 ;



- (b) that the right holder is not entitled to protection under section 146; or
- (c) that the layout design has been commercially exploited in or out side Sri Lanka, before the filing of the application for registration of the layout design, and the application was not filed within the time limit specified in subsection (2) of section 148 and subsection (2) of section 150.

(2) On the establishment of grounds for cancellation of a part of a layout design, the registration applicable to such corresponding part only of the layout design, shall be cancelled.

(3) The Court may on an application made to it in writing by an interested party or any appropriate Authority including the Director-General, and where the registered owner of the layout design and every assignee, licensee or sub-licensee on record shall be made party, make order for the cancellation or partial cancellation of such registration.

(4) Any cancellation of a registration of layout design or part thereof, shall have the effect of making null and void the registration of a layout design or part thereof as the case may be, and as such it shall be effective from the date of commencement of the protection of such layout design.

(5) The Court shall notify the Director-General of its decision and the Director-General shall record such decision and publish a notice to that effect, in the Gazette.

Representation by  
an Agent.

**155.** Where the ordinary residence, or principal, of the applicant place of business, of the applicant is outside Sri Lanka, he shall be represented by an agent registered under section 175 of the Act.

Infringement.

**156.** (1) Infringement shall consist of the performance of any act in contravention of the provisions of section 148.

(2) The Court may grant an injunction, award damages or grant any other proper remedy —

(a) to a right holder to prevent an infringement or imminent infringement if he makes an application having reason to believe that a layout design has been made infringing the rights protected under section 148 of the Act ; or

(b) to a licensee, where the licensee makes an application to court, in the event of the right holder failing or neglecting to make an application to Court on his being made aware of such infringement by the licensee.

(3) The provisions of Chapter XXXV of this Act shall apply in respect of an infringement and the remedies available to a right holder or a licensee.

(4) Any action under subsection (2) may be initiated only after an application for registration of the layout design being filed with the Director-General.

**157.** Any person who, knowingly or intentionally contravenes the provisions of section 148, shall be guilty of an offence, and shall on conviction after trial before a Magistrate be liable to a fine not exceeding rupees five hundred thousand or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment and in the case of a second or subsequent conviction such fine or term of imprisonment or both such fine and imprisonment may be doubled. The Court may in addition order the seizure, forfeiture and destruction of the layout design, integrated circuits, articles or any material or implement, which have been used for or in the commission of the offence.

Offences.

**158.** The provisions of sections 125A and 125B of the Customs Ordinance and sections 163 to 174, 177, 180, 187, 191, 195 to 204 of the Act shall apply to and in relation to the layout designs of integrated circuits.

Application of certain provisions of the Act.

Interpretation.

**159.** In this Part unless the context otherwise requires—

“integrated circuit” means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material and which is intended to perform an electronic function ;

“layout design” is synonymous with “topography” and means the three dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture ;

“right holder” means the natural person who, or the legal entity which, is to be regarded as the beneficiary of the protection referred to in section 146.

## PART VIII

### CHAPTER XXXII

#### UNFAIR COMPETITION AND UNDISCLOSED INFORMATION

Unfair  
competition and  
undisclosed  
information.

**160.** (1) (a) Any act or practice carried out or engaged in, in the course of industrial or commercial activities, that is contrary to honest practices shall constitute an act of unfair competition.

(b) The provisions of this section shall apply independently of, and in addition to, other provisions of the Act protecting inventions, industrial designs, marks, trade names, literary, scientific and artistic works and other intellectual property.