

said registered trade-mark, numbered \_\_\_\_\_, and also to our said trade-mark in paragraph 2 hereof referred to, as to be calculated to deceive.

(For other grounds of opposition, see pp. 69, 85; Chap. VIII., p. 115, "What marks may be registered as trade-marks"; Chap. X., p. 211, "Restrictions on registration" (b).)

### 3. COUNTER-STATEMENT.

(In answer to the Notice of Opposition, No. 2.)

[*Heading as in the Form, p. 729.*]

1. We [*the applicants*] deny that the mark which is the subject of our application has such resemblance to either of the marks referred to in the notice of opposition herein as to be calculated to deceive.

2. [*Describing the principal differences between the applicants' mark, and the opponent's registered mark No. 1,234.*]

3. [*Describing the principal differences between the applicants' mark, and the mark referred to in paragraph 2 of the notice of opposition.*]

4. The last-mentioned mark is not a trade-mark, and the opponents have not used the same as a trade-mark. If our said mark bears any undue resemblance to the said mark of the opponents (which we deny), the opponents will not in any way, nor will any right of which they are possessed, or to which they are entitled, be prejudiced by the registration of our said mark.

5. Our said mark has been used by us as a trade-mark in connection with the goods to which our application relates since the \_\_\_\_\_ of \_\_\_\_\_, 18 \_\_\_\_\_, before the opponents had commenced to use either of their said marks, and if it bears any undue resemblance to the last-mentioned marks or either of them (which we deny), the said marks, or whichever of them our said mark so resembles, have, or has been, used as a trade-mark, if at all, and the opponents' alleged trade-mark, numbered 1,234, has been registered, in derogation of our rights, and our application to register ought not to be prejudiced by reason of such user or registration.

(Signed) \_\_\_\_\_.

To the Comptroller,  
Patent Office, Trade-Marks Branch,  
25, Southampton Buildings, London.

(b) See also *Kutnow's Tm.*, 10 R. P. C. 403.

4. EVIDENCE IN SUPPORT OF THE APPLICATION OR OPPOSITION (c).

The formal parts of the declarations are as follows:—

[*Heading as in the counter-statement, p. 729.*]

We do solemnly and sincerely declare as follows:  
[*setting out the evidence of the declarants*].

And we make this declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1835.

Declared at  
in the City of London, } (Signed) \_\_\_\_\_  
this of 18 , }  
before me,

A commissioner for oaths.

5. APPLICATION FOR HEARING BY THE COMPTROLLER.

(Form E., above, p. 705.)

6. FORM OF APPEAL FROM THE COMPTROLLER TO THE BOARD OF TRADE.

(Form H., above, p. 707.)

7. STATEMENT OF CASE (d).

[*Heading as in the counter-statement, p. 729.*]

1. The appellants, \_\_\_\_\_, are manufacturers and vendors of indiarubber hose covered with steel wire, which is wound helically round it by a process protected by certain patents. The opponents, \_\_\_\_\_, are vendors of indiarubber hose covered with steel wire, wound round it by a process which is different from that employed by the appellants.

2. On or about the \_\_\_\_\_ of \_\_\_\_\_, 18 \_\_\_\_\_, the appellants

(c) This is given by statutory declaration. Rule 31 (3), (4), p. 81, and Rules 61, 62, p. 702. As to the Comptroller's power to dispense with evidence, see Rule 53, p. 701; and as to cases of infancy, lunacy, or other incapacity, sect. 99, p. 667.

(d) This is substantially the case made use of in *The Sphincter Co.'s Tm.*, 10 R. P. C. 84.

published a circular containing (*inter alia*) a representation of the device which they now seek to register as a trade-mark. The said circular and representation were registered at Stationers' Hall on the            of           , 18   , in the names of the appellants, and the copyright in the same is now and always has been vested in the appellants.

3. The said device consists of [*describing it*]. The said device was drawn on the instructions of the appellants, and was entirely novel in design, and it is a distinctive device. The appellants have extensively published and circulated the said circular and the said representation and device amongst persons concerned in the indiarubber and hose trade, and amongst their customers and others from the said            of            18   , to the present time.

4. By their application, numbered           , the appellants sought to register the said device as a trade-mark in Class 50, for use in connection with the hose manufactured or sold by them. The said application was opposed on the grounds following: that the opponents are the proprietors of a trade-mark in Class 50, for hose, registered on the            of           , 18   , under No.           ; and that they had (as they alleged) used for a considerable time past a device consisting of [*describing it*] as an advertisement and description of their hose in price lists, circulars, &c.; and that the mark for which the appellants are applying for registration had (as was alleged) such a resemblance to their said registered trade-mark and advertisement as to be calculated to deceive.

5. The trade-mark of the opponents consists of [*describing it*]. It is totally different in design and appearance from the said device of the appellants, and the said device bears no resemblance whatever to it.

6. It is untrue that the opponents have ever used any device similar to or resembling the said device of the appellants, or such as could be mistaken for or confounded with the said device referred to in the appellants' application, or such that the registration of the latter as a trade-mark would be calculated to deceive.

7. The opponents exhibited to their declaration in opposition certain copies of price lists and advertisements, and among them a price list marked           , containing a figure numbered No. 1. The said price list and figure were first issued and published on the            of           , 18   , as an advertisement, that is to say,            years after the appellants had commenced to issue and publish their said device. The said figure No. 1 consists of [*describing it*]. The said figure is quite different in design and appearance from the said device of the appellants, and the said device bears no resemblance whatever to it.

8. The application was heard before the learned Registrar sitting for the Comptroller, and on the            of            18   , he

gave his decision, and refused to allow the said device of the appellants to be registered.

9. The appellants crave leave to refer, for the purposes of their appeal, to all the evidence used at the hearing of their said application and of the opposition (*e*), and also to the written decision of the learned Registrar.

The appellants submit that, under the circumstances hereinbefore stated, the decision of the learned Registrar should be reversed, and the appellants' device No.                    above mentioned should be admitted to registration, on the following grounds:—

- (1.) Because the said device is a distinctive device which the appellants are entitled to use and register as a trade-mark under the above-mentioned Acts. Grounds of appeal.
- (2.) Because the learned Registrar was wrong in holding that it has been the custom in the hose trade to advertise pictures of hoses resembling the said device, whereas no such custom was established by the evidence, and such custom, if established, would not be a good ground of objection to the registration of the said device.
- (3.) Because the learned Registrar was wrong in holding that the said device resembles the said trade-mark of the opponents numbered No.                   , whereas the said device does not resemble the said trade-mark at all, or (alternatively) not so nearly as to be calculated to deceive.
- (4.) Because the learned Registrar was wrong in holding that the said device resembles the said figure No. 1, and such resemblance, if it existed, would not be a good ground of objection to the registration of the said device.

The matters with which this appeal is concerned are of great importance to the appellants, and they are desirous that the same may be referred to the decision of the Court under sect. 69 of the above-mentioned Act (*f*).

(Signed)                    .

(*e*) See Rule 26, p. 698.

(*f*) If the Board of Trade see no reason for differing from the decision of the Comptroller, they sometimes refer the appeal at once to the Court and so save a step; and they generally do so, if either party gives them notice that he considers it desirable. See further, pp. 87, 88.

*Appendix—No. 7.*

## 8. FORM OF REFERENCE OF THE APPEAL TO THE COURT BY THE BOARD OF TRADE.

[*Title.*]

WHEREAS it appears expedient to the Board of Trade to refer the above-mentioned appeal to the Court. Now, therefore, the Board of Trade by virtue of the provisions of sub-sect. 4 of sect. 69 of the above-mentioned Act do hereby refer such appeal to the Court accordingly.

Dated this            day of            .  
(Signed) \_\_\_\_\_,  
Secretary to the Board of Trade.

*Directions on Reference.*

For the purpose of the above reference, the Board of Trade, pursuant to Rule 23 of the Trade-Marks Rules, 1890, hereby direct that the appellants make application by motion, summons, or otherwise, as they may be advised, to the Chancery Division of the High Court of Justice to hear and determine the said appeal, and that notice of such application be served upon the Comptroller-General of Patents, Designs, and Trade-Marks, and upon [*the opponents* (a)]. And that upon the hearing and determination of the said appeal, the appellants, the Comptroller and [*respondents*] be respectively at liberty to adduce such evidence by affidavit, examination, or cross-examination of witnesses and otherwise, as the Court may see fit to direct or permit (b).

Dated this            day of            .  
(Signed) \_\_\_\_\_,  
Secretary to the Board of Trade.

## 9. NOTICE OF MOTION FOR THE DETERMINATION OF THE APPEAL.

18 , No. .

In the High Court of Justice,  
Chancery Division,  
Mr. Justice            .

[*Heading as in the Counter-statement above, p. 729.*]

TAKE NOTICE that the Court will be moved before the Honourable Mr. Justice            at 10.30 in the forenoon

(a) Where the Comptroller has refused a mark on account of its resemblance to a registered mark, and the applicant appeals and the appeal is referred to the Court under sect. 62, the directions now usually given include a direction to serve the proprietor of such mark; see, for instance, *Application of Pomvil, Ltd.*, 18 R. P. C. 181 (1901), and above, p. 89.

(b) Where statutory declarations have been used before the Comptroller, directions for the use of these are given; see above, p. 90.

on the \_\_\_\_\_ of \_\_\_\_\_, 18\_\_\_\_, or so soon thereafter as counsel can be heard, by counsel, on behalf of the above-mentioned applicants \_\_\_\_\_, that the appeal of the applicants from the decision of the Comptroller-General of Patents, Designs, and Trade-marks upon their above-mentioned application (which has been referred by the Board of Trade to the Court) may be heard and determined: And for an order directing the Comptroller-General of Patents, Designs, and Trade-marks to proceed with the registration of the trade-mark referred to in the said application.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 18\_\_\_\_.

(Signed) \_\_\_\_\_

Solicitors for the above-named \_\_\_\_\_.

To the Comptroller-General of Patents,  
Designs, and Trade-marks,  
and

To [*the opponents*].

## No. 8.

## NOTICE OF MOTION TO RECTIFY THE REGISTER.

18 . No.

In the High Court of Justice,  
Chancery Division,  
Mr. Justice .

In the matter of a Trade-mark numbered ,  
And in the matter of the Patents, Designs, and Trade-Marks Acts, 1883-1888.

TAKE NOTICE that this Court will be moved before the Honourable Mr. Justice , on the of 18 , at 10.30 in the forenoon, or so soon thereafter as counsel can be heard, by counsel on behalf of (*the applicant*) of (*address*), for an order that the Register of trade-marks kept under the above-mentioned Acts may be rectified (*as follows*):—

- (1.) By the removal of the mark therein registered for class , and numbered .
- (2.) By limiting the registration of the mark therein registered (&c.) for use in connection with part of the goods comprised in the said class only, namely,
- (3.) By expunging from the said Register part of the said mark No. , namely,
- (4.) By adding to the entry therein of the said mark No. , a disclaimer of any right on the part of the registered proprietor of the said mark to the exclusive use of part of the said mark, that is to say the words (*a*),

Or that such other order for the rectification of the said Register may be made as to the Court shall seem fit.

(Signed) \_\_\_\_\_.

To (*the registered proprietor*),  
and  
To the Comptroller-General of Patents,  
Designs, and Trade-Marks.

(a) For other forms of rectification see above, p. 278. For forms of orders, see Seton, 5th ed. vol. 3, p. 1989.

## No. 9.

### PRECEDENTS OF PLEADINGS IN ACTIONS FOR INFRINGEMENT AND PASSING OFF (a).

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#### 1. INDORSEMENT OF WRIT.

The plaintiff's claim is for—

(1.) An injunction to restrain the defendant, his servants, and agents, from infringing the plaintiff's registered trade-mark, No. 1234, and from passing off goods not of the plaintiff's manufacture as or for the goods of the plaintiff (b).

(2.) An account or damages.

(3.) Delivery up of the marked goods.

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#### 2. STATEMENT OF CLAIM.

1. The plaintiff and defendant are both manufacturers of hoes, shovels, and other hardware goods, carrying on business in Birmingham and also in London.

2. The plaintiff is the proprietor of a trade-mark consisting of the device of a circle and a triangle with a dagger placed between them, and the word "dagger" printed beneath the said device. The said trade-mark was registered, as an old mark, in the Register of trade-marks, under No. 1234, by the plaintiff, as the proprietor thereof, on the 1st of January, 1890, in Class 13 for hoes and shovels.

The plaintiff's  
registered  
trade-mark.

3. The plaintiff, and his predecessors in the business carried on by the plaintiff as aforesaid, have extensively used the said trade-mark and also the said word "dagger" as a trade-mark upon hoes and shovels manufactured and sold by them since the year 1850, and the plaintiff continues to extensively use the said trade-mark and word in his said business.

Use of the  
trade-mark.

(a) For the Forms given in the Appendix to the Rules of the Supreme Court, see p. 439. The first set of pleadings here given relate to an action for the infringement of a registered trade-mark, and also for passing off goods by the use of a trade-name and imitation of get-up. The paragraphs referring to each of the combined causes of action are readily distinguishable. The second set relate to an action for the infringement of an unregistered trade-mark.

(b) See a fuller form, p. 744, and other precedents, pp. 748 *et seq.*



Plaintiff's goods known as "dagger" hoes.

4. By reason of the user alleged in the last paragraph, the plaintiff's hoes and shovels marked with the said trade-mark and word have become known to purchasers or intending purchasers as "dagger" hoes and shovels; and "dagger" hoes and "dagger" shovels in the hardware trade mean respectively the hoes and shovels made and sold by the plaintiff.

Get-up of the plaintiff's goods.

5. The plaintiff is accustomed to paste upon the hoes and shovels manufactured and sold by him a number of small triangular labels arranged in the form of a circle and coloured alternately red and green, and hoes and shovels sold in the market and bearing triangular labels so arranged and coloured are known to purchasers or intending purchasers as, and are bought by them as and for, the goods of the plaintiff.

The infringing mark.

6. The plaintiff has recently discovered, as the fact is, that the defendant is selling hoes and shovels not of the plaintiff's manufacture, bearing a mark consisting of the device of an oval and a square with a dagger placed between them, and having pasted upon them a number of small square labels arranged and coloured similarly to the labels used by the plaintiff, and referred to in paragraph 5 hereof.

Imitation of the get-up.

Use of "dagger" by the defendant.

7. The plaintiff has also recently discovered, as the fact is, that the defendant has advertised and has invoiced and sold hoes and shovels, not of the plaintiff's manufacture, as "dagger" hoes and shovels.

Infringement of the registered trade-mark.

8. The use of the said device in paragraph 6 mentioned, and also of the word "dagger," as in paragraph 7 mentioned, is an infringement of the plaintiff's said trade-mark No. 1234.

Imitation of get-up.

9. The employment of the said square labels by the defendant is an unlawful imitation of the get-up of the plaintiff's goods referred to in paragraph 5 hereof.

Passing off goods: profits.

10. By reason of the unlawful acts aforesaid the defendant has sold and passed off, and has caused to be sold and passed off, large quantities of goods not of the plaintiff's manufacture as and for the plaintiff's goods, and has thereby gained large profits.

The plaintiff claims—

- (1.) An injunction to restrain the defendant, his servants and agents, from infringing the plaintiff's said trade-mark, No. 1234, and from passing off goods not of the plaintiff's manufacture as or for the goods of the plaintiff. And in particular to restrain him and them from selling, offering for sale, or disposing of any hoes or shovels, not of the plaintiff's manufacture, bearing the device of a circle and a square with a dagger between them, or any other device colourably resembling the plaintiff's said trade-mark, or under the name "dagger" hoes or shovels, or having fixed upon them square labels arranged in a circle, or any other labels in imitation of the

get-up of the plaintiff's goods, in paragraph 5 hereof mentioned (c).

- (2.) An account of the profits made by the plaintiff in selling or disposing of any hoes or shovels not of the plaintiff's manufacture, sold under the device in paragraph 6 hereof mentioned, or as "dagger" hoes or shovels, or bearing square labels arranged and coloured as in paragraph 8 hereof mentioned.
- (3.) Delivery up to the plaintiff by the defendant upon oath of all hoes and shovels not of the plaintiff's manufacture, in the defendant's possession or under his control, marked with the device, or bearing the said labels, and of all price lists, copies of invoices, and other documents, and of all advertisement-blocks in the defendant's possession or under his control, bearing the word "dagger," for erasure or cancellation of the devices, labels, and words, or for destruction.
- (4.) Costs.

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### 3. DEFENCE

(In answer to the above Statement of Claim No. 2).

1. The defendant admits that the plaintiff is registered as the proprietor of the alleged trade-mark, No. 1234 in class 13, but he denies that the said mark is a trade-mark, and that the plaintiff is properly registered as the proprietor of the same. The said mark was not used by the plaintiff or by his predecessors in business as a trade-mark before the 13th of August, 1875.

Traverses of the allegations in the statement of claim.

2. The defendant denies that the said mark and that the word "dagger" is, or at any material time has been, used as a trade-mark for hoes or shovels, and that the plaintiff's hoes or shovels are known as "dagger" hoes or shovels, and that "dagger" hoes or shovels mean, or are understood to mean, hoes or shovels made or sold by the plaintiff, and that hoes and shovels sold in the market and bearing labels arranged and coloured as stated in paragraph 5 of the statement of claim are known to purchasers or intending purchasers as, or are bought as or for, the goods of the plaintiff.

3. The devices of a circle or an oval and a triangle, and the word "dagger," and the device of a dagger, are, and each of them is, common to the trade in hoes and shovels. The word "dagger" and the device of a dagger are commonly employed in the hardware trade to indicate a particular pattern of hoe

Devices and word common to the trade.

(c) See other forms of injunction, *post*, p. 748.

or shovel, namely, a hoe or shovel having an unusually narrow blade.

Get-up used for a long time by the defendant.

4. The business of the defendant as a manufacturer of hoes and shovels has been established since the year 1860, and the said business is much larger than that of the plaintiff. The defendant and his predecessors in the said business have for many years, and since the year 1870 at least (as the plaintiff has since the year last mentioned been well aware), used upon the hoes and shovels manufactured and sold by them a number of small square labels coloured red and green, and arranged in the form of a circle.

Acquiescence and waiver.

5. If the use by the defendant of the said square labels as aforesaid was at any time an infringement of any right of the plaintiff (which the defendant denies), the plaintiff has acquiesced in the same, and has long since forfeited any claim to interfere with such use.

Get-up of defendant's goods is not deceptive.

6. The said square labels arranged and coloured as aforesaid are not an imitation of the plaintiff's triangular labels, but are, and are well known to dealers in and purchasers of hoes and shovels to be, distinct from the same, and to indicate the goods of the defendant.

Denial of infringement.

7. The defendant denies that he has infringed the plaintiff's alleged trade-mark, or imitated the get-up of the plaintiff's goods. He admits that he has sold hoes and shovels, as he lawfully might, bearing some of the common marks aforesaid, namely, the devices of an oval, a square, and a dagger. Save as herein expressly admitted, he denies each of the allegations in paragraphs 6, 7, 8, and 9 of the statement of claim.

Denial of passing off and of profits.

8. The defendant denies that he has sold or passed off, or caused to be sold or passed off, any goods not of the plaintiff's manufacture as or for the plaintiff's goods, and that (if he has done so, which he denies) he has made any profits thereby.

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#### 4. STATEMENT OF CLAIM (*d*).

##### ("Common Law Trade-Mark.")

1. The plaintiffs have for many years been manufacturers of belting for driving machinery, and have extensively advertised, and sold the belting made by them under the styles of "Camel," "Camel Brand," and "Camel Hair." In consequence thereof, belting called "Camel," "Camel Brand," or "Camel Hair," has become to be known in all parts of the world where belting is used as belting of the plaintiffs' manufacture, as the defendants well know.

2. The defendants have lately commenced the business of

(*d*) *Reddaway & Co. v. Bentham Hemp Spinning Co.*, 9 R. P. C. 503. This and the following pleading are taken from the report, and are probably somewhat abbreviated from the forms actually used. And see *Reddaway v. Banham*, 13 R. P. C. 218.

belting manufacturers, and in order to obtain for themselves the reputation acquired by the plaintiffs, and to pass off their belting as that of the plaintiffs, and to deceive purchasers thereof, have adopted the words "Camel," "Camel Brand," and "Camel Hair," so used by the plaintiffs as aforesaid, and have sold belting under the same designation, and have advertised for sale belting manufactured by them as "Camel," "Camel Brand," and "Camel Hair Belting."

3. The use of the words "Camel," "Camel Brand," and "Camel Hair," by the defendants as aforesaid, is calculated to deceive purchasers of belting into the belief that they were buying belting of the plaintiffs' manufacture, and many persons have been so deceived (*e*).

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### 5. DEFENCE

(In answer to the above-printed Statement of Claim, No. 4).

1. The defendants deny that belting called "Camel," "Camel Brand," and "Camel Hair Belting" has become to be known in all parts of the world where belting is used as belting of the plaintiffs' manufacture; and, if it has, they deny that the defendants were aware of the fact.

2. The defendants and their predecessors have long carried on the business of hemp spinning, and some time ago commenced the manufacture of various kinds of belting in connection with and as a branch of their said business.

3. Amongst other materials used by the defendants in the manufacture of belting was yarn made of camels' hair; and the defendants have, as they lawfully may, described and sold the said belting as the "Bentham Solid Woven Camel-Hair Belting." The defendants have applied to the said belting manufactured and sold by them their distinctive trade-mark.

4. Save as aforesaid, the defendants deny that they have sold or advertised their belting manufactured by them as "Camel," "Camel Brand," and "Camel Hair."

5. The defendants deny that the use of the words "Camel," "Camel Brand," and "Camel Hair" would be calculated to deceive persons into the belief that they were buying goods of the plaintiffs' manufacture. The plaintiffs have no prescriptive or distinctive right to the use of the said words.

6. The defendants deny that the use of the words "Camel Hair," as used by them, was calculated to deceive purchasers of belting manufactured by the defendants into the belief that they were buying belting of plaintiffs' manufacture. The defendants deny that any persons have been so deceived.

(The defendants also denied that the plaintiffs had been damnified, and alleged that their competition with the plaintiffs was fair trade competition.)

(*e*) For forms of claim, see pp. 744 and 748 *et seq.*

## No. 10.

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AND CASES ANALOGOUS THERETO (a).

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## 1. MORISON v. MOAT (b), 20 L. J. Ch. 529 (1851), Turner, V.-C.

*Trade Secret.*

Injunction  
against use  
of name of  
plaintiff's  
goods;

An injunction to restrain the defendant, his agents, servants, and workmen, from selling, or causing or procuring to be sold, under the title or designation of "*Morison's Universal Medicine*,"

(a) The forms are, in most instances, taken from the reports cited; in some cases they give only the substance of the orders actually drawn up. For fuller forms and the formal parts of orders, see Seton, 5th ed., Vol. I., p. 534 *et seq.* A large number of orders have been collected by Mr. Sebastian, and are printed in his book, 3rd ed., p. 510; 4th ed., p. 514.

(b) The Lords Justices required the plaintiffs to give an undertaking as to damages; 21 L. J. Ch. 248.

any medicine made or manufactured by him, the said defendant, or by or under his order or direction; and also to restrain the defendant, his agents, servants and workmen, from making or compounding any medicines according to the secret in the said bill mentioned, and from in any manner using the secret of compounding the said medicines or any part thereof. against use of trade secret.

2. *FARINA v. SILVERLOCK*, 24 L. J. Ch. 632 (1855), Wood, V.-C.

*Trade-Mark.*

To restrain the defendant from printing or selling any labels similar to those in use by the plaintiff, or containing copies of his signature, or address, or flourish, seal or stamps, or other marks invented and used by the plaintiff, or marks merely colourably differing therefrom, intended to represent that Eau de Cologne prepared by other parties was Eau de Cologne prepared by the plaintiff. Injunction against printing or selling labels; or passing off.

3. *SEIXO v. PROVEZENDE*, L. R. 1 Ch. 194 (1865), Cranworth, L.C.

*Trade-Mark and Passing off.*

An injunction to restrain the defendants from affixing, or causing to be affixed, to any casks of wine shipped to their orders, the brand or mark of a crown and the word *Seixo*, or any other combination of marks or words so contrived, as by colourable imitation or otherwise, to represent the marks or brands of the plaintiff, and from employing any marks or words which should be so contrived as to represent, or induce the belief, that such wines were Crown *Seixo*, or the produce of the Quinta do *Seixo*, or otherwise using the word *Seixo* without clearly distinguishing (a) the same from the wines produced by the Quinta do *Seixo*. Injunction against use of trade-mark; or of trade-name of the plaintiff's goods.

4. *WOTHERSPOON v. CURRIE*, L. R. 5 H. L. p. 523 (1872).

*Trade-Name of Goods, Passing off.*

Injunction restraining the respondent, his servants and agents, from using the word "Glenfield" in or upon any labels affixed to packets of starch manufactured by or for him, and from in any other way representing the starch manufactured by or for him to be "Glenfield Starch," and from selling or causing the same to Injunction against use of name;

(a) This is the proper form where the right to use is not absolutely barred. See No. 6, and *Reddaway v. Banham*, (1896) A. C. 199, 13 R. P. C. 218. Cf. No. 21.

and passing  
off.

be sold as "Glenfield Starch," and from doing any act or thing to induce the belief that starch manufactured by or for him, the respondent, is "Glenfield Starch" or starch manufactured by the appellants.

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5. FORD v. FOSTER, L. R. 7 Ch. p. 634 (1872), L. JJ.

*Trade-Mark.*

Injunction  
against use of  
trade-mark.

To restrain the defendants from applying the mark or title "Eureka" to any shirts manufactured by them, or to any shirts sold by them, unless manufactured by the plaintiffs, and from selling any shirts already marked with the mark and title "Eureka," unless such mark or title has been applied with the sanction of the plaintiff; and from issuing any boxes or packages on which the mark or title of "Eureka" shall be applied to shirts not of the plaintiff's manufacture; and from affixing or using any label or card or other mark containing the word "Eureka" to or upon any shirts not of the plaintiff's manufacture (there was also an order for an account limited to the period since the filing of the bill).

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6. ORR-EWING & Co. v. JOHNSTON & Co., 13 C. D. p. 450 (1880), Fry, J., and C. A. (c).

*Trade-Mark and Trade-Name.*

Injunction  
against use of  
an infringing  
mark;  
or any similar  
mark without  
distinguish-  
ing, &c.

To restrain the defendants, Robert Johnston & Co., their servants, workmen, and agents, from affixing or causing to be affixed to any Turkey red yarn not dyed by the plaintiffs, Archibald Orr-Ewing & Co., the ticket marked B, and from using two elephants on any tickets used on Turkey red yarn, without clearly distinguishing such tickets from the plaintiffs' ticket marked A, and from employing any mark or words which would be calculated to cause any Turkey red yarn not dyed by the plaintiffs to be known in Bombay as "*Bhé Hathi*" yarn, or to (c) (or so as to) represent or induce the belief that any of the said yarn was dyed by the plaintiffs; with an order for an account of profits and costs.

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7. MASSAM v. THORLEY'S CATTLE FOOD COMPANY, 14 C. D. p. 762 (1880), C. A.

*Trade-Name and Passing off.*

Injunction  
against  
passing off;

An injunction to restrain the defendant company, their servants, workmen, agents and travellers, and representatives

(c) The words in italics were struck out by the House of Lords. 7 App. Cas. p. 234.

respectively, from selling, exporting, or shipping, or causing, or procuring, or allowing to be sold, shipped, or exported, and from in any manner representing, or causing, or procuring to be represented, any goods manufactured by the defendant company as the manufacture or goods of the late *Joseph Thorley*, or of the plaintiffs, his trustees and successors in business; and also from in any manner representing, or causing, or procuring to be represented, or doing anything which shall lead to the belief that the defendant company have been or are carrying on the business of the late *Joseph Thorley*, or are the successors in business of the late *Joseph Thorley*; and also from affixing or permitting, or causing to be affixed to any goods or articles manufactured or bought, or procured, or sold, or shipped, or exported by the defendant company, or otherwise using or employing, or permitting to be used or employed, any labels, wrappers, or marks used by the late *Joseph Thorley* and the plaintiffs, his trustees and successors in business, or so contrived and prepared as to represent or lead to the belief that the goods or articles manufactured, or sold, or shipped, or exported by the defendant company are the goods or manufacture of the late *Joseph Thorley*, or of the plaintiffs; and also from employing, using, or circulating, or causing to be employed, used, or circulated, any circulars, pamphlets, notices, or advertisements of the late *Joseph Thorley* or of the plaintiffs, or which shall in any manner represent or lead to the belief that the defendant company have been or are carrying on the business of the late *Joseph Thorley*, or that they are his successors in business.

against pretence that defendants' business is the plaintiff's;

against imitation of marks and get-up.

Circulars and advertisement.

(The Court refused to prohibit the defendants using the name Thorley in a way not calculated to mislead the public.)

8. HENDRIKS v. MONTAGU, 17 C. D. p. 638 (1881), C. A.

*Company's Trade-Name.*

"An injunction to restrain the defendants from applying to the Registrar of Joint Stock Companies in *England* for registration, under the Companies Acts, of any company to be incorporated under the name of the *Universe Life Assurance Association*, or any other name likely to mislead or deceive the public into the belief that the company, being incorporated as aforesaid, is the same as the *Universal Life Assurance Society*, from issuing or publishing advertisements, circulars, or prospectuses, representing that a company is to be incorporated pursuant to the *Companies Act*, 1862, under the name of the *Universe Life Assurance Association, Limited*, or any other such name as aforesaid; and from carrying on or commencing any business under the name of the *Universe Life Assurance Association, Limited*, or any such other name as aforesaid."

Injunction against registration of company with name like plaintiff's name; against advertising company with name like plaintiff's name; or carrying on business under such name.



## 9. READ v. RICHARDSON, 45 L. T. N. S. p. 60 (1881), C. A.

*Trade-Mark.*Undertaking  
as to damages.Interim  
injunction  
against use of  
trade-marks  
on goods for  
exportation.

Costs.

The plaintiffs by their counsel undertaking to abide by any order this Court may make as to damages, in case this Court shall hereafter be of opinion that the defendants have sustained any by reason of this order which the plaintiffs ought to pay, this Court doth order that the defendants, E. Richardson & Co., their servants and agents, be restrained from using the figure of a dog's head upon any labels, tickets, or wrappers affixed or applied to bottles of beer or stout sold for exportation, or exported by the defendants to any of the Australian colonies or New Zealand, and from selling for exportation, or exporting, any bottles of beer or stout having affixed or applied thereto any such label, ticket, or wrapper, until judgment in this action, or further order: and it is ordered that the plaintiffs' costs of this motion be their costs in the action.

10. LEVER v. GOODWIN, 4 R. P. C. p. 503 (1886),  
Chitty, J., and C. A. (a).*Trade-Mark and Passing off.*Trade-mark  
action  
dismissed.Injunction  
against use of  
particular  
wrapper;against  
passing off.

Account.

Payment of  
amount found  
due.

Costs.

“This Court doth order that this action, so far as the same claims protection in respect of the trade-mark, No. 39,714, stand dismissed out of the said Court. And it is ordered, that the defendants, Goodwin Bros., their agents and servants, be restrained from selling, offering for sale, or disposing of any soap, not being manufactured for or by the plaintiffs, in the wrapper, or of the form of any one of the three exhibits admitted in this action to have been issued by the defendants, and marked J.S.S.1, J.S.S.4, and B.B.1, or in any wrapper or in any form calculated or intended to pass off, or to enable others to pass off, such soap as or for the goods of the plaintiffs. And it is ordered that the following account be taken, that is to say, an account of the profits made by the defendants in selling or disposing of soap, made by or for the defendants, in any wrapper such as that contained in the exhibits marked J.S.S.1, J.S.S.4, and B.B.1, and in the form of those exhibits. And it is ordered that the defendants, Goodwin Bros., do within fourteen days after the date of the chief clerk's certificate, to be made pursuant to this order, pay to the plaintiffs, Lever & Co., the amount which, upon taking such account, shall be certified to be payable by the defendants to the plaintiffs. And it is ordered that it be referred to the taxing master to tax the costs of the plaintiffs of this

(a) Compare the form of the order in *Payton v. Snelling, Lampard & Co., Ltd.*, 16 R. P. C. 290. (An appeal by the defendants in that case was allowed, 17 R. P. C. 48, and the plaintiffs' appeal to the House of Lords was dismissed, 17 R. P. C. 628.)

action, up to and including the trial, except so far as the same have been incurred by their claim for protection in respect of the trade-mark aforesaid. And it is ordered that it be referred to the taxing master to tax the costs of the defendants of the action, so far as the same have been incurred by the plaintiffs setting up the said claim for protection in respect of the said trade-mark, and the costs of the plaintiffs, when so taxed, are to be set off against the said costs of the defendants, when taxed, and the taxing master is to certify to whom, after such set-off, the balance is due. And it is ordered that the party from whom such balance shall be certified to be due do pay the amount thereof to the other party. And the question of the costs of this action incurred subsequent to the trial are reserved, and either of the parties are to be at liberty to apply as they may be advised."

Costs of account reserved.

11. MELACHRINO v. THE MELACHRINO EGYPTIAN CIGARETTE CO.,  
4 R. P. C. 225 (1887), Chitty, J.

*Trade-Mark and Trade-Name.*

An injunction to restrain the defendant *Poulides*, his agents and servants, from carrying on at No. 10, Pall Mall, the business carried on by him there under the name of *The Melachrino Egyptian Cigarette Co.*, or of *Melachrino & Co.*, and to restrain the defendants respectively, and their respective agents and servants, until judgment or further order, from selling or offering for sale cigarettes not of the plaintiffs' manufacture or merchandise, in boxes or packages having affixed thereto or connected therewith the labels, exhibits A11 and A12, or any other label being a colourable imitation of the plaintiffs' label.

Interim injunction against use of name for a particular business; and use of particular labels.

12. THE APOLLINARIS CO. v. HERRFELDT, 4 R. P. C. 488 (1887),  
C. A.

*Trade-Marks.*

That the defendants, Messrs. Herrfeldt and Campbell, their servants, agents, and workmen, be restrained, until judgment in this action or further order, from using the word "*Apollinis*," or any other word only colourably differing from the word "*Apollinaris*," upon any labels or corks used by them in the course of their trade in any mineral water, and also from offering for sale, or selling, or otherwise disposing of any mineral water in bottles bearing the word "*Apollinis*."

Interim injunction against use of infringing word;

and sale of marked goods.

13. JAY v. LADLER, 6 R. P. C. 138, 140 (1888), Kekewich, J.

*Trade-Mark and Passing off.*

Injunction against infringement by circulars or advertisements; against the use of a particular device.

To restrain the defendant from infringing the plaintiff's trade-mark by issuing, publishing, or circulating, or causing to be issued, published, or circulated, any circular, advertisement, or notice containing or bearing the trade-mark in the pleadings mentioned, or any colourable imitation thereof, in connection with sealskin mantles and sealskin coats, or otherwise using the said trade-mark in that connection (and also from using the device of a lady and a bear so as to deceive the public).

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14. MONTGOMERY v. THOMPSON, 41 C. D. 47 (1889), Chitty, J., and C. A. (d).

*Trade Name, Passing off.*

Interim injunction against the use of the plaintiffs' trade-name; and against passing off.

An injunction restraining the defendant until judgment or further order from carrying on the business of a brewer at Stone, under the title of "*Stone Brewery*," or "*Montgomery's Stone Brewery*," or under any other title so as to represent that the defendant's brewery is the brewery of the plaintiffs, and from selling or causing to be sold any ale or beer not of the plaintiffs' manufacture, under the term "*Stone Ale*" or "*Stone Ales*," or in any way so as to induce the belief that such ale or beer is of the plaintiffs' manufacture.

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15. BURLAND'S TRADE-MARK, 42 Ch. D. 274, 6 R. P. C. 482 (1889), Chitty, J.

*Order for Disclaimer.*

Entry of disclaimer on the Register.

This Court doth order that the Register of Trade-Marks be rectified by entering thereon a disclaimer of any right of Frederick Adolphus Burland to the exclusive use of the word "*Washerine*" in the Trade-Mark, No. 77,935, and due notice of the said rectification is to be given to the Comptroller of Patents, Designs, and Trade-Marks.

(d) The injunction was made perpetual, and was upheld by the House of Lords; (1891) A. C. 217.

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16. *WILKINSON v. GRIFFITH BROS. & Co.*, 8 R. P. C. 376  
(1891), Romer, J.

*Trade-Name and Passing off.*

An injunction restraining the defendants, their agents and servants, from selling, or offering for sale, any French polish not of the plaintiffs' manufacture with the label complained of upon it, or so labelled or marked as to induce the public to believe that it is of the plaintiffs' manufacture. An inquiry as to the amount of damages suffered by the plaintiffs by the wrongful acts of the defendants. The defendants to pay the costs of the action up to and including the trial. The subsequent costs to be reserved, with liberty to apply. The costs which the defendants are ordered to pay to include the costs of the counterclaim which was not insisted upon.

Injunction against the use of a particular label.

Inquiry as to damages.

Costs.

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17. *PAINÉ & Co. v. DANIELLS & SONS' BREWERIES*, (1893)  
2 Ch. 581, C. A.

*Trade-Mark and Passing off.*

Restrain the defendants, their servants and agents, from using the label marked "F." in the labels referred to in the plaintiffs' interrogatories, and from otherwise infringing the plaintiffs' registered trade-marks aforesaid, and from doing any act calculated to pass off ale or beer made by the defendants as ale or beer made by the plaintiffs.

Injunction against use of trade-mark; and against passing off.

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18. *POWELL'S TRADE-MARK*, (1893) 2 Ch. 388, 10 R. P. C. 63,  
Chitty, J. (e).

*Trade-Mark Expunged.*

This Court doth order that the Register of Trade-Marks kept under the authority of the above-mentioned Act be rectified by expunging therefrom the above-mentioned trade-mark, No. 37,030. And it is ordered that the said William Powell do pay to the said Birmingham Vinegar Brewery Co., Ltd., and to the Comptroller-General of Patents, Designs, and Trade-Marks their costs of this application, to be taxed by the taxing master.

Removal of mark from Register.

And it is ordered that an office copy of this order be forthwith left with the Comptroller-General of Patents, Designs, and Trade-Marks at the Patent Office.

(e) Affirmed by the Court of Appeal, (1893) 2 Ch. 388, 10 R. P. C. 195, and by the House of Lords, (1894) A. C. 8, 11 R. P. C. 4.

19. **POWELL v. BIRMINGHAM VINEGAR BREWERY COMPANY, LD.,**  
(1894) 3 Ch. 449, 11 R. P. C. 563, Stirling, J. and C. A.

*Interlocutory Injunction. Trade-Name of Goods.*

Interim in-  
junction  
against use of  
trade-name  
of plaintiff's  
goods.

An injunction to restrain the defendants until trial or further order from using the words *Yorkshire Relish* as descriptive of or in connection with any sauce or relish manufactured by them, or sauce or relish not being of the plaintiff's manufacture sold, or offered for sale, by them without clearly distinguishing such sauce or relish from the sauce or relish of the plaintiff.

20. **POWELL v. BIRMINGHAM VINEGAR BREWERY COMPANY, LD.,**  
(1896) 2 Ch. 54 ; 12 R. P. C. 496, Stirling, J. (*f*).

*Trade-Name of Goods.*

Injunction  
against use of  
trade-name  
of plaintiff's  
goods.

This Court doth order that the defendants, The Birmingham Vinegar Brewery Company, Ltd., their servants and agents, be perpetually restrained by injunction from using the words *Yorkshire Relish* as descriptive of or in connection with any sauce or relish manufactured by them, or sauce or relish (not being of the plaintiff's manufacture) sold, or offered for sale, by them without clearly distinguishing such sauce or relish from the sauce or relish of the plaintiff. And it is ordered that the following account be taken at the risk of the plaintiff: an account of all profits made by the defendants by the sale of any sauce or relish (not manufactured by the plaintiff) in bottles having labels with the words *Yorkshire Relish* thereon. And it is ordered that in case the defendants shall on or before 12th November, 1895, serve a notice of appeal from this order, the restraint hereby imposed is, so far as regards the label secondly issued by the defendants, to be suspended until after such appeal shall have been heard or otherwise disposed of. (The defendants were ordered to pay the costs of the action.)

Account of  
profits.

21. **GREZIER AND DOYLE v. AUTRAN,** 13 R. P. C. 13 (1896),  
Chitty, J.

*Trade-Name of Goods and Passing off.*

Injunction  
against use of  
name on  
goods not  
made by  
plaintiff at  
particular  
place.

(1) An injunction to restrain the defendant Hippolyte Autran, his servants and agents, until further order from selling, or offering or advertising for sale, within the United Kingdom, under the name of "*Liqueur de Chartreuse*," or "*Chartreuse*," or under any other description of which the name "*Chartreuse*" forms part, any liqueur which has not been, or shall not be, manufactured

(*f*) Affirmed on appeal, (1896) 2 Ch. 54, 13 R. P. C. 235, and by the House of Lords, (1897) A. C. 710 ; 14 R. P. C. 720.

by the plaintiff, Gabriel Alfred Grezier, or his assignor, Louis Garnier, at the Monastery of La Grande Chartreuse, in France, or elsewhere in the district or region known as La Grande Chartreuse, in France, hereinafter referred to as the "Monastery Liqueur," save and except the following liqueur, that is to say, liqueur which has been or shall be manufactured at one distillery or establishment at Voiron, in France, by Henri Meunier, the father, or by Henri Meunier, the son, or by other the persons, if any, for the time being entitled, according to the law of France, as set forth in the judgment of the Civil Court of Grenoble, dated the 2nd of March, 1895, to the benefit of the agreement dated the 9th of July, 1842. (2) An injunction to further restrain the defendant Hippolyte Autran, his servants and agents, until further order from selling, or offering or advertising for sale, within the United Kingdom, the said excepted liqueur under the name of "*Chartreuse*" simply, and from selling, or offering or advertising for sale, within the United Kingdom, under the name of "*Liqueur de Chartreuse*," or any other description of which the name "*Chartreuse*" forms part, the said excepted liqueur, without clearly distinguishing the same from the Monastery liqueur; and further, on any sale, or offer or advertisement for sale, of the said excepted liqueur, from making any mention of or reference to the recipe of Don Niviere, given to Charles Meunier, the grandfather, in 1813, intended or calculated to induce to the belief that the said excepted liqueur has been or is made according to such recipe. (3) An injunction to restrain the defendant Hippolyte Autran, his servants and agents, until further order from selling, or offering or advertising for sale, within the United Kingdom, under the name of "*Elixir Vegetal de la Grande Chartreuse*," or under any other description of which the name "*Chartreuse*" forms part, any liquid for medicinal use which has not been or shall not be manufactured by the plaintiff, Gabriel Alfred Grezier, or his assignor, Louis Garnier, at the Monastery of La Grande Chartreuse, in France, or elsewhere in the district or region known as La Grande Chartreuse, in France, hereinafter referred to as "Monastery Elixir," save and except the "*Elixir Vegetal*," which has been or shall be manufactured at one distillery or establishment at Voiron, in France, by Henri Meunier, the father, or by Henri Meunier, the son, or by other persons, if any, for the time being entitled, according to the law of France, as set forth in the said judgment of the Civil Court at Grenoble, dated the 2nd of March, 1895, to the benefit of the said agreement dated the 9th of July, 1842. (4) An injunction to further restrain the defendant Hippolyte Autran, his servants and agents, until further order from selling, or offering or advertising for sale, within the United Kingdom the said excepted elixir under the name of "*Elixir Vegetal de la Grande Chartreuse*," or under any other name of which the name "*Chartreuse*" forms part, first, without clearly distinguishing the same from the Monastery elixir, and secondly, without stating in English whenever mention

Exception.

Injunction against selling excepted goods under name without distinguishing;

and from referring to recipe.

Similar injunctions and exception as to another name;

and from referring to recipe without a particular statement.

or reference is made to the said recipe, that part of Article 4 of the said agreement, dated the 9th of July, 1842, in which it is formally declared that the processes of Henri Meunier, the father, as to the manufacture of the said excepted elixir, have no connection with those at the Monastery of La Grande Chartreuse aforesaid. And the parties were to be at liberty to apply to extend or vary the terms of the said injunctions, having regard to the result of any further proceedings in France relating to the said agreement dated the 9th of July, 1842.

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22. ROYAL BAKING POWDER COMPANY'S TRADE-MARKS, 14 R. P. C. 425 (1897), Romer, J. (g).

*Trade-Marks Expunged.*

Order expunging marks.

This Court doth order that the Register of Trade-Marks be rectified by expunging therefrom Trade-Marks Nos. 66,683 and 66,684, both in Class No. 42. And it is ordered that notice of this order be given to the Comptroller-General of Patents, Designs, and Trade-Marks by serving a copy of this order upon the said Comptroller, or by leaving the same with a clerk at the office of the said Comptroller, and at the same time producing the duplicate of this order passed and entered.

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23. SAXLEHNER v. APOLLINARIS COMPANY, 14 R. P. C. 657 (1897).

*Trade-Name of Goods.*

Injunction to restrain use of word without clearly distinguishing.

An injunction to restrain the defendants, their officers, &c., from selling or offering, or exposing or advertising for sale, in the United Kingdom, any Hungarian bitter water, not being "Hunyadi Janos" water derived from the plaintiff's spring near Buda P'esth, in the Kingdom of Hungary, under or with or by means of any name or description of which the name "Hunyadi" forms part, without clearly distinguishing the same from the water derived from the said spring. Delivery up or destruction of all labels and other documents, and also capsules in the possession or power of the defendants, or under their control, which exhibit the name "Hunyadi" in connection with Hungarian bitter water without clearly distinguishing the same from water derived from the said spring. (An account of profits, limited as agreed, was also ordered, and a special order was made as to costs.)

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(g) See 18 R. P. C. 97.

24. **KYNOCH & Co.'s TRADE MARK, 14 R. P. C. 905 (1897),**  
**Kekewich, J.**

*Order to proceed with Registration.*

Upon motion this day made unto this Court for the above-named applicants, Messrs. G. Kynoch & Co., Ltd., being an appeal from the Comptroller-General to register the word *Kynite* in Class 20 in respect of all goods included in that class, which appeal has been referred to the Court by the Board of Trade, and upon, &c., this Court doth order that the Comptroller-General do proceed with the registration of the said trade-mark.

Order to proceed with registration.

25. **F. PINET ET CIE. v. MAISON LOUIS PINET, LD.; and SAME v. MAISON PINET, LD., 15 R. P. C. 73 (1898),** North, J.

*Trade-Name.*

Upon the two several motions for injunction this day made unto this Court by counsel for the plaintiffs in the respective actions, and upon, &c.; and the plaintiffs and defendants in both actions by their counsel consenting that the hearing of the said motions should be treated as motions for judgment in the respective actions, and the plaintiffs by their counsel waiving any claim for damages. The Court doth order that the defendant, Frederick William Shepherd, the liquidator thereof, be perpetually restrained from transferring, selling, or dealing with any right to the name *Pinet*, or any title or description including that name in connection with the manufacture or sale of boots or shoes. And it is ordered that the defendants, Maison Louis Pinet, Ltd., Frederick Westwood Potter, William Alfred Phillips, Arthur Joshua Eastmead, and Louis Marius Pinet, and Maison Pinet, Ltd., Frederick William Shepherd, and Walter Kelsey, be perpetually restrained from using the said name *Pinet*, or any such title or description as aforesaid, in such connection as aforesaid, and from doing any other act or thing conferring, or purporting to confer, either directly or indirectly, upon any other person or persons any right to use the said name or other such title or description as aforesaid, in such connection as aforesaid, and from selling or offering for sale any boots or shoes not of the plaintiff's manufacture under the name of "*Pinet's Special Boots and Shoes*," or "*Pinet's Boots and Shoes*."

Injunction restraining liquidator from selling name.

Injunction restraining other defendants from using name in connection with certain goods or conferring use of it on others; and from selling goods under certain names.

26. **EASTMAN PHOTOGRAPHIC MATERIALS COMPANY, LD. v. JOHN GRIFFITHS CYCLE CORPORATION, LD., and KODAK CYCLE COMPANY, LD., 15 R. P. C. 112 (1898),** Romer, J.

*Trade-Name and Passing off.*

An injunction restraining the defendant companies, or either of them, from carrying on business under the name "*Kodak Cycle Company, Ltd.*," or under any name comprising the word

Injunction restraining carrying on business under name;



or representing that defendant's business is connected with plaintiff's; or selling goods under name.

"Kodak" likely to mislead or deceive the public into the belief that the defendant company is the same company as or is connected with either of the plaintiff companies, or that the business of the said companies, or either of them, is the same as, or is in any way connected with, the business of the plaintiffs, The Eastman Photographic Materials Company, Ltd. An injunction restraining the defendant companies, and each of them, from selling, or offering to sell, any of their cycles or goods as "Kodak." The defendants to pay the costs, including the costs of the Comptroller (h).

27. VALENTINE MEAT JUICE COMPANY v. VALENTINE EXTRACT COMPANY, LD., 17 R. P. C. 688 (1900), C. A.

*Trade-Name and Passing off.*

Injunction restraining certain defendants from carrying on certain business under name; and from selling goods under name; and another defendant from doing so without distinguishing; and all defendants from representing connection with plaintiffs or passing off.

"This Court doth order that the defendants, the Valentine Extract Company, Ltd., and Herbert Hughes, and each of them, their servants and agents, be perpetually restrained from carrying on business as manufacturers or vendors of any preparation of extract of meat or meat juice under any name or title of which the name 'Valentine' or 'Valentine's' forms part, and from selling, or offering, or exposing, or advertising for sale, or procuring to be sold any such preparation as aforesaid not being of the plaintiff's manufacture under any name or description of which the name 'Valentine,' or 'Valentine's,' or 'Valentine' forms part. And it is ordered that the defendant, Charles Richard Valentine, his servants and agents, be perpetually restrained from carrying on any such business as aforesaid, under any such name or title as aforesaid, without clearly distinguishing such business from the business of the plaintiffs, and from selling, or offering, or exposing, or advertising for sale, or procuring to be sold, any such preparation as aforesaid, under any such name or description as aforesaid, without clearly distinguishing such preparation from goods of the plaintiffs. And doth order that the defendants, the Valentine Extract Company, Ltd., Charles Richard Valentine, and Herbert Hughes, and each of them, their servants and agents, be perpetually restrained from in any manner representing or acting so as to be calculated to lead to the belief that the defendant, Charles Richard Valentine, is or ever has been interested in or connected with the business of the plaintiffs, and from passing off, or enabling or assisting others to pass off, any such preparation as aforesaid not being of the plaintiff's manufacture, as or for the plaintiff's goods." (The order directed a delivery up of infringing labels and boxes and an inquiry as to profits, and that the costs of the action and the appeal be paid by the defendants.)

(h) There was also an order to expunge the first defendant company's mark "Kodak."

28. *J. & J. CASH, LD. v. CASH*, 18 R. P. C. 191 (1901),  
Kekewich, J.(i).

*Trade-Name.*

An injunction to restrain the defendant, *Joseph Cash*, from carrying on business of a manufacturer or seller of frillings or woven names or initials under the name of *Joseph Cash & Company*, or under the name of "*Cash*," and from carrying on any such business under any name or in any manner so as to mislead or deceive the public into the belief that the business of the defendant, or the frillings or woven names or initials manufactured or sold by him, are the business of or goods manufactured by the plaintiffs, or that the defendant is carrying on the business formerly carried on at Coventry by Messrs. *J. & J. Cash*, the vendors to and predecessors in business of the plaintiffs; an injunction to restrain the defendant from making over his business in frillings or woven names or initials to, or acting as managing director of, any limited or other company formed to carry on business in frillings or woven names or initials, and having a name which is calculated or likely to mislead or deceive the public into the belief that the business, frillings, or woven names or initials of such company are the business, frillings, or woven names or initials of the plaintiffs, or that such company is carrying on the business formerly carried on at Coventry by the said Messrs. *J. & J. Cash*, and from otherwise assisting any such company to so mislead or deceive the public. (An injunction against soliciting was also granted with the costs of the action, and, the defendant alleging that an interlocutory injunction which had been granted was wider than that granted at the trial, he was to be at liberty to apply for an inquiry as to damages sustained by reason of the interim order (k).)

Injunction restraining defendant from carrying on business in certain goods under his own name ;

or so as to mislead ;

and from transferring his business to company having name calculated to mislead.

(i) The defendant has appealed from the order.

(k) There were special reasons for not granting the inquiry at the trial. See the report.

## No. 11.

**ORDERS IN COUNCIL APPLYING THE PROVISIONS OF SECT. 103 OF THE PATENTS, ETC. ACT OF 1883 TO BRITISH POSSESSIONS AND FOREIGN STATES.**

**COLONIAL ARRANGEMENTS.**

Colony.	Date of Order in Council.	Statutory Rules and Orders.
Queensland .....	17 Sept., 1885 .....	Vol. 5, p. 141.
New Zealand .....	8 Feb., 1890 .....	1890, p. 897.
Tasmania .....	30 April, 1894 .....	1894, p. 54, No. 123.
Western Australia .....	11 May, 1895 .....	1895, p. 587, No. 245.

**INTERNATIONAL ARRANGEMENTS (a).**

Foreign State.	Date of Order in Council.	Statutory Rules and Orders.
Belgium .....	26 June, 1884 .....	Vol. 5, p. 142.
Brazil .....	26 June, 1884 .....	Vol. 5, p. 142.
Denmark (including the Faroë Islands) .....	20 Nov., 1894 .....	1894, p. 56, No. 542.
Dominican Republic .....	21 Oct., 1890 .....	1890, p. 887.
Ecuador .....	16 May, 1893 .....	1893, p. 65.
France .....	26 June, 1884 .....	Vol. 5, p. 142.
Greece .....	15 Oct., 1894 .....	1894, p. 57, No. 234.
Italy .....	26 June, 1884 .....	Vol. 5, p. 142.
Japan .....	7 Oct., 1899 .....	1899, p. 964, No. 759.
Mexico .....	28 May, 1889 .....	Vol. 5, p. 146.
Netherlands .....	26 June, 1884 .....	Vol. 5, p. 142.
Netherlands (East Indian Colonies) .....	17 Nov., 1888 .....	Vol. 5, p. 145.
Netherlands (Curaçao and Surinam) .....	17 May, 1890 .....	1890, p. 886.
Paraguay .....	24 Sept., 1886 .....	Vol. 5, p. 144.
Portugal .....	26 June, 1884 .....	Vol. 5, p. 142.
Roumania .....	5 Aug., 1892 .....	1892, p. 650.
Servia .....	26 June, 1884 .....	Vol. 5, p. 142.
Spain .....	26 June, 1884 .....	Vol. 5, p. 142.
Sweden and Norway .....	9 July, 1885 .....	Vol. 5, p. 143.
Switzerland .....	26 June, 1884 .....	Vol. 5, p. 142.
Tunis .....	26 June, 1884 .....	Vol. 5, p. 142.
United States .....	12 July, 1887 .....	Vol. 5, p. 145.
Uruguay .....	24 Sept., 1886 .....	Vol. 5, p. 144.

(a) As to Guatemala, Salvador, and Ecuador, see p. 771.

PLACES UNDER BRITISH JURISDICTION.

Penalties on British subjects committing offences against the Patents, &c. Acts, 1883 to 1888 (b).

Places.	Date of Order in Council.	Statutory Rules and Orders.
Africa— (a) Continent and adjacent Islands (excluding certain of the territories to which the Order noted <i>infra</i> , under (b), and recent Orders dealing with Rhodesia and Nigeria apply)	15 Oct. 1889, Art. 55..	Vol. 3, pp. 259, 273.
(b) East Africa .....	7 July, 1897, Art. 17..	1897, pp. 134, 141, No. 575.
Brucei .....	22 Nov., 1890, Art. 40..	1890, p. 677.
China and Corea .....	2 Feb., 1899 .....	1899, p. 639, No. 82.
Egypt .....	8 Aug., 1899, Art. 57..	1899, pp. 643, 662, No. 595 (c).
Morocco .....	28 Nov., 1889, Art. 112	Vol. 3, p. 524.
Ottoman Empire (and see Egypt, <i>supra</i> ) }	8 Aug., 1899, Art. 57..	1899, pp. 643, 662, No. 595.
Persia .....	13 Dec., 1889, Art. 292.	Vol. 3, pp. 698, 766.
Persian Coast and Islands	13 Dec., 1889, Art. 50..	Vol. 3, pp. 796, 815.
Siam .....	28 Nov., 1889, Art. 40..	Vol. 3, pp. 813, 831.
Somaliland .....	7 Oct., 1899, Art. 12 ..	1899, pp. 705, 711, No. 758.
Turkey. See Ottoman Empire }	.. ..	.. ..
Zanzibar .....	7 July, 1897, Art. 17..	1897, pp. 159, 166, No. 576.

(b) Orders in Council issued under 41 & 42 Vict. c. 67, now replaced by 53 & 54 Vict. c. 37.

(c) This Order (the Ottoman Order in Council, 1899) is (Art. 12) suspended as regards matters within the jurisdiction of the Egyptian Courts established with his Majesty's concurrence, and the limits of the Order as respects Egypt do not extend to any place south of the 22nd parallel of north latitude.

## No. 12.

THE INTERNATIONAL CONVENTION (*a*).

INTERNATIONAL CONVENTION BETWEEN THE GOVERNMENTS OF BELGIUM, BRAZIL, SPAIN, FRANCE, GUATEMALA,\* ITALY, NETHERLANDS, PORTUGAL, SALVADOR,\* SERVIA, AND SWITZERLAND, FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

*Signed at Paris, March 20, 1883.*

*[Ratifications exchanged at Paris, June 6, 1884.]*

(Translation.)

ART. I.—THE Governments of Belgium, Brazil, Spain, France, Guatemala,\* Italy, Holland, Portugal, Salvador,\* Serbia, and Switzerland constitute themselves into a Union for the Protection of Industrial Property.

ART. II.—The subjects or citizens of each of the Contracting States shall, in all the other States of the Union, as regards patents, industrial designs or models, trade-marks and trade-names, enjoy the advantages that their respective laws now grant, or shall hereafter grant, to their own subjects or citizens.

Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the formalities and conditions

\* Salvador withdrew from this Convention by notice dated September 6, 1886; Guatemala by notice dated November 27, 1894, taking effect on November 8, 1895.

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(*a*) Further articles were agreed upon at the Conference at Rome in 1886 (see Parliamentary Paper, C.—4837), but were never ratified. The articles printed below, p. 771, were agreed upon at the Conference at Madrid in 1889, and they have been duly ratified by Great Britain, Spain, France, Switzerland, and Tunis. The articles printed below, p. 773, were not ratified by Great Britain. There are numerous other treaties and arrangements existing between this country and foreign States for the protection of the trade-marks of each other's subjects. See Parliamentary Papers (1888), Commercial, No. 12, and (1872) C.—633; and *ante*, p. 545, *n.* (*b*).

imposed on subjects or citizens by the internal legislation of each State.

Similar provisions to those of this Article and of Art. III. were to be found in particular treaties between individual States; but, owing to differences in municipal law, they were insufficient to provide for the protection of trade-marks. Thus, in France, Italy, and other countries, no right arises to the applicant for the registration of a trade-mark from the mere registration if another has previously held the same mark for goods of the same kind. In Germany, Sweden, Norway, &c., the mark belongs to the first applicant. "It has thus happened that unscrupulous competitors in countries where the latter system exists have hastened to register in their own names the new names registered in its own country by a well-known house, so that they were placed in a position to compete unfairly with the house by means of its own marks, and even to have its goods seized for infringement of trade-mark." (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i., 1897, p. 186.) It was impossible to compel these countries to alter the basis of their legislation. Hence Art. IV. gave persons interested the necessary time to register their marks in all the States of the Union before another could anticipate them. See note to Art. IV.

ART. III. Subjects or citizens of States not forming part of the Union, who are domiciled, or have industrial or commercial establishments in the territory of any of the States of the Union, shall be assimilated to the subjects or citizens of the Contracting States.

See note to Art. II., *supra*.

ART. IV. Any person who has duly applied for a patent, industrial design or model, or trade-mark in one of the Contracting States, shall enjoy, as regards registration in the other States, and reserving the rights of third parties, a right of priority during the periods hereinafter stated.

In some foreign countries registration is equivalent to ownership, notwithstanding prior user or prior registration elsewhere. Hence the provision in the Convention as to priority.

Consequently, subsequent registration in any of the other States of the Union before expiry of these periods shall not be invalidated through any acts accomplished in the interval, either, for instance, by another registration, by publication of the invention, or by the working of it by a third party, by the sale of copies of the design or model, or by use of the trade-mark.

The above-mentioned terms of priority shall be six months for patents and three months for industrial designs and models and trade-marks. A month longer is allowed for countries beyond sea.

See note to Art. II. Art. IV. provides a period of three months (with an additional month for countries beyond sea), during which the mark may be registered in all the Contracting States, and the efficacy of the registration cannot be affected by acts which have been accomplished in the interval, and in particular by another

registration or the use of the mark. "In other words, an application made during the period of priority has the same result as if it had been made on the day of the first application in the country of origin. In this way a temporary security is provided for applicants for the registration of new marks in those countries where by law the mark belongs to the first applicant." (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i., 1897, p. 187.)

ART. V. The introduction by the patentee into the country where the patent has been granted of objects manufactured in any of the States of the Union shall not entail forfeiture.

Nevertheless, the patentee shall remain bound to work his patent in conformity with the laws of the country into which he introduces the patented objects.

Forfeiture for importation and compulsory working are unknown to English law.

ART. VI. Every trade-mark duly registered in the country of origin shall be admitted for registration, and protected in the form originally registered in all the other countries of the Union.

That country shall be deemed the country of origin where the applicant has his chief seat of business.

If this chief seat of business is not situated in one of the countries of the Union, the country to which the applicant belongs shall be deemed the country of origin.

Registration may be refused if the object for which it is solicited is considered contrary to morality or public order.

See also note to Art. 4 of the Final Protocol, *post*, p. 769.

ART. VII. The nature of the goods on which the trade-mark is to be used can, in no case, be an obstacle to the registration of the trade-mark.

This provision relates to the case where the mark is intended for goods whose sale in the country is either forbidden or permitted only after official investigation. Medical remedies are here principally contemplated. This article, by permitting the registration of marks for such goods, allows the owner of a mark to take care at any rate that no other can obtain the use of the same mark for other similar goods, which might afterwards be opposed to the original mark, when the goods in question can be introduced into commerce. (*Trans. Int. Ass. Prot. Ind. Prop.*, vol. i., 1897, p. 188.)

ART. VIII. A trade-name shall be protected in all the countries of the Union, without necessity of registration, whether it form part or not of a trade-mark.

In France it had been decided by the Cour de Cassation, in *Beissel's case* (*Annales de la Propriété Industrielle*, 1880, p. 113), that a mark in becoming public property carried with it the trade-name which formed part of it. Hence Art. VIII.

ART. IX. All goods illegally bearing a trade-mark or trade-name may be seized on importation into those States of the Union where this mark or name has a right to legal protection.

Arts. IX. and X. are applied in English law by the provisions of the M. M. A. 1887, which go much further than, and therefore

satisfy, the provisions of the Convention. This article was a great benefit to the States which made liberal provision in regard to the device of marks. But this benefit gradually diminished owing to the tendency of all the States of the Union to adopt a broader conception of marks.

The seizure shall be effected at the request of either the proper public department or of the interested party, pursuant to the internal legislation of each country.

ART. X. The provisions of the preceding Article shall apply to all goods falsely bearing the name of any locality as indication of the place of origin, when such indication is associated with a trade-name of a fictitious character or assumed with a fraudulent intention.

Any manufacturer of, or trader in, such goods, established in the locality falsely designated as the place of origin, shall be deemed an interested party.

See note to Art. IX.

ART. XI. The high contracting parties agree to grant temporary protection to patentable inventions, to industrial designs or models, and trade-marks, for articles exhibited at official or officially recognized international exhibitions.

This article is carried out as regards patents and designs by sects. 39 and 57 of the Patents and Trade-Marks Act, 1883. No analogous provision was required as regards trade-marks, as the right to a trade-mark in England is acquired not by priority of registration, but by priority of user. A doubt has arisen under this article whether temporary protection ought to be granted by every State of the Union merely for the exhibitions which take place in its territory, or whether it should be extended to exhibitions in the other Contracting States. The Brussels Conference (*La Propriété Industrielle*, 1898, p. 2) interpreted the article in the latter sense; and see Patents Act, 1886, s. 3.

ART. XII. Each of the high contracting parties agrees to establish a special government department for industrial property, and a central office for communication to the public of patents, industrial designs or models, and trade-marks.

ART. XIII. An international office shall be organized under the name of "Bureau International de l'Union pour la Protection de la Propriété Industrielle" (International Office of the Union for the Protection of Industrial Property).

This office, the expense of which shall be defrayed by the governments of all the Contracting States, shall be placed under the high authority of the central administration of the Swiss Confederation, and shall work under its supervision. Its functions shall be determined by agreement between the States of the Union.

ART. XIV. The present Convention shall be submitted to periodical revisions, with a view to introducing improvements calculated to perfect the system of the Union.



To this end conferences shall be successively held in one of the Contracting States by delegates of the said States. The next meeting shall take place in 1885 at Rome.

ART. XV. It is agreed that the high contracting parties respectively reserve to themselves the right to make separately, as between themselves, special arrangements for the protection of industrial property, in so far as such arrangements do not contravene the provisions of the present Convention.

ART. XVI. States which have not taken part in the present Convention shall be permitted to adhere to it at their request.

Such adhesion shall be notified officially through the diplomatic channel to the government of the Swiss Confederation, and by the latter to all the others. It shall imply complete accession to all the clauses, and admission to all the advantages stipulated by the present Convention.

ART. XVII.—The execution of the reciprocal engagements contained in the present Convention is subordinated, in so far as necessary, to the observance of the formalities and rules established by the constitutional laws of those of the high contracting parties who are bound to procure the application of the same, which they engage to do with as little delay as possible.

ART. XVIII.—The present Convention shall come into operation one month after the exchange of ratifications, and shall remain in force for an unlimited time, till the expiry of one year from the date of its denunciation. This denunciation shall be addressed to the government commissioned to receive adhesions. It shall only affect the denouncing State, the Convention remaining in operation as regards the other contracting parties.

*[Here follow the Signatures.]*

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### *Final Protocol.*

On proceeding to the signature of the Convention concluded this day between the governments of Belgium, Brazil, Spain, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia, and Switzerland, for the protection of industrial property, the undersigned plenipotentiaries have agreed as follows:—

1. The words "industrial property" are to be understood in their broadest sense; they are not to apply simply to industrial products properly so called, but also to agricultural products (wines, corn, fruits, cattle, &c.), and to mineral products employed in commerce (mineral waters, &c.).

2. Under the word "patents" are comprised the various kinds of industrial patents recognized by the legislation of each of the Contracting States, such as importation patents, improvement patents, &c.

3. The last paragraph of Article II. does not affect the legislation of each of the Contracting States as regards the procedure to be followed before the tribunals, and the competence of those tribunals.

4. Paragraph 1 of Article VI. is to be understood as meaning that no trade-mark shall be excluded from protection in any State of the Union from the fact alone that it does not satisfy, in regard to the signs composing it (*b*), the conditions of the legislation of that State; provided that on this point it comply with the legislation of the country of origin, and that it had been properly registered in said country of origin. With this exception, which relates only to the form of the mark (*b*), and under reserve of the provisions of the other Articles of the Convention, the internal legislation of each State remains in force.

To avoid misconstruction, it is agreed that the use of public armorial bearings and decorations may be considered as being contrary to public order in the sense of the last paragraph of Article VI. (*c*).

5. The organization of the special department for industrial property mentioned in Article XII. shall comprise, so far as possible, the publication in each State of a periodical official paper.

6. The common expenses of the International Office, instituted by virtue of Article XIII., are in no case to exceed for a single year a total sum representing an average of 2,000fr. for each Contracting State.

To determine the part which each State should contribute to this total of expenses, the Contracting States, and those which may afterwards join the Union, shall be divided into six classes, each contributing in the proportion of a certain number of units, namely:—

1st class	..	..	..	..	25 units.
2nd „	..	..	..	..	20 „
3rd „	..	..	..	..	15 „
4th „	..	..	..	..	10 „
5th „	..	..	..	..	5 „
6th „	..	..	..	..	3 „

(*b*) The expressions “in regard to the signs composing it” and “only to the form of the mark” were, no doubt, used because special attention was directed to name-marks, which at that time were not considered as marks in a certain number of States. At present the majority of States do recognise names as marks, but with all kinds of restrictions which (as in the case of Great Britain, where descriptive words are not registrable) tend to destroy the effect of the concession. (*Trans. Int. Ass. Prot. Ind. Prop.*, Vol. 1 (1897), p. 144.)

(*c*) The object of clause 4 has been suggested to be to protect word-marks in countries where the local law did not admit them. (*Trans. Int. Ass. Prot. Ind. Prop.*, Vol. 1 (1897), p. 141.) On the other hand, the view has been put forward (*ib.*) that, under the last paragraph of this clause, States may refuse, as “contrary to public order,” marks which, whilst apparently mere fancy names, consist of a new name of the product, or words descriptive of it, and those which are more or less likely to lead to mistakes. (*Sed quare!*)

These coefficients will be multiplied by the number of States in each class, and the sum of the result thus obtained will supply the number of units by which the total expense has to be divided. The quotient will give the amount of the unit of expense.

The Contracting States are classed as follows, with regard to the division of expense :—

1st class	..	France, Italy.
2nd „	..	Spain.
3rd „	..	Belgium, Brazil, Portugal, Switzerland.
4th „	..	Holland.
5th „	..	Servia.
6th „	..	Guatemala, Salvador.

The Swiss Government will superintend the expenses of the International Office, advance the necessary funds, and render an annual account, which will be communicated to all the other Administrations.

The International Office will centralise information of every kind relating to the protection of industrial property, and will bring it together in the form of a general statistical statement, which will be distributed to all the Administrations. It will interest itself in all matters of common utility to the Union, and will edit, with the help of the documents supplied to it by the various Administrations, a periodical paper in the French language dealing with questions regarding the object of the Union.

The numbers of this paper, as well as all the documents published by the International Office, will be circulated among the Administrations of the States of the Union in the proportion of the number of contributing units as mentioned above. Such further copies as may be desired, either by the said Administrations or by societies or private persons, will be paid for separately.

The International Office shall at all times hold itself at the service of members of the Union, in order to supply them with any special information they may need on questions relating to the international system of industrial property.

The Administration of the country in which the next Conference is to be held will make preparation for the transactions of that Conference, with the assistance of the International Office.

The Director of the International Office will be present at the meetings of the Conferences, and will take part in the discussions, but without the privilege of voting.

He will furnish an annual report upon his administration of the office, which shall be communicated to all the members of the Union.

The official language of the International Office will be French.

7. The present final protocol, which shall be ratified together with the Convention concluded this day, shall be considered as

forming an integral part of, and shall have the same force, validity, and duration as, the said Convention.

[*Here follow the signatures.*]

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*Accessions and Withdrawals (d).*

Denmark (including the Faroe Islands) acceded October 1, 1894.

Dominican Republic acceded December 8, 1884.

Ecuador acceded December 21, 1883, but withdrew February 27, 1886 (*d*).

Greece, declaration October 15, 1894.

Guatemala withdrew by notice dated November 27, 1894, taking effect November 8, 1895.

Japan acceded by notice dated April 15, 1899, taking effect July 15, 1899.

Salvador, a signatory party, withdrew September 6, 1886.

Sweden acceded June 18, 1885.

United States acceded May 30, 1887.

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ARRANGEMENT BETWEEN GREAT BRITAIN, GERMANY, FRANCE,  
SWITZERLAND, AND TUNIS, FOR THE PREVENTION OF  
FALSE INDICATIONS OF ORIGIN OF GOODS (*e*).

*Signed at Madrid, April 14, 1891.*

[*Ratifications exchanged at Madrid, June 15, 1892.*]

(Translation.)

THE undersigned Plenipotentiaries of the States hereinafter enumerated,

In view of Article XV. of the International Convention of the 20th March, 1883, for the protection of industrial property,

Have mutually concluded the following arrangement, subject to ratification:—

ART. I. All goods bearing a false indication of origin, in which one of the Contracting States, or a place situated therein, shall be directly or indirectly indicated as being the country or place of origin, shall be seized on importation into any of the said States.

(*d*, See the list printed at p. 762.

(*e*) Parliamentary Paper, Treaty Series, No. 13 (1892).

The seizure may also take place either in the State where the false indication of origin has been applied, or in that into which the goods bearing the false indication may have been imported.

If the law of any State does not permit seizure on importation, such seizure shall be replaced by prohibition of importation.

If the law of any State does not permit seizure in the interior, such seizure shall be replaced by the remedies assured in such case to natives by the law of such State.

ART. II. The seizure shall take place at the request either of the proper Government Department, or of an interested party, whether individual or society, in conformity with the domestic law of each State.

The authorities are not bound to effect the seizure of goods in transit.

ART. III. The present stipulations are not intended to prevent the vendor from indicating his name or address upon goods coming from a country other than that where the sale takes place; but in such case the address or the name must be accompanied by a clear indication in legible characters of the country or place of manufacture or production.

ART. IV. The tribunals of each country will decide what appellations, on account of their generic character, do not fall within the provisions of the present arrangement, regional appellations concerning the origin of products of the vine being, however, not comprised in the reserve provided for by the present article.

It has been suggested that, instead of the courts of law being left to deal with the question *pro re nata*, either the Contracting States or the competent authorities in every country should be required to determine beforehand what local names in their territory are to be considered as generic. (*Trans. Int. Ass. Prot. Ind. Prop.*, Vol. 1 (1897).) There would, however, be great difficulty in carrying out either suggestion. In some cases the law of the country might not permit the Executive to trespass in this way on the domain of the Courts. Names that ought to find a place in the generic lists would be omitted. Who would decide as to translated names and names of countries?—as in the case of "Russia leather," which in German (*Russisches Leder*) means leather from Russia, while in England and in France (*leuir de Russie*) it means a peculiar kind of leather called in Germany *Juchtenleder*. (*Ib.* pp. 179, 180, and n. 120.)

ART. V. States which are parties to the Union for the Protection of Industrial Property, and who have not adhered to the present arrangement, shall be allowed to accede on demand in the manner prescribed by Article XVI. of the Convention of the 20th March, 1883, for the Protection of Industrial Property.

ART. VI. The present arrangement shall be ratified, and the ratifications shall be exchanged at Madrid within six months at the latest.

It shall come into force one month after the exchange of ratifications, and have the same force and duration as the Convention of the 20th March, 1883.

In witness whereof the plenipotentiaries of the States hereinafter enumerated have signed the present arrangement at Madrid, 14th April, 1891.

[Signed on behalf of Brazil, Spain, France and Tunis, Great Britain, Guatemala, Portugal, and Switzerland, but Brazil, Guatemala, and Portugal did not ratify.]

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ARRANGEMENT RELATING TO THE INTERNATIONAL REGISTRATION OF TRADE-MARKS (f).

ART. I. The subjects or citizens of each of the Contracting States may ensure in all the other States the protection of their trade-marks accepted for registration in the country of origin by applying for the said marks at the International Office at Berne, through the agency of the Administration of the said country of origin.

ART. II. The subjects or citizens of States which have not adhered to the present Arrangement who satisfy the conditions of Article III. of the Convention shall be assimilated to the subjects or citizens of the Contracting States.

ART. III. The International Office shall immediately register marks applied for, in accordance with Article I. It shall notify such registration to the Contracting States. The marks registered shall be published in a supplement to the journal of the International Office, by means of a drawing or a description in the French language provided by the applicant.

With a view to provide the necessary publicity in the various States for marks so registered, each Administration shall receive gratis from the International Office such a number of copies of the said publication as it shall think fit to demand.

ART. IV. From the date of registration so made at the International Office, the protection in each of the Contracting States shall be the same as if the mark had been directly registered there.

(f) This translation is by Mr. J. F. Iselin (*Trans. Int. Ass. Prot. Ind. Prop.*, Vol. 1 (1897), p. 111). The restricted Union includes the following States:—Belgium, Brazil, France, Italy, the Netherlands, Portugal, Spain, Switzerland, and Tunis. It applies also to the respective colonies of the Contracting States mentioned as forming part of the General Union of 1883. Great Britain did not sign, see above, p. 548.

ART. V. In the countries where their law authorises them to do so, the Administrations to which the International Office gives notice of the registration of a mark shall have power to declare that protection cannot be granted to such mark in their territory. They shall exercise such power within a year of the notice prescribed by Article III.

Such a declaration so notified to the International Office shall be transmitted by it without delay to the Administration of the country of origin and to the owner of the mark. The person interested shall have the same remedies as if the mark had been directly registered by him in the country where the protection is refused.

ART. VI. The protection resulting from registration at the International Office shall last for twenty years from such registration, but cannot be invoked in favour of a mark which no longer enjoys legal protection in its country of origin.

ART. VII. Registration may always be renewed in accordance with the provisions of Articles I. and III.

Six months before the expiry of the period of protection, the International Office shall give official notice to the Administration of the country of origin and to the owner of the mark.

ART. VIII. The Administration of the country of origin shall fix at its pleasure, and shall raise for its own profit, a fee which it may demand from the owner of the mark for which international registration is applied for.

To this fee shall be added an international duty of 100 francs, the annual produce of which shall be divided equally amongst the Contracting States, after deducting the costs occasioned by the execution of this Arrangement.

ART. IX. The Administration of the country of origin shall give notice to the International Office of the annulments, erasures, disclaimers, transfers, and other changes which shall take place in the ownership of the mark.

The International Office shall register these changes, give notice of them to the Contracting Administrations, and immediately publish them in its journal.

ART. X. The Administrations shall regulate by agreement the details relating to the execution of the present Agreement.

ART. XI. The States of the Union for the Protection of Industrial Property which have not taken part in the present Arrangement shall be permitted to adhere to it upon their demand, and in the form prescribed by Article XVI. of the Convention of the 20th March, 1883, for the Protection of Industrial Property.

As soon as the International Office shall be informed that a State has adhered to the present Arrangement, it shall send to the Administration of that State, in accordance with Article III., a

general notice of the marks which at that time enjoy international protection.

ART. XII. The present Arrangement shall be ratified, and the ratifications shall be exchanged at Madrid within six months at the latest. It shall come into force one month after the exchange of ratifications (*g*), and shall have the same force and duration as the Convention of the 20th March, 1883.

*Final Protocol.*

Upon proceeding to the signature of the Arrangement relating to the International Registration of Trade Marks, concluded this day, the Plenipotentiaries of the States which have adhered to the said Arrangement have agreed as follows:—Doubts having arisen as to the scope of Article V., it is understood that the power of refusal which this Article leaves to the Administrations does not affect the provisions of Article VI. of the Convention of the 20th March, 1883, or of paragraph 4 of the accompanying Final Protocol, these provisions being applicable to marks registered at the International Bureau, as they are, and shall still continue to be applicable to those directly registered in any of the Contracting States. The present Protocol shall have the same force and duration as the Arrangement to which it relates.

(*g*) This exchange of ratifications took place on June 15th, 1892.



## No. 13.

## FOREIGN AND COLONIAL TRADE-MARK LAWS (a).

## 1. Principal Foreign Laws.

## AUSTRIA-HUNGARY.

The Law of December 7th, 1858, which for thirty-two years regulated the protection to property in trade-marks in Austria-Hungary, gave way in 1890 to a new law, which was published in Vienna on January 6th, and in Buda-Pesth on April 6th of that year.

The law in question is the same for both halves of the Dual Monarchy, and came into force three months after the date of its publication in Austria and Hungary respectively.

This law, subject to certain modifications hereinafter mentioned, still regulates all questions as to trade-marks in Austria-Hungary, and contains full particulars as to procedure, forms, and fees for registration.

Sect. 4, para. 32, of the law enacts that, with reference to the protection of marks, as also of names, firms, arms, or business descriptions of foreign establishments or undertakings, the conventions or treaties concluded with the respective foreign States are decisive.

The subjects of His Britannic Majesty, therefore, by virtue of Article VI. of the treaty concluded between Great Britain and Austria on December 5th, 1876, enjoy in Austria-Hungary the same protection as native subjects with regard to rights of ownership over trade-marks, and other distinctive marks of goods, or their packages, as well as over patterns and designs for manufactures.

British subjects, however, in order that they may enjoy the benefit of protection, must obtain the registration of their trade-marks both at Vienna and Buda-Pesth, and, to this end, must deposit four specimens of such marks in the Chambers of Commerce at each capital, whereas under the law of 1858 only two copies were required.

It should be further noted that under the old law it was only necessary for an applicant for registration to prove that his

(a) This summary has been prepared from the following Blue Books:—*Reports relative to Legislation in Foreign Countries*, 1879 (C. 2284, 2420); *Reports from Her Majesty's Representatives Abroad on Trade-Marks Laws and Regulations*, 1900 (Cd. 104). See also *Summaries of Foreign and Colonial Laws as to Merchandise Marks*, pp. 850 et seq. (Cd. 358).

trade-mark had been registered in the United Kingdom in order to effect its registration in Austria-Hungary. Now, however, the law enacts that the mere fact of a mark being registered abroad does not necessarily imply that it is qualified for registration by the Austrian and Hungarian authorities, foreigners being called upon to satisfy the same requirements for registration as any native of the Dual Monarchy.

By virtue of an enactment, dated July 30th, 1895, the following amendments and additions to the Law of 1890 were made. These modifications of the law are still in force:—

1. The stipulations of sect. 3, No. 2, of the Law of 1890, **Amendment.** enacting that those marks of goods which consist only of words are excluded from registration, are restricted to those words which contain exclusively statements as to place, time, and manner of production, and as to quality, price, designation, quantity, and weight.

2.—(1) It is enacted, with reference to sect. 2 of the Law of 1890, that the sole right to a mark consisting of words is not restricted only to the deposited forms of a mark in words, but also extends to the use of those forms of execution by which the protected word or words are rendered in other characters, colours, or sizes, wholly or in part. **Addition.**

(2) It is enacted, with reference to sect. 21, sect (e), of the Law of 1890, that a mark can be annulled when it is found that the same has a striking resemblance to a mark previously granted upon a similar class of goods, the Minister of Commerce to give his decision in the matter after he has heard the owner of the trade-mark, and, if necessary, called in the evidence of experts.

(3) It is enacted, with reference to sect. 21 of the Law of 1890, that the actual user of a non-registered mark can bring an action for annulment against the owner, or his legal successor, of a registered mark, if, at the time of registration of the contested mark, or one strikingly similar, the said mark was known in commercial circles as the mark of his goods. Such an action for annulment shall be considered inadmissible when the mark in question has been registered with the consent of the plaintiff, or when the firm or other undertaking which has registered the mark has used the mark unregistered for the same period as the plaintiff, or even longer.

The complaint must be lodged with the Ministry of Commerce within two years of the registration of the mark, the annulment to come into force from the date of the filing of the action, where such action is successful.

The successful plaintiff is entitled to register the annulled mark in his own name as soon as the annulment has been declared valid.

This enactment is only applicable to those marks which have been registered since August 2nd, 1895.

(4) In those cases where a party is non-resident in Austria-

Hungary, including Bosnia and Herzegovina, and has no settled abode, the said party will only be able to establish his claims under the Law of 1890, or the supplementary enactment of 1895, by nominating an attorney resident within the territory in question. The name of the said attorney may, but need not necessarily, be entered in the register of marks. Where such name has not been entered, judgment may be given in any action brought for annulment of a mark without having the evidence of the non-resident owner.

(5) The Minister of Commerce has the right, according to his own free judgment, to determine in all disputes occurring subsequent to August 2, 1895, the proportion of the costs of the proceedings and of the legal representatives to be borne by the parties in question. Any legal decision concerning costs can be enforced by legal distraint.

(6) In those cases where marks have been annulled consequent upon a delay in the re-registration, or upon an action at the instance of the legitimate claimant, the same or strikingly similar marks for the same or a similar class of goods cannot be registered in favour of another or of the previous owner, or his legal successor, until two years after the legal annulment.

The foregoing supplementary enactment to the Law of 1890 came into force on February 2, 1896.

#### BRAZIL.

All matters relating to the registration and protection of trade-marks in Brazil are at present regulated by the Law of October 14, 1887.

In its main provisions this law is very similar to the decree of October 23, 1875, a French translation of which was published in Parliamentary Blue Book, "Commercial, No. 25, 1879." Contrary, however, to the British Act, while no prohibition appears of the importation of goods bearing the name or trade-mark of a Brazilian dealer, an endeavour has been made (Law of December 16, 1896), "with the view of protecting national industry, and in order to give greater publicity to its products, to prohibit, under penalty of a fine of from 1,000 to 5,000 milreis (about 30% to 150%), the printing or importation of labels and marks of foreign products, or in a foreign language, to be affixed to Brazilian products, and to prohibit the sale of products of Brazilian origin to which such labels have been affixed."

As regards registration of trade-marks, the following modifications appear in the Law of 1887 :—

The manufacturer or his special delegate is required to present three fac-similes of a trade-mark for registration, instead of two as formerly ; after registration two of these are returned to him.

An explanation or description of the trade-mark must accompany the fac-simile, with a declaration of the branch of trade or commerce for which the mark is destined.

The application and the print or sketch of the mark must be on thick paper 33 × 22 centims. in dimension, with a margin for binding. This paper must not be folded, nor must other parts be attached to it. Each sheet must be stamped, dated, and signed.

Within thirty days after the date of registration the applicant is required to publish in the official *Gazette* the certificate of registration, with an explanation of the distinguishing features of the mark.

Within sixty days from the same date he must also deposit a copy of the *Gazette* containing this publication at the office of the Commercial Tribunal of Rio.

Trade-marks composed of arms, national or foreign medals, or emblems are prohibited; also a trading name to which the applicant is not entitled; also the partial or entire imitation of a mark already registered for goods of the same description.

As regards the system of official fees for registration of trade-marks, it appears to be impossible to give precise information, as the system of registration fees in Brazil is so complicated and variable.

In the first place the power of attorney (*pouvoir*) and the certificate of registration of the country of origin must be taken to the stamp office to be stamped, the value of such stamp varying according to the dimensions of the paper and the number of sheets. The next step is to present these two documents at the Ministry of Foreign Affairs, where a fee of 550 reis (about 4½*d.* at present rate of exchange) has to be paid for each. These two documents must then be translated by a sworn translator on stamped paper; the price charged for these two translations is very variable. This done, a form of application, with a 300-reis stamp (about 2½*d.*) affixed, and a description in triplicate of the trade-mark with a 900-reis stamp (about 7½*d.*) affixed, must be deposited at the Junta Commercial, together with a fee of 2 milreis (about 1*s.* 4*d.*).

The stamps required for the certificate of deposit amount to 6\$600 reis (about 3*s.* 11*d.*); the publication of the certificate of registration in the official *Gazette* costs 200 reis (about 1½*d.*) per line.

Lastly, it is required to furnish a copy of the official *Gazette* (100 reis = about ½*d.*), stamped with a 1\$200-reis stamp (about 9½*d.*), together with a stamped petition (100 reis = about ½*d.*) accompanied by a fee of 2 milreis (about 1*s.* 4*d.*).

#### DENMARK.

The Danish Trade-Mark Law of April 11, 1890, replaced the old one of July 2, 1880. The reason for making a new law was that Sweden and Norway were to get a uniform law (there was already a law in Sweden, but none in Norway), and the two countries invited Denmark to join and have similar rules as to protection and reciprocity. In Sweden and Norway there were

a good many timber and iron firms, who used as marks single letters ("A," "B," "BB," "BC," &c.).

Such letter combinations could be registered by the owners within six months from the date of the coming into force of the law. After the expiration of the six months they could not be registered (sect. 14, paragraph 7).

On September 28, 1894, Denmark joined the International Convention for the protection of trade-marks of March 20, 1883, and to which almost all civilised States have adhered.

On December 19, 1898, an amendment was passed for the purpose of enabling traders to register words or figures, but the law prescribes that to make registration possible these words or figures should not contain any indication as to the origin, kind, use, quality, or price of the goods.

#### FRANCE.

(Law of June 23, 1857.)

#### *Part I.—The Ownership of Trade-Marks.*

ART. I.—(Sect. 1.) Trade-marks are optional. Nevertheless, decrees in the form of administration orders may, by way of exception, declare trade-marks compulsory for certain specified articles.

The following are considered trade-marks:—Names of a distinctive character, appellations, emblems, imprints, stamps, seals, vignettes, reliefs, letters, numbers, wrappers, and every other sign serving to distinguish the products of a manufacture or the articles of a trade.

ART. II. No person can assert his exclusive ownership of a trade-mark, unless two copies of the pattern of the mark have been deposited (registered) at the Tribunal of Commerce of his domicile (*b*).

ART. III. This deposit (registration) is effective for a period of fifteen years only. The ownership of the mark may, however, be secured for a further term of fifteen years by means of a fresh deposit (registration).

ART. IV. A fixed fee of one franc is charged for entering the minute of deposit of each mark, and making a copy thereof, exclusive of stamp and registration fees.

#### *Part II.—Provisions Relating to Foreigners.*

ART. V. Foreigners who have industrial or commercial establishments in France enjoy the protection of the present law for the products thereof, provided they comply with the formalities herein prescribed (*c*).

(*b*) This article has been amended by the Law of 3rd May, 1890 (see *infra*, p. 781).

(*c*) Compare Art. III. of the International Convention of 1883 (p. 765).

ART. VI.—(Sect. 1.) Foreigners and Frenchmen whose houses or places of manufacture are situate out of France also enjoy the protection of the present law for the products thereof, if, in the countries where such houses or factories are situate, diplomatic conventions have stipulated reciprocity for French trade-marks.

Sect. 2. Foreign marks in this case shall be registered at the Tribunal of Commerce of the Department of the Seine.

The Law of the 23rd June, 1857, is still in force, with the exception of Article II., which has been amended by the Law of the 3rd May, 1890.

A Presidential Decree of the 27th February, 1891, regulates the working of the provisions of the Law of 1857 in its amended form, and annuls the Imperial Decree of the 23rd June, 1857.

Under Article II. thus modified the applicant for a trade-mark must, in order to claim exclusive rights over that trade-mark, deposit at the "Tribunal de Commerce" of his place of domicile, or, in the case of a foreigner, at the "Tribunal de Commerce du Département de la Seine" : Procedure.

1. Copies in triplicate (instead of in duplicate, as heretofore) of his trade-mark; and

2. The plate (or die) of that trade-mark.

This plate must not exceed 12 centim. in length; it must be of metal, and of such a kind as is usually employed for printing purposes, 23 millim. in thickness, and must be inclosed in a solid wooden box.

It is returned to the interested party after the official publication of the trade-mark in the "Bulletin Officiel de la Propriété Industrielle et Commerciale."

The delay between the time of application for the registration of a trade-mark and its publication is usually about forty-five days.

A fee of 1 fr. is charged for each *procès-verbal* of deposit besides the stamp and registration fees, which amount together to about 8 fr. 38 c. (see annexed table) :— Fees.

(A.) *Dépôt de la Marque de Fabrique et délivrance de l'Expédition.*

	Fr. c.
1. Timbre de la minute du procès-verbal. (Décret du 18 Juin, 1880, Article XII. s. 3) .....	0 60
2. Enregistrement de la minute du procès-verbal ..	5 63
3. Rédaction du procès-verbal y compris le coût de l'expédition. (Décret du 27 Février, 1891, Article XII. Décret du 18 Juin, 1880, Articles VIII. et X.) .....	1 00
4. Mention sur le répertoire et remboursement du timbre. (Décret du 18 Juin, 1880, Articles X. et XII.) .....	0 35
5. Timbre de l'expédition .....	1 80

If more than one trade-mark is deposited by the same person, an additional fee of 1 fr. is charged for each trade-mark, the other stamp and registration fees of 8 fr. 38 c. being sufficient to cover the registration of any number of trade-marks.

The *procès-verbal* of deposit should be renewed every fifteen years.

Any person wishing to have an extract from the Trade-marks Register must pay a fee of 1 fr. for each trade-mark, together with stamp and registration fees, amounting together to 4 fr. 8 c. or 4 fr. 68 c., as the case may be (see annexed table):—

(B.) *Délivrance du Certificat d'Identité de la Marque de Fabrique.*

	Fr. c.
1. Timbre du certificat . . . . .	60 c. ou 1 20
2. Enregistrement de la Minute . . . . .	1 88
3. Délivrance du certificat. (Décret du 18 Juin, 1880, Article VIII., s. 8) . . . . .	1 00
4. Mention sur le répertoire et remboursement du timbre. (Décret du 18 Juin, 1880, Articles X. et XII.) . . . . .	0 35
5. Légalisation. (Décret du 18 Juin, 1880, Article X., s. 1) . . . . .	0 25

GERMANY.

The 1874 law on trade-marks and its defects.

The first uniform Law on trade-marks for the Empire of Germany was that of November 30th, 1874, which, however, proved to be defective, and was replaced twenty years later by the present Law of May 12th, 1894 (supplemented by "regulations to carry the same into effect").

The present Law extended legal protection to trade-marks which did not fall within the limits of the old Law. The 1874 Law had this peculiarity, that it was uniform in its application to all parts of the Empire, but each Federated State was allowed to retain its separate offices for the registration, cancellation, &c. of trade-marks, and each Commercial Court in each Federated State still continued to have its separate register of trade-marks, though all the registered marks were published in the *Imperial Gazette* (*Reichsanzeiger*), but without any central reference index.

The inconveniences occasioned by this state of things, which may be described as a want of centralisation, together with the non-examination of applications for trade-marks, the exclusion of the registration of "word marks," and the fact that marks could only be protected by such traders or merchants as were inscribed on the official Commercial Registers ("Handelsregister"), brought about changes that were urgently needed in the interests of the public.

The Trade-Marks Law of 1894 is characterised by the fact that any person whatsoever can acquire protection for a trade-mark, and that all foreigners in Germany are placed on an exactly equal footing with Germans in the eye of the law, so long as they have a domicile ("Niederlassung") within the Empire (*i.e.*, a place of business or a residence which involves the payment of German taxes). Failing this domicile in Germany, protection for a trade-mark is made strictly dependent upon the reciprocity of trade-mark rights in the country of the foreign applicant; therefore, in order that a foreigner may obtain the benefit of the German Trade-Mark Law, there must have been previously published in the *Imperial Gazette (Reichsanzeiger)* a notice stating that German trade-marks are granted legal protection, in the country or State in which the foreign applicant's domicile is located, to the same extent as the national trade-marks of that country. (Sect. 23 of Law.)

The 1894 law on trade-marks: position of foreigners.

If that reciprocity is accorded, the nationality of the applicant is immaterial. Such notifications have been published for Austria-Hungary, Belgium, Brazil, Bulgaria, Denmark, France, Greece, the United Kingdom, Guatemala, Italy, Japan, Luxembourg, the Netherlands, Mexico, Roumania, Russia, Sweden and Norway, Switzerland, Servia, Venezuela, and the United States.

As such a notice has been published as regards the United Kingdom, the only other condition to be fulfilled by a British applicant (not having a domicile in Germany) for the registration of a foreign trade-mark is that he produce proof that he has applied for and has secured protection for the mark in the United Kingdom by registration there (sect. 23 of Law). His application, however, for a similar registration in Germany does not follow as a matter of course. The German Trade-Marks Office (a branch of the Patent Office) first examines his application to see if it conforms to the requirements of the 1894 Act in every particular; and registration in the German Empire may be refused on various grounds, such as the previous registration of the same mark by another applicant, or the too great similarity of the mark to some other mark already registered for a German or foreign trader.

It may here be mentioned that the German Empire has not yet adhered to the "International Union for the Protection of Industrial Property," founded in 1883; so that in Germany there is no question of international registration of trade-marks, as is the case in some of those countries which have joined the Union.

Germany is not a member of the "Union for the Protection of Industrial Property."

As in Germany non-registered marks can be used by anyone, notwithstanding the fact that such marks are the property of British firms or individuals in Great Britain and are there registered for them, it may happen that German or other firms or persons in the German Empire have already adopted certain British marks, in which case there is not much hope of redress for such British firms or persons as have neglected to register their marks in due time in Germany. Moreover, the previous

British trade-marks may be appropriated by other persons if not registered in Germany.



use of a registered British mark for a lengthened period in the German Empire would not entitle the owner to any rights or priority in the matter of registration, as against a German or any foreigner who had already applied for its registration as his own trade-mark. The actual date of the application for registration is determinative. No registration of such a British trade-mark by a German or other foreigner would be cancelled in favour of the British owner, even if previous use and consequent material ownership of the said mark over a lengthened period in Germany were proved, save under exceptional circumstances (under the provisions of sect. 9 of Trade-Marks Law). It is therefore most important that all British exporters of goods, going both to the German Empire and to all other important neutral markets abroad, should, if they have not already done so, effect immediately a proper registration of their trade-marks. Otherwise they may suffer unnecessary injury all over the world, merely because they have not taken the trouble to effect a proper registration in Germany, as well as in the United Kingdom, for their trade-marks.

Fees for  
registration  
and renewal.

The actual procedure to be followed in order to obtain registration of a British trade-mark is to be found in the "Regulations for Applications for the Registration of Trade-Marks." The preliminary fee is 1*l.* 10*s.*, of which 1*l.* will be returned if the application for registration is not accepted. A further 10*s.* is payable for each application for the renewal of a mark on the expiration of the first ten years (sect. 2 of Law). There are no other fees or expenses whatever. In Germany there are forty-two classes of trade-marks, and the initial fee of 1*l.* 10*s.* covers the registration of the mark for all these classes of goods if noted in the complete list of goods to which the mark is to be applied accompanying the application.

Conditions of  
the renewal of  
registration.

The registration of a trade-mark expires *ipso facto* after ten years from the date of registration or from the date of renewal. It can also be cancelled if the registration ought to have been refused in the first instance. Notice of cancellation on account of failure to renew is given to the proprietor of the mark by the Trade-Mark Branch of the Patent Office. If 10*s.* fine besides the renewal fee of 10*s.*, or 1*l.* altogether, be paid within one month of the delivery of the notice, then the renewal will be considered to have been properly made on the day of the expiration of the former registration (sect. 8 of Law). But, even after this time, the expired mark can nevertheless be again registered afresh by an entirely new application. In this case, however, the application has no priority whatever on account of its previous registration, and such re-registration may meantime have been barred by the fact that some other firm or person has registered the same mark or one nearly resembling it.

Testamentary  
and contract  
transfer of

The rights in trade-marks can be transferred to other persons by contract, or they can pass over by a testamentary enactment, but only together with the business to which the trade-mark

belongs. Such transfers are officially registered (sect. 7 of Law). trade-mark rights.

Anyone can petition for the cancellation of a mark on the following grounds (sect. 9 of Law):— Grounds for cancellation of a mark.

1. If the mark has been entered in the Trade-Marks Register in his name for the same or similar goods on the basis of a prior application, or in pursuance of the Trade-Marks Act of November 30th, 1874.

2. If the business to which the mark belongs is no longer carried on by the registered proprietor.

3. If there are any circumstances that show that the mark used is misleading and is calculated to deceive.

These provisions are valuable where the British owner of a trade-mark wishes to try to remove the registration and to prevent the use of his mark in Germany by some other person. It is only under the provisions of sect. 9 that he might possibly obtain redress.

Sect. 17 of the Law is important, and reads thus:—

“Foreign products which wrongfully bear the name and locality of a German firm, or which wrongfully bear a registered trade-mark, on entering Germany as imports or for transit through the country are liable to seizure and confiscation if the injured party files a petition to that effect and gives security. The seizure is effected by the Custom House authorities, and the confiscation is decided according to the Penal Code (sect. 459 of Code).” Penalties for wrongfully using German trade-marks.

Actions in the Courts in trade-mark matters are provided for in sect. 21.

A most important provision is found in sect. 22; but the important rights conferred by it have not as yet been made use of by the Federal Council. It is as follows:— Powers of Federal Council as to compelling imported goods to bear a mark showing their origin.

“If German goods must bear a certain mark or sign on being imported into, or for transit through, a foreign country to show that they are of German origin, or if such goods are not so favourably treated at the Custom House in respect of trade-marks as the goods of other countries, then the Federal Council is empowered to subject goods imported into Germany from such other countries, or for transit through Germany, to the same obligations, and to order that, in the case of violation of this regulation, the goods shall be seized and confiscated. The seizure is effected by the Custom House authorities, and the confiscation will be decided by the verdict of the Department of Administration (sect. 459 of the Regulations of the Criminal Law).”

It is, therefore, to be noticed that the above regulation might be applied to British goods entering Germany whenever, in Great Britain, German goods imported there, or for transit merely, are obliged to bear a mark showing that they are of German origin, or whenever German imports do not, in the matter of trade-marks, receive most-favoured-nation treatment at the British Custom House. Liability of British imports to bear a mark showing their origin.

Definition of what may be registered as a trade-mark.

Any kind of sign can become a trade-mark, either on the article itself or on its covering when packed, if it affords a clear and distinguishing mark. Picture and figurative designs, as also "word marks" and fancy names, can be used as trade-marks; but they cannot consist of numerals, of letters, or of words which only give particulars of the time, place, or manner of production, or of words indicating considerations of quality, price, quantity, and weight, or words which refer to the nature of the goods. In the registration of "word marks" it is important to state in the application whether protection is wanted only for it as a design or for its sound, or for both; for the Trade-Marks Office, in its examination, investigates this point.

As to use of coats-of-arms.

The use of German or foreign State coats-of-arms, as well as of the arms of German municipalities or corporations, in order to unduly enhance the market value of goods, is forbidden under a penalty of a fine of 250*l.*, or by imprisonment not exceeding six months (sect. 16 of Law).

Definition of "freemarks."

The Trade-Mark Office in Berlin publishes a list of so-called "Free Marks" ("Freizeichen"). These consist of marks that are generally used by the public to indicate certain trades, such as crossed hammers for the coal trade, and an anchor for some marine trades, which cannot be acquired by anyone as a private trade-mark. Additions are often made to this list, and applications for the registration of trade-marks are refused if it is found that the mark applied for resembles too closely a listed "Free Mark."

German colonies and protectorates. Special agreements.

The German Trade-Marks Law was also put into force for the German Colonies and Protectorates on October 1, 1894.

Special agreements, dealing with trade-marks, &c., exist with Austria-Hungary (December 6, 1891), with Italy (January 18, 1892), with Switzerland (April 13, 1892), and with Servia (August 21, 1892).

Trade-mark relations between the United Kingdom and Germany.

The relations, in trade-mark matters, between the United Kingdom and the German Empire were formerly governed by Art. VI. of the Treaty of Commerce of May 30, 1865 (extended to the whole German Empire by the Declaration of April 14, 1875), which expired on July 30, 1898. Since that date our rights in Germany with regard to trade-marks are regulated by the German law.

Protection of German trade-marks in China.

The German Government has concluded agreements with France in 1898, with Holland in 1899, and with Belgium also during the present year regarding the protection of German trade-marks in China. Under these several agreements German Consular officers in China will take legal proceedings against any German subjects residing in China who may imitate French, Dutch, or Belgian trade-marks registered in the German Empire. The representatives of the French, Dutch, and Belgian Governments in China are likewise bound to act similarly in the case of French, Dutch, and Belgian subjects.

## ITALY.

No change has taken place in internal Italian legislation with regard to trade-marks since the report presented to Parliament in 1879.

Legislative effect has, however, been given with regard to foreign trade-marks to the requirements of the Paris Convention of 1883, and the similar requirements of the Italo-German Convention of 1892. These modifications in the existing Law only affect the period of delay conceded to the proprietors of foreign trade-marks during which the priority of a trade-mark registered abroad may be made valid in Italy. Special regulations issued in 1898 determine the formalities necessary to obtain the notification on the certificate of registration of the right of priority of a trade-mark claimed under the above-mentioned Conventions.

Further, a Law of November 19th, 1894, puts in force the provisions of the Madrid Convention of 1891 for the international registration of trade-marks, and affords protection in this country, without the fulfilment of the formalities required by the Law of Italy, to trade-marks registered in the countries adhering to the Union, and fulfilling the conditions contemplated by that instrument.

## JAPAN.

The present Japanese Law relating to trade-marks is one of a series of Laws which came into force on July 1st, 1899.

According to this Law, which has superseded the Trade-Mark Regulations contained in the Imperial Ordinance No. 86 of 1888, the protection of property in trade-marks in Japan depends upon registration, but trade-marks which were actually in use before July 1st last would appear to be protected by sub-heading 5 of Article II., unless their registration has meanwhile been obtained by other persons and three years have been allowed to elapse without protest.

The course to be pursued by owners of foreign trade-marks to obtain registration in Japan is laid down in the Law and in the "Detailed Regulations for carrying out the Trade-Marks Law" of July 20th, 1899.

The reference in Article XX. to Articles VI. to X. of the Japanese Patent Law is important, as it makes it obligatory on persons not resident in Japan to appoint a duly qualified agent through whom the application for registration of a trade-mark should be made. The registration may be cancelled if the owner of a trade-mark fails to appoint an agent within six months (Article XI., 2).

In the case of British subjects previous registration of their trade-marks in the United Kingdom does not appear to be necessary, but if it has taken place certified copies of the original certificate of registration and specifications must accompany the application for registration in Japan (Detailed Regulations, Article II.). Article IX. of the Law also gives priority to a

trade-mark registered in a country belonging to the Union for the Protection of Industrial Property, provided that application for its registration in Japan is made within four months.

No limit of time is stated within which persons who have used trade-marks before registration are obliged to register them. Penalties, however, are imposed by Article XVII. on persons who use a trade-mark "to which a deceptive mark, which suggests that it has been registered, is applied."

In order to obtain redress in the event of the infringement of trade-marks which have been registered in Japan, proceedings must be instituted by the injured party either by an application to the Patent Bureau for a trial of the case, or by a criminal action for an infraction of Article XVI. of the present Law.

All documents relating to an application for the registration of a trade-mark, or any other matter connected therewith, must be in Japanese, and all copies of foreign documents must be accompanied by a Japanese translation.

The fee for registration is *3l. 2s. 6d.* (30 yen) for each trade-mark and each class of goods for which it is used. The application for registration must bear revenue stamps to the amount of *6s. 3d.* (3 yen). Further payments in connection with trade-marks are enumerated in the list of fees contained in the Imperial Ordinance No. 195.

#### MEXICO.

ART. I. Any sign which may determine the special character of an industrial product for commercial purposes will be considered as a trade-mark.

ART. II. The protection which the present law grants to trade-marks does not protect, for the purposes therein specified, any but the goods manufactured or sold in the country.

ART. III. The form, colour, words, or designs which do not in themselves constitute a specific sign of the speciality of the product will not be considered as trade-marks. In no case shall this sign be of an immoral character.

ART. IV. Any proprietor of a trade-mark, whether Mexican or foreigner, residing in the country may acquire the exclusive right to use it in the Republic, always subject to the requirements of the present law.

The Mexicans and foreigners who reside outside of the country will be allowed to register the trade-marks belonging to them, when they have an industrial or mercantile establishment or agency within its boundaries, for the purpose of selling their products, always excepting any stipulation to the contrary contained in treaties that refer to foreigners.

ART. V. In order to acquire the exclusive ownership of a trade-mark the interested party will apply, either himself or through his representative, to the Department of Fomento,

stating that he reserves his rights, and transmitting the following documents:—

1. The power of attorney executed by the interested party unless he presents it in person.

2. Two copies of the trade-mark or a representation thereof in drawing or engraving.

3. Should the trade-mark be in bas-relief or raised on the goods, or should it present any other speciality, two separate leaves will also be presented showing those peculiarities, either by means of one or more figures in detail, or by means of an explanatory statement.

4. The written contract of commission, duly attested, by virtue of which an agency has been established, in the case referred to in the second part of the preceding article.

ART. VI. The petition must set forth the name of the factory, its situation, the residence of the proprietor, and the character of the trade or industry in which the petitioner desires to utilise the trade-mark.

ART. VII. No trade-mark belonging to a foreigner who is not a resident of the Republic can be registered therein unless it has been previously registered in the country of its origin in due legal form.

ART. VIII. The first person who may legally make use of the trade-mark is the only one who will be allowed to acquire its ownership. In case of any dispute arising between two claimants to the mark, the ownership will be conceded to the first possessor, or, should it be impossible to prove this, to the first petitioner.

ART. IX. The exclusive ownership of a trade-mark cannot be exercised except by virtue of a declaration from the Department of Fomento that the interested party has reserved his rights after having fulfilled all the legal requirements.

ART. X. The declaration referred to in the preceding article will be made without any previous examination, under the exclusive responsibility of the petitioner, and without prejudice to the rights of any third party.

The Department of Fomento will have the petition of the interested party published, and in case of any opposition presented within the ninety days following such publication the trade-mark will not be registered until the judicial authorities decide in whose favour it is to be registered.

ART. XI. The trade-marks can only be transferred together with the establishments for whose manufacture or trade they are to be employed for purposes of distinction; but the transfer shall not be subject to any special formality, and will remain in accordance with the provisions of common law.

ART. XII. The duration of the ownership over trade-marks is indefinite, but it will be considered abandoned through the closing of the establishment or factory which has used it, or the non-production for one year.

ART. XIII. The trade-marks which are deposited will be preserved in the Department of Fomento, where every person so desiring will be allowed to examine the register during the hours fixed for that purpose by that Department, and certified copies of the registry will be issued at the expense of the person who may require them.

ART. XIV. The ownership of any trade-mark which may have been obtained in contravention of the preceding provisions will be judicially declared null and void on *ex parte* petition.

ART. XV. The judge who may have had the matter before him will duly notify the Department of Fomento of any final sentence under which the ownership of a trade-mark is declared null and void.

#### NETHERLANDS.

Since the publication by the Foreign Office in 1879 of "Reports relative to Legislation in Foreign Countries on the subject of Trade-Marks" a completely new Law has been passed on the subject in the Netherlands, distinct from the draft bill which appeared in the above-mentioned Blue-Book.

The Law now in force on the subject for the Netherlands is dated September 30, 1893.

For the colonial possessions of the Netherlands three other Laws on trade-marks exist, all dated November 9, 1893—*i.e.*, for the Netherlands East Indies in twenty-six articles, and for Surinam and Curaçao in twenty-five articles each. All three are practically identical, with the exception of that regulating trade-marks in the Netherlands Indies, which has one additional article. It has, therefore, merely been necessary to have one of these Laws translated for the purposes of this report; for, if Article XII. of the Law for the Netherlands Indies be omitted, the rest of that Law and the twenty-five articles of the other two are the same; they are, therefore, applicable, not only to the Netherlands East Indies, but also to Surinam and Curaçao.

The Trade-Marks Law of September 30, 1893, for the Netherlands came into force on December 1, 1893, and it completely superseded the former Law of May 25, 1880, and the subsequent amendments of the Law of July 22, 1885. The three Laws for the various colonies came into force on January 1, 1884.

Trade-marks in the Netherlands are now entirely controlled by the Industrial Property Office at The Hague, which was established there on December 1, 1893, from which date applications for the registration of trade-marks had to be directed to that office instead of to the registrars of the local Courts as had previously been the case.

The Netherlands (including Dutch colonies) have joined the International Convention for the Protection of Industrial Property, concluded at Paris on March 20, 1883, which was approved by the Law of April 23, 1884. Trade-marks can, therefore, obtain in the Netherlands international registration (including Dutch colonies). There are thus two distinct forms of registration possible at The Hague Bureau:—

- (a) Merely for the Netherlands.
- (b) For international registration—*i.e.*, for Holland, France, Spain, Portugal, Switzerland, Belgium, Italy, Brazil, and Tunis, as well as for the colonies of the first four countries, and in Netherlands India, Surinam, and Curaçao.

The regulations to be followed to secure this international registration are to be found in Part B of "The Regulations for Registration," issued by the Industrial Property Office at The Hague. Part A of those regulations contain the rules for registration in Holland only. In the first case, the fee is about 4*l* 11*s.* 8*d.*; in the second case, 16*s.* 8*d.*

With regard to the course of procedure to be followed by owners of British trade-marks to obtain protection for their marks, it is to be observed that no difference whatever is made between natives and foreigners in such applications; but the foreigner must choose a "domicile" in order to be able to follow the ordinary procedure for the registration of a trade-mark. The Industrial Property Office at The Hague states that this merely means a "trade domicile," which is constituted by merely giving an address in Holland, such as a lawyer's address, or the name of an hotel at which the applicant for a trade-mark might be residing. The actual steps to be taken by a British applicant, either for registration in Holland only or for international registration, are to be found in "The Regulations for Registration."

The previous registration of British trade-marks in the United Kingdom is not required. In applications for international registration, sect. 3 of Article III. of "The Law on Trade-Marks for the Netherlands" says:—

"The person who, within the period fixed by Article IV. of the International Convention of Paris has sent in a mark to the Office for Industrial Property, which, with due observance of Article VI. of the said Convention, he has deposited according to the regulations of one of the States that is a party to that Convention, shall be considered to have already made use of the mark in the Netherlands."

A similar provision is found in the Laws on trade-marks for the Dutch colonies.

There is no limit of time within which persons who have used trade-marks before registration in the Netherlands are obliged to register their trade-marks in order to secure the benefit of the Dutch Laws on trade-marks.

The steps to be taken by the owners of trade-marks used in



the Netherlands, to obtain redress in the event of infringement, are the following :—

(a) By a prosecution, founded upon Article 337 of the Penal Law. This is effected by denouncing (to the justice of the local Court of the place of the occurrence) the infringement.

(b) By means of a civil law suit, founded upon—

1. Article X. of the Dutch Law on Trade-Marks. This is effected by petitioning the Court of Justice at The Hague to cancel the registration of a trade-mark which is similar or nearly similar to a mark which has already been made use of by some other person for the same kind of merchandise.

2. Article 1,401 of the Dutch Civil Law, in order to obtain indemnification.

The consequence of neglect on the part of British subjects to observe the regulations as to trade-marks entails possible adoption of those marks by Dutchmen or by other foreigners. It is most advisable to register marks, which are then protected by the Office for Industrial Property, which will prevent similar or nearly similar marks from being registered.

With regard to fees, there is only the one payment of 10fl. (16s. 8d.) for registration ("Dépôt-Taxe"); and no fees have to be paid subsequently for final registration nor for the renewal of registration in the Netherlands (see Article XIX. of Law on Trade-Marks for the Netherlands). There are, however, some small expenses in addition, for the law as to stamping has to be complied with, under which the stamp dues depend on the size of the paper used. And there is also a fixed duty of 1.10fl. (about 1s. 10d.) to be paid under the Law on Registration.

#### RUSSIA.

The question of trade-marks in Russia is regulated by the Law of February 26th (March 9th), 1896, and the following are its main provisions :—

Trade-marks may be adopted and used by all persons engaged in trade and manufacturing industries; such adoption, however, is not compulsory.

No trade-marks may be used with designs and inscriptions contrary to public morality, nor such as may fraudulently mislead and deceive a purchaser; also are prohibited trade-marks showing medals, &c. of distinction on which the year of award is not indicated. Marks exhibiting such honorary awards may, moreover, be exhibited only on goods and articles of the class for which the award was made.

The exclusive use of a trade-mark is secured by application to the Department of Trade and Manufactures, which, on approval of the mark, issues a certificate of registration.

Application for more than one trade-mark can be made by a single applicant for distinguishing goods differing in kind and variety.

Exclusive right to a trade-mark cannot be secured if it does

not differ distinctly from one already registered in the name of another person for goods of a kindred nature.

The registration of trade-marks may be effected, according to the desire of applicants, for terms ranging from one to ten years. On the expiration of the term of registration the same may be renewed for a further period.

A trade-mark registered in any one colour and in one size may be used in other colours and sizes.

A trade-mark is registered in the name of the first person applying for its registration.

The registration of a trade-mark does not deprive any other person of the right during three years after such registration of contesting at law the validity of the same.

The transfer of a trade-mark to another person or firm is allowed under certain conditions, and subject to the sanction of the Department of Trade and Manufactures.

The exclusive right of using a particular trade-mark ceases at the request of the person to whom such right was granted, or on the close of the manufacturing or other business in which it was used. It also lapses on the non-renewal of the registration or non-notification to the Department of Trade and Manufactures of the transfer of a business, &c., within six months of such transfer; moreover, the exclusive right of using a trade-mark expires when a Court of law shall declare such right to be non-existent.

The fee payable to the Government for registering or renewing a trade-mark is 3 roubles for the first year of duration of the certificate of registration, and 1 rouble for each succeeding year.

All applications for the registration of a trade-mark must have affixed on each sheet of the same a Russian revenue stamp of the value of 80 copecks.

Fraudulent use and counterfeit of trade-marks are punishable by imprisonment from four to eight months.

A dealer found in possession of goods bearing fraudulent trade-marks is liable to the same punishment.

Persons selling or found in possession of goods bearing prohibited trade-marks are liable to a fine not exceeding 100 roubles for the first offence, and for the second and succeeding offences in a sum not exceeding 200 roubles on each occasion.

#### SWEDEN AND NORWAY.

With the exception of stamps set on iron goods, no legislation existed in Sweden until the year 1885 protecting trade-marks, other than the very incomplete regulations which were to be found in the general Penal Law. The affixing of stamps on iron and steel goods has, on the other hand, been from time immemorial and continues to be obligatory in Sweden on the Swedish manufacturers. Up to the year 1885 the control and registration of the iron stamps belonged to the Director-General

of the Mining Department, now the Commercial Department of the Royal Board of Trade.

In the year 1877 a committee sat for the purpose of drawing up a bill regarding patents and protection for patterns and models as well as trade-marks. The proposals made by this committee led, however, as far as concerned the protection of trade-marks, to no result.

In the year 1881, however, committees met simultaneously in Sweden, Norway, and Denmark with the object, among others, of drawing up a bill concerning the protection of trade-marks as nearly as possible in the same form for the three countries.

When these committees met together for united work in 1882, they laid on the table bills respecting the protection of trade-marks which were in all essentials similar. After some slight amendments the Swedish bill was passed in the 1884 session of the Riksdag, and the Law on the protection of trade-marks now in force was promulgated on July 5th of the same year and came into force on January 1st, 1885.

The provisions of this Law have since been modified, partly by a Law of March 5th, 1897, which provided protection to certain so-called "word-marks," and partly by Decrees which were issued later.

The Decrees which are at present in force are (1) the Royal Proclamation of December 31st, 1895, relating to the character of the documents which are to be presented on the registration of trade-marks; (2) the Royal Proclamation of June 25th, 1897, relating to a change in the wording of paragraph 2 of the above-mentioned Royal Proclamation; and (3) the Royal Proclamation of November 18th, 1898, relating to the register of trade-marks.

Paragraph 3 of the Law on trade-marks relates to the formalities required for registration and the costs attached thereto. It runs as follows:—

Anyone who wishes to have a trade-mark registered shall hand into the registration authority, or send in a prepaid letter, a written application containing a clear description of the mark and a full statement of the name, business, and postal address of the applicant or firm, and also in cases where the right to the trade-mark embraces only certain kinds of wares, a statement of those kinds. The application must be accompanied by (1) a drawing upon good stout paper of the mark, in triplicate, not more than 10 centims. long and 15 centims. broad; (2) two stamps such as are used in printing the mark (*clichés*), of the same size as the drawing; (3) a fee of 40 kroner for registration and publication.

There are no fixed forms of publication, but more detailed information as to what the application should contain will be found in the above-mentioned Royal Proclamation of June 25th, 1897.

Beyond the above-mentioned fee of 40 kroner, the applicant has nothing more to pay for registration. The protection of a

registered trade-mark ceases, however, when an application for its renewal is not made, the first time, within ten years of the day of registration, and subsequently, within ten years from the previous day of renewal. A person wishing to renew his registration must hand or send in (in the way stated in paragraph 3 of the Law on trade-marks) a written application to that effect, accompanied by one copy of such drawing as is there prescribed, and also a registration fee of 10 kroner.

To insure mutual protection of trade-marks between Sweden and foreign States, the King has come to an understanding with certain States, and also, by an Act of Adhesion on behalf of Sweden on June 26th, 1885, has become a party to the Convention for the International Protection of Industrial Property, concluded at Paris on March 20th, 1883. His Majesty, by a Royal Proclamation of June 26th, 1885, in regard to States belonging to the Union founded through the above-mentioned convention, has also decreed, among other things, that protection of trade-marks, according to the Law of July 5th, 1884, belongs to those persons who, in a foreign State forming one of the Union, carry on manufactures or trades, agricultural, mining, or other business; and also to those who are the subjects of such a State, or have a fixed residence there but carry on their business in another State.

Besides the documents which, as above stated, must accompany an application for registration, such applications from foreigners must also be accompanied by an attestation, consisting of an extract from the proper register of trade-marks, that the applicant has fulfilled the conditions which in the foreign State are required in order to insure protection of the trade-mark.

#### SWITZERLAND.

The Law of December 19th, 1879, respecting the registration and protection of trade-marks, was superseded by that of September 26th, 1890.

The formalities required by the latter for the registration of a trade-mark are the following:—

An application must be made to the Bureau Fédéral de la Propriété Intellectuelle in French, German, or Italian, in the prescribed form, in duplicate, with a designation of the goods for which it is to be used.

Further, an exact reproduction, in duplicate, of the trade-mark, with the date of deposit, signed by the owner, or his representative, must be sent in, together with a stereotype of the same.

In the case of firms or individuals whose industry is carried on in Switzerland, an official attestation is required as regards their entry in the commercial register, or, in default of such entry, respecting the domicile of the depositor.

In the case of firms or individuals established in other countries

which accord reciprocity of treatment, an official attestation certifying the registration of the trade-mark in question in the country of origin is required.

The right of the depositor to any honorary distinctions mentioned on the trade-mark must be duly established, and it must be shown that a power of attorney has been conferred on the representative who acts for the owner if the latter does not appear personally in the business.

All papers in connection with the application for registration must be in the same language, or a translation furnished at the same time.

The fee for registration is 20 fr. At the expiration of twenty years it is necessary to renew the registration within six months for a fresh term of twenty years, the registration fee being, as before, 20 fr.

A trade-mark which is not made use of during three consecutive years is regarded as having lapsed.

In the case of refusal on the part of the Bureau Fédéral to register the trade-mark, appeal can be made to the competent department; if the decision of the former is upheld, final appeal can be made to the Conseil Fédéral.

A registered trade-mark can only be transferred with the industry the products of which it served to identify. Such transfer is subject to a fee of 20 fr., in addition to the same formalities as were required for the original registration, and is valid for a period of twenty years.

Any change or modification in the designation of the firm must be duly registered, the registration being gratuitous when such modification does not consist of a change of partners, or involve an alteration in the trade-mark. If, on the other hand, the change or modification affects the trade-mark, a tax of 10 fr. is levied, the publication of the trade-mark, as modified, being necessary.

An extension of the use of a registered trade-mark beyond the original limits specified at the time of registration involves formalities identical with those previously required, the fee for such extension being 20 fr., and a fresh period of twenty years commencing from that date.

A restriction, on the other hand, as regards its employment may be simply notified by letter, no tax attaching to such notification.

The cancelling of a registered trade-mark can take place—

By a written renunciation of the same from the owner.

On the expiration of the period of twenty years for which protection was originally granted, if a renewal of the term has not been formally made.

By decision of the competent Federal Department: or, in virtue of a legal sentence justifying the demand for such a step.

The owners of trade-marks applied to products at an exhibition from countries which have no convention with Switzerland

on the subject can enjoy temporary protection for a period not exceeding two years, on the payment of a fee of 10 fr. for registration.

Their application must be accompanied by a stereotype of the trade-mark.

THE UNITED STATES.

Rules governing the Registration of Trade-marks under the Act of March 3rd, 1881.

*Who may Register a Trade-mark.*

17. A trade-mark may be registered by any person, firm, or corporation domiciled in the United States or located in any foreign country which, by Treaty, Convention, or Law, affords similar privileges to citizens of the United States, and who is entitled to the exclusive use of any trade-mark and uses the same in commerce with foreign nations or with Indian tribes.

Also, by any citizen or resident of this country wishing the protection of his trade-mark in any foreign country the laws of which require registration in the United States as a condition precedent upon the payment of the fee required by law and other due proceedings had.

18. Owners of trade-marks for which protection has been sought by registering them in the Patent Office under the Act of the 8th July, 1870 (declared unconstitutional by the Supreme Court of the United States, 16 O.G., 999), may register the same for the same goods, without fee. With each application of this character a specific reference to the date and number of the former certificate is required.

19. Applicants whose cases were filed under the Act of 1870, either prior to or since the decision of the Supreme Court declaring it unconstitutional, which are now pending before the office, must prepare their applications in conformity with the present Law and Rules. On the receipt of such an application, referring to the date of the one formerly filed, all fees paid thereon will be duly applied. Those who have paid only 10 dollars as a first fee are advised that the Law does not provide for a division of the legal fee of 25 dollars, and that the remainder of the entire fee is required before the application can be examined.

20. No trade-mark will be registered unless it shall be made to appear that the same is used as such by the applicant in commerce between the United States and some foreign nation or Indian tribe, or is within the provisions of a Treaty, Convention, or Declaration with a foreign Power, or which is merely the name of the applicant, or which is identical with a known or registered trade-mark owned by another and appropriated to the same class of merchandise, or which so nearly resembles some other person's lawful trade-mark as to be likely to cause confusion in the mind of the public or to deceive purchasers, or which is merely descriptive in its nature.

*The Application.*

21. An application for the registration of a trade-mark must be made to the Commissioner of Patents, and must be signed by the owner of the trade-mark.

22. A complete application comprises—

(a) A brief letter of advice requesting registration, signed by the applicant.

(b) A statement or specification which, in addition to the requirements of sect. 1 of the Statute, must also discriminate between the essential and non-essential features of the trade-mark, and if the applicant be a corporation it must set forth under the laws of what State or nation incorporated.

(c) A declaration or oath complying with sect. 2 of the Statute.

(d) A fac-simile or drawing of the mark.

(e) A fee of 25 dollars.

23. The letter of advice, the statement, and the declaration must be in the English language, and written on one side of the paper only.

24. Pending applications are preserved in secrecy, and no information will be given without authority of the applicant respecting the filing of an application for the registration of a trade-mark by any person, or the subject-matter thereof, unless it shall, in the opinion of the Commissioner, be necessary to the proper conduct of business before the office.

*Declaration or Oath.*

25. The declaration or oath may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any Minister, Chargé d'Affaires, Consul, or Commercial Agent holding commission under the Government of the United States, or before any notary public of the foreign country in which the applicant may be, who is authorized by the laws of said country to administer oaths, the oath being attested in all cases, in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made. When the person before whom the oath or affirmation is made is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a Court of Record or other proper officer having a seal.

26. The declaration cannot be amended. If that filed with the application is faulty or defective, a substitute declaration must be filed.

*Fac-simile or Drawing.*

27. If for any reason a drawing does not constitute a satisfactory fac-simile of the trade-mark, two copies of the trade-

mark as actually used must be deposited in addition to the required drawing, to be preserved in the office for reference.

28.—(1.) The drawing must be made upon pure white paper of a thickness corresponding to three-sheet Bristol board. The surface of the paper must be calendered and smooth. India ink alone must be used, to secure perfectly black and solid lines.

(2.) The size of a sheet on which a drawing is made must be exactly 10 by 15 inches. One inch from its edges a single marginal line is to be drawn, leaving the "sight" precisely 8 by 13 inches. Within this margin all work and signatures must be included. One of the shorter sides of the sheet is regarded as its top, and, measuring downwardly from the marginal line, a space of not less than  $1\frac{1}{4}$  inches is to be left blank for the heading of title, name, number, and date.

(3.) All drawings must be made with the pen only. Every line and letter, signatures included, must be absolutely black. This direction applies to all lines, however fine, and to shading. All lines must be clean, sharp, and solid, and they must not be too fine or crowded. Surface shading, when used, should be open.

(4.) The signature of the proprietor of the trade-mark must be placed at the lower right-hand corner of the sheet and the signatures of the witnesses at the lower left-hand corner, all within the marginal line, but in no instance should they encroach upon the drawing.

(5.) When the view is longer than the width of the sheet, the sheet should be turned on its side, and the heading will be placed at the right and the signatures at the left, occupying the same space and position as in an upright view, and being horizontal when the sheet is held in an upright position.

(6.) Drawings should be rolled for transmission to the office—not folded.

An agent's or attorney's stamp, or advertisement, or written address will not be permitted upon the face of a drawing, within or without the marginal line.

29. The office, at the request of applicants, will furnish the drawings at cost.

#### *Examination of Applications.*

30. All applications for registration are considered in the first instance by the trade-mark examiner. Whenever on examination of an application registration is refused for any reason whatever, the applicant will be notified thereof. The reasons for such rejection will be stated, and such information and references will be given as may be useful in aiding the applicant to judge of the propriety of prosecuting his application.

31. The examination of an application and the action thereon will be directed throughout to the merits; but in each letter the examiner shall state or refer to all his objections.



*Amendments.*

32. The statement may be amended to correct informalities or to avoid objections made by the office, or for other reasons arising in the course of examination; but no amendments will be admitted unless warranted by something in the statement or fac-simile as originally filed.

33. In every amendment the exact word or words to be stricken out or inserted in the statement must be specified, and the precise point indicated where the erasure or insertion is to be made. All such amendments must be on sheets of paper separate from the papers previously filed, and written on but one side of the paper.

Erasures, additions, insertions, or mutilations of the papers and records must not be made by the applicant.

34. When an amendatory clause is amended, it must be wholly re-written, so that no interlineation or erasure shall appear in the clause, as finally amended, when the application is passed to issue. If the number or nature of the amendments shall render it otherwise difficult to consider the case, or to arrange the papers for printing or copying, the examiner may require the entire statement to be re-written.

35. Amendments will not be permitted after the notice of allowance of an application, and the examiner will exercise jurisdiction over such an application only by special authority from the Commissioner.

Amendments not affecting the merits may be made after the allowance of an application, if the case has not been printed, on the recommendation of the examiner, approved by the Commissioner, without withdrawing the case from issue.

36. After the completion of the application the office will not return the papers for any purpose whatever. If the applicant has not preserved copies of the papers which he wishes to amend, the office will furnish them on the usual terms.

*Interferences.*

37. In case of conflicting applications for registration, or in any dispute as to the right to use which may arise between an applicant and a prior registrant, the office will declare an interference, in order that the parties may have an opportunity to prove priority of use, and the proceedings on such interference will follow, as nearly as practicable, the practice in interferences upon applications for patents.

*Appeals or Petitions.*

38. From an adverse decision of the examiner of trade-marks upon an applicant's right to register a trade-mark, or upon any interlocutory matter, or from a decision of the examiner of interferences, the case will be reviewed by the Commissioner, on petition or appeal, without fee.

*Issue, Date, and Duration of Certificate.*

39. When the requirements of the Law and the Rules have been complied with, and the office has adjudged a trade-mark lawfully registrable, a certificate will be issued by the Commissioner, under seal of the Interior Department, to the effect that applicant has complied with the Law, and that he is entitled to the protection of his trade-mark in such case made and provided. Attached to the certificate will be a fac-simile of the trade-mark and a printed copy of the statement and declaration.

40. Before a trade-mark certificate will be delivered, the applicant must furnish a revenue stamp to the value of 10 cents, to be affixed thereto and cancelled as required by the "Act to provide Ways and Means to meet War Expenditures, and for other purposes," approved on the 13th June, 1898.

41. The weekly issue closes on Thursday, and the certificates of registration of that issue bear date as of the third Tuesday thereafter.

42. A certificate of registry shall remain in force for thirty years from its date, except in cases where the trade-mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the Laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this Act at the time that such trade-mark ceases to be exclusive property elsewhere.

At any time during the six months prior to the expiration of the term of thirty years such registration may be renewed on the same terms and for a like period.

*Assignments.*

43. The right to the use of any trade-mark is assignable by an instrument in writing, and provision is made for recording such instrument in the Patent Office. But no such instrument or conveyance will be recorded unless it is in the English language, and unless an application for the registration of a trade-mark shall have first been filed in the Patent Office, and such instrument must identify the application by serial number and date of filing, or, where the mark has been registered, by its certificate number and the date thereof. No particular form of instrument is prescribed.

*Copies and Publications.*

44. After a trade-mark has been registered, printed copies of the statement and declaration in each case, with a fac-simile of the trade-mark, can be furnished by the office upon the payment of the fee.

45. An order for a copy of an assignment must give the liber and page of the record, as well as the name of the proprietor;

otherwise an extra charge will be made for the time consumed in making any search for such assignment.

46. The "Official Gazette" of the Patent Office will contain a list of all trade-marks registered, with the name and address of the registrant in each case, an illustration of the trade-mark, a brief statement of its essential features, and the particular description of goods to which it is applied.

*Fees.*

	Dol.	c.
47. On filing an application for registration of a trade-mark .....	25	00
For abstracts of title—		
For the certificate of search .....	1	00
For each brief from the digests of assignments .....	0	20
For copies of matter in any foreign language, for every 100 words or fraction thereof .....	0	10
For translation, for every 100 words or fraction thereof .....	0	50
For recording every assignment, agreement, power of attorney, or other paper, of 300 words or less .....	1	00
For recording every assignment, agreement, power of attorney, or other paper, of more than 300 words and less than 1,000 words .....	2	00
For recording every assignment, agreement, power of attorney, or other paper, of more than 1,000 words .....	3	00
For assistance to attorneys and others in the examination of records, one hour or less .....	0	50
Each additional hour or fraction thereof .....	0	50
For single printed copy of statement, declaration, and fac-simile .....	0	05
If certified, for the certificate, additional .....	0	25

48. The person ordering any such certificate as specified in Rule 47 must furnish a revenue stamp to the value of 10 cents, to be affixed to the certificate and cancelled as provided for by the "Act to provide Ways and Means to meet War Expenditures, and for other purposes," approved on the 13th June, 1898.

49. Money required for office fees may be paid to the Commissioner, or to the Treasurer, or any of the Assistant Treasurers of the United States, or to any of the depositaries, national banks, or receivers of public money designated by the Secretary of the Treasury for that purpose, who shall give the depositor a receipt or certificate of deposit therefor, which shall be transmitted to the Patent Office. When this cannot be done without inconvenience, the money may be remitted by mail, and in every such case the letter should state the exact amount inclosed. All money orders should be made payable to the "Commissioner of Patents."

50. All money sent by mail, either to or from the Patent Office, will be at the risk of the sender. All payments to the office must be made in specie, Treasury notes, national bank notes, certificates of deposit, post office money orders, postal notes, or certified cheques.

*Repayment of Money.*

51. Money paid by actual mistake, such as a payment in excess, or when not required by Law, or by neglect or misinformation on the part of the office, will be refunded; but a mere change of purpose after the payment of money, as when a party desires to withdraw his application for the registration of a trade-mark, will not entitle a party to demand such a return.



**2. Colonial Laws.**

It has not been thought necessary to increase the size of the book by a summary of the provisions of the trade-marks laws of the colonies, as these follow very closely the lines of Imperial legislation on the subject. The Hong Kong Ordinance of 1898 (No. 14 of 1898) is a recent and typical instance (a).

(a) See p. 850, as to Merchandise Marks.

**No. 14.****TREATY WITH THE UNITED STATES.**

The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Government of the United States of America, with a view to the reciprocal protection of the marks of manufacture and trade in the two countries, have agreed as follows:—

The subjects and citizens of each of the Contracting Parties shall have, in the dominions and possessions of the other, the same rights as belong to native subjects or citizens, or as are now granted or may hereafter be granted to the subjects and citizens of the most favoured nation in everything relating to property in trade-marks and trade-labels.

It is understood that any person who desires to obtain the aforesaid protection must fulfil the formalities required by the laws of the respective countries.

In witness whereof the undersigned have signed the present declaration, and have affixed thereto the seal of their arms.

Done at London, the 24th day of October, 1877.

**DERBY.**  
**EDWARD PIERREPONT.**

**No. 15.**

**MERCHANDISE MARKS ACT, 1887 (a).**

(50 & 51 Vict. c. 28.)

**ARRANGEMENT OF SECTIONS.**

**SECT.**

1. Short title.
2. Offences as to trade-marks and trade descriptions.
3. Definitions.
4. Forging trade-mark.
5. Applying marks and descriptions.
6. Exemption of certain persons employed in ordinary course of business.
7. Application of Act to watches.
8. Mark on watch case.
9. Trade-mark, how described in pleading.
10. Rules as to evidence.
11. Punishment of accessories.
12. Search warrant.
13. Extension of 22 & 23 Vict. c. 17, to offences under this Act.
14. Costs of defence or prosecution.
15. Limitation of prosecution.
16. Prohibition on importation.
17. Implied warranty on sale of marked goods.
18. Provisions of Act as to false description not to apply in certain cases.
19. Savings.
20. False representation as to Royal Warrant.
21. Application of Act to Scotland.
22. Application of Act to Ireland.
23. Repeal of 25 & 26 Vict. c. 88.

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*An Act to consolidate and amend the Law relating to Fraudulent  
Marks on Merchandise.* [23rd August, 1887.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Merchandise Marks Act, 1887. Short title.

2.—(1.) Every person who—

- (a) forges any trade-mark (pp. 560 to 566) ; or
- (b) falsely applies to goods any trade-mark or any mark so nearly resembling a trade-mark as to be calculated to deceive (pp. 567 to 569) ; or

Offences as to  
trade-marks  
and trade  
descriptions.

(a) See Book II., p. 554.

- (c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade-mark (pp. 560 to 566); or
- (d) applies any false trade description to goods (pp. 569 to 596); or
- (e) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade-mark (pp. 560 to 566); or
- (f) causes any of the things above in this section mentioned to be done (p. 596),

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud (pp. 601 to 604), be guilty of an offence against this Act.

(2.) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade-mark or false trade description is applied, or to which any trade-mark or mark so nearly resembling a trade-mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

- (a) That having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade-mark, mark, or trade description; and
  - (b) That on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or
  - (c) That otherwise he had acted innocently;
- be guilty of an offence against this Act (pp. 607 to 610).

(3.) Every person guilty of an offence against this Act shall be liable (p. 611)—

- (i.) on conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and
- (ii.) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and
- (iii.) in any case, to forfeit to her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(4.) The Court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the Court thinks fit (p. 611).

(5.) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions (p. 617).

(6.) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly (p. 612).

42 & 43 Vict.  
c. 49.

3.—(1.) For the purposes of this Act—

The expression “trade-mark” means a trade-mark registered in the Register of trade-marks kept under the Patents, Designs, and Trade-Marks Act, 1883, and includes any trade-mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of the one hundred and third section of the Patents, Designs, and Trade-Marks Act, 1883, are, under Order in Council, for the time being applicable (p. 560):

Definitions.  
46 & 47 Vict.  
c. 57.

The expression “trade description” means any description, statement, or other indication, direct or indirect,

- (a) as to the number, quantity, measure, gauge, or weight, of any goods, or
- (b) as to the place or country in which any goods were made or produced, or
- (c) as to the mode of manufacturing or producing any goods, or
- (d) as to the material of which any goods are composed, or
- (e) as to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act (pp. 570 to 584):

The expression “false trade description” means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade-mark, or part of a trade-mark, shall not prevent such trade description being a false trade description within the meaning of this Act (pp. 584 to 588):



The expression "goods" means anything which is the subject of trade, manufacture, or merchandise (p. 567):

The expressions "person," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate (p. 558):

The expression "name" includes any abbreviation of a name (p. 592).

(2.) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade-mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are (p. 588).

(3.) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials of a person which—

- (a) are not a trade-mark, or part of a trade-mark, and
- (b) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials, and
- (c) are either those of a fictitious person or of some person not *boni fide* carrying on business in connection with such goods (pp. 590 to 594).

Forging  
trade-mark.

4. A person shall be deemed to forge a trade-mark who either—

- (a) without the assent of the proprietor of the trade-mark makes that trade-mark or a mark so nearly resembling that trade-mark as to be calculated to deceive; or
- (b) falsifies any genuine trade-mark, whether by alteration, addition, effacement, or otherwise;

and any trade-mark or mark so made or falsified is in this Act referred to as a forged trade-mark.

Provided that in any prosecution for forging a trade-mark the burden of proving the assent of the proprietor shall lie on the defendant (p. 563).

Applying  
marks and  
descriptions.

5.—(1.) A person shall be deemed to apply a trade-mark or mark or trade description to goods who—

- (a) applies it to the goods themselves; or
- (b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture: or

- (c) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade-mark or trade description has been applied; or
- (d) uses a trade-mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade-mark or mark or trade description (p. 567).

(2.) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade-mark, or mark, or trade description, shall be deemed to be applied, whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing (p. 568).

(3.) A person shall be deemed to falsely apply to goods a trade-mark, or mark, who without the assent of the proprietor of a trade-mark applies such trade-mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade-mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant (p. 569).

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade-mark, or with falsely applying to goods any trade-mark or any mark so nearly resembling a trade-mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

**Exemption of certain persons employed in ordinary course of business.**

- (a) That in the ordinary course of his business he is employed on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade-marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (b) That he took reasonable precautions against committing the offence charged; and
- (c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade-mark, mark, or trade description; and
- (d) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade-mark, mark, or description was applied—

he shall be discharged from the prosecution, but shall be liable

to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence (pp. 597 to 600).

Application  
of Act to  
watches.

7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case (p. 620).

Mark on  
watch case.

8.—(1.) Every person who after the date fixed by Order in Council sends or brings a watch case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch case made in the United Kingdom), and in such a mode as may be from time to time directed by Order in Council (pp. 622, 837).

(2.) The declaration may be made before an officer of an assay office, appointed in that behalf by the office (which officer is hereby authorized to administer such a declaration), or before a justice of the peace, or a commissioner having power to administer oaths in the Supreme Court of Judicature in England or Ireland, or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council (p. 838).

(3.) Every person who makes a false declaration for the purposes of this section shall be liable, on conviction on indictment, to the penalties of perjury, and on summary conviction to a fine not exceeding twenty pounds for each offence (p. 640).

Trade-mark,  
how described  
in pleading.

9. In any indictment, pleading, proceeding, or document, in which any trade-mark or forged trade-mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or fac-simile, to state that trade-mark or forged trade-mark to be a trade-mark or forged trade-mark (p. 563).

Rules as to  
evidence.

10. In any prosecution for an offence against this Act,—

(1.) A defendant, and his wife or her husband, as the case

may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness (p. 605).

- (2.) In the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced (p. 576).

11. Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act which, if committed in the United Kingdom, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanour had been there committed (p. 600).

Punishment  
of accessories.

12.—(1.) Where, upon information of an offence against this Act, a justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said justice on or after issuing the summons or warrant, or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

Search  
warrant.

(2.) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3.) Any goods or things forfeited under this section, or under any other provision of this Act, may be destroyed or otherwise

disposed of, in such manner as the Court by which the same are forfeited may direct, and the Court may, out of any proceeds which may be realized by the disposition of such goods (all trade-marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods (pp. 618 to 620).

Extension of  
22 & 23 Vict.  
c. 17, to  
offences under  
this Act.

13. The Act of the session of the twenty-second and twenty-third years of the reign of her present Majesty, chapter seventeen, intituled, "An Act to prevent vexatious indictments for certain misdemeanours," shall apply to any offence punishable on indictment under this Act, in like manner as if such offence were one of the offences specified in section one of that Act, but this section shall not apply to Scotland (p. 615).

Costs of  
defence or  
prosecution.

14. On any prosecution under this Act the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively (p. 616).

Limitation of  
prosecution.

15. No prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens (p. 615).

Prohibition on  
importation.

16. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Act; be it therefore enacted as follows (pp. 624 to 638):

- (1.) All such goods, and also all goods of foreign manufacture, bearing any name or trade-mark being or purporting to be the name or trade-mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade-mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section forty-two of the Customs Consolidation Act, 1876 (pp. 627 *et seq.*).
- (2.) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported (p. 635).
- (3.) The Commissioners of Customs may from time to time

39 & 40 Vict.  
c. 36.

make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence (p. 635).

- (4.) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom (p. 578).
- (5.) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
- (6.) The Commissioners of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Commissioners of her Majesty's Treasury.
- (7.) The regulations may provide for the informant reimbursing the Commissioners of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.
- (8.) All regulations under this section shall be published in the "London Gazette" and in the "Board of Trade Journal."
- (9.) This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.
- (10.) Section two of the Revenue Act, 1883, shall be repealed as from a day fixed by regulations under this section, not being later than the first day of January one thousand eight hundred and eighty-eight, without prejudice to anything done or suffered thereunder. 46 & 47 Vict. c. 55.

17. On the sale or in the contract for the sale of any goods to which a trade-mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade-mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered

Implied warranty on sale of marked goods.

at the time of the sale or contract to and accepted by the vendee (p. 520).

Provisions of Act as to false description not to apply in certain cases.

18. Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there (p. 594).

Savings.

19.—(1.) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2.) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master (p. 618).

False representation as to royal warrant.

20. Any person who falsely represents that any goods are made by a person holding a royal warrant, or for the service of her Majesty, or any of the Royal Family, or any government department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds (p. 641).

Application of Act to Scotland.

21. In the application of this Act to Scotland the following modifications shall be made:—

The expression "Summary Jurisdiction Acts" means the Summary Procedure Act, 1864, and any Acts amending the same.

The expression "justice" means sheriff.

The expression "Court of Summary Jurisdiction" means the Sheriff Court, and all jurisdiction necessary for the purpose of this Act is hereby conferred on sheriffs.

Application of Act to Ireland.

22. In the application of this Act to Ireland, the following modifications shall be made:—

The expression "Summary Jurisdiction Acts" means, so far

as respects the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace of such district, and as regards the rest of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same. 14 & 15 Vict. c. 93.

The expression "Court of Summary Jurisdiction" means justices acting under those Acts.

23. The Merchandise Marks Act, 1862, is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this Act; provided that this repeal shall not affect— Repeal of 25 & 26 Vict. c. 88.

- (a) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor
- (b) the institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Act; nor
- (c) any right, privilege, liability, or obligation acquired, accrued, or incurred under any enactment hereby repealed.



## No. 16.

## MERCHANDISE MARKS ACT, 1891.

(54 VICT. c. 15.)

*An Act to amend the Merchandise Marks Act, 1887.*

[11th May, 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Customs entry  
to be trade  
description.  
50 & 51 Vict.  
c. 28.  
Official  
prosecutions.

1. The customs entry relating to imported goods shall, for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods (p. 583).

2.—(1.) The Board of Trade may, with the concurrence of the Lord Chancellor, make regulations providing that in cases appearing to the Board to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution of offences under the Merchandise Marks Act, 1887, shall be undertaken by the Board of Trade, and prescribing the conditions on which such prosecutions are to be so undertaken. The expenses of prosecutions so undertaken shall be paid out of moneys provided by Parliament.

(2.) All regulations made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act, and shall be published under the authority of Her Majesty's Stationery Office.

(3.) Nothing in this Act shall affect the power of any person or authority to undertake prosecutions otherwise than under the said regulations (pp. 612, 840).

Short title.

3. This Act may be cited as the Merchandise Marks Act, 1891, and the Merchandise Marks Act, 1887, and this Act may be cited together as the Merchandise Marks Act, 1887 and 1891.

**No. 17.**

**MERCHANDISE MARKS (PROSECUTION) ACT, 1894.**

*An Act for enabling the Board of Agriculture to undertake Prosecutions in certain cases under the Merchandise Marks Act, 1887.* [20th July, 1894.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The powers exercisable by the Board of Trade under the Merchandise Marks Act, 1891, with respect to the prosecution of offences under the Merchandise Marks Act, 1887, may in cases which appear to the Board of Agriculture to relate to agricultural or horticultural produce be exercised by that Board, and in such cases the former Act shall apply as if the Board of Agriculture were referred to therein instead of the Board of Trade (p. 613 and pp. 841 to 843). Power of Board of Agriculture to prosecute in certain cases. 54 & 55 Vict. c. 28.

2. This Act shall not extend to Ireland.

Extent of Act.

3. This Act may be cited as the Merchandise Marks (Prosecutions) Act, 1894, and shall be read with the Merchandise Marks Acts, 1887 and 1891. Short title.

## No. 18.

GENERAL ORDERS ON THE MERCHANDISE  
MARKS ACT, 1887.

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## A.—GENERAL ORDER 15/1900.

CUSTOM HOUSE, LONDON,  
26th February, 1900.

*Consolidated Instructions.*

The following consolidation of the General Orders and other instructions on the subject of the Merchandise Marks Act of 1887, is issued for the information and guidance of the officers.

1. The regulations made by the Board under sect. 16 of the Merchandise Marks Act, 1887, will be found on page 18 (p. 830).

Goods with-  
out marks.

2. Goods imported into the United Kingdom which do not bear any marks whatever, either on the goods themselves or on the coverings containing them, are not subject in any way to the Act, and therefore need not bear any statement or indication, such as "Made abroad," "Made in Germany," &c.

3. Although the Act draws no special distinction, except as regards the requirement of qualification in certain cases under sect. 16, between goods prohibited on account of marks suggesting British origin and goods prohibited on other grounds, for the purposes of customs administration it is convenient to deal with them separately. The goods, therefore, prohibited under the Act to which the attention of officers is called may be classed under two heads:

(A) Goods with marks which suggest British origin and require, in order to legalize their importation, some counteracting qualification (paragraph 4).

(B) Goods with marks prohibited on other grounds (paragraph 19).

It is to be noted that by sect. 1 of the Merchandise Marks Act, 1891 (54 Vict. c. 15), the customs entry relating to imported

goods shall, for the purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

**(A) Goods with Marks suggesting British Origin.**

4. Goods falling under (A) may be again subdivided:—

- (a) Goods, whether manufactured or raw, having applied to them any description, figures, words, or marks, or arrangement or combination thereof, which by being or including, either expressly or by reference, the name of a place in or a part of the United Kingdom (*e.g.*, "Irish" = "of Ireland"), or in any other way, constitute a statement or other indication, direct or indirect, that the goods were made or produced in the United Kingdom.
- (b) Goods of foreign manufacture bearing any name or mark which is, or purports to be, the name or trade-mark of a manufacturer, dealer, or trader in the United Kingdom.
- (c) Goods, whether manufactured or raw, having applied to them a generally used trade description, which in indicating a particular class of goods or method of manufacture, includes expressly the name of a place in, or a part of, the United Kingdom, and is thereby calculated to mislead as to the place of the manufacture or production of the goods. This class, though in fact only a case of (a), is dealt with specially by the Act (sect. 18).

5. (A) (b) relates to manufactured goods, and not to entirely raw goods, and the word "purports" is to be understood as referring to any name or names reasonably suggesting a British manufacturer, dealer, or trader, whether the name is or is not known to the officer; or as referring to a trade-mark, not being merely matter of decoration or ornament, which reasonably suggests itself as British by containing English wording, or other representation specially designed to convey, and, in fact, conveying, an impression of British manufacture.

6. As to (c) that the words "trade description which in indicating a particular class of goods or method of manufacture, includes the name of a place in or a part of the United Kingdom, and is thereby calculated to mislead" (*see* 4 (c)) mean such terms as Kidderminster Carpets, "Balbriggan" on Hosiery, or "Shetland" on Shawls, and the like, which, although they might be held to be merely phrases descriptive of method of manufacture, are yet calculated to mislead as to place of origin. Where, however, such a description has become associated with a particular class of goods in a manner practically to preclude any probability of deception, as "Portland Cement" and "Bath Chaps," the description need not be accompanied by a statement of the country of actual production. This applies also to the

Places  
indicating  
method of  
manufacture.

case of colonial names describing, for instance, classes of wool, &c., where, although the names are British, the circumstances preclude mistake.

7. All such goods as above specified are to be detained and reported to the Board unless they are qualified as follows:—

As to (a), by a definite indication of make or production out of the United Kingdom.

As to (b), by a definite indication of the country in which the goods were made.

As to (c), by the name of the country in which the goods were actually made or produced, with a statement that they were made or produced there.

When "made in" not required.

8. With regard to (a), "Made abroad" will be generally sufficient. With regard to (b), the name of the country is a sufficient indication, without the words "made in," if the name or trade-mark only appears. Where there is an address, as "John Smith, Sheffield," then the qualification must be "Made in Germany," or similar wording; "Germany" alone would not counteract "Sheffield"; (c) requires the full statement "Made in Germany."

Actual place of origin.

9. Officers are not expected to decide whether goods were actually made or produced in the country from which in the qualification they are stated to come; the name of *some* foreign country, or of some place in a foreign country is sufficient.

Place-name alike in United Kingdom and abroad.

10. If the goods bear the name of a place identical with, or a colourable imitation of, the name of a place in the United Kingdom, the name should be accompanied by the name of the country in which the place is situated. Thus Boston, in Massachusetts, should be accompanied by the name "United States," or by the initials "U.S.A.," or even by the abridgment "Mass."

English language on goods.

11. The use of the English language applied as a description to goods imported from non-English speaking countries is not, simply as language and where not involving the name of any place in, or part of, the United Kingdom, a "direct," and, as a rule, is not to be regarded as an "indirect," indication of British origin. Where, however, there is good ground for considering that the use of the language was specially designed to convey, and does in fact convey, an impression of such origin, then the language will be a description within (a) of paragraph 4.

#### Initials.

Initials.

12. "Initials" under the Act, though not treated as names generally, are to be so treated in certain cases, of which the following are all of which the officers need take cognizance:—

- (i.) Where the initials are followed by affixes distinctly suggesting a British firm as "& Co." from countries where that affix is not used, which includes all the continental countries except Germany, and "Brothers" or "Bros." or the like, which applies to all non-

English speaking countries. This holds as to all goods whether manufactured or raw; but in respect of baskets and the like, holding raw fruit, eggs, &c., and sent to and from the Continent, the rule, when the baskets, &c., will not meet the eyes of retail buyers, is not strictly applied.

- (ii.) Where, in respect of manufactured goods, the name or mark of a manufacturer, dealer, or trader in the United Kingdom is prohibited, on foreign goods, even his own property, without a definite qualification, the initials will fall within the prohibition if they are easily recognizable as those of persons or firms so well-known as to make the initials practically equivalent to the name itself; and also, where they are the initials of known consignees of the goods who will bring them into consumption in the same "coverings." Where the consignees are not known, and no special fact calls attention to the goods, they may, as regards initials, be passed.

*Packing Cases and Coverings.*

13. Goods will not be liable to detention when the name of a port or place of destination is applied to mere packing cases or outer wrappers in which goods are clearly not intended to be sold or exposed for sale, or if exposed for sale, then in an export market. Address marks, when they are merely and manifestly such, for purposes of carriage only, are not marks within the Act. Cases and coverings.

14. "Coverings" such as boxes, capsules, bottles, &c., are to be judged with discrimination as to whether the marks, if any, on them, refer to them, or to the goods they are to cover. If the marks on them refer, as is rarely the case, distinctly to the coverings, the case should be reserved for the Board. If the marks, such as Royal Arms, or the like, refer to the goods to be covered, and it is shown to the satisfaction of the officer that they will be British goods, or goods as to which British marks are not objectionable, and do not refer to the coverings themselves, then the coverings may be regarded as not contrary to the Act.

15. This principle will apply to coverings (such as ornamental boxes for tobacco, tea, or confectionery), with names on them of firms who have ordered the coverings for their own goods, or where such firms, though not having actually ordered the coverings themselves, consent in writing to their importation for such goods.

*Grain Sacks.*

16. The name and address of a merchant in this country upon grain sacks, are to be regarded as an indication that the grain is of British origin, and will require the addition of a statement of Grain sacks.

the country of production. In the case of grain imported in bulk and transferred *after due entry and clearance* into sacks on board the importing ship, such marking of the sacks need not be qualified with a statement of the foreign origin of the grain.

*Samples, &c.*

Samples.

17. Samples or patterns, readily distinguished as such, and valueless in themselves, are not to be treated as under the Act so far as British origin is concerned.

*Goods not Produced in United Kingdom.*

Non-products  
of United  
Kingdom.

18. Goods not produced in the United Kingdom, such as wine, tea, and other produce not grown in this country, such as linseed, rapeseed, &c., are also treated as not under the Act, so far as British origin is concerned. This is applied further to some special forms of manufacture which, by shape, make, or colour, cannot be mistaken for the manufacture here of the same article, as, for instance, Dutch cheese of the kind well-known to be made in Holland, bearing the initials of British dealers.

**(B) Goods Prohibited on other grounds.**

19. Goods prohibited on grounds other than marking suggestive of British origin are those which, whether manufactured or raw, have applied to them a false trade description

- (a) As to the place or country in which they were made or produced ;
- (b) As to trade-marks or names so as to constitute forgery ;
- (c) As to number, quantity, measure, gauge or weight, and mode of manufacture or material ;
- (d) As to being the subject of any existing patent, privilege, or copyright.

Marks as  
between  
foreign  
countries.

20. As to (a), this relates, of course (British origin having been dealt with above), to questions between two foreign countries; that is to say, to goods with marks indicating make or production in a place or country which is not that in which the goods were made or produced. The Act does not specify particularly what is to be the qualification here; but if the mark indicates, expressly, or by reference, a place or country not that, in reality, of the make or production of the goods, there must be a definite qualification to the effect that the goods were not made or produced in the place or country indicated; or, a definite indication of the place or country in which the goods were made or produced.

Mark  
including  
place-name.

21. A mark which, though not naming, *includes* the name of a place or country, is to be held as naming such place or country. For instance, a wine, the produce of Germany, and described as "Port" or "Sherry" (which words include the names of the places Oporto and Xeres), should have that de-

scription accompanied by the statement "produced in Germany," or should be described as "German Port" or "Australian Sherry," &c. Such a mark as "Lancashire Swedish" on Swedish iron, where the qualifying word follows the misleading name, may be admitted. As in marks suggesting British origin, exception to this rule is made in cases where the name of a place in a trade description is indicative merely of the character of the goods, and is not calculated to mislead as to the country of origin. The description "Brussels Carpet" is an exception of this kind.

22. For judging between two foreign countries the Act provides that, in the absence of proof to the contrary, the port of shipment of goods shall be *prima facie* evidence of the place or country in which the goods were made or produced; and this rule the officers can, generally, act upon. Where, however, the port of shipment is merely an ordinary trading route from some inland country, as Rotterdam or Antwerp with respect to Germany, or Hamburg with respect to Austria, the officers may, if they have no reason to doubt the good faith of the importer, accept the statement that the goods are the make or produce of the inland country.

Port of shipment evidence of origin.

23. The use of language of one foreign country on goods of another must not be viewed more strictly than its use in cases indicating British origin, dealt with in paragraph 11. The use of a certain language is allowed freely to *all* countries when, by custom, that language is usually applied to such goods: *e.g.*, Spanish on tobacco and cigars, when the recognized words are applied only to colour, shape, size, and the like; or French on sardines, when confined to the words "Sardines à l'huile," without any additional French description.

Foreign language not of country of origin.

24. The forging of a trade-mark (par. 19 (b)) is the application to goods of any figure, words, or marks, or arrangement or combination thereof, reasonably calculated to lead persons to believe that the goods are the manufacture or the merchandise of some person other than the person whose manufacture or merchandise they really are; and this includes the name or initials of a person. The figures, words, or marks applied need not be an actual trade-mark, or actual name or initials, provided they are a colourable imitation of the mark, name, or initials of a person carrying on business in connection with goods of the same description, and are used without his authority.

Forging trade-mark.

### Registration.

25. As to goods under all the three heads, (b), (c), and (d), of paragraph 19, the difficulty of detection by officers, without special information, and more particular examination than is ordinarily bestowed for revenue purposes, is greater than in the case of goods falling under (a), but as regards the forging of trade-marks (b), as above explained, while it would not be possible for officers to enter into the examination of all names and marks so as to detect fraud of this kind, the Board have, nevertheless, felt that a manufacturer, dealer, or trader who has reason to

Registration.



believe that his name or trade-mark is one not unlikely to be imitated, so as to constitute a forgery, is entitled to ask that, without the requirement of information beforehand, goods so marked shall be stopped; and to meet this the Board have established the following system.

Detention on account of registration.

26. They have established a system of registration of name or marks so that a manufacturer, dealer, or trader, may register his name or mark at such port or ports as he desires. In respect of names or marks so registered, it will be the duty of the officers, at the particular port or ports, to prevent the delivery of goods to which such names or marks or imitations of them as above explained may be applied, unless the delivery is authorized by the registered proprietor.

27. When goods are thus detained on account of names or marks which have been registered in this Department, care is to be taken in every case that, in addition to the usual notice of seizure required under section 207 of the Customs Consolidation Act, information of the detention, and of the cause of such detention, shall be at once given in writing to the person who has so registered his name or mark, or to the representative appointed by him to authorize delivery of the goods, who is to be informed that unless immediate attention is given to the matter the goods will be released. If, at the end of forty-eight hours, the collector (or other principal officer concerned) does not receive a reply he will release the goods; but collectors will observe that the limit to the time of detention here laid down does not apply in cases where the marks are such as to render the goods liable to detention irrespective of the question of registration. In any case of detention under this system of registration the Board, if they see fit, may order security to be given if prolongation of the detention is requested, and the matter is, at all, one of doubt.

Registering foreign marks; and agency.

28. Any manufacturer, dealer, or trader, whether British or foreign, may register his name or mark; but officers may refuse registration to any name or mark which they consider to be of a character too indefinite or indistinct to recognise, referring to the Board in any case of doubt. An applicant for registration must prove his proprietorship of the name or mark by declaration (see Form C. in the Appendix); and if, in order to avoid delay, he desires to do so, he may appoint an agent to give authority for delivery of his goods.

Registered marks on goods imported by owner.

29. It must, however, be distinctly understood that the use by any manufacturer, dealer, or trader in the United Kingdom of even his *own* name on foreign goods, and the use by any manufacturer, dealer, or trader, on like goods, of words, figures, or marks of any kind stating or indicating, directly or indirectly, make or production in the United Kingdom, are prohibited unless such goods are properly qualified by the required definite indication of origin. It must, therefore, be clearly explained to every person registering a name or mark which involves any such statement or indication, as will probably often be the case,

that, while the name or mark will be guarded by such registration, it will not be rendered admissible unless duly qualified, as the law may require, in every case.

30. Goods bearing a mark registered in this Department may be delivered by the officers without reference to the Board on receipt by them of the authority of the proprietor of the mark, or of his duly appointed agent, provided the mark be properly qualified, as in this Order shown. Release when qualified.

### General.

#### *British Returned Goods.*

31. British goods returned bearing the name, brand, or mark of any British manufacturer may be admitted upon proof of their origin being furnished. This may be done by Bill of Store; or by a declaration by the importer that the goods are, to his knowledge, British goods returned, and were originally manufactured in this country; or by and with the consent in writing of the proprietor of such name, brand, or mark, or his legal representative (42 & 43 Vict. c. 21, s. 6). British returned goods.

32. The declaration by the importer as to the British origin of the goods may be in the usual form as an ordinary customs document, but if the officer sees reason to doubt it, he should refer the papers to the Board; and he should, in no case, require a statutory declaration, under the Act as to such declarations, without the Board's order.

33. On any other point British goods returned will not be dealt with except on information.

#### *Goods for Private Use.*

34. Dutiable.—Tobacco, including cigars, not exceeding 20 lb., wine not exceeding twelve gallons, and spirits not exceeding one-half that quantity, in any one consignment, may be admitted free of the Act, on the officer being satisfied that the goods are for private use. Private use.

35. Non-dutiable.—Such goods sent as presents, or for personal use, and not in any process of sale or purchase, are similarly free of the Act, and this especially includes articles not new, and which are manifestly private property, such as clothing, or other personal effects, and old, used, and damaged articles sent for repairs, imported by, or consigned to, persons whose names are on them. This applies also to presents to corporate bodies or public institutions.

#### *Goods in Transit.*

36. Under the Transshipment Regulations, transshipment and transit goods are not to be specially examined for the purpose of scrutinizing marks *in the absence of information* (General Transshipment goods.

Order 1864); nor are such goods to be detained under the Merchandise Marks Act unless they infringe its provisions in one or other of the following ways:—

- (a) By reason of their bearing marks which raise a clear and direct claim to British origin; or
- (b) By reason of their bearing the name or trade-mark of a manufacturer, dealer, or trader in the United Kingdom, without qualification; or
- (c) By reason of their bearing a trade-mark specially registered at the customs.

When the marks on a package, or on goods found therein, contravene the Merchandise Marks Act, all the packages of the same mark on the entry are to be examined, the packages with other marks being treated as if on a separate entry.

This direction also applies to goods entered for home consumption, but intended to be forthwith re-shipped for exportation, on production of satisfactory evidence (such as Bills of Lading, Invoices, &c.), of the final destination abroad of the goods; but they are subject to examination under G.O. 1864, as laid down in G.O. 1865, par (8).

#### *Marks not descriptive but part of the Goods.*

Marks where part of goods.

37. Wording or marking, whatever may be its character, if it is not a description "applied" to goods, but part of the goods themselves, as, for instance, the regulating words on a thermometer, the titles of books, christian names on handkerchiefs, such words as "a present from Margate" on china, and the like, are not amenable to the Act.

Goods imported for advertising purposes only, and not for sale, although bearing the name, or name and address of a British trader, provided he is not a maker of, or dealer in, such articles, may be delivered upon a written statement to that effect from the person whose name is on the goods.

#### *Reports of Detention.*

Detained goods to be reported at once; monthly and quarterly.

38. Report (on Form 294) is to be made immediately of all cases of detention of goods, stating briefly the number of packages detained, the port from which they come, the marks and numbers of the packages, the description and value of the goods, and the objectionable marking, whether by means of labels or on the goods themselves, on account of which they are detained. Reference should be made to any previous cases of the importation of illegally marked goods consigned to the same merchants or coming from the same consignor.

A monthly return is to continue to be made to the Board, being forwarded to the solicitor on Forms 401 and 402.

A quarterly return is to be made to the Board (Div. IV.) on Form No. 398, for which purposes the present form of record at the various stations is to be maintained.

39. Immediate reports of detentions of goods may be dispensed with when such detentions are made in consequence of the absence of evidence that the marks on the goods are correct, provided that the officers have reason to believe that such evidence will be forthcoming within a reasonable time. On production of the evidence, the officers, if satisfied therewith, will deliver the goods. This direction will include British returned goods bearing marks which would be open to objection on goods of foreign origin; also goods bearing marks indicative of origin in some country other than that from which the goods are imported, when such marks are believed to be authentic.

When report dispensed with.

40. The whole of the marks found on the detained goods should be reported, including the marks on cartons, cases, &c., containing the goods and not merely the actual mark for which the detention has been made.

All marks to be reported.

*Qualifying Words to be conspicuous, &c.*

41. The officers are to take care that, in all cases where the Board allow qualifying words to be added before the delivery of goods, such words are applied in characters clear, conspicuous, and as indelible as the marks requiring qualification, and in close proximity to those marks.

Qualification to be conspicuous.

*Seizures and Unclaimed Goods.*

42. In all cases in which goods are ordered to be retained as seizures, a *full examination* of the contents of all the packages should be made as soon as the order for seizure is given, and any discrepancy between the marks originally reported and those found on the goods should be communicated to the Board forthwith.

Seizures. Full examination.

But if an importer should express a wish not to have *all* his packages opened, officers may forego this upon a consent in writing from him, or his agents, that the whole consignment shall be taken as having marks applied to them similar to those on the goods in the packages already opened.

43. Goods which have been placed under detention on account of illegal marks, and in respect of which no applications have been made by the importers for, or no steps taken to carry out the conditions imposed by the Board on their release, are to be removed to the Queen's Warehouse, within two months from the date of the Board's order for their detention, without special directions in each case, if the officers see no circumstances which call for exceptional treatment. They are to be entered in the Monthly Seizure Account.

Goods in London not claimed within two months.

*Patent or Copyright on Goods.*

44. In order that there may be no risk of goods protected by

Goods for sale: patent or copyright.

patent or copyright in the United Kingdom being offered for sale by this Department, in submitting accounts of seizures under the Act, particular attention should be called in column 8 to any goods included for disposal marked "Patent," or "Copyright," or which the officers have any reason to suppose are patented, or the subject of copyright, in this country.

#### *Watch Cases and Watches.*

Watch cases and watches.

45. A special provision as to watch cases and watches is made by sect. 7 of the Act. It provides that, as regards watches, any mark on the case is to be deemed to extend to the watch. If, therefore, a watch case is made in this country, with any statement or indication of origin such as, for instance, a British hall-mark, and having been exported, is returned with a foreign movement, then, in the absence of a counter description on the watch itself, the mark on the case will apply to the watch.

General Order 1888, which goes fully into this subject, is not affected by this Consolidating Order (a).

#### *Procedure on Information.*

Detentions on information.

46. It must be borne in mind that information, in itself, even though given, is not a mandate to the Crown to detain; and no detention should on account of it be made where it is clear that the law would be against it. Officers may sometimes see at once that a consignment to which the information points does not infringe the law, and they will then not detain the goods. But they are authorized to make, when necessary, a fuller examination than ordinarily takes place.

Deposit or bond.

47. In any other case the officer will detain the goods, and require (if it is not already given) immediate security, as in Regulation 4 (p. 20) (b). The sufficiency of the sureties named in the notice of information must be tested in the usual way. Regulation 7 (p. 20) (b) shows when the security will be delivered up.

No security, no detention.

Whenever security is not duly given, there will be no further detention.

Information as to origin.

48. Information will not generally touch the point of origin. Whenever it does do so, and affects the interests of "British Possessions" or "Foreign States," if the name complained of is found to be applied to the goods, and is the name of a country, or of a place in a country, not the country of the port of shipment, the officer may, in the absence of proof of make or produce at the place or in the country named on them, be satisfied that the alleged infringement clearly exists. This is in accordance with the principle in paragraph 22.

Forged marks in certain States and British Possessions.

49. Whenever an information relates to a forged trade-mark alleged to be one recognised in a British Possession or foreign State, information will not be good unless it relates to a Possession or State to which sect. 103 of the Patents, Designs,

(a) Printed p. 837.

(b) Page 833, below.

and Trade Marks Act, 1883, has been applied by Orders in Council, viz. :—

BRITISH POSSESSIONS	..	{	New Zealand. Queensland. Tasmania. Western Australia.
FOREIGN STATES	..	{	Belgium. Denmark, including Faroë Islands. France. Greece. Italy. The Netherlands. Norway. Portugal, including Azores and Madeira. Roumania. Servia. Spain. Sweden. Switzerland.
IN N. AND S. AMERICA AND THE W. INDIES	..	{	Brazil. Ecuador. Mexico. Paraguay. San Domingo. Surinam and Curaçao. The United States of America. Uruguay.
IN AFRICA	..	..	Tunis.
IN ASIA	..	..	{ Japan. Netherlands East India Colonies.

*Definitions.*

50. The officers will note the meanings given by the Act to Definitions. the following expressions, viz. :—

“ Goods ”	}	Sect. 3, and *54 Vict. c. 15, s. 1.
“ Trade Mark ”		
*“ Trade Description ”		
“ False Trade Description ”		
“ Person ”		
“ Manufacturer ”		
“ Dealer ” or “ Trader ”		
“ Proprietor ”		
“ Name ”		
“ Name or initials ”		
“ Applied ”	}	Sect. 5, (1), (2), and (3).
“ Falsely applied ”		
“ Coverings ”		

51. The following General Orders are hereby cancelled :—

Nos. 81 and 99 of 1887.

Nos. 10, 14, 26, 33, 39, 44, 121, 122, 125 and 147 of 1888,  
No. 7 of 1889.

Nos. 1 and 8 of 1890.

Nos. 50 and 68 of 1893.

No. 4 of 1894.

Nos. 4, 28, 34 and 82 of 1895.

Nos. 4 and 9 of 1896.

No. 63 of 1897.

The following Circular Letters are also cancelled :—

Nos. 1, 4, 5, 8, 33 and 36 of 1889.

No. 6 of 1890.

Nos. 9 and 20 of 1891.

No. 13 of 1892.

The following London Port Orders are also cancelled :—

Nos. 9, 18, 21, 61, 70, 72, 74 and 76 of 1888.

Nos. 23, 48 and 52 of 1889.

Nos. 2 and 6 of 1890.

Nos. 12 and 58 of 1893.

No. 19 of 1894.

No. 13 of 1895.

No. 4 of 1898.

The following General Orders on the subject are not affected,  
viz. :—

1888, 1888 (with directions as to examining London Port  
Order No. 1888), and 1881.

By order of the Board,  
JOHN COURROUX.

REGULATIONS MADE BY THE COMMISSIONERS OF CUSTOMS UNDER  
SECTION 16 OF THE MERCHANDISE MARKS ACT, 1887.

WHEREAS by the Merchandise Marks Act, 1887 (hereinafter  
called "the Act"),

After various provisions against the sale, or exposure for sale,  
or possession for sale, trade or manufacture, of goods with  
forged trade-marks or false trade descriptions, or trade-marks  
falsely applied to them;

And after defining (amongst other things) the expression  
"trade-mark" in manner therein set forth, with reference  
to "The Patents, Designs, and Trade Marks Acts, 1883,"  
and the law of indicated British Possessions and Foreign  
States;

And after defining the expression "trade description" as any  
description, statement or other indication, direct or indirect,  
as to number, quantity, measure, gauge, or weight of goods,

as to place or country in which any goods were made or produced, as to the mode of manufacturing or producing any goods, or as to the material of which any goods are composed, or as to any goods being the subject of any existing patent, privilege, or copyright;

And after defining the expressions "false trade description," "goods," "apply," and "falsely apply";

It is provided by section 16 that,

- (i.) All such goods as above mentioned, and
  - (ii.) All goods of foreign manufacture, bearing any name or trade-mark, being or purporting to be, the name or trade-mark of any manufacturer, dealer, or trader, in the United Kingdom, unless such name or mark be accompanied by definite indication of the country in which such goods were made or produced,
- shall be prohibited to be imported, and, subject to the provisions of the said section, shall be included among goods prohibited to be imported, as if they were specified in section 42 of "The Customs Consolidation Act, 1876."

And whereas by section 18 of the Act, after authorizing the continued use of trade descriptions lawfully and generally applied to goods of the particular class, or manufactured by a particular method, to indicate such class or method, it is provided that, where such trade description includes the name of a place or country calculated to mislead as to where the goods were actually made or produced, such goods not having been actually made or produced there, the said reciting section should not apply (and, consequently, goods so marked would be prohibited), unless there be added to the trade description, immediately before or after the name of the place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

And whereas it is also provided by the said section 16 that the Commissioners of Customs (hereinafter called "the commissioners"), may, from time to time, make, revoke and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited as hereinbefore mentioned, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of the said section, and the mode of verification of such evidence.

And it is further provided by the said last-mentioned section:—  
That before detaining goods or taking proceedings with a view to the forfeiture thereof under the law relating to the customs, the commissioners may require that such regulations as aforesaid shall be complied with, and satisfy themselves as to the liability of the goods to forfeiture.



That such regulations may apply to all goods, the importation of which is prohibited by the said section, or different regulations may be made respecting different classes of such goods.

And also that the regulations may provide for the informant reimbursing the commissioners all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

And it is also provided by the said section that section 2 of the Revenue Act, 1883, shall be repealed from a day to be fixed by regulations under the said reciting section, such day not being later than the 1st day of January, 1888, without prejudice to anything done or suffered thereunder.

And whereas section 2 of the Revenue Act, 1883, is the law under, and by virtue of which, goods of foreign manufacture infringing the proprietary rights of British subjects in names, addresses, and trade-marks, or bearing or having upon them, under certain conditions, the name of a place in or a part of the United Kingdom, are, at the present time, detected and stopped by officers of customs acting on their own observation and responsibility, under directions laid down by the commissioners, and without the requirement of previous information, security, or other conditions.

Now, therefore, the commissioners under and by virtue of the hereinbefore recited power in that behalf, hereby make and require to be complied with the following regulations, viz. :—

1. Goods prohibited to be imported as hereinbefore recited, having applied to them forged trade-marks, false trade descriptions, or marks, names, or descriptions otherwise illegal, which, upon examination, are detected by the officers of customs, are to be detained by them without the requirement of previous information.

2. In giving information with a view to detention an informant must fulfil the following conditions, viz. :—

(i.) He must give to the collector or superintendent or the chief officer of customs of the port (or sub-port) of expected importation, notice in writing, stating,  
the number of packages expected, as far as he is able to state the same,  
the description of the goods by marks or other particulars sufficient for their identification,  
the name or other sufficient indication of the importing ship,  
the manner in which the goods infringe the Act,  
the expected day of the arrival of the ship.

(ii.) He must deposit with the collector or other officer as aforesaid a sum sufficient, in the opinion of that officer, to cover any additional expense which may be incurred in the examination required by reason of his notice.

3. If, upon arrival and examination of the goods, the officer of customs is satisfied that there is no ground for their detention,

they will be delivered. If he is not so satisfied, he will decide either to detain the goods as in a case of detention upon ordinary examination, or to require security from the informant for reimbursing the commissioners or their officers all expenses and damages incurred in respect of the detention made on his information and of any proceedings consequent thereon.

4. The security thus required must be an immediate *ad valorem* deposit of ten pounds per cent. on the value of the goods, as fixed by the officer from the quantities or value shown by the entry; and also, subsequently, a bond to be completed within four days in double the value of the goods, with two approved sureties. The *ad valorem* deposit will be returned upon completion of the bond, and will not be required if, as an alternative where time permits, the informant prefers to give a like bond before examination upon estimated value of the goods declared to by him under statutory declaration. If the security is not duly given as above required, there will be no further detention of the goods.

5. In the above regulations the words "officer of customs" mean an officer acting under general or special direction of the commissioners, and the words "value of the goods" mean value irrespective of duty.

6. The "notice" and "bond" required as above shall be in the forms contained in the schedule to these regulations, or in such other forms as the commissioners may from time to time order and direct.

7. The security taken under these regulations will be given up at the times following, that is to say:—

Where given before examination, and if no detention, forthwith.

Where given on detention:—

If the forfeiture is completed, either by lapse of time or ultimate condemnation by a Court of Justice, then on such completion of forfeiture.

If the forfeiture is not completed, then

If the goods are released by the Commissioners, and no action or suit has been commenced against them, or any of their officers, in respect of the detention, then at the expiration of three months from the time of detention; or, if the goods are released for failure of proceedings taken for the forfeiture and condemnation thereof upon information under section 207 of "The Customs Consolidation Act, 1876," and no action or suit has been commenced against the commissioners, or any of their officers, in respect of the detention, then at the expiration of three months from the trial of such information.

If within such periods as aforesaid any such action or suit as aforesaid has been commenced, then upon the ultimate conclusion of such action or suit, and the fulfilment of the purpose for which the security was given.

8. These regulations apply to transshipment and transit goods

as well as to goods landed to be warehoused, or for home consumption.

9. The 1st day of January, 1888, is, by these "regulations," fixed as the day from which section 2 of the "Revenue Act, 1883," shall be repealed, subject to the terms of the recited Act; and these regulations will take effect from the date of such repeal.

CHARLES DU CANE	}	Commissioners of H. M. Customs.
H. MURRAY		
HORACE SEYMOUR		

Custom House, London,  
1st December, 1887.

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### SCHEDULE.

#### A.—(NOTICE.)

*The Merchandise Marks Act, 1887.*

To the Collector, Superintendent, or Chief  
Officer of Customs at the Port \* of

I hereby give you notice that the undermentioned goods, that is to say, †  
are about to be imported into your port on or about the            day of  
next in the ‡            from

That such goods are liable to detention and forfeiture being §

That            Mr.            of            and Mr.            of            are prepared to  
become my sureties in such bond as may be required upon detention of the  
goods.

And I request that the said goods may be detained and dealt with  
accordingly.

Dated this            day of            , 188    .

A. B.  
[or Agent for]

NOTE.—Mr.            refers to            his bankers [or solicitors], and Mr.  
to            his bankers [or solicitors] as to his sufficiency for the penalty of the  
bond.

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#### B.—(BOND.)

*The Merchandise Marks Act, 1887.*

KNOW ALL MEN BY THESE PRESENTS, THAT WE            A. B.            and  
are held and firmly bound unto Our Sovereign Lady Victoria, by the Grace  
of God, of the United Kingdom of Great Britain and Ireland, Queen,

\* Or Sub-Port.

† Describe the goods, number of packages, marks used, and any other  
particulars necessary for their identification.

‡ Describe the ship, and give name or indication.

§ State how the goods infringe the Act, and if the infringement is one as  
to a forged trade-mark protected in a British possession or foreign state,  
state the possession or state; or, if the infringement is one as to place or  
country of origin, state the name of the place or country falsely used.

Defender of the Faith, in the sum of            pounds to be paid to our said Lady the Queen, her heirs or successors. For which payment well and truly to be made we bind ourselves, jointly and severally, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this            day of            in the year of our Lord one thousand eight hundred and            .

Whereas the above-named            A. B.            has by a notice dated the day of            informed the collector of customs at            that the undermentioned goods, that is to say,            were about to be imported into the port of            contrary to section 16 of the Merchandise Marks Act, 1887, and requested that the said goods should be detained and dealt with accordingly. And whereas the said goods duly arrived in the said port on the day of            last, and are now detained pursuant to the said notice. Now the condition of this obligation is such that if the said            A. B. his executors or administrators, shall well and effectually indemnify, save harmless, and keep indemnified, her Majesty, her heirs and successors, and all her and their officers of customs, and their executors or administrators, from and against all loss or damage, payment or payments, and all costs and expenses which her said Majesty, her heirs or successors, and her and their officers of customs, their executors or administrators, shall or may sustain or incur by reason or on account of any detention of the said goods following upon the information contained in such notice and any proceedings consequent upon such detention, then this obligation shall be void, or otherwise shall be and remain in full force and virtue.

Signed, sealed, and }  
delivered.            }

**O.—MERCHANDISE MARKS ACT, 1887.**

(50 & 51 Vict. c. 28.)

*Declaration on Registration under Paragraph 28 of General Order*

Port of

I\*            , hereby declare that †            , ‡ the proprietor , of §            , viz.,            , which ||            expect to be applied to goods imported, from time to time, at this port; and that ¶            have appointed Mr. ¶            of            , to be\*\*            agent, to give authority for the delivery of such goods.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declaration Act, 1835.

(Signed)            .

Declared this            day of            , 188            , at            ,

Before me

A commissioner to administer oaths, &c.

N.B.—Registration in pursuance of this declaration is subject to the provisions of the Act which forbid the importation, by a registered proprietor, even of his own goods which bear, in name or mark, any statement or indication, direct or indirect, of make or produce in the United Kingdom unless qualified as the Act requires.

\* Full name and address of declarant.

† "I," or "I and my partners, trading as Messrs.            ," or "such and such a company, of which I am the representative official," or "so and so, of such and such a place abroad, whom I represent in this country."

‡ "Is" or "are."

§ "The following name as a trade description," or "the following trade-mark," or "the following name as a trade description and trade-mark."

|| "I" or "we."

¶ This portion as to appointment of agent may be erased, where such appointment is not desired.

\*\* "My" or "our."

## B.—GENERAL ORDER 9/1888.

CUSTOM HOUSE, LONDON,

18th January, 1888.

SIR,

In accordance with paragraph 33 of General Order 99/1887, I now transmit to you the directions of the Board, to enable you to deal with watch cases and watches, under the Merchandise Marks Act; the latter term, watches, meaning, as provided by section 7 of the Act, "all that portion of a watch which is not the watch case."

Your attention has already, by G. O. 81/1887, been called to the position in which watch cases, under this section, stand in relation to watches; and the consequent importance of the assay mark on watch cases, which mark, by virtue of section 3 (1) of the Act, would be deemed a trade description as to place or country of origin.

You will note, in addition, that by section 8 (1) of the Act, provision is made for preventing foreign-made watch cases from obtaining the mark placed on a watch case made in the United Kingdom; and it is enacted that a different mark shall be placed on foreign watch cases of such pattern, and in such mode as directed by Order in Council.

An Order in Council to this effect, dated the 28th of November last, was published in the "London Gazette" of 9th December last, and a copy of this order, together with sheets 1 and 2 of Appendix to Schedule II. therein referred to, which contain diagrams of the required new marks, are sent to you herewith.

You will carefully study these sheets, and note how the marks apply variously to the different assay offices in the United Kingdom.

The directions to be observed by you in applying this new law will relate to—

- (a) Watch cases with assay marks imported alone.
- (b) Like watch cases imported with the watches, that is to say watches of foreign manufacture in them.

(a) *Watch Cases with Assay Marks imported alone.*

If the cases are wholly unmarked, or are duly marked in accordance with the Order in Council, or with a foreign assay mark, and there is not, in addition, any wording on any part of the case proper, or on the dome, indicating make or produce in the United Kingdom, the goods may be delivered. If, on the other hand, there is any such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with a British Hall Mark as placed on watch cases made in the United Kingdom, you will detain the goods unless they are entered as "British goods brought back," in which case they may be admitted under the usual regulations.

*(b) Watch Cases imported with the Watches in them.*

If the cases are wholly unmarked, or are marked either  
In accordance with the Order in Council, or  
With a foreign assay mark, or  
With a British assay mark as placed on a watch case made  
in the United Kingdom, and with an equally conspicuous  
statement either above or below the assay mark, that the  
watch is of foreign make :

And if there is no wording either as an addition on the case  
or dome, or upon the watch itself, whether on the dial or the  
plate, or any part of the works, indicating make or produce in  
the United Kingdom, then the goods may be delivered.

If, on the other hand, there is any such wording, the goods  
must be detained and the matter referred to the Board.

If the cases are marked with a British assay mark as placed  
on a watch case made in the United Kingdom, and with no  
statement of foreign make on the cases, as required above, you  
will detain them as a seizure, unless there is upon the dial of  
each watch and also on the top "plate" (where the watch is of  
that construction) or on the bottom "plate" (where the watch is  
of that construction) visibly, between the "bridges," an indelible  
and definite indication of the place or country in which the  
watches were made. Such an indication will be considered  
definite, if it is, or contains only the name of the place or  
country of origin ; if in addition, it contains the name of a place  
in, or a part of the United Kingdom, as, for instance, "Geneva  
and London," or if there is anywhere on the watch an indication  
by figures, words, or otherwise, that the watch might be the  
make or produce of the United Kingdom, then, in addition to  
the name of place or country of origin, there must be a distinct  
statement that the watches were there made.

I am, Sir, your obedient Servant,  
E. GOODWYN.

The Collector            at

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**C.—ORDER IN COUNCIL AS TO ASSAY MARKS ON WATCH CASES (b).**

At the Court at Windsor, the 28th day of November, 1887.

PRESENT—The Queen's Most Excellent Majesty in Council.

WHEREAS by the Merchandise Marks Act, 1887, 50 & 51 Vict.  
c. 28, it is, amongst other things, provided that—

- (1.) Every person who, after the date fixed by Order in  
Council sends or brings a watch case, whether imported  
or not, to any assay office in the United Kingdom for  
the purpose of being assayed, stamped, or marked, shall

(b) London Gazette, 9 Dec., 1887, p. 6862.

make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch case made in the United Kingdom) and in such a mode as may be from time to time directed by Order in Council.

- (2.) The declaration may be made before an officer of an assay office appointed in that behalf by the office (which officer is hereby authorized to administer such a declaration) or before a justice of the peace or a commissioner having power to administer oaths in the Supreme Court of Judicature in England or Ireland or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.
- (3.) Every person who makes a false declaration for the purposes of this section shall be liable on conviction or indictment to the penalties of perjury, and, on summary conviction, to a fine not exceeding twenty pounds for each offence.

Now, therefore, her Majesty, by and with the advice of her Privy Council, and in exercise of the powers vested in her by the above-recited provisions of the said Act, is pleased to order and declare, and doth hereby order and declare, that where it appears by such declaration that such watch cases have been made in some country or place out of the United Kingdom, then the following authorities, that is to say:—

The Wardens and Commonalty of the Mystery of Goldsmiths of the City of London;

The Guardians of the Standard of Wrought Plate, Birmingham;

The Company of Goldsmiths of the City of Chester;

The Guardians of the Standard of Wrought Plate, Sheffield;

The Incorporation of Goldsmiths of the City of Edinburgh;

The Goldsmiths' Company of the City of Glasgow;

The Fraternity or Company of Goldsmiths of the City of Dublin;

shall respectively cause to be placed on such watch cases the marks more particularly described and delineated in Schedule II. hereunto annexed, and no other mark or marks, and such marks are hereby authorized accordingly.

And it is hereby further ordered and declared that the declaration to be made shall be in the form set forth in Schedule I. hereunto annexed.

This order shall come into operation on the first day of January, one thousand eight hundred and eighty-eight.

C. L. PEEL.

SCHEDULE I.

FORM OF DECLARATION.

I\* do hereby declare that the [watch case] or [watch cases]  
[brought] or [sent] by me this day to the Assay Office at in number  
and in a parcel marked [was] [were] made in †.

Declared at this day of , 18 .

Before me ‡.

Officer of the aforesaid Assay Office appointed in that behalf or,  
Justice of the Peace for or, Commissioner having power to administer  
oaths in the Supreme Court of Judicature in England.

[Supreme Court of Judicature in Ireland].

[Court of Session in Scotland].

\* Here insert name and address of declarant.

† Signature of declarant.

‡ Signature and title of person before whom the declaration is made.

SCHEDULE II. (c).

On a foreign gold case:—

Within a shield of the form of a cross, and of the size shown in Figure I.  
of the Appendix hereto, the word "Foreign," over which a hall mark  
particular to each office shown in Figure III. and the carat value of  
the gold, and under which the decimal equivalent of the carat value  
of the gold together with the variable annual date letter.

On a foreign silver case:—

Within a shield of the form of a regular octagon and of the size shown  
in Figure II. of the Appendix hereto, the word "Foreign," over  
which a hall mark particular to each office shown in Figure III. and  
under which the variable annual date letter.

The particular hall mark above referred to for each of the seven assay  
offices at which foreign cases may be stamped is shown in Figure V. of  
the Appendix hereto (c).

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**D.—BY BOARD'S ORDER ON No. 37366/1888.**

*Sardine Trade.*

Sardines from Spain and Portugal imported into this country,  
*marked with names of French places or in the French language*, but  
without the qualification required by the Merchandise Marks  
Act, 1887, may be delivered, up to the 30th of June, 1889  
(inclusive). After that date, sardines which are not imported  
from France will not be admitted to this country unless duly  
qualified, when they bear upon them the names of places in  
France or descriptions in the French language other than the  
trade description "sardines à l'huile," which will be admissible  
on sardines from whatever part of the world they may be  
imported.

By order,

(Signed) E. GOODWYN.

Custom House, London,  
18th December, 1888.

(c) The figures referred to are shown in the London Gazette, 9 Dec., 1887,  
p. 6862.



## No. 19.

REGULATIONS MADE BY THE BOARD OF TRADE WITH  
THE CONCURRENCE OF THE LORD CHANCELLOR UNDER  
SECTION 2 OF THE MERCHANDISE MARKS ACT, 1891,  
WITH REGARD TO THE PROSECUTION OF OFFENCES UNDER  
THE MERCHANDISE MARKS ACT, 1887 (a).

1. The prosecution of offences under the Merchandise Marks Act, 1887, shall, subject to the condition hereinafter prescribed, be undertaken by the Board of Trade in cases which appear to the Board to affect the general interests of the country, or of a section of the community, or of a trade.

2. Every application to the Board to undertake a prosecution shall be accompanied by the following documents :

(a) A statement showing the nature and circumstances of the case, and sufficient to enable the Board to form an opinion whether the case affects the general interests of the country, or of a section of the community, or of a trade.

(b) A statement showing the facts which, if the Board undertake the prosecution, will be capable of proof, and setting out the proofs and names of the witnesses available to prove such facts.

The Board may require the above statements to be supplemented, or additional evidence to be furnished.

3. If, on the evidence, the Board is of opinion that there is no reasonable prospect of a conviction being obtained, the Board will not, unless it thinks fit, undertake the prosecution.

4. If the Board is of opinion that the prosecution would be better or more properly conducted under some other Act of Parliament other than the said Act, the Board will not undertake the prosecution.

5. The Board may, before undertaking a prosecution, require the applicant to give security for costs on such terms and in such manner as it thinks proper.

6. For the purpose of carrying these regulations into effect, the Board may, from time to time, prescribe the use of such forms and give such directions as it may deem expedient.

21st May, 1892.

M. E. HICKS-BEACH,  
President of the Board of Trade.

I concur,  
HALSBURY, C.

(a) Statutory Rules and Orders, 1892, p. 973.

**REGULATIONS MADE BY THE BOARD OF AGRICULTURE,  
WITH THE CONCURRENCE OF THE LORD CHANCELLOR, PUR-  
SUANT TO SECTION 1 OF THE MERCHANDISE MARKS (PRO-  
SECUTIONS) ACT, 1894, WITH REGARD TO THE PROSE-  
CUTION OF OFFENCES UNDER THE MERCHANDISE MARKS  
ACT, 1887, RELATING TO AGRICULTURAL OR HORTI-  
CULTURAL PRODUCE.**

1. The Board of Agriculture shall, where it appears to them from the statements hereinafter mentioned that there is a reasonable prospect of a conviction being obtained, and subject to the other conditions in the next following regulation prescribed, undertake the prosecution of offences under the Merchandise Marks Act, 1887, in cases which appear to the Board to relate to agricultural or horticultural produce and to affect the general interests of the country, or of a section of the community, or of a trade.

2. (i.) Every application to the Board to undertake a prosecution shall be accompanied by the following documents :—

- (a) A statement showing the nature and circumstances of the case, and sufficient to enable the Board to form an opinion whether the case relates to agricultural or horticultural produce and affects the general interests of the country, or of a section of the community, or of a trade.
- (b) A statement of the facts capable of proof, with the names and addresses of the witnesses available to prove such facts.

(ii.) The Board may require the above statements to be supplemented or additional evidence to be furnished.

3. For the purpose of carrying the foregoing regulations into effect, the Board may, from time to time, prescribe the use of such forms and give such directions as they may deem expedient.

T. H. ELLIOTT,  
Secretary to the Board of Agriculture.

27th October, 1894.

I concur,  
HERSCHELL, C.

*Merchandise Marks (Prosecutions) Act, 1894.*

BOARD OF AGRICULTURE,  
4, WHITEHALL PLACE,  
LONDON, S.W.,  
1st February, 1895.

SIR,

I am directed by the Board of Agriculture to say that they think it may be useful that they should communicate to you the following information as to the effect of the Merchandise Marks (Prosecutions) Act, 1894, and as to the procedure to be adopted on applications for prosecutions thereunder.

The Act referred to enabled the Board, with the concurrence of the Lord Chancellor, to make regulations providing that in cases appearing to the Board to relate to agricultural or horticultural produce, and to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution of offences under the Merchandise Marks Act, 1887, should be undertaken by the Board, under such conditions as they might prescribe, and the Board have accordingly, with the concurrence of the Lord Chancellor, made regulations in the following form:—

[The regulations referred to are set out *ante* at p. 841.]

The Merchandise Marks Act, 1887, provided, *inter alia*, that every person who applies any false trade description to goods shall, subject to the provisions of the Act, and unless he proves that he acted without intent to defraud, be guilty of an offence under the Act, and although various other offences of an analogous character are specified in the Act of 1887, the Board apprehend that the provision above cited is that to which it will most frequently be necessary to resort in order to check the malpractices of which complaint has been so generally made amongst British agriculturists.

It is important to observe that the expression "goods" in the Act of 1887 is defined to mean "anything which is the subject of trade, manufacture, or merchandise"; that the expression "trade description" is defined by the Act to mean "any description, statement, or other indication, direct or indirect, (a) as to the number, quantity, measure, gauge, or weight of any goods, or (b) as to the place or country in which any goods were made or produced, or (c) as to the mode of manufacturing or producing any goods, or (d) as to the material of which any goods are composed, or (e) as to any goods being the subject of an existing patent, privilege, or copyright;" that the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above

matters, is to be deemed to be a trade description within the meaning of the Act; and, lastly, that the expression "false trade description" is defined to mean "a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect," and that the fact that a trade description is a trade-mark, or part of a trade-mark, is not to prevent such trade description from being a false trade description within the meaning of the Act.

The Board have little doubt that the law as it now stands should be sufficient to enable cases in which fraudulent misrepresentations of the place of origin are applied to agricultural produce to be dealt with as they deserve, and, so far as the Board are concerned, they will be very willing to exercise the new powers which Parliament has conferred upon them with a view to the removal of the sense of grievance which undoubtedly exists on the part of many agriculturists in respect to what they consider and, in the opinion of the Board, very legitimately so, as competition unfair in character.

The Board have certainly no wish that the Act passed last session under their auspices should remain a dead letter so long as any legitimate ground for complaint on the part of home producers remains, but it is beyond the power of the Board to be of assistance in this matter unless agriculturists themselves are able and willing, either individually or through the instrumentality of their various organisations, to co-operate with the Board by bringing under their notice specific cases in which there is *prima facie* ground for believing that an offence under the Act of 1887 has been committed.

The Board would be glad, therefore, if you would take steps to bring this matter under the notice of your fellow members at an early opportunity, with a view to its being considered whether any, and if so, what, action can be taken by them in the direction indicated in the preceding paragraph. Applications which may be made to the Board to undertake prosecutions for offences under the Act of 1887 should comply fully with the requirements of the regulations above set out, and it is desirable that they should be made as soon as possible after the alleged offence has been committed.

I am, Sir,  
Your obedient Servant,

T. H. ELLIOTT,  
Secretary.

## No. 20.

## FORMS OF INDICTMENT AND INFORMATION.

## FORM OF INDICTMENT (a).

Middlesex ) The jurors for our Lord the King upon their  
to wit. } oath present that C. D. before and on the  
day of        was the proprietor of a certain trade-mark duly  
registered in the Register of trade-marks kept under the Patents,  
Designs and Trade-Marks Act, 1883, and in the said Register  
numbered (        ) (b); and that A. B. on the        day of        ,  
the said C. D. then being the proprietor of the said trade-mark  
as aforesaid, unlawfully, and with intent to defraud, did apply  
the said trade mark to certain goods, to wit [*describing them*],  
without the assent of the said C. D., contrary to the Merchandise  
Marks Act, 1887 [*or the statute in that case made and pro-*  
*vided*];

*Second Count.*—And the jurors aforesaid, upon their oath  
aforesaid, do further present that C. D., before and on the  
day of        , was the proprietor of a certain trade-mark duly  
registered in the register of trade-marks kept under the Patents,  
Designs, and Trade-Marks Act, 1883, and in the said register  
numbered (        ) (b), and that A. B., on the        day of        ,  
the said C. D. then being the proprietor of the said trade-mark  
as aforesaid, unlawfully, and with intent to defraud, and without  
the assent of the said C. D., did apply to certain goods, to wit  
[*describing them*], a certain mark, to wit [*describing it*], so nearly  
resembling the said trade-mark as to be calculated to deceive,  
contrary to the Merchandise Marks Act, 1887 [*or as above*].

INFORMATION FOR AN OFFENCE AGAINST THE MERCHANDISE  
MARKS ACT, 1887 (c).

In the County of        , Petty Sessional Division of        .  
The information of C. D. [*address and description*], who, upon  
oath, states that A. B. [*address and description*] on the        day  
of        did [*here state the offence, as below*].

Taken before me,        J. P.,  
Justice of the Peace for the county  
of        aforesaid.

(a) It is not necessary to aver that the defendant elected to be tried by jury. See *R. v. Chambers*, 65 L. J. M. C. 214; 18 Cox, C. C. 401 (1896), Lord Russell of Killowen, C. J., Pollock, B., Hawkins, Grantham and Lawrance, JJ., C. C. R.

(b) If the date of the offence charged is more than one year before that of the presentation of the indictment, add, "and that the said C. D. first discovered the commission of the offence herein charged after the        of        ." See sect. 15.

(c) Summary Jurisdiction Rules, 1886, r. 31; the information must be for one offence only, Summary Jurisdiction Act, 1848, s. 10. Informations are not usually in writing or upon oath in summary cases.

*Statement of Offences (d).*

Unlawfully and with intent to defraud did forge a certain trade-mark duly registered in the Register kept under the Patents, Designs and Trade-Marks Act, 1883, and therein numbered \_\_\_\_\_, of which trade-mark one C. D. was then the proprietor, within the meaning of the Merchandise Marks Act, 1887, contrary to the said Act.

Unlawfully and with intent to defraud did falsely apply to certain goods, to wit [*describing them*], a certain trade-mark duly registered [*as above*], of which [*as above*], within the meaning of the Merchandise Marks Act, 1887, contrary to the said Act.

Unlawfully and with intent to defraud did apply to certain goods, to wit, gelatine (on the \_\_\_\_\_ day of \_\_\_\_\_, sold by the said A. B. to \_\_\_\_\_), a false trade description as to the materials of which such goods were composed, by which description the said goods were falsely indicated to be isinglass (*e*), contrary, &c.

Unlawfully and with intent to defraud did sell [*or did expose for sale*] certain goods, to wit, gelatine (on the \_\_\_\_\_ day of \_\_\_\_\_, sold by the said A. B. to \_\_\_\_\_), to which had been applied a false trade description as to the materials of which such goods were composed, whereby the goods were falsely indicated to be isinglass (*e*), contrary, &c.

Unlawfully and with intent to defraud did apply a false trade description, whereby the said goods were falsely described to be subject to an existing patent (*e*), contrary, &c.

Unlawfully did sell [*or did expose for sale*] certain goods, to wit [*describing them*], to which a false trade description had been applied (*e*), contrary, &c.

At the parish of Saint Michael in the said city, on the 16th of January, 1890, unlawfully did apply a certain false trade description, namely, the word "barrel," to certain goods, to wit, to a certain cask of beer, false as to the measure [*or gauge*] thereof, contrary to the provisions of the Merchandise Marks Act, 1887 (*f*).

On the 7th and 11th of February, 1889, at Purfleet, in the parish of \_\_\_\_\_, and the county of \_\_\_\_\_, unlawfully did apply [*or cause to be applied*] a false trade description, to wit, the letters, figures, and words "Gunpowder, Chilworth Gunpowder Company, R.L.G.4," to certain goods, viz., gunpowder, contrary to the statute 50 & 51 Vict. c. 28, s. 2 (*g*).

(*d*) See note (*c*).

(*e*) See *Gridley v. Swinborne*, 52 J. P. 791.

(*f*) *Budd v. Lucas*, 55 J.P. 550.

(*g*) *Starey v. Chilworth Gunpowder Co.*, 54 J. P. 436.

## No. 21.

**STATUTES REQUIRING PARTICULAR CLASSES  
OF GOODS TO BE MARKED IN A SPECIFIED  
MANNER (a) IN ENGLAND (b).**

**ANCHORS AND CHAIN CABLES.]**—Manufacturer to place his name or initials and the number and weight of the anchor on every anchor (57 & 58 Vict. c. 60, s. 543); contract for sale of chain cable or anchor exceeding in weight 168 lbs. to imply a warranty of testing and stamping (62 & 63 Vict. c. 23, s. 2 (1)); no chain cable or anchor of greater weight than 168 lbs. to be sold unless tested and stamped according to the Anchor and Chain Cables Act, 1899 (62 & 63 Vict. c. 23, s. 1 (1)).

**BREAD.]**—Penalty for making or exposing for sale any bread made wholly or partially of peas, beans, potatoes (not including potato-yeast), or any sort of corn or grain other than wheat, unless it be marked with a Roman M. The Act applies only beyond ten miles from the Royal Exchange, London. 6 & 7 Will. 4, c. 37, s. 10. But the same provision is made for the excepted area by 3 Geo. 4, c. cvi.

**BUTTER.]**—Imitations of butter to be sold only as “margarine.” See “Margarine.”

**BUTTONS (metal).]**—Penalties for marking, ordering, or exposing for sale any words or marks denoting quality on metal buttons, or any words or marks on the undersides thereof, unless the buttons be silver-plated or gold-gilt; only the marks, gilt, plated, double or treble gilt to be marked; penalties for falsely marking buttons; Act not to extend to buttons of gold, silver, tin, pewter, lead, tin and lead, tinned iron, Bath metal, white metal, any of these metals inlaid with steel, or buttons plated on shells. 36 Geo. 3, c. 60.

**CARDS.]**—Playing cards (except toy cards) to be sold in stamped wrappers. 25 & 26 Vict. c. 22, ss. 1, 2, 28, 36; 27 & 28 Vict. c. 56, s. 6. So as to foreign cards. 16 & 17 Vict. c. 107, ss. 114—116; 39 & 40 Vict. c. 36, s. 286.

**CHAIN CABLES.]**—See “Anchors.”

(a) A more detailed summary of all or most of these statutes will be found in Mr. Safford's “Law of Merchandise Marks,” Appendix D., and in Mr. Sebastian's “Trade-Marks.” I am indebted to the former book for the suggestion of many of the classes of goods referred to, and to the Official Index to Statutes for reference to the statutes mentioned under the different heads. Statutes (as the Copyright Acts, for example) which require marks to be put upon particular goods in order to secure some right or privilege (as copyright in designs, for instance) are not here included. They would naturally be sought for in works devoted to the law regarding the rights or privileges in question.

(b) The Scotch and Irish statutes are given by Mr. Safford.

CHICORY AND COFFEE.]—Imitations of coffee and coffee mixtures not to be sold, except in packets containing one or more quarters of a pound, each packet bearing a label showing the amount of duty, and a label showing the constituents of the mixture. 45 & 46 Vict. c. 41, s. 6.

CLOCKS.]—Bearing marks implying manufacture in the United Kingdom not to be imported. 39 & 40 Vict. c. 36, s. 42.

CUTLERY.]—*See* above, p. 641, and Sheffield marks, p. 101.

GOLD.]—*See* "Plate."

GUNPOWDER.]—If sold in quantities greater than 1lb., to be packed in closed packages and labelled "Gunpowder." 38 & 39 Vict. c. 17, s. 32.

HOPS.]—Bags to be marked with the name of the owner, the parish and county where they were grown, and the date, number, and weight; penalty for false marking. 54 Geo. 3, c. 123, s. 1; 29 & 30 Vict. c. 37, s. 2. Implied warranty that the marks are genuine. 29 & 30 Vict. c. 37, s. 18.

LINEN.]—Penalties for affixing counterfeit marks to linen. 17 Geo. 2, c. 30; 18 Geo. 2, c. 24. English linen for exportation to be marked with name and place of abode of the maker and of the exporter, the year and number and length. 18 Geo. 2, c. 24, s. 2.

MARGARINE.]—All imitations of butter to be sold, and marked, when exposed for sale, as "margarine." 50 & 51 Vict. c. 29, ss. 3—7. Penalties for dealing in, selling, or exposing for sale any margarine contrary to the Act. *Ibid.* s. 7. *See* also the Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51).

MEDALS (Exhibition).]—Penalties for false representations as to grants of medals or certificates of the Exhibitions of 1851 or 1862. 26 & 27 Vict. c. 119.

PLATE (*bb*).]—The rules regulating the marking and standards of fineness required and allowed in respect of gold and silver goods are contained in the statutes referred to below (*c*). They require to be marked on the goods the first letters of the christian and surnames of the worker (12 Geo. 2, c. 26, s. 5), and the *assay mark* of the town where the goods were made, or (if they were not made in an assay town) marked (2 Hen. 6, c. 17, London; 12 & 13 Will. 3, c. 4, York (*d*), Exeter, Bristol (*e*), Chester, and Norwich (*d*); 1 Anne, c. 3, Newcastle-on-Tyne; 13 Geo. 3, c. 52, Sheffield; 5 Geo. 4, c. lii. s. 1, *local*, Birmingham), the variable or date mark to show the year of marking (12 & 13 Will. 3, c. 4, s. 3; 12 Geo. 2, c. 26, s. 5). And, in addition, on gold wares of twenty-two or eighteen carats fineness, the *standard* and *quality* marks of a crown and 22 (7 & 8 Vict. c. 22, s. 15), or a crown and 18 (38 Geo. 3, c. 69, s. 2) respectively; and on silver wares of 11 ozs. 10 dwts. and 11 ozs. 2 dwts. fineness, the standard

(*bb*) *See* Encyclopedia Britannica, "Plate."

(*c*) These statutes are summarized by Mr. Sebastian, 4th ed., p. 614, and Mr. Safford, p. 204.

(*d*) The marks for these towns are now discontinued.

(*e*) Bristol never exercised its right to mark: Sebastian, 4th ed., p. 614.



marks of Britannia and a lion *passant* respectively (6 Geo. 1, c. 11, s. 41; 12 Geo. 2, c. 26), and a *duty* mark (*f*) of the king's head. (24 Geo. 3, sess. 2, c. 53, s. 5.)

Before 1854, gold wares were required to be of either twenty-two or eighteen carats fineness (38 Geo. 3, c. 69); but her Majesty was authorized, under an Act of that year (17 & 18 Vict. c. 96), by Order in Council, to allow any standard for gold plate not being less than one-third part of the whole in fine gold, and to approve any instrument for stamping or marking the wares, setting forth in figures the actual fineness thereof according to the standard declared. The new inferior standard gold wares were declared not to be liable to duty. Under this Act, the nine, twelve, and fifteen carat gold standards have been authorized.

Silver wares must all be of either the 11 ozs. 10 dwts. or 11 ozs. 2 dwts. of silver to the pound troy standard. (6 Geo. 1, c. 11.)

The following wares are exempted from marking:—chains, necklace beads, lockets, filigree work, shirt buckles or brooches, stamped medals, or spouts to china, stone, or earthenware tea-pots, or any of them, of any weight; tippings, swages, or mounts, or any of them, not exceeding 10 dwts. of silver each, except only necks and collars for castors, cruets, or glasses, appertaining to any sort of stands or frames; silver goods not weighing 5 dwts., except necks, collars, and tops for castors, cruets, or glasses appertaining to any sort of stands or frames, buttons to be affixed or set on any wearing apparel, solid sleeve buttons, and solid studs, not having a bisseled edge soldered on, wrought seals, blank seals, bottle tickets, shoe clasps, patch boxes, salt spoons, salt shovels, salt ladles, tea-spoons, tea-strainers, caddy ladles, buckles (shirt buckles or brooches before mentioned excepted), and pieces to garnish cabinets, or knife cases, or tea-chests, or bridles, or stands, or frames. (30 Geo. 3, c. 31.) Gold wedding rings are to be marked as gold plate. (18 & 19 Vict. c. 60, s. 1.)

Imported foreign plate, except ornamental plate, made before 1800 (5 & 6 Vict. c. 56, s. 6), is to be marked as English plate (5 & 6 Vict. c. 47, s. 59), and with the figure F. on an oval shield. (39 & 40 Vict. c. 35.)

Penalties for counterfeiting assay marks and connected offences are provided by 7 & 8 Vict. c. 22.

The importation of clocks and watches, or any other article of metal impressed with any mark or stamp, representing or in imitation of any legal British assay mark or stamp, or purporting by any mark or appearance to be of the manufacture of the United Kingdom, is forbidden (39 & 40 Vict. c. 36, s. 42).

Watch cases of foreign manufacture brought for assay to any assay office in the United Kingdom are to be marked as directed by the Order in Council of the 28th of November, 1887 (p. 837),

(*f*) The duty on plate is now abolished: 53 Vict. c. 8, s. 10.

made under the Merchandise Marks Act, 1887, s. 8, that is to say, with the word "foreign," and a shield which is cross-shaped for gold and octagon-shaped for silver (p. 622).

**PLATED GOODS.]**—Makers of plated goods in Sheffield, or within 100 miles thereof, are authorized to strike on their goods their surnames, or the names of their firm, with a mark (not being an imitation of an assay-mark) which is approved by the guardians of the assay office and registered (24 Geo. 3, sess. 2, c. 20, ss. 2 and 3).

**SILVER.]**—See "Plate."

**STORES (PUBLIC).]**—The marks enumerated below to denote that stores to which they are affixed are his Majesty's property; the marks not to be applied by unauthorized persons (a); obliterating the marks with intent to conceal his Majesty's property in the stores is a felony; regimental necessaries, &c., issued to soldiers, militiamen, or volunteers are excepted from the Act (38 & 39 Vict. c. 25; 44 & 45 Vict. c. 58, s. 156).

Stores.	Marks.
Hempen cordage and wire rope . . . .	White, black, or coloured worsted threads laid up with the yarns and wire respectively.
Canvas, fearnought, hammocks, and seamen's bags.	A blue line in a serpentine form.
Bunting . . . . .	A double tape in the warp.
Candles . . . . .	Blue or red cotton threads in each wick, or wicks of red cotton.
Timber or metal. Any stores not before enumerated, whether similar to the above or not.	The name of her Majesty (Queen Victoria), her predecessors, her heirs or successors, or of any public department or any branch thereof, or the broad arrow, or a crown, or her Majesty's arms, whether such broad arrow, crown, or arms be alone or be in combination with any such name as aforesaid, or with any letters denoting any such name.

**TOBACCO.]**—Cavendish and negro-head tobacco to be delivered for home consumption in separate packets not exceeding 1 lb. or less than 1 oz. in weight, and wrapped in a wrapper and label approved by the Commissioners of Customs; not to be sold, or had in possession, except wrapped and labelled as aforesaid; penalties for forging labels (26 & 27 Vict. c. 7, ss. 3—8).

**WEIGHTS AND MEASURES.]**—To be marked with proper indicating marks: see the Acts 41 & 42 Vict. c. 49; 52 & 53 Vict. c. 21.

**YARN.]**—Penalty for reeling short lengths of yarn, 17 Geo. 3, c. 11 (ss. 17—19, 24, in part repealed by the S. L. Rev. Act, 1861; ss. 12, 22, repealed in part; ss. 20, 23, repealed by 47 & 48 Vict. c. 43, s. 4; and s. 24 by 56 & 57 Vict. c. 61, s. 2).

(a) See 28 & 29 Vict. c. 89, s. 45 (Greenwich Hospital Mark), and 38 & 39 Vict. c. 25, s. 17.

## No. 22.

COLONIAL AND FOREIGN LAWS AS TO  
MERCHANDISE MARKS.

## I.—The Colonies.

[See as to places where extraterritorial jurisdiction is regulated under the Foreign Jurisdiction Acts, p. 763.]

**AUSTRALIA—NEW SOUTH WALES** (No. 9 of 1865).]—The statute is called "The Trade-Marks Act, 1865," and only a few of its provisions deal with the criminal law of false marking. Forging a trade-mark or falsely applying any trade-mark to any chattel or article with intent to defraud (sect. 8), and applying a forged trade-mark to any vessel, case, wrapper, &c., in or with which any article is sold or intended to be sold (sect. 9), are misdemeanours. Penalties are attached to selling articles with forged or false trade-marks (sect. 10), marking any false indication of quantity, &c., upon an article with intent to defraud (sect. 13), selling or exposing for sale articles with false statements of quantities, &c. (sect. 14); but it is not an offence to apply names or words known to be used for indicating particular classes of manufactures (sect. 15). As to procedure, see sects. 16—24.

**QUEENSLAND.**]—There is no special statutory law as to merchandise marks. The Acts No. 13 of 1884, No. 5 of 1886, and No. 8 of 1890, which are closely modelled on the Imperial Acts, deal with trade-marks.

**SOUTH AUSTRALIA** (No. 551 of 1892).]—Sects. 45—62 deal with merchandise marks, and are practically a transcript of the M. M. A. 1887.

**VICTORIA** (54 Vict. No. 1146).]—The provisions as to forgery, &c., of trade-marks and false trade descriptions (sects. 12, 13, 14) are substantially identical with those of the M. M. A. 1887. In case of charges of marking dies, blocks, &c., there is an exemption of persons employed in work of the kind in the ordinary course of business (sect. 16). Watch-cases are expressly dealt with in sect. 17. As to procedure, see sects. 18—25. The Customs regulations are contained in sect. 26. There is an implied warranty on the sale of marked goods that the mark is genuine, and that any trade description applied to the goods is not false (sect. 27). There is an exemption similar to that in the M. M. A. 1887 of conventional descriptions from the provisions of the Act as to false trade descriptions (sect. 28). Similar provisions occur in nearly all the colonial Acts relating to merchandise marks. (No. 6 of 1888.)

**WESTERN AUSTRALIA.**]—Practically a transcript of the M. M. A. 1887.

BAHAMA ISLANDS.]—There is no special statutory law as to merchandise marks.

BARBADOS (No. 28 of 1888—89; No. 7 of 1896).]—The Act is closely modelled on the M. M. A. 1887. There are provisions similar to those noted under “Victoria,” *supra*, as to watch-cases (No. 28 of 1888-9, s. 7), Customs regulations (sect. 13), implied warranty on the sale of marked goods (sect. 14), and conventional descriptions (sect. 15). No. 7 of 1896 deals with the registration of marks; it is amended on a point of detail by No. 16 of 1897.

BERMUDA (No. 17 of 1889).]—The Act is closely modelled on the M. M. A. 1887.

BRITISH GUIANA (No. 2 of 1888).]—Practically a transcript of the M. M. A. 1887.

BRITISH HONDURAS (No. 3 of 1888).]—Practically a transcript of the M. M. A. 1887.

BRITISH INDIA (No. 4 of 1889).]—Closely modelled on the M. M. A. 1887. Piece goods, such as are ordinarily sold by length or by the piece, which have been manufactured in premises which are a factory under the Indian Factories Act, 1881, are not to be removed from those premises without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece (sect. 12 (1)). The penalty for contravention of this provision, besides forfeiture of the piece, is a maximum fine of 1,000 rupees (sect. 12 (2)) (a).

BRITISH NEW GUINEA.]—No statutory law as to merchandise marks exists.

BRITISH NORTH BORNEO.]—No statutory law as to merchandise marks exists.

CANADA (51 Vict. c. 41; Crim. Code, 1892, Pt. 33, ss. 443—455).]—Closely modelled on the M. M. A. 1887. There are special provisions as to the fraudulent marking of bottles (51 Vict. c. 41, s. 7, and Crim. Code, 1892, s. 449); words or marks on watch-cases (sect. 11, and Crim. Code, 1892, s. 444); prohibiting the importation of specified goods (sect. 22, and Crim. Code, 1892, s. 452); and as to implied warranty on sale of marked goods (sect. 18).

CAPE OF GOOD HOPE (No. 12 of 1888; No. 14 of 1889).]—Practically a transcript of the M. M. A. 1887.

CEYLON (No. 13 of 1888, and No. 14 of 1892).]—Practically a transcript of the M. M. A. 1887. No. 14 of 1892 enacts provisions as to piece goods similar to those noted *supra* under BRITISH INDIA.

CYPRUS (No. 12 of 1892).]—Practically a transcript of the M. M. A. 1887.

FALKLAND ISLANDS (No. 1 of 1889; No. 14 of 1889).]—Practically a transcript of the M. M. A. 1887.

(a) See further, on Indian Marks, p. 863.

**FIJI ISLANDS** (No. 12 of 1889; No. 2 of 1890).]—Practically a transcript of the M. M. A. 1887.

**GAMBIA** (No. 11 of 1888).]—Practically a transcript of the M. M. A. 1887.

**GIBRALTAR** (No. 4 of 1888).]—Practically a transcript of the M. M. A. 1887.

**GOLD COAST COLONY** (No. 4 of 1888; No. 16 of 1888).]—Practically a transcript of the M. M. A. 1887. Sect. 308 (8) of the Criminal Code (No. 12 of 1892) applies the provisions of that Code as to forgery to the forgery of trade-marks. Folded woven goods are partly exempted from the provisions of No. 4 of 1888. (No. 2 of 1894, s. 16.)

**GRENADA** (No. 9 of 1889).]—Practically a transcript of the M. M. A. 1887.

**HONG KONG** (No. 15 of 1890).]—Practically a transcript of the M. M. A. 1887. And see Regulations made by Governor in Council, 13th July, 1891 (*Gazette*, 1st August, 1891).

**ISLE OF MAN.**]—Merchandise Marks Act, 1898, closely modelled on the M. M. A. 1887. Sect. 17 imposes penalties on any person who falsely represents that any goods are made by a person holding a royal warrant, or for the service of her Majesty or of any of the Royal Family, or any Government department.

**JAMAICA** (Nos. 18 and 22 of 1888).]—Practically a transcript of the M. M. A. 1887.

**LABUAN** (No. 3 of 1891).]—Practically a transcript of the M. M. A. 1887.

**LAGOS** (No. 8 of 1888, and No. 13 of 1889).]—Practically a transcript of the M. M. A. 1887. Folded woven goods are partly exempted from No. 8 of 1888. (No. 5 of 1893, s. 17.)

**LEEWARD ISLANDS** (No. 34 of 1887; No. 10 of 1890).]—No. 34 of 1887 is practically a transcript of the M. M. A. 1887. No. 10 of 1890 prohibits the importation of goods unless marked with the name of the country in which they were made (sect. 1 (1)), and provides that goods marked with the name or imitation of the name of a place in the United Kingdom, or the colony, or any British possession, unless the name of the country is given, are to be treated as if such place were in British territory (sect. 1 (4)).

**MAURITIUS** (No. 13 of 1888; No. 6 of 1896).]—No. 13 of 1888 is practically a transcript of the M. M. A. 1887. No. 6 of 1896 deals with a minor point of evidence on Customs prosecutions.

**NATAL** (No. 22 of 1888; No. 11 of 1889).]—Practically a transcript of the M. M. A. 1887.

**NEW ZEALAND** (No. 12 of 1889).—Sects. 89—105 deal with merchandise marks and are practically a transcript of the M. M. A. 1887.

**NEWFOUNDLAND** (c. 31 of 1888).]—Practically a transcript of the M. M. A. 1887. C. 12 of 1891 is a minor amending Act.

St. LUCIA (No. 106, Laws of St. Lucia (1888)).]—Practically a transcript of the M. M. A. 1887. And see the Crim. Code, 1888 (No. 101, Laws of St. Lucia), ss. 112, 113.

St. VINCENT (No. 8 of 1885).]—Practically a transcript of the M. M. A. 1887.

SIERRA LEONE (Nos. 7 and 12 of 1889).]—Practically a transcript of the M. M. A. 1887. Folded woven goods are partly exempted from the operation of these Ordinances (No. 1 of 1894, s. 15).

STRAITS SETTLEMENTS (No. 3 of 1888).]—Practically a transcript of the M. M. A. 1887.

TASMANIA (No. 6 of 1893).]—Sects. 90—105, deal with merchandise marks and are practically a transcript of the M. M. A. 1887.

TRINIDAD and TOBAGO (No. 7 of 1888).]—Practically a transcript of the M. M. A. 1887.

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## II. Foreign Law.

### *Provisions as to False Marking (a).*

#### AUSTRIA-HUNGARY (Law of 1890).

Sect. 23. Whoever introduces into commerce goods for sale, well knowing that the same are illegally provided with a mark in which another person possesses the sole right, or whoever designedly imitates a mark, shall be guilty of a misdemeanour and be fined with a sum not less than 500 florins, and not exceeding 2,000 florins, or be punished with imprisonment for a term of from three months to one year, to which may be also added a fine of a sum not exceeding 2,000 florins.

Besides this, the application of the more rigid stipulations of the general penal code, especially those referring to the crime of fraud, is not excluded (sect. 197, &c.).

Sect. 24. The provision of sect. 23 is also applied against any person who introduces into commerce goods, well knowing that the same have been illegally marked with the name, the firm, the arms, or the business description of the undertaking of a producer or a trader, and also against the person who designedly manufactures the said marks for this purpose.

Sect. 25. The punishment of the acts mentioned in sects. 23 and 24 is also imposed in cases where the mark, the name, the firm, the arms, or the business description of the undertaking are reproduced with such slight alterations that the difference

(a) This summary is condensed from the *Reports from Her Majesty's Representatives Abroad on Trade-Marks Laws and Regulations*, Part 1900.

can only be distinguished by the purchaser of those goods with more than ordinary attention.

Sect. 26. The procedure and decision of the transgressions described in sects. 23 and 24 belong to the common Courts of law.

Prosecution only takes place at the application of the injured party.

Sect. 27. At the demand of the injured party it must be decreed that the tools and apparatus which have been exclusively or especially used for the imitation or illegal denotations be made unserviceable, that the stock then in hand of imitated marks and illegally manufactured descriptions be destroyed, and that the illegally fixed marks and descriptions on goods in the possession of the convicted person be removed therefrom, and from the wrappers, even if this would lead to the destruction of the goods.

The verdict may be published by the injured party at the expense of the convicted person, and must contain, in accordance with the suggestions of the injured party, stipulations how and when this publication is to take place.

In place of the compensation due to the injured party, according to common law, the Criminal Court may decree that, in addition to the punishment, the convicted must pay to the injured party a sum not exceeding 5,000 florins. All persons condemned to pay a fine are liable jointly and separately for the payment of the same. The stipulations of this paragraph are also to be put into practice if the punishment takes place in accordance with a more rigid stipulation of the penal code.

Sect. 28. The injured party is entitled to demand the seizure, or at least the taking in safe custody, of the articles mentioned in sect. 27, para. 1, as also that the necessary measures be carried out to prevent a repetition of the criminal act, even before the judgment is pronounced.

The Criminal Court must at once decide with reference to this demand, and may decree the seizure or the custody of the articles in question, against security to be found by the injured party.

Sect. 29. In case the injured party demands the adjudgment of damages in civil law for one of the offences mentioned in sects. 23 and 24, the judge has to decide with reference to the existence as also to the extent of the injury, according to his unbiassed judgment, taking all the facts disclosed into consideration.

Sect. 30. The Minister of Commerce decides as to the sole right vested in a mark, as to the priority and transfer of the same, and also whether a registered mark may be used by a third person for a different kind of goods (sect. 7).

Should it appear during the criminal proceedings in one of the cases mentioned in sect. 23, that the decision depends on a preliminary question, which, according to the first part, is to be

settled by the Minister of Commerce, the Criminal Court is bound to apply to the said Minister for such decision, to forward to him all the required documents, and to await his decision.

Sect. 31. Infringements of the stipulations mentioned in sect. 6 are to be punished by the political authorities in accordance with the stipulations of the Trade Law, whereby always the seizure of the goods is to be decreed.

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FRANCE.

(Law of 23rd June, 1857.)

ART. VII., Sect. 1. The following persons are liable to a fine of from 50 francs to 3,000 francs, and to imprisonment for from three months to three years, or to one of such penalties only:—

1. Those who have counterfeited or made use of a counterfeit mark;

2. Those who have fraudulently affixed to their goods, or the articles in which they trade, a mark belonging to others;

3. Those who have knowingly sold or displayed for sale one or more articles bearing a counterfeit mark, or to which a mark has been fraudulently affixed.

ART. VIII. The following are liable to a fine of from 50 francs to 2,000 francs and to imprisonment for from one month to one year, or to one of such penalties only:—

1. Those who, without having counterfeited a mark, have fraudulently imitated it in a way calculated to deceive a purchaser, or who have made use of a mark fraudulently imitated;

2. Those who have made use of a mark having characteristics (*indications*) apt to deceive a purchaser as to the nature of the goods;

3. Those who have knowingly sold or exposed for sale one or more articles bearing a mark fraudulently imitated, or having characteristics (*indications*) apt to deceive a purchaser in relation to the nature of the goods.

ART. IX. The following are liable to a fine of from 50 francs to 1,000 francs, or to imprisonment for from a fortnight to six months, or to one of such penalties only:—

1. Those who have not affixed to their goods a mark which is compulsory;

2. Those who have sold or offered for sale articles not bearing a mark compulsory for such articles;

3. Those who have infringed the provisions of the decrees issued pursuant to Article 1 of the present law.

ART. X. The penalties provided by the present law cannot be cumulated.



The highest penalty only is inflicted for all acts done before the commencement of proceedings.

ART. XI. The penalties inflicted by Articles 7, 8, and 9 may be doubled in case of a fresh offence. A sentence for any offence under this Act delivered within the next preceding five years makes the accused an old offender for the purposes of this Act.

ART. XII. Article 463 of the Penal Code is applicable to offences provided for in the present Act.

ART. XIII., Sect. 1. Offenders, moreover, may be deprived of the right of voting at the elections for Tribunals and Chambers of Commerce, for the Consultative Chambers of Arts and Manufactures, and for the *Conseils de Prud'hommes*, for a period not exceeding ten years.

Sect. 2. The Court may order the publication of the sentence in such places as it may deem fit, as well as its insertion wholly or partially in such newspapers as it may appoint at the expense of the person against whom such sentence is delivered.

ART. XIV., Sect. 1. The Court may even on acquittal order the confiscation of goods bearing marks contrary to the provisions of Articles 7 and 8, as well as of the instruments and tools which have been specially employed for the commission of the offence.

Sect. 2. The Court may order delivery of the confiscated objects to the owner of the infringed mark, irrespectively of further damages where such owner is entitled to them.

Sect. 3. It shall in every case order the destruction of marks found to be an infringement of the provisions of Articles 7 and 8.

ART. XV., Sect. 1. In the case provided for by the first two paragraphs of Article 9, the Court shall order that marks be affixed to articles for which they are obligatory by law.

Sect. 2. The Court may order the confiscation of such articles where the defendant has been convicted within the next preceding five years of an offence provided against in the first two paragraphs of Article 9.

ART. XIX., Sect. 1. All foreign articles bearing either the trade-mark or the name of a manufacturer residing in France, or the name or place of a French manufactory, are prohibited from entering or passing through France, or being warehoused there, and may be seized wherever found, either by the Customs authorities or at the instance of the Public Procurator or of the person whose rights are infringed.

Sect. 2. Where the seizure is made at the instance of the Customs authorities, a minute of the seizure shall at once be transmitted to the Public Procurator.

Sect. 4. The provisions of Article 14 are applicable to goods seized pursuant to the present article.

ART. XX. All the provisions of the present Act are applicable to wines, alcohols, and other drinks, to cattle, grain, flour, and generally to all agricultural products.

ART. XXII., Sect. 1. The present Act shall not come into force until six months after its promulgation.

Sect. 2. An administrative order shall specify the formalities to be observed in regard to registration, and publication of trade-marks, and any other measures requisite for the enforcement of the law.

ART. XXIII. Subject to the provisions of this Act previous enactments shall remain in force.

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(Law of November 26, 1873.)

*ACT to Establish a Stamp or Special Mark to be Affixed to Trade and Merchandise Marks.*

ART. I. On written application by the owner of a trade-mark registered in accordance with the Act of June 23, 1857, whether the said trade mark be marked upon labels, bands, or envelopes of paper, or upon plaques of metal, the Government shall apply a special stamp or puncheon for the purpose of guaranteeing the authenticity of such trade-mark. The puncheon may be applied to the trade-mark forming part of the article itself, if the authorities think it fit to receive such application.

ART. II. A fee, varying from one centime to one franc, shall be paid to the State for every affixing of the stamp. The fee shall be not less than five centimes and not exceed five francs for every application of the puncheon to the articles themselves.

ART. III., Sect. 1. The amount of the fees payable to the Treasury shall be proportionate to the value of the articles to which the labels are to be attached, whether in paper or in metal, and to the difficulty of applying the puncheon to the marks affixed to the articles themselves.

Sect. 2. An administrative order shall determine such proportion; it shall also specify the metals to which the puncheon may be applied, the conditions to be complied with for obtaining the application of a stamp or puncheon, the place where such application shall be effected, and other measures for carrying out the present Act.

ART. IV. The sale by the owner of the trade-mark of the articles protected thereby at a higher price than that corresponding to the proportion of the stamp or puncheon shall be punishable for each offence by a penalty of 100 francs to 5,000 francs. Such offences shall be published in every place open to the public by the officials authorized to report offences relating to

stamps and indirect taxes, and by post-office and custom-house officials in case of exportation. These officials shall receive one-fourth of the penalty recovered. The offences shall be reported and the prosecution shall take place:—(1) as in stamp matters where the stamp has been affixed to labels, bands, or wrappers in paper; (2) as in matters of indirect taxes, where a stamp has been applied by puncheon.

ART. V. French consuls abroad are qualified (*auront qualité*) to draw up reports concerning the fraudulent use of trade-marks, and to forward the same to the competent authorities.

ART. VI. Any person who shall counterfeit or forge the stamps or puncheons instituted by this Act, and who shall make use of counterfeit or forged stamps or puncheons, shall be punished according to the provisions of Article 140 of the Penal Code, irrespectively of civil damages. Any other fraudulent use of such stamps or puncheons, or of labels, bands, wrappers, or plaques, stamped therewith, shall be punished according to the provisions of Article 142 of the said Code. Article 463 of the Penal Code is applicable thereto.

ART. VII. The stamp or puncheon of the State applied to a trade-mark shall form an integral part of the said mark. If the State should fail to prosecute, in France or abroad, the counterfeiting or forgery of such stamp or puncheon, the owner of the mark may himself prosecute.

ART. VIII. The present Act shall be applicable in the French Colonies and in Algeria.

ART. IX. The provisions of other laws in force relating to trade names, merchandise and trade-marks, designs and models shall be applicable in favour of foreigners, if the laws of their country or international treaties insure the same protection to Frenchmen.

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(Law of November 26, 1873.)

ART. IX. The provisions of other laws in force relating to trade names and merchandise marks (*nom commercial*), . . . shall be applicable in favour of foreigners, if in their country the laws (*la législation*) or international treaties insure the same protection to Frenchmen.

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(Law of July 28, 1824.)

*Merchandise Marks and Trade Names.*

ART. I., Sect. 1. Any person who shall affix or by adding, shortening, or any other alteration, shall cause to appear on manufactured goods the name of any manufacturer but their real manufacturer, or the name of any manufactory but that at which the goods were manufactured, or the name of any place

but that of manufacture, will be liable to the penalties prescribed by Article 123 of the Penal Code, and to damages where a right to them exists.

Sect. 2. Every merchant, commission agent, or tradesman will be liable to prosecution who knowingly exhibits for sale or sells goods marked with pretended or altered names.

Art. II. The above-mentioned offence will consequently cease, in spite of Article 17 of the law of April 12, 1803 (22 Germinal, year XI), to be assimilated to the counterfeiting of special marks provided for by Articles 142 and 143 of the Penal Code.

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GERMANY.

(*Law of May 12th, 1894.*)

Sect. 14. Any person who knowingly, or through gross negligence, wrongfully applies to goods, their packings or coverings, advertisements, price lists, business letters, circulars, or the like, the name or firm of another party or a trade-mark registered according to the provisions of this Act, or puts goods so marked on the market, or offers same for sale, is bound to indemnify the injured party.

If he has knowingly made use of the mark he will be further punished by a fine of 150 to 5,000 marks (7*l.* 10*s.* to 250*l.*), or by imprisonment not exceeding six months. The prosecution is only instituted on petition. The petition can be withdrawn.

Sect. 15. Any person who, for the purpose of fraudulent trading, applies to goods or their packings or coverings, or advertisements, price lists, business letters, circulars, invoices, or the like, a design used in the trades concerned for distinguishing another person's similar goods, without the permission of such person; or any person who, for the same purpose, puts on to the market or offers for sale goods so marked is bound to indemnify the injured party, and will be punished by a fine of 100 to 3,000 marks (5*l.* to 150*l.*), or by imprisonment not exceeding three months. The prosecution is only instituted on petition. The petition can be withdrawn.

Sect. 16. Any person who wrongfully applies to goods or their wrappers or packings, or to advertisements, price lists, business letters, circulars, bills, or the like, a State coat-of-arms, or the name or coat-of-arms of a district, of a municipal or corporate body, for the purpose of creating confusion as regards the nature and value of the goods; or any person who offers goods bearing such mark for sale, will be punished by a fine of 150 to 5,000 marks (7*l.* 10*s.* to 250*l.*), or by imprisonment not exceeding six months.

The employment of names which, according to trade custom, serve to designate certain products on the market without being

destined to show their origin, is not subject to these prescriptions.

Sect. 17. Foreign products which wrongfully bear the name and locality of a German firm, or which wrongfully bear a registered trade-mark, on entering Germany as imports or for transit through the country, are liable to seizure and confiscation, if the injured party files a petition to that effect, and gives security. The seizure is effected by the Custom-house authorities, and the confiscation is decided according to the Penal Code of the Department of Administration (sect. 459 of the Criminal Code).

Sect. 18. In lieu of all damages arising according to the present Act, an amercement not exceeding 10,000 marks (500*l.*), in addition to the penalty, may be adjudged to the injured party if he so demands.

The condemned are liable for this amercement as joint debtors.

Such acknowledged amercement precludes all further rights to claim damages.

Sect. 19. If verdict is given on the basis of sects. 14, 15, 16, and 18, the sentence must provide that the illegal mark on the goods found in the possession of the condemned party be removed, or, when it is not possible to remove the mark in any other way, that the goods bearing such mark be destroyed.

If verdict is given in the criminal procedure in the instance of sects. 14 and 15, the injured party shall have the right to publish the sentence at the expense of the condemned party. The kind of publication and the term for making same is to be fixed in the verdict.

Sect. 20. The application of the prescriptions of this Act is not excluded from taking effect in the case of variations in the reproduction of foreign names, firms, designs, coats-of-arms, and other designations for goods, if, in spite of such variations, there is any danger of confusion arising in the trade.

Sect. 22. If German goods must bear a certain mark or signification on being imported into, or for transit through, a foreign country, to show that they are of German origin, or if such goods are not so favourably treated at the Custom-house in respect of trade-marks as the goods of other countries, the Federal Council is empowered to subject goods imported into Germany from such foreign countries, or for transit through the country, to the same obligations; and to order that, in case of violation of this regulation, the goods shall be seized and confiscated. The seizure is effected by the Custom-house authorities, and the confiscation will be decided by verdict of the Department of Administration. (Sect. 459 of the Regulations of the Criminal Law.)

UNITED STATES.

(Law of 1881.)

Sect. 7. That registration of a trade-mark shall be *prima facie* evidence of ownership. Any person who shall reproduce, counterfeit, copy, or colourably imitate any trade-mark registered under this Act and affix the same to merchandise of substantially the same descriptive properties as those described in the registration shall be liable to an action on the case for damages for the wrongful use of said trade-mark at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of such trade-mark used in foreign commerce or commerce with Indian tribes, as aforesaid, and to recover compensation therefor in any Court having jurisdiction over the person guilty of such wrongful act; and Courts of the United States shall have original and appellate jurisdiction in such cases without regard to the amount in controversy.

Sect. 8. That no action or suit shall be maintained under the provisions of this Act in any case where the trade-mark is used in any unlawful business or upon any article injurious in itself, or which mark has been used with the design of deceiving the public in the purchase of merchandise, or under any certificate of registry fraudulently obtained.

Sect. 9. That any person who shall procure the registry of a trade-mark, or of himself as the owner of a trade-mark, or an entry respecting a trade-mark, in the office of the Commissioner of Patents, by a false or fraudulent representation or declaration, orally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence thereof to the injured party, to be recovered in an action on the case.

Sect. 10. That nothing in this Act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade-mark might have had if the provisions of this Act had not been passed.

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CIRCULAR TO CUSTOMS OFFICERS.

1897.—*Department Circular No. 116. Division of Customs.*

*Treasury Department, Office of the Secretary,  
Washington, D.C., August 3rd, 1897.*

To Officers of the Customs and others :

The attention of officers of the Customs and others is invited to the following provision of sect. 11 of the Act of the 24th July, 1897 :

“Sect. 11. That no article of imported merchandise which shall copy or simulate the name or trade-mark of any domestic manufacture or manufacturer, or which shall bear a name or

mark which is calculated to induce the public to believe that the article is manufactured in the United States, shall be admitted to entry at any Custom-house of the United States. And in order to aid the officers of the Customs in enforcing this prohibition, any domestic manufacturer who has adopted trade-marks may require his name and residence and a description of his trade-marks to be recorded in books which shall be kept for that purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department fac-similes of such trade-marks; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of the Customs."

Applications for the recording of names or trade-marks in this Department will state the name and residence of the domestic manufacturer, and furnish a description of the mark and the names of the ports to which the fac-similes should be sent. No such name or trade-mark will be received unless accompanied by the proper proof of ownership and proof that the owner is a domestic manufacturer, which must consist of the affidavit of the owner or one of the owners, certified by a notary public, or other officer entitled to administer oaths, and having a seal.

On the receipt by a Customs officer of any such fac-similes, with information from the Department that they have been recorded therein, he will properly record and file them, and will exercise care to prevent the entry at the Custom-house of any article of foreign manufacture copying or simulating such mark.

No fees are charged for recording trade-marks in the Department and Custom-houses.

A sufficient number of fac-similes should be forwarded to enable the Department to send one copy to each port named in the application with ten additional copies for the files of the Department.

Especial attention is invited to the provision in said section prohibiting the entry of articles "which shall bear a name or mark which is calculated to induce the public to believe that the article is manufactured in the United States," and collectors and other officers of the Customs are instructed to use due diligence to prevent violations of this provision.

## No. 23.

### TRADE MARKS (INDIA).

The extract from a letter of the Government of India of 28th January, 1891, and copy of a notification dated 13th November, 1891 (which are printed below), state the Indian law and executive orders now in force for the protection of trade-marks and descriptions. Though there is no law requiring the registration of trade-marks in India, they can be, and sometimes are, registered under Act III. of 1877 ("The Indian Registration Act").

The use of a false trade-mark is an offence punishable in India under Section 480 of the Indian Penal Code, and protection of trade-marks and descriptions is also provided by the Merchandise Marks Act, 1889 (a).

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*Extract of Letter from Government of India, No. 25 (Statistics and Commerce), dated 28th January, 1891.*

Trade-marks are defined by sect. 3 of the Indian Merchandise Marks Act (amending the Indian Penal Code, sect. 478) to include those which are registered in England and those which, whether with or without registration, are protected in any British possession or foreign State to which the British law is by Order in Council made applicable. There is no law requiring the registration of trade-marks in this country, nor is it the usual practice to register them here. No condition is required precedent to action by either the Customs authorities or the Criminal Courts; the former can act either on their own motion or on information, the latter only on information and formal complaint; but to ensure seizure and detention the information must be followed by satisfactory proof of fraud.

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*Notification (Home Department), dated 13th November, 1891.*

In the exercise of the power conferred by sect. 16 of the Indian Merchandise Marks Act, IV. of 1889, and in supersession of all existing orders on the subject, the Governor General in Council is pleased to direct that Criminal Courts, in giving effect to the provisions of the Act in respect of trade descriptions of

(a) From information supplied to the author by the courtesy of the India Office.



quantity, measure, or weight of the goods specified hereunder, shall observe the following instructions:—

I. A trade description of length stamped on *grey, white or coloured cotton piece goods* shall not be deemed to be false in a material respect unless,—

(a) where a single length is stamped, the description exceeds the actual length by more than—

4 inches in pieces stamped as 10 yards long and under;

5 inches in pieces stamped as above 10 yards and up to 23 yards long;

7 inches in pieces stamped as above 23 yards and up to 36 yards long;

9 inches in pieces stamped as above 36 yards and up to 47 yards long;

18 inches in pieces stamped as above 47 yards long;

provided that the average length of the goods in question shall not be less than the stamped length;

(b) where a maximum and minimum length are stamped, the described maximum length is greater than the actual length by more than—

9 inches in piece goods under 35 yards long;

18 inches in piece goods 35 yards and up to 47 yards long;

36 inches in piece goods above 47 yards long;

provided that no such piece shall measure less than the minimum stamped length.

II. A trade description of width stamped on *grey, white, or coloured cotton piece goods* shall not be deemed to be false in a material respect unless the description exceeds the actual width by—

half an inch, in pieces stamped as 40 inches or less in width;

three quarters of an inch, in pieces stamped as over 40 inches or under 59 inches in width;

one inch, in pieces stamped as 59 inches or more in width;

provided that the average width of the goods in question shall not be less than the stamped width.

III. A trade description of count or number, length or weight, applied to *grey or bleached cotton yarn* shall not be deemed to be false in a material respect unless—

(a) the described count or number is greater or less than the actual count or number by more than 5 per cent., provided that the average count of the whole of the yarn in question is not greater or less than the described count; or

(b) the average length of the whole number of hanks in a bundle is less than 840 yards; or

(c) in a bundle of yarn of any count or weight, described as being 10 pounds in weight, the number of knots of 20 hanks each is not half of, the number of knots of

10 hanks each is not the same as, and the number of knots of 5 hanks is not double, the described count or number of the yarn; or

(d) in a bundle of yarn of any count under 50, described as being 5 pounds in weight, the number of knots of 20 hanks each is not a quarter of the described count or number of the yarn; or

(e) in a bundle of yarn of any count from 50 upwards, the number of knots of 20 hanks each is not half, or the number of knots of 40 hanks each is not a quarter, when the described weight is 10 pounds, and is not a quarter or an eighth, as the case may be, when the described weight is 5 pounds, of the count or number of the yarn; or

(f) in the case of *bleached yarn*, the described weight exceeds the actual weight by more than,—

7½ per cent. in counts from 1 to 8:

5 per cent. in counts from above 8 to 18;

4 per cent. in counts from above 18 to 30;

2½ per cent. in counts from above 30 to 80.

IV. A trade description of count or number applied to a bundle of *dyed cotton yarn* shall be accepted as indicating length only, the hank being taken to measure 840 yards, and it shall be deemed to be false in a material respect if the average length of the hanks in a bundle is less than 819 yards.

V. A trade description of length applied to *thread of any kind* (of cotton, wool, flax, or silk) shall not be deemed to be false in a material respect unless it exceeds the actual length by more than one per cent.

VI. The dimensions of goods on which their length or width is stamped shall be determined by measurement in imperial yards of 36 inches.

C. J. LYALL,  
Secretary to the Government of India.

*Instructions (Executive) for the guidance of Customs Officers in the administration of the India Merchandise Marks Act, IV. of 1889.*

1. Labels or tickets applied to boxes, cartons, parcels or other packages, which are manifestly intended only for the purpose of identifying articles for the convenience of dealers and shopkeepers, and are not specially intended to attract the eye of the purchaser, should not be treated as trade descriptions. *Examples*:—On bundles of hosiery, “hose, brown merino, size 10;” on shoes, “enamelled leather, men’s, No. 6;” on hats, “brown felt, hard, No. 7.”

**NOTE.**—This rule does not apply to a mark or description on the goods themselves, or to a description of quality, or one containing the name of a place, country, manufacturer or trader, or to a trade-mark.

2. Goods manufactured on the Continent of Europe should be detained if the manufacturer's name and the trade description are expressed in English, unless the name and description are accompanied by the name of the country of manufacture.

3. Customs officers should detain, on their own motion and without requiring information, any goods produced or manufactured beyond the limits of the United Kingdom or of British India which are marked with British or British Indian names or trademarks, or so described as to indicate that the goods were produced or made in the United Kingdom or British India, unless such description is accompanied with the name, in conspicuous letters, of the country of manufacture.

A description in such cases which indicates a particular class or method of manufacture, and includes the name of a place in or a part of the United Kingdom, and is thereby likely or calculated to mislead, includes such terms as "Kidderminster carpets," "Windsor soap," "Balbriggan" on hosiery, "Shetland" on shawls and the like; for though these terms may be held to be merely indicative of methods of manufacture, they are likely to mislead as to the place of origin.

4. A report on the proceedings of the Collector should be submitted annually to the Local Government, for transmission to the Government of India. The report should show the number of cases in which (1) detention was ordered; (2) detention was followed by confiscation; (3) detention was followed by release with or without a fine; (4) detention was ordered on information received; (5) detention was ordered without information. Under the first head should be specified the section of the Act under which action was taken.

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**NOTE.**—*A collection of words and names of marks occurring in trade-marks considered in the decided cases has been inserted in the Index, with the names of the cases in which they occur, in order to facilitate reference to cases of which the names have been forgotten.*

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12/12/01