

MALAYSIA

Trademarks Regulations

as amended by PU (A) 228 of 2001

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PART I PRELIMINARY

1. Citation and commencement.

These regulations may be cited as the **Trade Marks Regulations 1997** and shall come into force on 1 December 1997.

2. Interpretation.

In these Regulations, unless the context otherwise requires -
"agent" means an agent duly authorized to the satisfaction of the Registrar;
"Office" means the Central Trade Marks Office or any other trade marks office established under section 5 of the Act.

3. Fees.

The fees to be paid in pursuance of the Act and these Regulations shall be as specified in the First Schedule.

4. Forms.

(1) The forms referred to in these Regulations are those contained in the Second Schedule.

(2) The forms shall be used in all cases in which they are applicable.

5. Classification.

For the purposes of the registration of trade marks and of the registration of registered users, goods and services are classified in the manner prescribed in the Third Schedule.

PART II DOCUMENTS

6. Size, etc. of documents.

Subject to any other directions that may be given by the Registrar, all applications, notices, counter-statements, papers having representation affixed, and other documents required by the Act or by these Regulations to be left with or sent to the Registrar shall be in ISO A4 size which shall have on the left hand part thereof a margin of not less than four centimetres.

7. Signature of documents.

(1) Subject to subregulation 10(3) and regulation 11 documents and forms filed at the Office and which require a signature shall be signed -

- (a) in the case of an individual, by that person;
- (b) in the case of a partnership, by all the partners, or by the principal acting partner stating that he signs on behalf of all the partners;
- (c) in the case of an association of persons other than a partnership, by the secretary or by any other person who satisfies the Registrar that he is authorized to sign on behalf of the association;
- (d) in the case of a body corporate, by the secretary, or by a director or by any authorized signatory.

(2) A document filed on behalf of a partnership shall contain the names of all the partners in full and in default the Registrar may require the deficiency to be rectified and may decline to take any further step in the matter to which the document in question relates until the deficiency has been rectified to his satisfaction.

8. Service of documents.

(1) All applications, notices, statements, papers having representations affixed, and other documents authorized or required by the Act or these Regulations to be made, left or sent, at or to the Office, may be sent by post.

(2) Any application or any document so sent shall be deemed to have been received at the time when it is received at the Office.

9. Address.

Where any person is, by the Act or these Regulations, bound to furnish the Registrar with an address, the address given shall in all cases be as full as possible for the purpose of enabling the place of trade or

business of such person to be found easily.

10. Address for service.

(1) An applicant, opponent, registered proprietor or registered user of a trade mark who does not reside or carry on business in Malaysia shall file Form TM 1 giving an address for service in Malaysia and such address may be treated as the actual address of the person for all purposes connected with the matter in question.

(2) Any other applicant, opponent, registered proprietor or registered user of a trade mark may, if he so desires, file Form TM 1 giving an address for service in Malaysia.

(3) Subject to regulation 7, Form TM 1 filed under these Regulations may be signed by an authorized agent and in any case in which the Registrar so requires shall be signed by the applicant, opponent, registered proprietor or registered user, as the case may be.

(4) In any case in which no address for service is filed at the Office, the Registrar may treat the business address in Malaysia, if any, of the person concerned as his address for service for all purposes connected with the matter in question.

(5) Any written communication addressed to a person at an address given by him or treated by the Registrar as his address for service shall be deemed to be properly addressed.

(6) The Registrar may, at any time that a doubt arises as to the continued availability of an address for service entered in the Register, request the person for whom it is entered, by letter addressed to his business address in the Register, to confirm the address for service or to provide another by filing Form TM 1, and if within two months of making such a request the Registrar receives no confirmation or substitution of that address, he may strike the address off the Register.

PART III AGENTS

11. Agency.

- (1) Except as otherwise required by the Act or these Regulations -
- (a) any application, request or notice which is required or permitted to be made or given to the Registrar;
 - (b) all other communications between an applicant or a person making such request or giving such a notice and the Registrar; and
 - (c) all other communications between the registered proprietor or the registered user of a trade mark and the Registrar or any other person, may be signed, made or given by or through an agent and the Registrar may -
 - (aa) in any particular case, require the personal signature or presence of the applicant, opponent, registered proprietor, registered user or other person;
 - (bb) by notice in writing sent to an agent, require him to produce evidence of his authority.

(2) Where a party to proceedings before the Registrar appoints an agent for the first time or appoints one agent in substitution for another, the agent appointed shall file Form TM 1 with the Registrar on or before the first occasion on which he acts as an agent for that party in the proceedings.

(3) No person may appoint more than one agent to act for him concurrently in respect of the same mark, whether in respect of the same or different transactions; and where more than one agent is on record, the Registrar shall recognize only the latest agent duly appointed.

(4) The Registrar shall decline to recognize as an agent any person who is not currently on the Register of Trade Marks Agents of Malaysia compiled and maintained under regulation 12.

12. Registration of agents.

- (1) The Registrar shall maintain a Register of Trade Marks Agents.
- (2) An application to be registered as a trade marks agent shall be made to the Registrar on Form TM 2 accompanied with payment of the prescribed fee.
- (3) In order to be registered in the Register of Trade Marks Agents, the

applicant shall satisfy the Registrar that he is either domiciled or resident in Malaysia or has a principal place of business in Malaysia, and -

(a) is on the Register of Patents Agents maintained in pursuance of regulations made under the Patents Act 1983; or

(b) is an advocate and solicitor practising solely in Malaysia; or

(c) holds a recognized degree in any field of studies and has had at least three years experience in the field of industrial property; or

(d) has had at least seven years of experience in the field of industrial property by virtue of his being an ex-officer of the Office; or

(e) has acted as a trade mark agent to the satisfaction of the Registrar before the Trade Marks Regulations 1997 came into force.

(4) The Registrar shall not register any person who has been convicted of any registrable offence or any criminal offence involving fraud or dishonesty.

(5) The Registrar, upon being satisfied that the applicant qualifies to be registered in the Register of Trade Marks Agent, shall register the applicant for a term expiring on the 31st December of that year.

(6) An agent shall be removed from the Register of Trade Marks Agent if he -

(a) is no longer domiciled or resident in Malaysia or no longer has a principal place of business in Malaysia; or

(b) is convicted of a registrable offence or any criminal offence involving fraud or dishonesty; or

(c) is an undischarged bankrupt; or

(d) has been struck off and not restored to the Register of Patents Agents or the Roll of Advocates and Solicitors or is suspended for the time being from that Register or that Roll.

(7) An application for the renewal of registration as a trade mark agent shall be made to the Registrar on Form TM 3 together with payment of the prescribed fee by 31 January of each year.

(8) The Registrar, shall upon being satisfied that the conditions specified in subregulations (3) and (4) continue to be satisfied, renew the registration of the trade marks agent for a term expiring on 31 December of that year.

PART IV REGISTRABLE TRADE MARKS

13. Marks subject to statutory restriction.

(1) The Registrar shall refuse to accept any application for the registration of a mark upon which any of the following appears:

- (a) the words "To counterfeit this is a forgery", "Registered Trade Mark", "Registered Service Mark", or any words to the like effect in any language;
- (b) the words "Bunga Raya" and the representations of the hibiscus or any colourable imitation thereof;
- (c) representations of or words referring to Seri Paduka Baginda Yang di-Pertuan Agong, Ruler of a State or any colourable imitation thereof;
- (d) the representations of any of the royal palaces or of any building owned by the Federal Government or State Government or any other government or any colourable imitation thereof;
- (e) the word "ASEAN" and the representation of the ASEAN logotype or any colourable imitation thereof;
- (f) the words "Red Crescent" or "Geneva Cross" and representations of the Red Crescent, the Geneva Cross and other crosses in red, or of the Swiss Federal Cross in white or silver on a red ground, or such representations in a similar colour or colours.

(2) Where there appears in a trade mark, the registration of which is applied for, a representation of a crescent or a cross in any colour, not being one of those mentioned in paragraph (1)(f), the Registrar may require the applicant, as a condition of acceptance, to undertake not to use the crescent or cross device in red, or in white or silver on a red ground, or in any similar colour or colours.

13A. Where registration of mark is not allowed.

The Registrar shall not register a mark or part of a mark where -

- (a) the mark or part of the mark is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of Malaysia to be well-known in Malaysia, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services;
- (b) the mark or part of the mark is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known under regulation 13B, which is registered in Malaysia with respect to goods or services whether or not similar to those with respect to which registration is applied for, provided that use of the mark in relation

to those goods or services would indicate a connection between those goods or services, and the proprietor of the registered mark, provided further, that the interests of the proprietor of the registered mark are likely to be damaged by such use;

(c) the mark or part of the mark is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;

(d) the mark or part of the mark is likely to mislead the public if it is a mark for wines which contains or consists of a geographical indication identifying wines, or is a mark for spirits which contains or consists of a geographical indication identifying spirits, not originating in the place indicated by the geographical indication in question.

13B. Criteria of well-known mark.

In determining whether a mark is well-known or not, the following criteria may be taken into account:

(a) the degree of knowledge or recognition of the mark in the relevant sector of the public;

(b) the duration, extent and geographical area of any use of the mark;

(c) the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods or services to which the mark applies;

(d) the duration and geographical area of any registrations, or any applications for registration, of the mark to the extent that they reflect use or recognition of the mark;

(e) the record of successful enforcement of rights in the mark, in particular, the extent to which the mark was recognized as well-known by competent authorities;

(f) the value associated with the mark.

14. Royal arms, etc.

The following devices shall not appear on a trade mark the registration of which is applied for:

(a) representations of, or mottoes of or words referring to, the royal or imperial arms, crest, armorial bearings or insignia or devices so nearly resembling any of them as to be likely to be mistaken for them;

(b) representations of, or mottoes of or words referring to, the royal or imperial crowns, or of the royal, imperial or national flags;

(c) representations of, or mottoes of or words referring to, the crests, armorial bearings or insignia of the Malaysian Army, Royal Malaysian Navy, Royal Malaysian Air Force and of the Royal Malaysia Police, or devices

so nearly resembling any of the foregoing as to be likely to be mistaken for them.

15. Arms of city, etc.

Where a representation of the name, initials, armorial bearings, insignia, orders of chivalry, decorations or flags of any international organization, state, city, borough, town, place, society, body corporate, institution or person appears on a mark, the Registrar shall not consider whether to refuse or accept an application for the registration of the mark unless the consent of such official or other person as appears to the Registrar to be entitled to give consent is filed.

16. Goods or services described on a mark.

(1) Where the name or description of any goods appears on a trade mark for any goods or the name or description of any service appears on a trade mark for any services, the Registrar may refuse to register such mark in respect of any goods or services, as the case may be, other than the goods or services so named or described.

(2) Where the name or description of any goods appears on a trade mark for any goods or the name or description of any service appears on a trade mark for any services and in either case the name or description in use varies, the Registrar shall not consider whether to refuse or permit the registration of the mark for those and other goods or services, as the case may be, unless the applicant states in his application that the name or description will be varied when the mark is used upon goods or services covered by the specification other than the named or described goods or services.

17. Preliminary advice.

(1) Any person who proposes to apply for the registration of a mark in respect of any goods or services may apply to the Registrar on Form TM 4 for advice as to whether the mark, of which duplicate representations shall accompany the form, appears to the Registrar prima facie to be inherently capable of distinguishing within the meaning of section 10 in relation to those goods or services.

(2) Separate applications shall be made in relation to goods or services comprised within different classes in the Third Schedule.

(3) For the purpose of obtaining repayment of any fee paid on the filing

of an application for registration to which the Registrar objects, notice of withdrawal of the application under subsection 73(3) of the Act shall be given in writing within one month from the date of receipt of the notice of the Registrar's objection.

17A. Request for search.

Any person may request the Registrar on Form TM 4A to cause a search to be made in respect of specified goods or services classified in any one class of the Third Schedule to ascertain whether any trade mark is on record at the date of the search which resembles a trade mark of which duplicate representations shall accompany the Form and the Registrar shall cause such a search to be made and the person making the request to be informed of the result of the search.

PART V APPLICATION FOR REGISTRATION

18. Form of application.

(1) An application for the registration of a trade mark, certification trade mark or defensive trade mark shall be made on Form TM 5 accompanied by the prescribed fee and five copies of the application.

(2) Each application shall be in respect of goods or services in only one class in the Third Schedule and applications for the registration of the same mark in different classes shall be treated as separate and distinct applications.

(3) In the case of an application for registration in respect of all the goods or services included in one class, or of a large variety of goods or services, the Registrar may refuse to accept the application unless he is satisfied that the specification is justified by the use of the mark which the applicant has made, or which he intends to make if and when it is registered.

19. Representation of mark.

(1) A representation of the trade mark shall be affixed to the form of application in the space provided for that purpose but if the representation of the mark exceeds that space in size it shall be mounted upon durable material and be annexed to the form of application.

(2) The Registrar may, if he considers that a representation of a trade mark is mounted on a material which will not in the course of time preserve the features of the trade mark, require the applicant to furnish a further representation of the trade mark mounted on a material specified by the Registrar.

20. Representations to be satisfactory.

The representation of a mark shall be clear and durable and if he is dissatisfied with any representation the Registrar may at any time require another representation satisfactory to him to be substituted before proceeding with the application.

21. Cases of difficulty.

(1) Where a representation cannot be filed in accordance with regulation 19, a specimen or copy of the mark, either of full size or on a reduced scale, may, subject to the consent of the Registrar, be filed in any

convenient form.

(2) Each specimen or copy filed under subregulation (1) shall be retained by the Registrar for inspection by the public, and the Registrar may refer thereto in the Register in such manner as he may think fit.

22. Series of trade marks.

When application is made for the registration of a series of trade marks under section 24 of the Act, a representation of each mark of the series shall be affixed to the application form in accordance with regulation 19.

23. Transliteration and translation.

(1) Where a trade mark contains a word or words in characters other than Roman there shall, unless the Registrar otherwise directs, be endorsed on the application form for its registration, a certified transliteration and translation of each of such words, and every such endorsement shall state the language to which the words belong.

(2) Where a certified transliteration and translation accompanies the application a sufficient reference to it must be endorsed on the form of application.

(3) Where a trade mark contains a word or words in a language other than the national language or English language, the form of application shall be endorsed with an exact translation of the word or words and the name of the language.

24. Amendment of application.

Any request to amend an application for registration, whether or not the amendment is made to overcome an objection by the Registrar, shall be made on Form TM 26 accompanied by the prescribed fee.

PART VI PROCEDURE ON RECEIPT OF AN APPLICATION FOR REGISTRATION OF TRADE MARK

25. Search.

(1) Upon receipt of an application for the registration of a trade mark the Registrar shall, for the appropriate purpose specified in subregulation (2) or (3), cause a search to be made amongst registered marks and pending applications and the Registrar may cause the search to be renewed at any time before the acceptance of the application, but shall not be bound to do so.

(2) In the case of an application for the registration of a trade mark in respect of any goods, the appropriate purpose mentioned in subregulation (1) is that of ascertaining whether, for the same goods, for the same description of goods, or for services closely related to those goods, there are on record any marks identical with the mark applied for, or so nearly resembling it as to render use of the mark applied for likely to deceive or cause confusion.

(3) In the case of an application for the registration of a trade mark in respect of any services, the appropriate purpose mentioned in subregulation (1) is that of ascertaining whether, for the same services, for the same description of services, or for goods that are closely related to those services, there are on record any marks identical with the mark applied for, or so nearly resembling it as to render use of the mark applied for likely to deceive or cause confusion.

26. Registrar's acceptance.

After a search conducted as provided for in regulation 25, and after consideration of the application and of any evidence of use or distinctiveness or any other matter which the applicant may, or may be required to furnish, the Registrar may accept the application absolutely, or he may object to it, or he may express his willingness to accept it subject to such conditions, amendments, modifications, or limitations as he may think right to impose.

27. Registrar's objection.

(1) If the Registrar objects to the application, he shall inform the applicant of his objections in writing, and unless within two months from the date of receipt of those objections, the applicant makes a considered reply in writing, he shall be deemed to have abandoned his application.

(2) Any considered reply in writing filed in accordance with subregulation (1) may contain proposals, conditions, amendments, modifications or limitations designed to overcome the Registrar's objections.

(3) Where, after taking into account any considered reply in writing provided in accordance with subregulations (1) and (2), the Registrar maintains his objections to the application, he shall so inform the applicant and if the applicant does not apply for a hearing within two months from the date of receipt of the Registrar's decision he shall be deemed to have abandoned his application.

28. Conditional acceptance.

(1) If the Registrar is willing to accept the application subject to any condition, amendment, modification or limitation, he shall inform the applicant in writing of such willingness.

(2) If the applicant does not respond to the information sent in accordance with subregulation (1) within two months of its receipt he shall be deemed to have abandoned his application.

(3) If the applicant objects to any condition, amendment, modification or limitation contained in the communication sent in accordance with subregulation (1) he may submit his considered reply in writing within two months of its receipt and if he does not do so he shall be deemed to have abandoned his application.

(4) Where, after taking into account any considered reply in writing provided in accordance with subregulation (3), the Registrar maintains his objections to the application, he shall so inform the applicant and if the applicant does not apply for a hearing within two months from the date of receipt of the Registrar's decision he shall be deemed to have abandoned his application.

29. Decision of Registrar.

(1) The decision of the Registrar following a hearing as provided in subregulation 27(3) or 28(4) shall be communicated to the applicant in writing, and if the applicant objects to such decision he may, within two months from the date of its receipt, require, on Form TM 6, the Registrar to state in writing the grounds of, and the materials used by him in arriving at, his decision.

(2) In a case where the Registrar makes any requirements to which the applicant does not object, the applicant shall comply with the requirements before the Registrar issues the statement setting out the grounds of his decision.

(3) The date when a statement is sent to the applicant under this regulation shall be deemed to be the date of the Registrar's decision for the purpose of appeal.

PART VII CERTIFICATION TRADE MARK

30. Application for registration of certification trade mark.

(1) These Regulations shall apply to an application to register a certification trade mark as they apply to an application to register an ordinary trade mark, except that for references to acceptance of an application there shall be substituted references to authorization to proceed with the application under regulation 31.

(2) The address of an applicant to register a certification trade mark shall be deemed to be a business address for all the purpose for which such an address is required by these Regulations.

31. Case and draft rules.

(1) The applicant for the registration of a certification trade mark shall send to the Registrar together with his application and the draft rules for governing use of the mark, a statement of case setting out the grounds on which he relies in support of his application.

(2) The Registrar may communicate to the applicant any observations he may have to make on the sufficiency of the case or the suitability of the draft rules and the applicant may modify either of those documents.

(3) The Registrar may at any time, call for such evidence as he thinks fit before deciding on the application.

PART VIII DEFENSIVE TRADE MARK

32. Application for registration of defensive trade mark.

(1) An application to register a defensive trade mark under section 57 of the Act shall be accompanied by a statement of case setting out full particulars of the facts on which the applicant relies in support of his application, verified by a statutory declaration made by the applicant or by some other person approved for the purpose by the Registrar.

(2) The applicant may send with the statutory declaration or within such time as the Registrar may allow, such other evidence as he may desire, whether after request made by the Registrar or otherwise, and the Registrar shall consider the whole of the evidence before deciding on the application.

(3) Subject to subregulations (1) and (2), these Regulations shall, except to the extent that they are inappropriate or it is otherwise provided, apply to applications to register defensive trade marks as they apply to applications to register ordinary trade marks.

PART IX ADVERTISEMENT OF APPLICATION

33. Application for registration.

(1) Every application for the registration of a trade mark required or permitted to be advertised by section 27 of the Act, shall be advertised in the Gazette during such times and in such manner as the Registrar may direct and regulation 34 shall apply.

(2) Before advertising any application in accordance with subregulation (1), the Registrar shall notify the applicant and request payment of the appropriate fee by way of filing Form TM 29; and if the applicant does not pay the fee within two months of receipt of the Registrar's request he shall be deemed to have abandoned his application.

(3) In the case of an application which will be proceeded with by the Registrar only after the applicant has lodged the written consent of the registered proprietor of another mark to the proposed registration of the applicant's mark, the words "By Consent" shall appear in the advertisement.

34. Representation for advertisement.

The applicant shall, for the purposes of advertisement, file a representation of the mark in a form approved or directed by the Registrar or in a manner which he thinks fit and such a representation shall be of such dimensions as the Registrar may require or permit for the purpose.

35. Advertisement of series of trade marks.

When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in section 24 of the Act, the Registrar may, if he thinks fit, insert with the advertisement of the application a statement of the manner in which the marks differ from one another.

36. Advertisement in order cases.

Advertisement under subsections 28(9), 44(2) and 44(4) of the Act shall be made in the same manner, mutatis mutandis, as advertisements relating to an application for registration.

PART X OPPOSITION TO REGISTRATION

37. Opposition.

Any person may, within two months from the date of any advertisement in the Gazette of an application for registration of a -

- (a) trade mark;
- (b) certification trade mark; or
- (c) defensive trade mark,

give notice in writing to the Registrar on Form TM 7 accompanied by the prescribed fee of opposition to the registration, and in any such case shall at the same time send a copy of the notice to the applicant.

38. Contents of notice.

(1) A notice of opposition shall include a statement of the grounds upon which the opponent objects to the registration of the applicant's mark.

(2) If registration is opposed on the ground that the mark resembles another mark already on the Register, or the registration of which is the subject of a current application, the number and class of that other mark and, except in the case of an application not yet advertised, the number of the Gazette in which it has been advertised shall be set out in the notice.

39. Counter-statement.

(1) Within two months of the receipt of a notice of opposition filed in accordance with regulation 38, the applicant may file a counter-statement on Form TM 8 setting out the grounds on which he relies as supporting his application and the facts, if any, alleged in the notice of opposition which he admits, and shall at the same time send a copy of the counter-statement to the opponent.

(2) If no counter-statement is filed in accordance with subregulation (1), the application shall be deemed abandoned.

40. Evidence in support of opposition.

(1) Within two months of the receipt of the counter-statement, the opponent shall file with the Registrar such evidence by way of statutory declaration as he desires to adduce in support of his opposition, and shall at the same time send a copy of that evidence to the applicant.

(2) If no evidence is filed in accordance with subregulation (1), the opposition shall be deemed abandoned.

41. Evidence in support of application.

(1) Within two months of the receipt of the opponent's evidence, the applicant shall file with the Registrar such evidence by way of statutory declaration as he desires to adduce in support of his application and shall at the same time send a copy of that evidence to the opponent.

(2) If no evidence is filed in accordance with subregulation (1), the application shall be deemed abandoned.

42. Evidence in reply.

(1) Within two months from the receipt by the opponent of the copies of the applicant's evidence filed in accordance with regulation 41, the opponent may file evidence in reply by way of statutory declaration and shall, at the same time, send a copy of that evidence to the applicant.

(2) Evidence in reply shall be confined to matters strictly in reply to the applicant's evidence.

43. Further evidence.

No further evidence may be filed by either side, except that in any proceedings before him, the Registrar may at any time if he thinks fit give leave to either party to file such further evidence upon such terms as to costs or otherwise as he may think fit.

44. Exhibits.

(1) Where there are exhibits to any statutory declaration filed as evidence in an opposition, the party filing them shall, on the request and at the cost of the other party, send to him a copy or impression of each exhibit.

(2) In all cases, the original exhibits filed with the Registrar shall be opened for inspection at the Office by the other side.

45. Extension of time.

Where in opposition proceedings any extension of time is granted to any party, the Registrar may thereafter, if he thinks fit, without giving that party a hearing, grant to the other party, on payment by him of the prescribed fee, any reasonable extension of time in which to take any subsequent step.

46. Written submission.

(1) Upon completion of the evidence the Registrar shall give notice to

the parties of a date by which they may send to him any arguments or submissions in writing.

(2) The date mentioned in subregulation (1) shall be at least one month after the date of receipt by the parties of the notice given by the Registrar.

47. Registrar's decision.

As soon as may be after the expiration of the period notified in accordance with regulation 46, the Registrar shall consider the evidence and any written submissions or arguments and shall within two months communicate to the parties in writing his decision in the matter and the grounds of his decision.

48. Security for costs.

(1) Where a party giving notice of opposition under regulation 37 or a counter-statement under regulation 39 neither resides nor carries on business in Malaysia, the Registrar may require him to give security, in such form as the Registrar may deem sufficient, for the costs or expenses of the proceedings before him, for such amount as the Registrar may deem fit, and at any stage in the opposition proceedings he may require further security to be given at any time before giving his decision in the case.

(2) Where an application under subsection 26(1) of the Act is subject to opposition, the Registrar may require the applicant to give security for the costs of any proceedings in relation to the opposition.

(3) In default of such security as mentioned in subregulation (1) being duly given, the Registrar may treat the application or the opposition, as the case may be, as abandoned.

49. Costs in uncontested cases.

In the event of an opposition being uncontested by the applicant, the Registrar in deciding whether costs should be awarded to the opponent shall consider whether proceedings might have been avoided if reasonable notice had been given by the opponent to the applicant before the notice of opposition was lodged.

50. Opposition to a certification trade mark.

(1) Within two months from the date of any advertisement in the Gazette of an application for the registration of a certification trade mark, any person may give notice of opposition to the Registrar by filing Form

TM 7, accompanied by the prescribed fee, and regulations 37 to 45, 48 and 49 shall apply to the proceedings thereon.

(2) Where the opposition is lodged under subsection 56(12) of the Act, regulations 46 and 47 shall also apply.

(3) Where the opposition is lodged under subsection 56(13) of the Act, subregulations (4), (5) and (6) shall apply.

(4) Upon completion of the evidence the Registrar shall give notice to the parties of a date by which they may either apply for a hearing or send to him any submissions or arguments in writing. If the parties desire to be heard they shall file with the Registrar Form TM 9 accompanied by the prescribed fee.

(5) The date mentioned in subregulation (4) shall be at least one month after the date of receipt by the parties of the notice given by the Registrar.

(6) As soon as may be after the expiration of the period notified in accordance with subregulations (4) and (5), and after hearing the parties if that option has been exercised, the Registrar shall consider the evidence and any written or oral submissions or arguments, and shall within two months communicate in writing to the parties his decision in the matter and the grounds of his decision.

51. Opposition to alteration of rules of a registered certification trade mark.

(1) Within two months from the date of any advertisement in the Gazette under subsection 56(14) of the Act of an alteration to the rules deposited in respect of a registered certification trade mark, any person may give notice to the Registrar of opposition to the proposed alteration by filing Form TM 7 accompanied by the prescribed fee.

(2) The subsequent proceedings shall be in accordance with regulations 37 to 45, 48 and 49 and subregulations 50(4) to 50(6).

PART XI REGISTRATION AND RENEWAL

52. Entry in the Register.

(1) As soon as may be after the expiration of two months from the date of the advertisement in the Gazette of any application for the registration of a trade mark, the Registrar shall, subject to any opposition and the determination thereof and subject to subsection 30(1) of the Act, enter the mark in the Register.

(2) Except where the mark consists of a letter, letters, word or words in plain type, or where the Registrar has retained a specimen or copy under subregulation 21(2), the applicant shall if required file a representation of the mark agreeing in all respects with the representation then appearing on the form of application and, subject to subregulation 21(1), complying with regulation 20.

(3) The entry of a trade mark in the Register shall give the following particulars:

- (a) the date of the registration;
- (b) the goods or services in respect of which it is registered;
- (c) the name and the trade or business of the proprietor, including the names of all the partners where the proprietor is a partnership;
- (d) any approved address for service filed under regulation 10;
- (e) particulars of any undertakings given by the proprietor;
- (f) particulars affecting the scope of the registration or the rights conferred by it; and
- (g) any other particulars as the Registrar may determine from time to time.

(4) In the case of an application which the Registrar accepts only after the applicant has lodged the written consent to the proposed registration of the registered proprietor of another trade mark or another applicant for registration, the entry in the Register shall state that it is "By Consent" and shall give the number of the registration of the other trade mark or the other application for registration.

53. Registration not completed within twelve months.

(1) Subject to subregulation (2), where a trade mark has not been registered after six months from the date of the advertisement in the Gazette of the application for registration of the mark, the Registrar may give notice in writing to the applicant at his address for service of the non-completion,

and if after twelve months from the date of the advertisement the registration is not completed by reason of default on the part of the applicant, the application shall lapse and shall be removed from the record.

(2) Where the registration of a trade mark is delayed by an opposition to its registration and no appeal to the court is made in the matter, the mark may be registered within such time as may be directed by the Registrar and if the mark has not been registered within that time the application shall lapse and shall be removed from the record.

(3) For the purposes of this regulation the requirements for completion are satisfied when the Registrar has received the prescribed fee and, where required, the representation referred to in subregulation 52(2).

54. Associated marks.

(1) Where a mark is registered as associated with any other mark or marks the Registrar shall note in the Register in connection with the first mentioned mark the registration numbers of the marks with which it is associated and shall also note in the Register in connection with each of the associated marks the number of the first mentioned mark as being a mark associated therewith.

(2) An application by a registered proprietor under subsection 22(2) of the Act requesting the Registrar to dissolve the association between two or more registered marks shall be made by filing Form TM 11 accompanied by the prescribed fee and a statement of the grounds of the application.

55. Death of applicant before registration.

(1) If an applicant for the registration of trade mark dies -
(a) after his application has been made and before the mark has been entered on the Register; and
(b) another person proves to the satisfaction of the Registrar that he enjoys the same rights in, or in respect of, the mark that the applicant enjoyed,
the application shall, subject to subregulation (2), proceed in that other person's name and regulations 52 and 53 shall apply as if that other person were the applicant.

(2) Before a person may be substituted on an application for registration under subregulation (1), he shall file Form TM 26 accompanied by the prescribed fee and regulation 26 shall apply.

56. Certificate of registration.

Upon the registration of a trade mark, the Registrar shall issue to the applicant a certificate of registration on Form TM 10 and shall affix thereto representation of the mark, if any.

57. Renewal of registration.

(1) At any time not less than three months before the expiration of the last registration of a trade mark, the registered proprietor or his authorized agent may submit Form TM 12 together with the prescribed fee for the renewal of the mark.

(2) If the person filing Form TM 12 is other than the registered proprietor or his authorized agent, he shall enter on the form his name and address and shall attach a letter of authority from the registered proprietor, authorizing him to renew the registration of the mark.

58. Reminder of renewal.

(1) If on a date not less than one month and not more than two months before the expiration of the last registration of a trade mark, Form TM 12 accompanied by the appropriate fee has not been received, the Registrar shall notify the registered proprietor in writing of the impending expiration.

(2) Any such notification may be sent in accordance with subregulation 10(5).

59. Late renewal.

If within one month from the expiration of the last registration of a trade mark the renewal fee has not been paid and if Form TM 13 is filed, accompanied by the late renewal fee, the Registrar shall renew the registration without removing the mark from the Register.

60. Removal and restoration.

(1) If the late renewal fee have not been paid by the end of the period of one month referred to in regulation 59, the Registrar shall remove the mark from the Register as of the expiration of the last registration.

(2) If, within one year from the expiry of the last registration, Form TM 14 is filed, accompanied by the restoration and renewal of registration fee, the Registrar may restore the mark to the Register and renew its registration if he is satisfied that it is just to do so, upon such condition

as he may think fit.

61. Record of removal.

Where a trade mark has been removed from the Register for non-payment of the renewal fee the Registrar shall enter in the Register a record of such removal and of the cause thereof and shall advertise the fact of the removal in the Gazette.

62. Notice and advertisement of renewal and restoration.

Upon the renewal or restoration and renewal of registration, a notice to that effect shall be sent to the registered proprietor and the renewal or restoration and renewal of registration shall be advertised in the Gazette.

PART XII ASSIGNMENTS AND TRANSMISSIONS

63. Application for entry of subsequent proprietor.

(1) Where a person becomes entitled by assignment or transmission to a registered trade mark he shall make application to register his title by filing Form TM 15 accompanied by the prescribed fee.

(2) An application under subregulation (1) may be made jointly with the registered proprietor.

64. Particulars to be provided.

(1) An application under subregulation 63(1) shall contain the full name and trade or business address of the applicant and, if the applicant is a partnership, the full names of all the partners.

(2) There shall be filed with the application for retention by the Registrar, an attested copy of the instrument, if any, under which the applicant claims his entitlement.

(3) The Registrar may at any time, by notice in writing sent to the applicant, require him to produce for inspection any instrument of which an attested copy has been filed.

(4) An instrument or attested copy of the instrument furnished in accordance with this regulation shall not be opened for public inspection.

(5) Where an applicant does not claim under any instrument which is capable in itself of furnishing documentary proof of his title he shall file with the application a statement of case setting forth the full particulars of the facts upon which his claim to be the proprietor of the mark in question is based and showing that it has been assigned or transmitted to him, and if the Registrar so requires the case shall be verified by statutory declaration.

65. Proof of title.

The Registrar may call on any person who applies to be registered as proprietor of a registered trade mark for such proof or additional proof of title as he may require for his satisfaction.

66. Assignment without goodwill.

(1) An application under subregulation 63(1) relating to an assignment

of a trade mark in respect of any goods or services shall state -

- (a) whether the mark was, at the time of the assignment, used in a business in any of those goods or services, as the case may be; and
- (b) whether the assignment was made otherwise than in connection with the goodwill of that business,

and if both circumstances subsist the assignment shall be advertised in prominent newspapers or other publications approved by the Registrar in any particular case and the advertisement shall state that the assignment was otherwise than in connection with the goodwill of the business concerned.

(2) A copy of the advertisement shall be filed with the Registrar and until this has been done the assignment shall be deemed not to have taken effect.

67. Entry of assignment in Register.

When the Registrar is satisfied as to the title of an applicant under subregulation 63(1), he shall cause the applicant to be registered as proprietor of the trade mark in respect of the relevant goods or services and shall enter in the Register -

- (a) the name and the trade or business address of the new proprietor, including the names of all the partners where the new proprietor is a partnership;
- (b) any address for service filed under regulation 10; and
- (c) particulars of the assignment or transmission.

68. Partial assignment.

Where, pursuant to an application under subregulation 63(1) and as a result of a division and separation of the goods or services of a registration, or a division and separation of places or markets, different persons become registered separately, whether or not under different official numbers, as subsequent proprietors of a registered trade mark, each of the resultant separate registrations in the names of different persons shall be treated as a separate registration for all purposes of the Act.

69. Proposed assignment or transmission.

(1) Any person wishing to obtain the Registrar's written approval of a proposed assignment or transmission in accordance with subsection 55(4) of the Act shall file an application on Form TM 15, a statement of case in duplicate setting out the circumstances, and a copy of any instrument or proposed instrument effecting the assignment or transmission in

question.

(2) The Registrar may call for any evidence or further information that he may consider necessary, and may require the statement of case to be amended to include all the relevant circumstances or to be verified by statutory declaration; and if the statement of case is amended, two fair copies in its final form shall be filed.

(3) The Registrar shall consider whether in all circumstances use of the trade mark in question in exercise of rights conferred or to be conferred by the proposed assignment or transmission is in the public interest and shall issue a notification in writing of approval or disapproval thereof, as the case may be, and shall seal to the notification a copy of the statement of case in its final form.

PART XIII ALTERATION OF THE REGISTER

70. Alteration of address.

(1) A registered proprietor or registered user of a trade mark whose -
(a) trade or business address is changed; or
(b) address for service as entered in the Register is no longer appropriate, whether by reason of discontinuance of the entered address or otherwise, and as such the entry in the Register is rendered incorrect shall forthwith, by filing Form TM 16 or TM 1 as appropriate, request the Registrar to make the appropriate alteration of the address in the Register.

(2) Upon a request made under subregulation (1), accompanied by the prescribed fee, the Registrar shall, if he is satisfied in the matter, alter the Register accordingly.

(3) A registered proprietor or a registered user of a trade mark whose registered business address or address for service is altered by a public authority but the address as altered designates the same premises as before shall make a request for the appropriate alteration of the address to the Registrar on Form TM 16 or TM 1 as appropriate and if the request is accompanied by a certificate of the alteration given by the said authority, the Registrar shall alter the Register accordingly if he is satisfied as to the facts of the case, without payment of fee.

(4) If the address of one person is the address for service of more than one registered proprietor or registered user, or in respect of more than one registered mark, that person may request the Registrar to make the appropriate alteration in the Register in respect of each entry concerned by filing a single Form TM 1 suitably amended and, if the Registrar is satisfied that the altered address is that of the applicant and complies with regulation 10, he shall make the alterations in the Register accordingly on payment of the prescribed fee in respect of each such entry, unless the application is made under subregulation (3).

71. Application for making, cancelling or varying an entry by a registered proprietor or registered user.

(1) Subject to regulation 70, an application to the Registrar under section 43 of the Act for making, cancelling or varying an entry in the Register shall be made by filing Form TM 17, TM 18 or TM 19, as the case may be, accompanied by the prescribed fee.

(2) Every application under subregulation (1) shall be accompanied by a statement setting out fully the nature of the applicant's interest, the facts on which he bases his case and the relief which he seeks.

(3) Where the application is made by a person who is not the registered proprietor of the mark in question, the applicant shall forthwith send copies of the application and of the statement to the registered proprietor at his trade or business address as entered in the Register and, if an address for service different therefrom is entered in the Register, at that address also.

(4) In any particular case the Registrar may require a statement made under subregulation (2) to be verified by statutory declaration.

72. Evidence for alteration.

The Registrar may require an applicant under regulation 71 to furnish such evidence by statutory declaration or otherwise as he may think fit as to the circumstances in which the application was made.

73. Advertisement in certain cases.

Before deciding on a request made on Form TM 19 under regulation 71 for the entry of a disclaimer or memorandum, the Registrar shall advertise the request in the Gazette to enable any person wishing to oppose the request to state in writing, within two months from the date of the advertisement, any reasons against the making of the entry.

74. Application to the court.

A copy of every application to the court under the Act shall be filed at the Office by the applicant.

75. Order of court.

(1) Where an order is made by the court in any case under the Act, the person in whose favour the order is made or, if there is more than one, such one of them as the Registrar may direct, shall file an office copy of the order with the Registrar and, if rectification or alteration of the Register is required, Form TM 28 accompanied by the prescribed fee.

(2) The Register shall, where appropriate, be rectified or altered by the Registrar accordingly.

(3) If the Registrar considers that an order made by the court under the

Act should be given publicity he may publish it in the Gazette.

76. Certificate of validity.

(1) Where the court has certified with regard to the validity of a registered trade mark as provided in section 61 of the Act, the registered proprietor of the mark may, by filing Form TM 20 accompanied by the prescribed fee and an office copy of the certificate, request the Registrar to add to the entry in the Register a note that the certificate of validity has been so granted.

(2) The proceedings in the course of which the certificate was granted shall be named in the request.

(3) On receipt of a request made in accordance with subregulation (1), the Registrar shall enter a note in the Register as requested and publish it in the Gazette.

77. Alteration of registered mark.

(1) An application under section 44 of the Act for addition to or alteration of a registered trade mark shall be made by filing Form TM 21 accompanied by the prescribed fee and a representation of the mark as it will appear when added to or altered.

(2) The representation of the altered mark shall, subject to regulation 21, comply with regulation 20.

78. Advertisement before decision.

(1) The Registrar shall consider each application filed in accordance with regulation 77 and, if it appears to him expedient to do so, shall advertise it in the Gazette before deciding it.

(2) Where the Registrar causes an application made under subsection 44(1) of the Act to be advertised, then, within two months from the date of the advertisement, any person may give notice of opposition to the application by filing Form TM 22 accompanied by the prescribed fee and a statement of the grounds of the opposition.

(3) Regulations 37 to 45 and subregulations 50(4), 50(5) and 50(6) shall apply to any further proceedings on the application with such modifications as may be required to suit the circumstances.

(4) If, in a case where notice has been given under subregulation (2), the Registrar decides to allow the application he shall add to or alter the mark in the Register accordingly.

79. Advertisement of altered mark.

Regulation 34 shall apply in respect of all advertisements made under regulation 78.

PART XIV REGISTERED USER

80. Application for entry of registered user.

(1) An application to the Registrar under section 48 of the Act for the registration of a person as a registered user of a registered trade mark shall be made by the registered proprietor by filing Form TM 23 accompanied by the prescribed fee.

(2) A separate application shall be made for each proposed registered user of the registered mark.

(3) Every application under this regulation shall contain a representation of the registered mark complying with regulation 34.

81. Entry of registered user.

(1) The Registrar shall send to the registered proprietor of the mark in respect of which an application under regulation 80 has been made and to the registered user a notification in writing of the registration of the registered user and may, if he thinks fit, publish such notification in the Gazette.

(2) The date on which the application was duly made under regulation 80 shall be deemed to be the date on which the person mentioned in the entry in the Register as a registered user was so registered.

82. Variation or cancellation of entry of registered user.

(1) Application by the registered proprietor of a registered trade mark for the variation or cancellation of the registration of a registered user of the mark under section 49 of the Act shall be made by filing Form TM 24 accompanied by the prescribed fee.

(2) A representation of the registered mark in question shall accompany any application made under this regulation and regulation 34 shall apply to it.

(3) If the variation or cancellation affects more than one registered user of the mark a separate application shall be made in respect of each of them.

(4) If the Registrar is satisfied in the matter, he shall cancel or vary, as the case may be, the entry on the Register relating to the registered

user concerned, in accordance with the application.

(5) The Registrar shall send to the registered proprietor of the registered mark in question a notification of the variation or cancellation and may, if he thinks fit, publish such notification in the Gazette.

83. Expiry or striking out.

(1) Where, in accordance with paragraph 48(2)(e) of the Act, the registration of a registered user is for a period and the period expires before the expiration of the last registration of the trade mark, the Registrar may strike out the relevant entry at the end of that period.

(2) If an entry is struck out or varied otherwise than at the instance of the registered proprietor, the Registrar shall send written notification of the striking out or variation to the registered proprietor and to any registered user whose permitted use is affected thereby and shall publish such notification in the Gazette.

PART XIVA BORDER MEASURES

83A. Application to restrict importation of counterfeit trade mark goods.

(1) An application under section 70D to the Registrar to restrict the importation of counterfeit trade mark goods into Malaysia by the proprietor or an agent of the proprietor having the power to submit such application shall be made in Form TM 30 accompanied by the prescribed fee, an affidavit and five copies of the application.

(2) Each application shall be made in respect of a single trade mark and shall state the date, time and place the counterfeit trade mark goods are expected to be imported.

(3) An affidavit made under subregulation (1) shall state that the applicant is the proprietor of the mark or an agent having the power to submit such application, registration number of the said trademark, the representation of the mark and interest of the applicant in the mark, if any.

PART XV SUPPLEMENTARY

84. Extension of time.

(1) If, in any particular case, the Registrar is satisfied that the circumstances are such as to justify an extension of the time for doing any act or taking any proceeding under these Regulations, not being a time expressly provided in the Act or prescribed by regulation 53, subregulation 60(1), or subregulation 86(2), he may extend the time upon such notice to other parties, and upon such terms as he may direct, and the extension may be granted though the time has expired for doing the act or taking the proceeding.

(2) Every application for an extension of time under subregulation (1) shall be made on Form TM 27 stating the circumstances in sufficient detail to enable the Registrar to determine whether the extension is justified and shall be accompanied by the prescribed fee.

(3) Where, in an inter-partes proceeding an extension of time is sought, the party seeking the extension shall at the same time send to every other person who at the time is a party to the proceeding, a copy of the request for extension filed with the Registrar.

(4) Any party may, within fourteen days of receiving a copy of a request in accordance with subregulation (3), send to the Registrar observations on the request for an extension and if no observations are so sent he shall be deemed to consent to the extension being granted by the Registrar.

(5) In considering whether to grant an extension of time in a case falling within subregulation (3) the Registrar shall take into account the circumstances set out in the request for an extension and of any observations submitted by other parties to the proceedings and he shall send a copy of his decision to the party seeking the extension and to every other party referred to in subregulation (3).

85. Excluded days.

(1) The following days shall be excluded days for all purposes under the Act and these Regulations:

- (a) all Sundays;
- (b) any day specified as or proclaimed to be a public holiday;
- (c) any day proclaimed to be an excluded day by notice displayed to public view at an Office.

(2) Whenever the last day fixed by the Act or by these Regulations for doing any act or thing at the Office falls on a day which is an excluded day, it shall be lawful to do the act or thing on the first day following such excluded day which is not an excluded day.

86. Application for hearing.

(1) Before exercising adversely to an applicant for registration or a registered proprietor any discretionary power given to the Registrar by the Act or by these Regulations, the Registrar shall hear that person thereon if so required by that person.

(2) Any request for a hearing under subregulation (1) shall be made to the Registrar within two months from the date the Registrar notifies him that he proposes to exercise a discretionary power.

(3) The decision of the Registrar in the exercise of any such discretionary power shall be notified to the person affected.

87. Power to dispense with evidence.

Where, under these Regulations any person is required to do any act or thing, or any document or evidence is required to be filed, and it is shown to the satisfaction of the Registrar that by any reasonable cause that person is unable to do that act or thing or that document or evidence cannot be filed, the Registrar may, upon the production of such other evidence and subject to such terms as he thinks fit, dispense with the doing of any such act or thing, or the filing of such document or evidence.

88. Amendment of documents.

Any document filed in any proceedings before the Registrar and any mistake in a drawing or other representation of a trade mark may, if the Registrar thinks fit, be amended, and any irregularity in procedure in or before the Office may be rectified, on such terms as the Registrar may direct.

89. Certificate by Registrar.

(1) Subject to subregulation (2), any person may, by filing Form TM 25 accompanied by the prescribed fee, request the Registrar to give a certificate as to any entry, matter or thing which the Registrar is authorized or required by the Act or these Regulations to make or do, other than a certificate of registration issued under subsection 30(2) of the Act.

(2) Before giving a certificate under subregulation (1), the Registrar may, if he thinks fit, require the person making the request to show to his satisfaction an interest in the entry, matter or thing in question and if he is not so satisfied he may decline to furnish the certificate.

(3) The Registrar shall not be obliged to include in any certificate issued under this regulation a copy of the mark unless the person making the request has filed a copy suitable for the purpose.

90. Statutory declarations.

(1) Any statutory declaration required under the Act or these Regulations, or used in any proceedings thereunder, shall be made and subscribed as follows:

(a) in Malaysia, in accordance with the provisions of the Statutory Declarations Act 1960;

(b) in any other part of the world before any court, judge, justice of the peace, magistrate, notary public or other officer authorized by law to administer an oath for the purpose of any legal proceedings.

(2) Any document purporting to have affixed, impressed or subscribed thereto or thereon the seal or signature of any person authorized by subregulation (1) to take a declaration may be admitted without proof of the genuineness of the seal or signature or of the official character of the person or his authority to take the declaration.

PART XVI REVOCATION AND TRANSITIONAL PROVISIONS

91. Revocation.

The Trade Marks Regulations 1983 are hereby revoked.

92. Saving.

(1) These Regulations shall not apply to any application made under the revoked Regulations and submitted prior to the coming into force of these Regulations and for the purpose of such applications, the revocation of the Trade Marks Regulations 1983 shall be deemed to have not been made.

(2) The Registrar may give directions as he deems fit to ensure that the application under subregulation (1) complies with these Regulations in so far as it is not prejudicial to the application of the revoked Regulations.

(3) For the avoidance of doubt, the directions of the Registrar in respect of an application for registration of a trade mark or for renewal of a trade mark or for registration as a registered user or to any trade mark registered, made prior to the coming into force of these Regulations, shall not affect paragraph 31(2)(c), subsection 32(1), section 41, subsection 49(3) and section 70A of the Act.