

KENYA
Trademarks Rules
Amended by L.N. 146/2003

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Preliminary

1. Short title

These Rules may be cited as the Trade Marks Rules.

2. Interpretation

In these Rules, except where the context otherwise requires--

"agent" means a person appointed as an agent under rule 14;

"the office" means the office of the Registrar;

"specification" means the designation of goods or classes of goods or the description of services or classes of services in respect of which a trademark, or a registered user of a trademark, is registered or proposed to be registered.

Fees and Forms

3. Fees

The fees to be paid in relation to trade marks shall be those prescribed in the First Schedule.

4. Forms

The forms referred to herein are the forms contained in the Fourth Schedule, and those forms shall be used in all cases to which they are applicable and shall be modified as directed by the Registrar to meet other cases.

5. (Deleted by L.N. 146/2003, s.3)

Classifications Under Previous System

6. Old classifications preserved

(1) This rule applies with respect to a trade mark registered for goods or services classified in accordance with a classification system that has been amended or replaced since those goods or services were classified.

(2) The goods or services described in paragraph (1) are not required to be reclassified in accordance with the new classification system unless application is made under rule 7.

7. Conversions to new classification system

(1) The registered proprietor of a trade mark described in rule 6(1) may apply to have the classification of the goods or services in respect of

which the trade mark was registered adapted so that they are classified in accordance with section 6(2) of the Act.

(2) An application under this rule shall be made to the Registrar in form TM 43.

(3) The registrar shall determine what amendment he proposes to make in relation to an application under this rule and shall notify the applicant of that proposal as required under section 39(3) of the Act.

(4) The advertisement of the proposed amendment required under section 39(3) of the Act shall be made in the Journal or the Kenya Gazette.

(5) A person who wishes to oppose the proposed amendment shall do so by filing a notice of opposition with the Registrar within thirty days after the date of advertisement.

(6) The notice of opposition shall be in form TM 44 and shall be filed in duplicate.

(7) The notice of opposition shall be accompanied by a statement, in duplicate, showing how the proposed amendment would be contrary to section 39(2) of the Act.

(8) The Registrar shall send the duplicate copies of the notice of opposition and the accompanying statement to the applicant.

(9) The applicant may file a counter-statement with the Registrar setting out fully the grounds on which the applicant contests the opposition.

(10) The counter-statement shall be in form TM 7 and shall be filed in duplicate within thirty days after the applicant receives the notice of opposition.

(11) The Registrar may allow or require evidence to be adduced and, if the Registrar so decides, rules 49 to 52 shall apply, with necessary modifications, subject to any directions given by the Registrar.

(12) Before deciding the matter, the Registrar shall give the parties an opportunity to be heard if either party requests it.

(13) If a party requests an opportunity to be heard, the Registrar shall give notice to the parties of a date when he will hear the arguments in the case.

(14) An appointment shall be for a date at least fourteen days after the date of the notice, unless the parties consent to a shorter notice.

(15) Within seven days after the receipt of the notice a party who intends to appear shall so notify the Registrar in form TM 8.

(16) A party who receives notice and who does not, within seven days after the receipt of the notice, notify the Registrar in form TM 8 that he intends to appear, may be treated as not desiring to be heard and the Registrar may act accordingly.

(17) The Registrar shall make the entries in the Register that are necessary to give effect to a request to adapt a classification if--

(a) the time for filing a notice of opposition has expired without such a notice being filed; or

(b) a notice of opposition has been filed but the Registrar has decided to allow the request.

(18) If the Registrar makes an entry under paragraph (17) he shall also enter the date when that entry was made.

(19) No entry under this rule shall affect the period of registration of a trade mark or when it may be renewed.

8. (Deleted by L.N. 146/2003, s.4)

Documents

9. Size, etc., of documents

Subject to any other directions that may be given by the Registrar, all applications, notices, counter-statements, papers having representations affixed or other documents authorized or required by the Act or these Rules to be made, left or sent, at or to the office or with or to the Registrar or the court, shall be on strong non-absorbent paper of a size approximately 297 mm. by approximately 210 mm., and shall have on the left hand part thereof a margin of not less than 35 mm.

10. Signature of documents by partnerships, companies and associations

(1) A document purporting to be signed for or on behalf of a partnership shall contain the names of all the partners in full and shall be signed by all the partners or by any qualified partner stating that he signs on behalf of the partnership, or by any other person who satisfies the Registrar that he is authorized to sign the document.

(2) A document purporting to be signed for or on behalf of a body corporate shall be signed by a director or by the secretary or other principal officer of the body corporate, or by any other person who satisfies the Registrar that he is authorized to sign the document.

(3) A document purporting to be signed for or on behalf of an association of persons may be signed by any person who appears to the Registrar to be duly qualified.

11. Service of documents

(1) All applications, notices, statements, papers having representations affixed or other documents authorized or required by the Act or these Rules to be made, left or sent, at or to the office, or with or to the Registrar or the court or any other person, may be sent through the post by a prepaid or official paid letter.

(2) Any application or any document so sent shall be deemed to have been made, left or sent at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving the sending it shall be sufficient to prove that the letter was properly addressed and put into the post.

Address

12. Address

(1) Where any person is by the Act or these Rules 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 any person easily to find the place of trade or business of the person whose address is given.

(2) The Registrar may require the address to include the name of the street and the plot number in the street of the premises.

13. Address for service

(1) The Registrar may require an applicant, opponent or agent, or a registered proprietor or registered user of a trade mark, who does not reside or carry on business within Kenya to give an address for service within Kenya, and that address may be treated as the actual address of that person for all purposes connected with the matter in question.

(2) Any registered proprietor or registered user of a trade mark, or any person about to be registered as such, may give in form TM 32 an address for service for entry in the register, and such address may be entered by the Registrar.

(3) All applications in form TM 32 under this rule shall be signed by the applicant for registration or the registered proprietor or registered user, as the case may be, or by an agent expressly authorized by him for the purpose of such an application, unless in exceptional circumstances the Registrar otherwise allows.

(4) In any case in which no address for service is entered in the register, the Registrar may treat the trade or business address of the registered proprietor or registered user as therein entered as his address for service for all purposes connected with the registration.

(5) Any written communication addressed to a party or person as aforesaid 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, at any time that a doubt arises as to the continued availability of an address for service entered in the register, may request the person for whom it is entered, by letter addressed to his trade or business address in the register, to confirm the address for service, and if within three months of making such a request the Registrar receives no confirmation of that address he may strike it off the register.

Agents

14. Agency

(1) Except as otherwise required by these Rules, any application, request or notice which is required or permitted by the Act or these Rules to be made or given to the Registrar or the court, and all other communications between an applicant or a person making such a request or giving such

a notice and the Registrar, or the court, and between the registered proprietor or a registered user of a trade mark and the Registrar or the court or any other person, may be signed, made or given by or through an agent.

(2) Any such applicant, person making request or giving notice, proprietor or registered user may appoint an agent to act for him in any proceeding or matter before or affecting the Registrar or the court under the Act and these Rules by signing and sending to the Registrar or the court, as the case may be, an authority to that effect in form TM 1 or in such other written form as the Registrar or the court may deem sufficient.

(3) In case of such appointment, service upon the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so appointing him, all communications directed to be made to that person in respect of the proceeding or matter may be addressed to the agent, and all attendances upon the Registrar relating thereto may be made by or through the agent.

(4) In any particular case the Registrar may require the personal signature or presence of an applicant, opponent, proprietor, registered user or other person.

Registrable Trade Marks and Preliminary Advice (Section 43)

15. Registrable trade marks

(1) The Registrar may refuse to accept any application for the registration of a mark upon which any of the following appear--

(a) the words "Patent", "Patented", "Registered", "Registered Design", "Copyright", "Entered at Stationer's Hall" or "To counterfeit this is a forgery", or words to similar effect;

(b) representations of the Head of State of any foreign state, or any colourable imitation thereof;

(c) the words "Red Cross", or "Geneva Cross", and representations of the Geneva and other crosses in red, or of the Swiss Federal cross in white on a red ground 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 cross in any colour, not being one of those mentioned in subparagraph (c) of paragraph (1), the Registrar may require

the applicant as a condition of acceptance to undertake not to use the cross device on red, or in white on a red ground or silver on a red ground, or in any similar colour or colours.

16. Flags, emblems, arms, etc.

Representations in any form of any of the following, or any device so nearly resembling them as to be likely to lead to mistake, may not appear on trade marks the registration of which is applied for--

(a) without the written permission of the competent authority, any specified emblem, specified likeness or specified name within the meaning of section 2 of the National Flag, Emblems and Names Act;

(b) without the written permission of the competent authority, any honour or award, or any title or abbreviation of a title thereof, created by the President;

(c) any armorial bearing, insignia or flag of any foreign state or international intergovernmental organization;

(d) any honour or award, or any title or abbreviation of a title thereof, of any foreign state;

(e) any title or abbreviation thereof of any international intergovernmental organization.

17. Arms of city, etc.

Where a representation in any form of the armorial bearings, insignia, orders of chivalry, decorations or flags of any city, borough, town, place, society, body corporate, institution or person appears on a mark, the Registrar, before proceeding to register the mark, may require to be furnished with a consent to the registration and use of those emblems from such official or other person as appears to the Registrar to be entitled to give consent, and in default of that consent he may refuse to register the mark.

18. Living persons or persons recently dead

Where the name or representation of any person appears on a trade mark, the Registrar may require, before proceeding to register the mark to be furnished with consent from him or, in the case of a person recently dead, from his legal representatives, and in default of that consent he may refuse to register the mark.

19. Name and description of goods or services on a trade mark

(1) Where the name or description of any goods or the name or description of any services appears on a trade mark 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 or the name or description of any services appears on a trade mark, and the name or description in use varies, the Registrar may permit the registration of the mark for these and other goods or services, as the case may be, and in that case the applicant shall state 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.

20. Preliminary advice by Registrar as to distinctiveness

(1) A person who proposes to apply for the registration of a trade mark in relation to goods or services may apply to the Registrar for advice as to whether the trade mark appears to the Registrar *prima facie* to be inherently adapted to distinguish the goods or services within the meaning of section 12 of the Act or to be inherently capable of distinguishing the goods or services within the meaning of section 13 of the Act.

(1A) An application under paragraph (1) shall be in form TM 27 and shall be accompanied by duplicate representations of the trade mark.

(2) A notice of withdrawal of an application for the registration of a trade mark given under subsection (3) of section 43 of the Act for the purpose of obtaining repayment of any fee paid on the filing of the application shall be given in writing within two months from the date of the notice of the Registrar's objection.

Application for Registration of a Trade Mark

21. Form of application

(1) An application to the Registrar for registration of a trade mark shall be in form TM 2 and shall be signed by the applicant or his agent.

(2) Every application claiming priority under section 65 of the Act shall state the date of the application in the United Kingdom or foreign state, and the applicant shall furnish a certificate by the Registrar or other registering authority of that country, or shall otherwise verify the application made or deemed to have been made therein to the satisfaction of the Registrar.

(3) In the case of an application for registration in respect of all the goods or services included in a 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 intends to make if it is registered.

(4) An application for registration of a trade mark that is three dimensional shall include a statement to that effect.

(5) An application for registration of a trade mark of which colour is claimed as an element shall include a statement to that effect.

(6) An application for registration of a trade mark that includes a word without regard to its graphical form shall include a statement to that effect.

(7) The specification of an application for registration of a trade mark for goods or services in more than one class shall set out the classes in the same order as they appear in the classification referred to in section 6(2) of the Act.

22. Representation of mark

(1) Every application for the registration of a trade mark shall contain a representation of the mark in the space provided on the application form for that purpose.

(2) Where the representation exceeds the space in size, the representation shall be mounted upon linen, tracing cloth or such other material as the Registrar may consider suitable; part of the mounting shall be affixed in the space and the rest may be folded.

23.-24. (Deleted by L.N. 146/2003, s.7)

25. Separate applications

Applications for the registration of the same mark in different classes shall be treated as separate and distinct applications, and in all cases where a trade mark is registered under the same official number for goods or services in more than one class, whether on conversion of the specification under rule 6 or otherwise, the registration in respect of the goods or services included in each separate class shall be deemed to be a separate registration for all the purposes of the Act.

26. Representations to be satisfactory

The Registrar, if dissatisfied with any representation of a mark, may at any time require another representation satisfactory to him to be submitted before proceeding with the application.

27. Specimens of trade marks in exceptional cases

(1) Where a drawing or other representation or specimen cannot be given as prescribed in these Rules, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the Registrar may think most convenient.

(2) The Registrar may also, in exceptional cases, deposit in the office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

28. Series of trade marks

If application is made for the registration of a series of trade marks under section 24(3) of the Act, a representation of each trade mark in the series shall be included in the application.

29. 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, a sufficient transliteration and translation to the satisfaction of the Registrar of each of the words, and every such endorsement shall state the language to which the word belongs and shall be signed by the applicant or his agent.

(2) Where a trade mark contains a word or words in a language other than English, the Registrar may ask for an exact translation thereof together with the name of the language, and the translation and name, if he so requires, shall be so endorsed and signed.

29A. Application to add goods or services

(1) The proprietor of a registered trade mark may apply to the registrar to add goods or services to the goods or services in respect of which the trade mark is registered, including goods or services in an additional class or classes.

(2) An applicant for the registration of a trade mark may apply to the Registrar to amend the application to add goods or services to the goods or services in respect of which the trademark would be registered, including goods or services in an additional class or classes.

(3) An application under this rule shall be in form TM 55.

(4) These Rules shall apply, with necessary modifications, with respect to an application under this rule as though it were an application for registration of a trade mark.

Procedure on Receipt of Application for Registration of a Trade Mark

30. Search

Upon receipt of an application for the registration of a trade mark in respect of any goods or services, as the case may be, the Registrar shall cause a search to be made amongst the registered marks and pending applications for the purpose of ascertaining whether--

(a) in the case of an application relating to goods, there are on record for the same goods or for the same description of goods or for services or a description of services associated with the goods or goods of that description; or

(b) in the case of application relating to services, there are on record for the same services or for the same description of services or for goods or a description of goods associated with the services of that description; any marks identical with the mark applied for, or which so nearly resemble it as to render the mark applied for likely to deceive or cause confusion, 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.

31. Registrar's powers on application

After a search, and consideration of the application, and of any evidence of use or of distinctiveness or of 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, disclaimer, modifications or limitations as he may think right to impose.

32. Objection by Registrar

If the Registrar objects to the application, he shall inform the applicant of his objections in writing, and unless within ninety days the applicant

applies for a hearing or makes a considered reply in writing to those objections he shall be deemed to have withdrawn his application.

33. Conditions by Registrar

(1) If the Registrar is willing to accept the application subject to any conditions, amendments, disclaimer, modifications or limitations, he shall communicate his willingness to the applicant in writing, and, if the applicant objects to the conditions, amendments, disclaimer, modifications or limitations, he shall within ninety days from the date of the communication apply for a hearing or communicate his considered objections in writing, and if he does not do so he shall be deemed to have withdrawn his application.

(2) If the applicant does not object to the conditions, amendments, disclaimer, modifications or limitations, he shall within thirty days from the date of receipt of the Registrar's communication notify the Registrar in writing, and alter his application accordingly.

34. Decision of Registrar

(1) The decision of the Registrar, at a hearing under rule 32 or rule 33, or without a hearing if the applicant has duly communicated his considered objections or considered reply, in writing, and has stated that he does not desire to be heard, shall be communicated to the applicant in writing, and if the applicant objects to the decision he may within thirty days from the date of receipt of the decision by applying in form TM 4, require 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 therewith before the Registrar issues the statement in writing; and the date when the statement is sent to the applicant shall be deemed to be the date of the Registrar's decision for the purpose of appeal.

35. Disclaimer

The Registrar may call on an applicant to insert in his application such disclaimer as the Registrar may think fit, in order that the public generally may understand what the applicant's rights, if his mark is registered, will be.

Defensive Trade Marks

36. Application under s.30 of the Act

(1) An application to the Registrar for registration of a defensive trade mark under section 30 of the Act shall be in form TM 2 and shall be accompanied by a statement of case setting forth 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 some other person approved for the purpose by the Registrar.

(2) The applicant may send with this declaration, or subsequently, such other evidence as he may desire to furnish, 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) In all other respects, and where they are appropriate and it is not otherwise stated, these Rules shall apply to such applications as they apply to applications for the registration of ordinary trade marks.

Certification Trade Marks

37. Application under s.40 of the Act

An application to the Registrar for registration of a certification trade mark under section 40 of the Act shall be in form TM 2.

38. Authorization to proceed

These Rules shall apply to applications under rule 37 as they apply to applications for the registration of ordinary trade marks, except that the applicant shall not be deemed to have abandoned his application if in the circumstances of rule 32 or rule 33 he does not apply for a hearing or reply in writing.

39. Case, draft regulations

(1) The applicant shall send to the Registrar, with his application or when required by the Registrar, a case setting out the grounds on which he relies in support of his application together with draft regulations for governing the use of the mark, all in duplicate.

(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 regulations and the applicant may modify either of those

documents.

40. Regulations and application to be open to inspection

If the Registrar decides to accept the application the regulations for governing the use of the mark approved by the Registrar, as well as the form of application, shall be open to public inspection.

41. Registrar's refusal

If the Registrar decides to refuse to accept the regulations or to accept the regulations subject to conditions, limitations, amendments or modifications, he shall inform the applicant of his objections in writing and shall, if required, hear the applicant.

Advertisement of Application

42. Advertisement of application

(1) An application for the registration of a trade mark shall be advertised in the Journal or Kenya Gazette in such manner as the Registrar may direct.

(1A) If an application that has been advertised under paragraph (1) is withdrawn, the withdrawal shall be advertised in the Journal or Kenya Gazette in such manner as the Registrar may direct.

(2) In the case of an application with which the Registrar proceeds only after the applicant has lodged the written consent to the proposed registration of the registered proprietor of another trade mark or another applicant, the words "By Consent" shall appear in the advertisement.

(3) If no representation of the trade mark is included in the advertisement of the application, the Registrar shall refer in the advertisement to the place or places where a specimen or representation of the trade mark is deposited for exhibition.

43. Representations or information from applicant

For the purpose of advertising a trade mark, the Registrar may, at the appropriate time, require the applicant to supply--

(a) up to ten printed representations of the trade mark satisfactory to the Registrar; or

(b) such other information or means of advertising the trade mark as the Registrar requires.

44. Advertising of series of trade marks

The following shall apply if the application relates to a series of trade marks differing from one another in respect of the particulars mentioned in section 24(3) of the Act--

(a) rule 43 shall apply with respect to each of the trade marks in the series; and

(b) the Registrar may, instead of advertising a representation of each of the trademarks in the series, include with the advertisement a statement describing how the trade marks differ from each other.

45. Advertisements under s.21(10) and 38(2), (4) of the Act

Advertisements under section 21(10) and 38(2) and (4) of the Act shall be made in the same manner as advertisements of applications for registration and rules 42 to 44 and rule 45A shall apply with necessary modifications.

45A. Costs of advertisement

Before an advertisement relating to an application is published, the applicant shall pay the costs of the advertisement.

Opposition to Registration

46. Opposition

Any person may, within sixty days from the date of any advertisement in the Journal or Kenya Gazette of an application for registration of a trade mark, give notice in form TM 6 to the Registrar of opposition to the registration.

47. Notice of opposition

(1) The notice shall include a statement of the grounds upon which the opponent objects to the registration.

(2) If the registration is opposed on the ground that the mark resembles marks already on the register, the notice shall set out--

(a) the numbers of those other marks; and

(b) references to the Journals or Kenya Gazettes in which those other marks were advertised.

(3) The notice shall be accompanied by a duplicate, which the Registrar shall forthwith send to the applicant.

48. Counter-statement

(1) Within forty-two days from the receipt of the duplicate the applicant shall send to the Registrar a counter--statement in form TM 7 setting out the grounds on which he relies as supporting his application.

(2) The applicant shall also set out what facts, if any, alleged in the notice of opposition he admits.

(3) The counter--statement shall be accompanied by a duplicate.

(4) Upon receipt of the counter--statement and duplicate the Registrar shall forthwith send the duplicate to the opponent.

49. Evidence in support of opposition

(1) Within forty-two days after the receipt of the duplicate counterstatement, the opponent shall leave with the Registrar such evidence by way of statutory declaration as he desires to adduce in support of his opposition.

(2) The statutory declaration shall be in duplicate.

(3) Upon receipt of the statutory declaration and duplicate the Registrar shall forthwith send the duplicate to the applicant.

50. Evidence in support of application

(1) Within forty-two days after the receipt of the statutory declaration of the opponent under rule 49, the applicant shall leave with the Registrar such evidence by way of statutory declaration as he desires to adduce in support of his application.

(2) The statutory declaration shall be in duplicate.

(3) Upon receipt of the statutory declaration and duplicate the Registrar shall forthwith send the duplicate to the opponent.

51. Evidence in reply by opponent

(1) Within thirty days after the receipt of the statutory declaration of the applicant under rule 50, the opponent may leave with the Registrar evidence, by way of statutory declaration, confined strictly to matters in reply.

(2) The statutory declaration shall be in duplicate.

(3) Upon receipt of the statutory declaration and duplicate the Registrar shall forthwith send the duplicate to the applicant.

52. Further evidence

No further evidence shall be left on either side, but, in any proceedings before the Registrar, he may at any time give leave to either the applicant or the opponent to leave any evidence upon such terms as to costs or otherwise as he may think fit.

52A. Abandonment of application or opposition

If the applicant or opponent fails to furnish the required counterstatement or evidence in support within the times prescribed by rules 48 to 50, the application or opposition, as the case may be, shall be deemed to be abandoned and the Registrar may proceed to make an award of costs.

53. Exhibits

(1) Where there are exhibits to declarations filed in an opposition, copies or impressions of such exhibits shall be sent to the other party on his request and at his expense, or, if such copies or impressions cannot conveniently be furnished, the originals shall be left with the Registrar in order that they may be open to inspection.

(2) The original exhibits shall be produced at the hearing unless the Registrar otherwise directs.

54. Hearing

(1) Upon completion of the evidence, the Registrar shall give notice to the parties of a date when he will hear the arguments in the case.

(2) An appointment shall be for a date at least fourteen days after the date of the notice, unless the parties consent to a shorter notice.

(3) Within seven days from the receipt of the notice any party who intends to appear shall so notify the Registrar in form TM 8.

(4) A party who receives notice and who does not, within seven days from the receipt thereof, so notify the Registrar in form TM 8, may be treated as not desiring to be heard and the Registrar may act accordingly.

55. (Deleted by L.N.146/2003, s. 24)

56. Security for costs

Where a party giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such a notice neither resides nor carries on business in Kenya, the Registrar may require him to give security, in such form as the Registrar may deem sufficient, for the costs of the proceedings before the Registrar, for such amount as to the Registrar may seem fit, and at any stage in the opposition proceedings may require further security to be given at any time before his decision in the case.

57. Costs in uncontested case

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.

58. (Deleted by L.N.146/2003, s.25)

Non-Completion

59. Non-completion of registration

(1) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar shall in form TM 9A give notice in writing to the applicant at his trade or business address of the non-completion, but if the applicant has authorized an agent for the purpose of the application he shall instead send the notice to the agent and shall send a duplicate thereof to the applicant.

(2) If after fourteen days from the date when the notice was sent, or such further time as the Registrar may allow, the registration is not completed, the application shall be deemed to be abandoned.

Entry in the Register, and Associated Marks

60. Entry in register

(1) As soon as may be after the expiration of sixty days from the date of the advertisement in the Journal or Kenya 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 the provisions of subsection (1) of section 22 of the Act, and upon payment of the prescribed fee, enter the trade mark in the register.

(2) The entry of a trademark in a register shall give the date of registration, the goods or services in respect of which it is registered together with the particulars of the trade, business, profession, occupation or other description of the proprietor, particulars of any undertakings of the proprietor entered on the form of application, particulars affecting the scope of the registration or the rights conferred by the registration, and such other particulars as are prescribed.

(3) 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 previous registration or the application for registration.

61. Notations indicating association no longer of any effect

A notation in the Register included as a result of a trade mark having been associated with another trade mark under section 26 of the Act before that section was repealed is of no effect.

62. Death of applicant before registration

In case of the death of any applicant for the registration of a trade mark after the date of his application and before the trade mark applied for has been entered in the register, the Registrar, after the expiration of the prescribed period of advertisement and the determination of any opposition to the application, may, on being satisfied of the applicant's death, enter in the register, in place of the name of the deceased applicant, the name, address and description of the person owning the trade mark, on ownership being proved to the satisfaction of the Registrar.

63. Certificate of registration

Upon the registration of a trade mark the Registrar shall issue to the applicant a certificate in form TM 10A, and shall affix thereto a copy of the mark.

Renewal

64. Renewal of registration

(1) At any time not more than ninety days before the expiration of the last registration of a trade mark, any person may leave at the office a fee for the renewal of the registration of the mark in form TM 10, and, if he is not the registered proprietor, shall sign a statement on the form that he is directed by the registered proprietor to pay the fee (if such be the case) and shall give his address.

(2) Before taking any further step, the Registrar may either--

(a) require the person leaving the fee to furnish within ten days an authority to pay the fee signed by the registered proprietor, and if he does not furnish that authority may return the fee and treat it as not received; or

(b) communicate with the registered proprietor stating that the fee has been received and that the registration will in due course be renewed.

65. Notice before removal of trade mark from register

At a date not less than thirty days and not more than sixty days before the expiration of the last registration of a mark, if no fee in form TM 10 has been received, the Registrar shall notify the registered proprietor in writing of the approaching expiration.

66. Second notice

At a time not less than fourteen days and not more than thirty days before the expiration of the last registration of a mark, the Registrar may, if no renewal fee has been received, send a notice in writing to the registered proprietor at his trade or business address as well as at his address for service, if any.

67. Advertisement of non-payment

If at the date of the expiration of the last registration of a mark the renewal fee has not been paid, the Registrar shall advertise the fact forthwith in the Journal or Kenya Gazette, and, if within one month after that advertisement the renewal fee in form TM 10, together with the additional prescribed late renewal fee, is received, he may renew the registration without removing the mark from the register.

68. Removal of trade mark from Register

If, at the expiration of thirty days after the advertisement under rule

67, the fees referred to in that rule have not been paid, the Registrar may remove the mark from the register as of the date of the expiration of the last registration, but he may, upon payment of the renewal fee in form TM 10 together with the additional prescribed restoration fee, restore the mark to the register if satisfied that it is just to do so, and upon such conditions as he may think fit to impose.

69. Record of removal of mark

Where a trade mark has been removed from the register, the Registrar shall cause to be entered in the register a record of the removal and of the cause thereof.

70. Notice and advertisement of renewal and restoration

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

Assignments and Transmissions

71. Application for entry of assignment or transmission

A person who becomes entitled by assignment or transmission to a registered trade mark may apply, in form TM 14, to the Registrar to register his title.

72. (Deleted by L.N.146/2003, s.34)

73. Particulars to be stated in application

(1) An application under rule 71 shall contain the name, trade or business address and description of the person claiming to be entitled and shall be accompanied by a copy of the instrument, if any, under which the person claims.

(2) The full names of all the partners in a partnership shall be given in the body of the application.

(3) The Registrar may in any case require and retain an attested copy of any instrument produced for inspection in proof of title, but that copy shall not be open to public inspection.

74. Case accompanying application

If the person applying for registration of his title does no claim under any document or instrument which is capable in itself of furnishing proof of his title, he shall, unless the Registrar otherwise directs, either upon or with the application, state a case setting forth the full particulars of the facts upon which his claim to be proprietor of the trade mark is based, and showing that the trade mark has been assigned or transmitted to him; and if the Registrar so requires, the case shall be verified by a statutory declaration.

75. 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.

76. Application for entry of assignment without goodwill

(1) An application under rule 71 relating to an assignment on or after the appointed day of a trade mark in respect of any goods or services shall state--

- (a) whether the trade 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 connexion with the goodwill of that business;

and, if both those circumstances subsisted, the applicant shall leave with the Registrar a copy of the Registrar's directions to advertise the assignment, obtained upon application under subsection (7) of section 25 of the Act and rule 80 of these Rules, and such proof, including copies of advertisements or otherwise, as the Registrar may require that his directions have been fulfilled; and if the Registrar is not satisfied that the directions have been fulfilled, he shall not proceed with the application.

(2) For the purposes of section 32(4) of the Act, the period within which a corporation may be registered as the subsequent proprietor shall be six months after the date of advertisement of the registration in the Journal or Kenya Gazette.

77. Entry in register

When the Registrar is satisfied as to the title of the person claiming to be registered, he shall cause him to be registered as proprietor of the trade mark in respect of the relevant goods or services, and shall

enter in the register his name, trade or business address and description and particulars of the assignment or transmission.

78. Separate registrations

Where, pursuant to an application under rule 71, and as the 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 under the same official number as subsequent proprietors of a trade mark, each of the resulting separate registrations in the names of those different persons shall be deemed to be a separate registration for all the purposes of the Act.

79. Registrar's certificate of approval as to certain assignments and transmissions

(1) Any person who desires to obtain the Registrar's certificate under subsection (5), or his notification of approval under subsection (6), of section 25 of the Act shall send to the Registrar, with his application in form TM 39 or 40, as the case may be, a statement of case in duplicate setting out the circumstances, and a copy of any instrument or proposed instrument effecting the assignment or transmission.

(2) The Registrar may call for any evidence or further information that he may consider necessary, and the statement of case shall be amended if required to include all the relevant circumstances, and shall if required be verified by a statutory declaration.

(3) The Registrar, after hearing if so required the applicant and any other person whom the Registrar may consider to be interested in the transfer, shall consider the matter and issue a certificate thereon or a notification in writing of approval or disapproval thereof, as the case may be.

(4) Where a statement of case is amended, two fair copies thereof in its final form shall be left with the Registrar.

(5) The Registrar shall seal a copy of the statement of case in its final form to the certificate or notification.

80. Registrar's directions for advertisement of assignment without goodwill of trade mark in use

(1) An application to the Registrar under subsection (7) of section 25 of the Act shall be made by the assignee in form TM 41, and shall state

the date on which the assignment was made.

(2) The application shall give particulars of the registration in the case of a registered trade mark, and, in the case of an unregistered trade mark, shall show the mark and give particulars of the registered trade mark that has been assigned therewith in accordance with sub-section (3) of section 25.

(3) The Registrar may call for any evidence or further information, and if he is satisfied with regard to the various matters he shall issue directions in writing with respect to the advertisement of the assignment.

(4) The Registrar may refuse to consider such an application in a case to which subsection (6) of section 25 applies unless his approval has been obtained under the said subsection and a reference identifying the Registrar's notification of approval is included in the application.

(5) (Deleted by L.N.146/2003, s.40)

Alteration of Address

81. Alteration of address in register

(1) A registered proprietor or registered user of a trade mark whose trade or business address is changed so that the entry in the register is rendered incorrect shall forthwith request the Registrar in form TM 17 to make the appropriate alteration of the address in the register, and the Registrar shall alter the register accordingly if he is satisfied in the matter.

(2) A registered proprietor or registered user of a trade mark whose address for service in Kenya entered in the register is changed, whether by discontinuance of the entered address or otherwise, so that the entry in the register is rendered incorrect, shall forthwith request the Registrar in form TM 32 to make the appropriate alteration of the address in the register, and the Registrar shall alter the register accordingly if he is satisfied in the matter.

(3) A registered proprietor or registered user of a trade mark whose registered trade or business address or address for service is altered by a public authority, so that the changed address designates the same premises as before, may make the request to the Registrar, but in that case no fee shall be payable, and if he does so he shall leave therewith

a certificate of the alteration given by the authority; and if the Registrar is satisfied as to the facts of the case he shall alter the register accordingly.

(4) In the case of the alteration of the address of a person entered in the register as the address for service of more than one registered proprietor or registered user of trade marks, the Registrar may, on proof that the address is the address of the applicant and if satisfied that it is just to do so, accept an application from that person in form TM 32 amended so as to suit the case for the appropriate alteration of the entries of his address as the address for service in the several registrations, particulars of which shall be given in the form, and may alter the entries accordingly.

(5) All applications under this rule in form TM 32 shall be signed by the registered proprietor or the registered user, as the case may be, or by an agent, expressly authorized by him for the purpose of such an application, unless in exceptional circumstances the Registrar otherwise allows.

Applications to the Registrar for Rectification (Sections 29, 30, 35 and 36)

82. Application to rectify or remove a trade mark from the register

(1) An application to the Registrar under any of the sections 29, 30, 35 and 36 of the Act for the making, expunging or varying of any entry in the register shall be made in form TM 25 and shall be accompanied by a statement setting out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief which he seeks.

(2) The application shall be accompanied by a copy of the application and a copy of the statement and the Registrar shall forthwith transmit the copies to the registered proprietor.

83. Further procedure

Rules 48 to 57 shall apply with respect to the further proceedings relating to an application in form TM 25, with necessary modifications and with the following specific modifications--

(a) references to the applicant shall be deemed to be references to the registered proprietor and references to the opponent shall be deemed to be references to the person making the application under rule 25;

(b) the Registrar shall not rectify the register or remove the mark from the register merely because the registered proprietor has not filed a counterstatement.

84. Intervention by third parties

(1) Any person other than the registered proprietor alleging interest in a registered trade mark in respect of which an application is made in form TM 25 may apply to the Registrar in form TM 26 for leave to intervene, stating thereon the nature of his interest, and the Registrar may refuse or grant leave, after hearing (if so required) the parties concerned, upon such conditions and terms as he may deem fit.

(2) Before dealing in any way with the application for leave to intervene the Registrar may require the applicant to give an undertaking to pay such costs as in the circumstances he may award to any party.

Surrender of a Registered Trade Mark

84A. Application to surrender

(1) An application to surrender a registered trade mark under section 36A(1) of the Act shall be made to the Registrar--

(a) in form TM 21, if the surrender is for all of the goods or services in respect of which the trade mark is registered; or

(b) in form TM 22, if the surrender is for some of the goods or services in respect of which the trade mark is registered.

(2) An application under paragraph (1) shall--

(a) set out the name and address of each person who has a registered interest in the trade mark; and

(b) include a certification by the proprietor that each person referred to in subparagraph (a) either--

(i) has been given notice of the proposed surrender at least ninety days before the application is made; or

(ii) is not affected by the surrender or has consented to it.

(3) After making the appropriate entries in the Register, the Registrar shall publish a notice of the surrender in the Journal or Kenya Gazette.

Applications for Alteration of the Register by Correction, Change, Cancellation or Striking out Goods or for Entry of Disclaimer, Memorandum or Note (Section 37 (1))

85. Application under section 37(1)

(1) An application to the Registrar under subsection (1) of section 37 of the Act for the alteration of the register by correction, or change or for the entry of a disclaimer or memorandum, may be made by the registered proprietor of the trade mark or by such person as may satisfy the Registrar that he is entitled to act in the name of the registered proprietor.

(2) An application under paragraphs (a), (b) or (e) of section 37(1) of the Act shall be in form TM 17, TM 19, TM 20, TM 23 or TM 32, as may be appropriate.

(3) An application under paragraph (c) or (d) of section 37(1) of the Act shall be made in accordance with rule 84A.

(4) For greater certainty, form TM 20 may be used to change the name of the registered proprietor if the registered proprietor merges with another corporation and the corporation resulting from the merger has a different name.

86. Evidence

In the case of an application as in rule 85, the Registrar may require such evidence by statutory declaration or otherwise as he may think fit as to the circumstances in which the application is made.

87. Advertisement of certain applications

Where application is made in form TM 23 to enter a disclaimer or memorandum relating to a trade mark, the Registrar, before deciding upon such application, shall advertise the application in the Journal or Kenya Gazette in order to enable any person desiring so to do to state, within thirty days of the advertisement, any reasons in writing against the making of the entry of the disclaimer or memorandum.

88. Certificates of validity to be noted

Where the court has certified under section 47 of the Act with regard to the validity of a registered trade mark, the registered proprietor thereof may request the Registrar in form TM 47 to add to the entry in the register a note that the certificate of validity has been granted in the course of the proceedings, which shall be named in the form; an office copy of the certificate shall be sent with the request, and the Registrar shall so note the register and publish the note in the Journal

or Kenya Gazette.

Applications to Alter Registered Trade Marks

89. Alteration of registered mark

Where a person desires to apply under section 38 of the Act that his registered trade mark may be added to or altered, he shall make his application in writing in form TM 24.

90. Advertisement before decision

(1) The Registrar shall consider the application and shall, if it appears to him to be expedient, advertise the application in accordance with rule 45 and rules 43, 44 and 45A shall apply with necessary modifications.

(2) Any person may, within thirty days after the date of the advertisement of the application, give notice in form TM 6 to the Registrar of opposition to the application and rules 47 to 57 shall apply with necessary modifications.

(3) The Registrar shall send the duplicate notice, and the duplicate of any further statement of objections, to the applicant, and the provisions of rules 48 to 57 shall apply mutatis mutandis to the further proceedings thereon; and in any case of doubt any party may apply to the Registrar for directions.

91. Decision of Registrar

If the Registrar decides to allow the application he shall add to or alter the mark in the register, and if the mark so added to or altered has not been advertised under rule 90 he shall advertise it in the Journal or Kenya Gazette, and in any case shall insert in the Gazette a notification that the mark has been altered.

92. Advertisement

If the Registrar is of the opinion that an advertisement describing the addition or alteration to the trade mark would not likely be understood by persons interested in the matter, the Registrar may make a requirement under rule 43.

Court Orders for Rectification of Certification Trade Mark Entries and Regulations

93. Rectification of certification trade mark entries by the court

An application on any of the grounds mentioned in paragraph 4 of the First Schedule to the Act, made by an aggrieved person to the court for an order expunging or varying an entry in the register of or relating to a certification trade mark, or varying the relevant deposited regulations, shall be made in form TM 35 and shall include full particulars of the grounds on which the application is made.

Alteration of Certification Trade Mark Regulations

94. Alteration of regulations

(1) An application by the registered proprietor of a certification trade mark for an alteration of the deposited regulations shall be made in form TM 34.

(2) Where the Registrar causes such an application to be advertised, the time within which any person may give notice to the Registrar of opposition to the application shall be thirty days from the date of the advertisement.

Collective Trade Marks

94A. Application for registration

(1) An application to the Registrar for registration of a collective trade mark under section 40A(1) of the Act shall be in form TM 2.

(2) These Rules shall apply, with necessary modifications, to an application for registration of a collective trade mark as they apply to an application for an ordinary trade mark.

Registered Users

95. Application for entry of registered user

An application to the Registrar for the registration under section 31 of the Act of a person as a registered user of a registered trade mark shall be made by that person and the registered proprietor in form TM 48.

96. Entry and notification

(1) The entry of a registered user in the register shall state the date on which it was made; and in addition to the trade or business address of the registered user it may include an address for service, if an

application by him in form TM 32 therefor has been approved.

(2) A notification in writing of the registration of a registered user shall be sent to the registered proprietor of the trade mark, to the registered user and to every other registered user whose name is entered in relation to the same registration of a trade mark, and shall be inserted in the Journal or Kenya Gazette.

97. Registered proprietor's application to vary entry

An application by the registered proprietor of a trade mark for the variation of the registration of a registered user of that trade mark under paragraph (a) of subsection (8) of section 31 of the Act shall be made on form TM 49, and shall be accompanied by a statement of the grounds on which it is made and, where the registered user in question consents, by the written consent of that registered user.

98. Application by registered proprietor or user to cancel entry

An application by the registered proprietor or any registered user of a trade mark for the cancellation of the registration of a registered user of that trade mark under paragraph (b) of subsection (8) of section 31 of the Act shall be made in form TM 50, and shall be accompanied by a statement of the grounds on which it is made.

99. Application by any person to cancel entry

An application by any person for the cancellation of the registration of a registered user under paragraph (c) of subsection (8) of section 31 of the Act shall be made in form TM 51, and shall be accompanied by a statement of the grounds on which it is made.

100. Notification and hearing

(1) The Registrar shall notify in writing applications under rules 97, 98 and 99 to the registered proprietor and each registered user (not being the applicant) under the registration of the trade mark.

(2) Any person so notified who intends to intervene in the proceedings shall, within thirty days of the receipt of the notification, give notice to the Registrar in form TM 52 to that effect, and shall send therewith a statement of the grounds of his intervention; and the Registrar shall thereupon send copies of such notice and statement to the other parties, so that the intervention may be known to the applicant, the registered proprietor, the registered user whose registration is in suit and any

other registered user who intervenes.

(3) Any such party may, within such time or times as the Registrar may appoint, leave evidence in support of his case, and the Registrar, after giving the parties an opportunity of being heard, may accept or refuse the application or accept it subject to any conditions, amendments, modifications or limitations as he may think right to impose.

101. Registered user's application to correct error or enter change

(1) Applications under subsection (2) of section 37 of the Act shall be made in form TM 17, TM 19, TM 20 or TM 32, as may be appropriate, by a registered user of a trade mark, or by such person as may satisfy the Registrar that he is entitled to act in the name of a registered user; and the Registrar may require such evidence by statutory declaration or otherwise as he may think fit as to the circumstances in which the application is made.

(1A) For greater certainty, form TM 20 may be used to apply to change the name of a registered user if the registered user merges with another corporation and the corporation resulting from the merger has a different name.

(2) In case of the registration of a registered user for a period, in accordance with paragraph (d) of subsection (4) of section 31 of the Act, the Registrar shall cancel the entry of the registered user at the end of the period.

(3) Where some or all of the goods or services are struck out from those in respect of which a trade mark is registered, the Registrar shall at the same time strike them out from those specifications of registered users of the trade mark in which they are comprised.

(4) The Registrar shall notify every cancellation or striking out under this rule to the registered users whose permitted use is affected thereby and the registered proprietor of the trade mark.

Extension of Time

102. Extension of time

(1) The Registrar may extend, on such conditions as he may specify, the time for doing any act or taking any proceedings under these Rules.

(2) The Registrar may not extend a time expressly provided in the Act, other than the period prescribed under subsection (6) or (7) of section 25 of the Act.

(3) A time limit may not be extended for a period exceeding ninety days, except for a time period prescribed by rule 76 which may be extended for a period not exceeding six months.

(4) An application to the Registrar for an extension of time under paragraph (1) shall be in form TM 53 and shall be filed with the Registrar.

(5) The application shall state the grounds on which the application is based.

(6) An application for an extension of time may be made even though the time has already expired.

(7) The application shall be dealt with upon such notice, and in accordance with such procedures, as the Registrar may direct.

Discretionary Power

103. Hearing

Before exercising adversely to any person any discretionary power given to the Registrar by the Act or these Rules, the Registrar shall, if so required, hear that person thereon.

104. Application for hearing

An application for a hearing shall be made within thirty days from the date of notification by the Registrar of any objection to an application or the date of any other indication that he proposes to exercise a discretionary power.

105. Notice of hearing

(1) Upon receiving such application, the Registrar shall give the person applying fourteen days' notice of a time when he may be heard.

(2) Within seven days from the date when the notice would be delivered in the ordinary course of post, the person applying shall notify the Registrar whether or not he intends to be heard on the matter, and if

he intends to appear he shall file form TM 8 and pay the prescribed fee thereon.

106. Notification of decision

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

Power to Dispense with Evidence

107. Dispensing with evidence

Where under these Rules a person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Registrar, or at the office, and it is shown to the satisfaction of the Registrar that from any reasonable cause that person is unable to do the act or thing, or to sign the document, or to make the declaration, or that the document or evidence cannot be produced or left, the Registrar may, upon the production of such other evidence, and subject to such terms as he may think fit, dispense with any such act or thing, signature, declaration, document or evidence.

Amendments

108. Amendments of documents

(1) Any document or drawing or other representation of a trade mark may be amended, and any irregularity in procedure which in the opinion of the Registrar may be excused without detriment to the interests of any person may be corrected, if the Registrar thinks fit, and on such terms as he may direct.

(2) An application under paragraph (1) to amend a document or drawing or other representation shall be in form TM 19.

Certificates

109. Certificates by Registrar

(1) The Registrar may give a certificate, other than a certificate under section 22 of the Act, as to any entry, matter or thing which he is authorized or required by the Act or these Rules to make or do, upon receipt of a request therefor in form TM 30 from any person who, if the Registrar thinks fit so to require, can show an interest in the entry, matter or thing

to his satisfaction.

(2) Except in a case falling under rule 111, the Registrar shall not be obliged to include in the certificate a copy of any mark, unless he is furnished by the applicant with a copy thereof suitable for the purpose.

110. Marks registered without limitation of colour

Where a mark is registered without limitation of colour, the Registrar may grant a certificate of its registration for the purpose of obtaining registration abroad either in the colour in which it appears upon the register or in any other colour or colours.

111. Certificates for use in obtaining registration abroad

(1) Where a certificate of registration of a trade mark is issued for use in obtaining registration abroad, the Registrar shall include in the certificate a copy of the mark, and may require the applicant for the certificate to furnish him with a copy of the mark suitable for the purpose, and if the applicant fails to do so may refuse to issue the certificate.

(2) The Registrar may state in the certificate such particulars concerning the registration of the mark as to him seem fit, and may omit therefrom reference to any disclaimers appearing in the register; but in the last-mentioned case the certificate shall be marked "For use in obtaining registration abroad only".

Declarations

112. Person before whom declaration is to be taken

The statutory declarations required by the Act and these Rules, or used in any proceedings thereunder, shall be made and subscribed as follows--

(a) if made in the Commonwealth, before any court, judge or justice of the peace, or any officer authorized by law to administer an oath for the purpose of a legal proceeding;

(b) if made outside the Commonwealth, before a Kenya Consul or Vice-Consul, or other person exercising the functions of a Kenya Consul, or a notary public, or before a judge or magistrate.

113. Presumption as to seal of officer taking declaration

Any document purporting to have affixed, impressed or subscribed thereto or thereon the seal or signature of any person authorized by rule 112 to take a declaration in testimony that the declaration was made and

subscribed before him may be admitted by the Registrar 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.

Search

114. Searches

(1) Any person may request the Registrar to cause a search to be made in respect of specified goods and services to ascertain whether any mark is on record that resembles a trade mark provided by the person.

(1A) An application under paragraph (1) shall be in form TM 27 and shall be accompanied by duplicate representations of the trade mark.

(2) The Registrar shall cause such a search to be made and the person making the request to be informed of the result thereof.

Copies

115. Copies of documents

A person who wishes to obtain a copy of a document kept by the Registrar shall use form TM 54.

116. (Deleted by L.N. 146/2003, s.61).

Appeals to the Court

117. Appeal to court

When a person intends to appeal to the court, the appeal shall be made by motion in the usual way, and no such appeal shall be entertained unless notice of motion is given within sixty days from the date of the decision appealed against or within such further time as the Registrar shall allow.

Applications to and Orders of the Court

118. Applications to court

Every application to the court under the Act shall be served on the Registrar.

119. Order of court

(1) Where an order has been made by the court in any case under the Act, the person in whose favour the order has been made, or such one of them

if more than one, as the Registrar may direct, shall forthwith leave at the office an office copy of the order, together with form TM 46, duly completed, if required.

(2) The register may, if necessary, thereupon be rectified or altered by the Registrar.

120. Publication of order of court

Whenever an order is made by the court under the Act, the Registrar may, if he thinks that the order should be made public, publish it in the Journal or Kenya Gazette.

Submission of Documents in Electronic Form

121. Submission of electronic documents

A document submitted to the Registrar in electronic form shall be deemed to have been submitted in accordance with these Rules on the day the electronic form is submitted if, within thirty days after that submission, the document is submitted to the Registrar in paper form in accordance with these Rules together with any applicable fee required under these Rules.

FIRST SCHEDULE (r.3) FEES

Notes:

1. A foreign fee is payable if the person paying the fee or on whose behalf the fee is being paid does not reside in Kenya and does not have a principal place of business in Kenya.

2. A series of trade marks under section 24(3) of the Act shall be deemed to be a single trade mark for the purpose of calculating fees, except where otherwise indicated.

Description of fee		Local Fee Ksh	Foreign Fee US\$	Corresp onding form
Registration of Trade Marks				
1.	Application fee for an application to register a trade mark			TM 2
	for the first class	4,000	200	
	for each subsequent class	3,000	150	
2.	Fee for filing a notice of opposition to an application to register a trade mark			TM 6
	for the first class	5,000	250	
	for each subsequent class	4,000	200	
3.	Fee for filing a counter statement			TM 7
	for the first class	4,000	200	
	for each subsequent class	3,000	150	
4.	Fee for registration of a trade mark under r.60(1)			
	for the first class	2,000	150	
	for each subsequent class	1,500	100	
Addition Of Goods Or Services				
5.	Application fee for an application, under r. 29A, to add goods or services with respect to a registered trademark or application to register a trade mark, for each class	3,000	150	TM 55
Renewal				
6.	Fee for renewal of a registration of a trade mark under r.64(1), 67 or 68			TM 10
	for the first class	4,000	200	
	for each subsequent class	3,000	150	
7.	Additional fee, under r.67, for renewal within thirty days after advertisement of non-renewal	3,000	150	
8.	Restoration fee, under r.68, for restoration of registration after removal from register	5,000	250	
Assignment Of Trade Marks				
9.	Application fee for an application, under r.71, to register an assignment			TM 14

	or transmission, for each trade mark assigned or transmitted			
	for the first class	3,000	150	
	for each subsequent class	2,000	100	
10.	Application fee for an application, under r.79(1), for a certificate under s.25(5) of the Act relating to the validity of a proposed assignment, for each trade mark			TM 39
	for the first class	3,000	150	
	for each subsequent class	2,000	100	
11.	Application fee for an application, under r.79(1), for approval under s.25(6) of the Act of a proposed assignment or transmission			TM 40
	for each trade mark to which the proposed assignment or transmission would relate	500	50	
12.	Application fee for an application, under r.80(1), for directions under s.25(7) of the Act with respect to the advertisement of an assignment,			TM 41
	for the first class	6,000	300	
	for each subsequent class	5,000	250	
Registered Users				
13.	Application fee for an application, under r.95, to register a person as a registered user of a registered trade mark, for each trade mark			TM 48
	for the first class	6,000	300	
	for each subsequent class	5,000	250	
14.	Application fee for an application, under r.97, to vary the registration of a person as a registered user of a registered trade mark under s.31(8)(a) of the Act, for each trade mark			TM 49
	for the first class	5,000	250	
	for each subsequent class	4,000	250	
15.	Application fee for an application, under r.98, to cancel the registration of a person as a registered user of a registered trade mark under s.31(8)(b) of the Act, for each trade mark			TM 50
	for the first class	5,000	250	
	for each subsequent class	4,000	200	
16.	Application fee for an application, under r.99, to cancel the registration of a person as a registered user of a registered trade mark under s.31(8)(c) of the Act, for each trade mark			TM 51
	for the first class	5,000	250	
	for each subsequent class	4,000	200	

17.	Fee for filing, under r.100(2), a notice of intention to intervene in proceedings relating to an application under s.31(8) of the Act	3,000	150	TM 52
Conversion Of Old Classifications				
18.	Application fee for an application, under r.7(2), to adapt the classification of goods and services in respect of which a trade mark is registered	1,000	50	TM 43
19.	Fee for filing a notice of opposition, under r.7(6), to an application, under r.7(2), to adapt a classification	5,000	250	TM 44
Rectification And Correction Of The Register				
20.	Application fee for an application, under r.81(2), 85(2) or 101(2), to alter the trade or business address of the proprietor or a registered user, for each trade mark			TM 17
	for the first class	2,000	100	
	for each subsequent class	1,000	50	
21.	Application fee for an application, under r.13(2), 81(2), 85(2) or 101(2), to enter or change an address for service	no fee	no fee	TM 32
22.	Application fee for an application, under r.82(1) and section 29, 30, 35 or 36 of the Act, for the making, expunging or varying of an entry in the register, for each trade mark			TM 25
	for the first class	6,000	300	
	for each subsequent class	5,000	250	
23.	fee for filing an application for leave to intervene, under r.84(1), in relation to an application under r.82(1) and section 29, 30, 35 or 36 of the Act	3,000	150	TM 26
24.	Application fee for an application, under r.84A(1), to surrender a trade mark			
	for some goods and services	1,000	50	TM 21
	for some goods and services	1,000	50	TM 22
25.	Application fee for an application, under r.85(2) or 101(2), to make a correction to the Register for which a fee is not otherwise specified, for each trade mark			TM 19
	for the first class	2,000	100	
	for each subsequent class	1,000	50	
26.	Application fee for an application, under r.85(2) or 101(2), to change the name or description of the proprietor or a registered user			TM 20
	for the first class	3,000	150	

	for each additional trade mark	500	50	
27.	Application fee for an application, under r.85(2), to enter a disclaimer or memorandum under s.37(1)(e) of the Act	500	20	TM 23
28.	Fee for request, under r.88, to add, to the register, a note that a certificate of validity has been granted			TM 47
	for the first registration certified	1,000	50	
	for each additional registration certified in the same certificate	500	50	
29.	Application fee for an application, under r.89, for leave to add to or alter a trade mark under s. 38 of the Act, for each trade mark			TM 24
	for the first class	4,000	200	
	for each subsequent class	3,000	150	
30.	Fee for filing a notice of opposition, under r.90(2), to an application, under r.89, to add to or alter a trade mark	5,000	250	TM 6
31.	Application fee for an application to the court, under r.93, relating to a certification trade mark	6,000	300	TM 35
32.	Fee for a notice, under r.119(1), of a court order relating to alteration or rectification of register	1,000	50	TM 46
Hearings And Decisions				
33.	Fee for filing a notice of intention to appear at a hearing, for each trade mark			TM 8
	for the first class	4,000	200	
	for each subsequent class	3,000	150	
34.	Fee for a request to the Registrar to state grounds of a decision and the materials used in arriving at the decision	4,000	200	TM 4
Costs				
35.	On filing a bill of costs for taxation, for every ten pages or part thereof	2,000	100	
36.	On issue of a notice of taxation	1,000	50	
37.	On application for service of a notice of taxation together with a bill of costs	1,000	50	
38.	On application for a certificate of taxation	1,000	50	
Miscellaneous				
39.	Fee for appointing an agent, under r.14(2), to act in a proceeding or matter before or affecting the Registrar	1,000	50	TM 1
40.	Fee for preliminary advice of the Registrar under r.20(1)			TM 27
	for the first class	3,000	150	

	for each subsequent class	2,000	100	
41.	Fee for making a request under r.109(1) for a certificate (other than a certificate of registration under section 22 of the Act) If the certificate relates to a trade mark			TM 30
	for the first class	3,000	150	
	for each subsequent class	2,000	100	
	If the certificate does not relate to a trade mark	3,000	150	
42.	Application fee for an application, under r.94(1), for alteration of deposited regulations relating to a certification trade mark			TM 34
	a. for the alteration of the regulations relating to one certification trade mark	3,000	150	
	b. for the alteration of identical or substantially identical regulations relating to another certification trade mark, for each such additional certification trade mark	500	50	
43.	Application fee for an application, under r.102, for an extension of time, other than an extension of time prescribed by rule 76			TM 53
	(a) extension not exceeding 30 days	1,000	50	
	(b) extension exceeding 30 days but not exceeding 60 days	2,000	100	
	(c) extension exceeding 60 days	3,000	150	
44.	Application fee for an application, under r.102, for an extension of time prescribed by rule 76			TM 53
	a) extension not exceeding two months	1,000	50	
	(b) extension exceeding two months but not exceeding four months	2,000	100	
	(c) extension exceeding four months	3,000	150	
45.	Application fee for an application, under r.108, to amend a document or drawing or other representation, for each trade mark			TM 19
	for the first class	2,000	100	
	for each subsequent class	1,000	50	
46.	Fee for search under r.114			TM 27
	for the first class	2,000	100	
	for each subsequent class	1,000	50	
47.	Fee for inspecting the Register or any notice, opposition, or decision relating to an application to rectify the Register, for each quarter hour	200	10	
48.	Fee to search among the representations of trade marks, for each quarter hour or part thereof	1,000	10	
49.	Fee for copies for judgments, orders	20	1	TM 54

	or other documents used in a proceeding before the Registrar, per page			
	for other documents, per document	500	10	
	additional fee for certification, per document	1,000	50	

SECOND SCHEDULE (Deleted by L.N. 146/2003, s.65)

THIRD SCHEDULE (Deleted by L.N. 146/2003, s.65)

FOURTH SCHEDULE (r.4) Forms (Omitted)