

**INDEPENDENT STATE OF PAPUA NEW GUINEA**

Trade Marks Regulation

amended on 2002

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**PART I. FEES, FORMS, DOCUMENTS, CLASSIFICATION.**

**1. FEES.**

The fees payable under the Act are as specified in Schedule 4.

**2. ERROR IN OFFICE OF REGISTRAR.**

Item 1 of Schedule 4 does not apply to a correction necessitated solely by error or omission in the Office of the Registrar.

**3. PREPARATION AND LODGEMENT OF DOCUMENTS.**

Where a document received at the Office of the Registrar is not in accordance with whichever of the forms specified in Schedule 1 is applicable or does not comply with the requirements specified in Schedule 2, he may -

- (a) treat the document as not having been lodged at the Office; or
- (b) treat the document as having been so lodged, but require the applicant to make such alterations as are necessary; or
- (c) return the document to the applicant with a statement indicating the requirements which have not been complied with.

**4. CLASSIFICATION OF GOODS.**

Each of the Classes of Goods specified in Schedule 3 is a prescribed class of goods for the purposes of Section 22(1) of the Act.

**PART II. AMENDMENT, ALTERATION OF REGISTER.**

**5. APPLICATION TO AMEND OR ALTER REGISTER.**

An application under Section 11(1) or (3) of the Act shall be in Form 2.

**6. APPLICATION TO ALTER REGISTERED TRADE MARK.**

(1) An application under Section 12(1) of the Act shall be in Form 3.

(2) The prescribed time for the purposes of Section 12(3) of the Act is three months from the date of advertisement of the application.

(3) A notice of opposition shall be in Form 5.

(4) The person giving notice of opposition shall serve a copy of the notice on the applicant on or before the date of giving notice and shall indicate this fact in Form 5.

**PART III. PROHIBITED MARKS, ASSOCIATION.**

**7. PROHIBITED MARKS.**

(1) Each of the marks specified in Schedule 5 is a prohibited mark.

(2) A mark specified in Schedule 5, not being a mark in use in good faith as a trade mark, shall not be used as a trade mark or part of a trade mark after 1 November 1979.

**8. DISSOLUTION OF ASSOCIATED MARKS.**

An application under Section 28(2) of the Act shall be in writing and shall contain a statement setting out the grounds on which the applicant relies.

#### **PART IV. APPLICATION FOR REGISTRATION.**

##### **9. APPLICATION FOR REGISTRATION OF TRADE MARK.**

(1) An application under Section 32(1) of the Act shall be in Form 4 and shall be submitted together with eight representations of the trade mark each measuring, unless otherwise allowed, 80 mm x 60 mm.

(2) One copy of the representations referred to in Subsection (1) shall be fixed in the space provided for that purpose in the application form and the other seven copies attached to the form, except that -

(a) where the trademark is in ordinary Roman typescript-the copy that is required to be fixed in the space in the form, may, instead of being so fixed, be typed or printed in that space; or

(b) where by virtue of the nature of the trademark, the representations can only be conveniently reproduced in a larger size - the representations shall be mounted or printed on linen or other suitable material and attached to the form.

(3) The Registrar may, if he considers that a representation of a trade mark is on or mounted on 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.

(4) The Registrar may at any time before registration of the trade mark require further representations of the trade mark to be lodged.

(5) The prescribed period for the purposes of Section 35(2) of the Act is the period of six months after the date on which notification of the registration of the trade mark is advertised in the National Gazette.

(6) In the case of an application relying on Section 35(1)(b) of the Act, the applicant shall -

(a) attach an application for registration of a registered user to the first-mentioned application; or

(b) lodge an application for registration of a registered user within three months from the date of the first-mentioned application.

(7) In the case of an application under Part XIV. of the Act, the

application shall indicate -

(a) the number of the registration in Australia on which it is based;  
and

(b) the proprietorship of the registration on 15 September, 1975; and  
(c) the existence of any conditions or restrictions relevant to  
Section 106(2) of the Act,

and shall, subject to Subsection (8), be accompanied by an extract  
from the Australian Register of Trade Marks, certified by the  
Australian Registrar, or his delegate, evidencing the matters  
referred to in this subsection.

(8) The Registrar may allow an extension of time of three months from  
the date of lodgement of the application for lodging the extract from  
the Australian Register under Subsection (7).

**10. REGISTRAR MAY ISSUE NOTICE THAT APPLICATION BE AMENDED, ETC.**

By virtue of Sections 33 and 104 of the Act, the Registrar may issue  
a notice to the applicant requiring that the application be amended  
to his satisfaction so as to remove specified grounds of objection  
within a period of six months from the date of the notice or within  
such further period, not exceeding three months, as the Registrar  
allows, otherwise the Registrar may refuse to accept the application.

**11. ADVERTISEMENT OF ACCEPTANCE.**

(1) For the purposes of Section 37(2) of the Act the prescribed manner  
is authorization of the Registrar by the applicant to advertise the  
acceptance in a journal approved by the Minister by notice in the  
National Gazette.

(2) The Registrar may require the applicant to furnish to him such  
material as he requires.

**PART V. OPPOSITION TO REGISTRATION.**

**12. NOTICE OF OPPOSITION.**

A notice of opposition under Section 40 of the Act shall be in Form 5.

**PART VI. REGISTRATION AND RENEWAL.**

**13. REGISTRATION TO BE NOTIFIED.**

The Registrar shall, as soon as practicable after the registration of a trade mark -

- (a) publish a notification of the registration in a journal approved by the Minister by notice in the National Gazette; and
- (b) forward to the registered proprietor a certificate of registration in Form 1.

**14. APPLICATION FOR RENEWAL.**

(1) An application for renewal under Section 60 of the Act shall be made within the period of six months which ends on the date of the expiration of the last registration of the trade mark and shall be in Form 6.

(2) Where the trade mark is used at the date of application for renewal in an altered form, the applicant for renewal shall attach an application for amendment under Section 10.

**15. REGISTRAR TO SEND NOTE OF EXPIRATION OF REGISTRATION.**

The Registrar shall, under Section 61 of the Act, send to the registered proprietor of a Trade Mark notification of the date of the expiration of that registration six months before that date.

**PART VII. REGISTERED USERS.**

**16. REGISTERED USERS.**

An application for registration as a registered user of a trade mark under Section 64(2) of the Act shall be in Form 7.

**17. APPLICATION FOR RENEWAL OF REGISTERED USER.**

(1) An application under Section 66 of the Act shall be made by the registered proprietor in Form 8.

(2) The registered proprietor shall give notice in accordance with Section 45 of the application for renewal to the registered user.

(3) For the purposes of Section 66(2) of the Act the prescribed time is six months.

**18. APPLICATION FOR VARIATION OR EXTENSION: REGISTERED USER.**

An application for the variation or extension of the registration of a registered user of a trade mark under Section 67(1)(a) or (b) of the Act shall be made, by the registered proprietor and the registered user, in Form 9.

**19. APPLICATION FOR CANCELLATION OF REGISTERED USER.**

(1) An application for cancellation under Section 67(1)(c) or (d) of the Act shall be in Form 10.

(2) The applicant shall give notice, in accordance with Section 45, of the application for cancellation to the registered proprietor and registered user.

**PART VIII. ASSIGNMENT.**

**20. REGISTRATION OF ASSIGNMENT.**

An application for registration of an assignment under Section 74(1) of the Act shall be in Form 11.

## **PART IX. PRACTICE AND PROCEDURE IN OPPOSITION CASES.**

### **21. INTERPRETATION OF PART IX.**

(1) In this Part -

"applicant" means a person who has made the request or application in respect of which a person has given a notice of opposition;

"counter-statement" means a short formal statement indicating the intention of the applicant to resist the opposition and continue the application;

"notice of opposition" means a notice of opposition in relation to which this Regulation applies;

"opponent" means a person who has lodged a notice of opposition.

(2) In this Part a requirement that a person is to lodge declarations, or to serve copies of declarations, on which he relies in support of, or in answer to, an opposition shall, in a case in which it is not practicable to include in, or annex to, a declaration any material on which the person relies, be construed as including a requirement that the person is to lodge that material or serve copies of that material, as the context requires.

### **22. APPLICATION OF PART IX.**

This Part applies where a notice of opposition has been given under the Act.

### **23. OPPONENT'S EVIDENCE IN SUPPORT.**

An opponent shall -

(a) serve on the applicant, within three months after the notice of opposition has been lodged at the Office of the Registrar, a copy of each of the declarations on which he relies in support of his opposition; and

(b) within 21 days after the copies of the declarations have been served- lodge the declarations at the Office of the Registrar with a written statement indicating the place at which, and the date on which, the copies of the declarations were served.

### **24. APPLICANT'S EVIDENCE IN ANSWER.**

An applicant shall -

(a) serve on the opponent, within three months after the date on which the declarations of the opponent were served, a copy of each of the declarations on which he relies in answer to the opposition; and

(b) within 21 days after the copies of the declarations are served—lodge the declarations at the Office of the Registrar with a written statement indicating -

(i) the place at which, and the date on which, the copies of the declarations of the opponent were served on him; and

(ii) the place at which, and the date on which, the copies of his declarations were served on the opponent.

**25. OPPONENT'S EVIDENCE IN REPLY.**

An opponent -

(a) may serve on the applicant, within three months after the date on which the copies of the declarations of the applicant were served on him, a copy of each of the declarations on which he relies in reply to the declarations of the applicant; and

(b) shall, within 21 days after the copies of the declarations are served—lodge the declarations at the Office of the Registrar with a written statement indicating the place at which, and the date on which, the copies of the declarations were served.

**26. STATEMENT IF DECLARATIONS IN REPLY NOT TO BE LODGED.**

Where an opponent does not intend to reply to the applicant's declarations within the time specified in Section 25, the opponent shall lodge at the Office of the Registrar a written notice to that effect and, if a notice is so lodged, serve a copy on the applicant.

**27. FURTHER EVIDENCE TO BE BY LEAVE OR SPECIAL LEAVE.**

(1) An opponent or applicant may not adduce further evidence except -

(a) by leave of the Registrar, if the parties agree in writing to further evidence being adduced; or

(b) by special leave of the Registrar granted on an application made for that purpose.

(2) An application for special leave under Subsection (1)(b) shall, unless it is made at the hearing, be in writing.

(3) The person making the application shall lodge with the application a declaration setting out the grounds on which the application is made and the nature of the further evidence which it is desired to lodge.

(4) The person making the application shall -

(a) within 14 days after the making of the application, serve a copy of the application and a copy of the declaration on the other party to the proceedings; and

(b) if the copies are served after the making of the application—lodge at the Office of the Registrar a written statement indicating the place at which, and the day on which, the copies of the application and the declaration were served on the other party.

(5) The other party shall, if he intends to oppose the application, give to the Registrar and to the person making the application notice of his intention to do so within 14 days after the date on which the copies of the application and the declaration were served on him.

(6) Where special leave to adduce further evidence is granted, the other party shall be entitled to reply to the further evidence.

(7) The Registrar shall notify the parties of his decision on the application for special leave.

## **28. PROCEDURE WHERE SPECIAL LEAVE GRANTED.**

(1) Where the Registrar grants special leave to a party to adduce further evidence, that party shall -

(a) serve on the other party, within one month after the date on which he received notification that special leave has been granted, a copy of the further evidence; and

(b) within 21 days after the copy of the further evidence is served lodge the further evidence at the Office of the Registrar with a written statement indicating the place at which, and the date on which, the copy was served.

(2) Where the other party desires to adduce evidence in reply to the further evidence, that party shall -

(a) serve, within one month after the date on which the copy of the further evidence referred to in Subsection (1)(a) was served on him, a copy of the evidence on which he proposes to rely in reply to the further evidence, on the party who obtained special leave to adduce further evidence; and

(b) within 21 days after the copy of the declaration is served—lodge the evidence in reply at the Office of the Registrar with a written statement indicating the place at which, and the date on which, a copy of the evidence in reply was so served.

**29. FIXING TIME AND PLACE FOR HEARING.**

The Registrar may fix a date for hearing at any stage in the proceedings and, in particular, he may fix a date for hearing where a party fails to take a procedural step or when the cause of the proceedings have been unduly prolonged.

**30. HEARING.**

(1) The Registrar shall hear the applicant and the opponent, if they desire to be heard, at the time and place fixed under Section 29.

(2) The Registrar may, if he thinks fit, adjourn the hearing from time to time and from place to place.

**31. NOTIFICATION OF REGISTRAR'S DECISION.**

The Registrar shall forward a copy of his decision to each of the parties to the opposition.

**32. COSTS.**

(1) Where, in proceedings in relation to which this Part applies, the Registrar awards costs against a party to the proceedings, the costs shall be taxed, allowed and certified by an officer of the Office of the Registrar appointed by the Registrar for the purpose.

(2) A taxation of costs is subject to review by the Registrar.

**PART X. PRACTICE AND PROCEDURE IN CASES OTHER THAN OPPOSITION CASES.**

**33. PROCEDURE IN PROCEEDINGS OTHER THAN OPPOSITION PROCEEDINGS.**

Where the Act or this Regulation authorizes the Registrar to hear and decide an application or matter not being an opposition, the practice and procedure to be followed for the purposes of enabling the application or matter to be decided shall be the practice and procedure which the Registrar, on an application made to him for that purpose, directs to be followed.

**PART XI. FORMAL REQUIREMENTS IN RELATION TO EVIDENCE.**

**34. EVIDENCE.**

Notwithstanding anything in Part IX the Registrar may require a person who has made a declaration, to attend before him to give evidence orally on oath instead of, or in addition to, the evidence contained in the declaration and may allow the person to be cross-examined on his declaration.

**35. DOCUMENTS IN A FOREIGN LANGUAGE.**

Where a document is in a foreign language, a translation of the document verified in such manner as the Registrar directs shall be furnished for the Registrar's use.

**36. DECLARATIONS AND AFFIDAVITS.**

(1) In this section -

"consular officer" has the same meaning as in the Vienna Convention on Consular Relations; and

"member of the diplomatic staff" has the same meaning as in the Vienna Convention on Diplomatic Relations.

(2) A declaration required by the Act or this Regulation to be lodged at the Office of the Registrar or furnished to the Registrar shall -

(a) be entitled in the matter in respect of which the declaration is made; and

(b) be drawn in the first person; and

(c) state the description and true place of business or abode of the declarant; and

(d) be divided into paragraphs, each of which shall be numbered consecutively and shall, as far as practicable, be confined to one subject; and

(e) have endorsed on it the name and address of the person who lodges it and the name of the person on whose behalf it is lodged.

(3) A declaration may be made -

(a) in Papua New Guinea-before a Commissioner for Oaths; and

(b) in a part of Her Majesty's dominions other than Papua New Guinea-before a Judge, Magistrate, Commissioner for Oaths, Notary Public, a Commissioner for Affidavits, or a member of the diplomatic staff or a consular officer of the Papua New Guinea mission or a person

authorized by the law of that part to administer oaths or take declarations; and

(c) in any other place-before a Judge of a court the jurisdiction of which is unlimited, one of Her Majesty's Consuls or Vice-Consuls, a Notary Public, or a member of the diplomatic staff or a consular officer of the Papua New Guinea mission.

(4) The title of the person before whom the declaration is made and the date when and the place where it was taken or made shall be stated on the declaration.

(5) The Registrar may take notice of the signature to a declaration and of the signature of the person before whom it is made without proof of the signatures or of the fact that the person before whom the declaration is made holds the office stated on the declaration.

## **PART XII. MISCELLANEOUS.**

### **37. OFFICE HOURS.**

The Office of the Registrar shall be open for business on those hours and days specified in the Public Services (Management) Act 1995.

### **38. TRANSLATIONS.**

Where an application is made for the registration of a trade mark which contains words in a language other than the English language or in Pisin or Hiri Motu or words in characters other than Roman characters, the applicant shall at the same time as he lodges his application, furnish to the Registrar -

- (a) a translation in the English language of those words; and
- (b) a transliteration in Roman characters of those characters.

### **39. EXECUTION OF DOCUMENTS.**

(1) A document lodged with the Registrar under the Act or this Regulation, in relation to a trade mark, shall be signed or authenticated by the applicant, or opponent, or by his agent.

(2) An agent referred to in Subsection (1) shall act only on the written authority of the applicant or opponent unless that agent is -

- (a) a lawyer practicing in Papua New Guinea; or
- (b) a legal practitioner practising in a State or Territory of Australia; or
- (c) a patent attorney registered under the Patents Act 1952, or a trade marks agent registered under the Trade Marks Act 1955, of Australia.

(3) An applicant or opponent who is a corporation shall sign or authenticate the document referred to in Subsection (1) or execute the authority referred to in Subsection (2) in a manner binding on the corporation.

### **40. REQUIREMENTS AS TO AGENCY.**

(1) Where an agent is not a person referred to in Section 39(2)(a), (b) or (c), the Registrar may require that agent to produce to him evidence of his authority to act for the applicant or opponent.

(2) Notwithstanding that an agent required under Section 39(2) to act only on the written authority of the applicant or opponent has so

acted,

the Registrar may, in his discretion, refuse to receive a document signed or authenticated by that agent if he is of the opinion that

-

(a) the agent is otherwise not competent to act for the applicant or opponent; or

(b) professional responsibility cannot be fixed on the agent.

**41. TIME WITHIN WHICH APPLICATIONS FOR EXTENSIONS OF TIME ARE TO BE LODGED.**

An application for an extension of time under this Regulation shall be in writing and shall be lodged at the Office of the Registrar -

(a) before the expiration of the time sought to be extended; or

(b) if the Registrar is satisfied that special circumstances existed which prevented the application being made before that time-within such time as the Registrar allows.

**42. WHERE REQUIREMENT CANNOT BE COMPLIED WITH.**

Where, under this Regulation, a person is required to do an act or thing, to sign a document, to make a declaration, to produce to or leave with the Registrar or at the Office of the Registrar any document or evidence and the Registrar is satisfied that that person is, for reasonable cause unable to comply with the requirement, the Registrar may, subject to such terms as he directs, dispense with the requirement.

**43. CERTIFICATION OF COPIES.**

Where a person is required by the Act or this Regulation to lodge a copy of a document, the person shall certify as to the truth and correctness of the document so lodged in such manner as the Registrar desires.

**44. ADDRESS FOR SERVICE.**

(1) Where, in a form in Schedule 1, provision is made for a statement of an address for service, the person completing the form shall state an address in Papua New Guinea at which documents under the Act or this Regulation may be served on him personally or on a person specified in the form on his behalf.

(2) A person may, by written notice lodged at the Office of the Registrar, change his address for service to an address specified in

the notice.

(3) Where proceedings in relation to which Part IX. applies are pending, a person who has given notice under Subsection (2) shall serve a copy of the notice on all persons interested in the proceedings.

(4) Notwithstanding Subsection (1), in relation to an application for registration of a trade mark lodged on or after 18 October 1979 but not later than 31 December 1980 by an agent referred to in Section 39(2)(b) or (c), on behalf of an applicant, the address, in Australia, of that agent, may be stated in the application as the address for service of documents under the Act or this Regulation.

#### **45. NOTIFICATION OF SERVICE.**

(1) Where a person is required by the Act or this Regulation (other than Part IX.) to serve on another party a copy of a document, the first-mentioned person shall serve the copy on the party before applying to the Registrar or taking such other action as is prescribed by the Act or this Regulation and the service shall be notified by endorsement on the appropriate form.

(2) Documents shall be served either by registered mail with acknowledgement of receipt or by such other method as is prescribed.

#### **46. REASONS FOR DECISION.**

(1) The Registrar shall, on the written request of a person affected by a decision of the Registrar, furnish to that person a concise statement of the grounds on which the decision was made.

(2) An elaboration of the statement under Subsection (1) shall be required only in the case of an appeal to the Court.

#### **47. DESTRUCTION OF DOCUMENTS.**

(1) The Registrar may order the destruction of documents relating to trade marks the registration of which has ceased not less than 25 years before the date of the order.

(2) Subsection (1) does not authorize the destruction of -

(a) the Register; or

(b) documents considered by the Registrar or by any State authority

concerned with the preservation of archives, to be of legal or historical interest.

**48. DIRECTIONS OR ACTION BY THE REGISTRAR NOT OTHERWISE PRESCRIBED.**

(1) The Registrar may prescribe any matter, give any direction or take any action, which is not otherwise prescribed and which is not inconsistent with this Regulation which is necessary or convenient for carrying out or giving effect to this Regulation.

(2) The Registrar may notify or publish any matter in the National Gazette which is necessary or convenient for carrying out or giving effect to this Regulation.

SCHEDULE 1 Forms. (omitted)

SCHEDULE 2 REQUIREMENTS IN RELATION TO DOCUMENTS AND REPRESENTATIONS  
OF TRADE MARKS. (omitted)

SCHEDULE 3 CLASSIFICATION OF GOODS. (omitted)

**SCHEDULE 4 FEES.**

Item No.	Matter	Fees
1.	On Lodging:	
	(a) on a day, an application to register a trade mark, or a series of trade marks, in respect of goods or services in a prescribed class of goods or services;	K150.00
	(b) on the same day, an application to register the same trade mark, or the same series of trade marks, in respect of goods or services in another prescribed class of goods or services	K100.00
2.	On lodging an application to register a trade mark or a series of trade marks, in respect of goods or services where a representation exceeds 80 mm x 60 mm in size (in addition to any application fee payable under Item No. 1).	K20.00
3.	For registration of a trade mark or a series of trade marks-for each prescribed class of goods or services in which the goods or services in respect of which registration is effected.	K250.00
4.	For each entry in the Register of association of a trade mark or service mark under Section 28(1) of the Act.	K20.00
5.	On Lodging-	
	(a) an application under Section 5(2), 9, 11, 28(2), 66, 67 or 68 of the Act, or any other application-	
	(i) for cancellation of the entry of a trade mark; or	
	(ii) to enter change of address; or	
	(iii) for a Certified Copy of a Certificate of registration; or	
	(iv) to which fee under Paragraph (b) applies;	K30.00
	(b) simultaneously, where two or more applications under Section 5(2) or 11 of the Act that are to the same effect in respect of each trade mark to which application relate, other than an application referred to in Paragraph (a) (i), (ii) or (iii).	K30.00 plus K15.00 for each application after the first

6.	On lodging-	
	(a) an application under Section 12, 40, 64 or 74 of the Act;	K70.00
	(b) simultaneously, where two or more applications that are to the same effect in respect of each trade or service mark to which the applications relate.	K70.00 plus K40.00 for each application after the first
7.	On lodging evidence in opposition proceedings-for each evidential stage.	K50.00
8.	On lodging an application under Section 66 of the Act for renewal of the registration of-	
	(a) a trade or service mark; or	K300.00
	(b) a series of trade or service marks-	
	(i) for the first mark; and	K300.00
	(ii) for every other mark of the series.	K200.00
9.	On lodging an application for restoration of a removed trade mark under Section 62(1) of the Act (in addition to any renewal fee payable).	K200.00
10.	For issuing a summons to a witness or a summons to produce documents.	K50.00
11.	On lodging request to the Registrar for the statement of grounds on which his decision was made.	K80.00
12.	On lodging an application under the Act or the Regulation for an extension of time-	
	(a) if the application is lodged before the end of the time to be extended-for each month or part of the month applied for;	K40.00
	(b) if the application is lodged after the time to be extended.	K30.00 plus the amount payable under Paragraph (a).
13.	For supply under Section 10(2) of the Act of an uncertified photographic copy of, or extract from, the Register or other document in the custody of the Registrar.	K2.00

14.	For taxing costs.	K50.00
15.	Searches-	
	(a) where carried out by a member of public;	K10.00
	(b) where carried out by the Registrar.	K25.00
16.		
	(a) for an annual subscription to the journal issued under Sections 11 and 13; or	K125.00
	(b) for each edition of the journal issued under Sections 11 and 13.	K30.00

SCHEDULE 5 PROHIBITED MARKS. (omitted)