

MONTSERRAT
STATUTORY RULES AND ORDERS

S.R.O. 51 OF 2012

TRADE MARKS RULES

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THE TRADE MARKS RULES 2012 MADE BY THE GOVERNOR ACTING ON THE ADVICE OF CABINET UNDER SECTIONS 76, 77, 79 AND 81 OF THE TRADE MARKS ACT (CAP. 15:23).

Preliminary

Citation and commencement

1. These Rules may be cited as the **Trade Marks Rules 2012** and shall come into force on the 15th October, 2012.

Interpretation

2. (1) In these **Rules**, unless the context otherwise requires—

“**Nice Classification**” means the current version of the international classification drawn up under the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of marks of 15th June 1957;

“**proprietor**” means the person registered as the proprietor of a trade mark;

“**publish**” means to publish in the *Gazette*;

“**Registry**” means the registry of trade marks located at the offices of the Financial Services Commission or such other place as may by law be designated from time to time;

“**specification**” means the statement of goods or services in respect of which a trade mark is registered or proposed to be registered.

(2) In these rules a reference to the filing or the making of an application, the giving of notice or the delivery of any document, unless the contrary intention appears, is to be construed as a reference to it being delivered to the Registrar at the office of the Registrar wherever located.

Fees

3. (1) The fees to be paid in relation to trade marks are specified in the Schedule.

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(2) Payments shall be made in East Caribbean Currency but the equivalent amount in a foreign convertible currency may be accepted.

(3) A payment of a fee by cheque or other negotiable instrument may be accepted by the Registrar as payment of the fee when received, but if the cheque or negotiable instrument is not paid when presented to the bank on which it is drawn, and not made good within such time as the Registrar may direct, the acceptance of the fee shall be revoked and anything done pursuant to the payment shall be void and of no effect.

(4) Where a fee is paid to the Registrar by any person in respect of an application that is withdrawn before it is given an application number, or for a service that cannot be provided, the person who paid the fee is entitled to a refund of the fee less an administrative fee of \$100.

Forms

4. A reference in these Rules to a request or application being made or notice given in a particular form referred to by number shall be a reference to a Form bearing that number prescribed by the Registrar in the Trade Marks (Forms) Rules 2012 made pursuant to section 70 of the Act.

Address for service

5. (1) For the purposes of any proceedings before the Registrar under these Rules or any appeal from a decision of the Registrar under the Act or these Rules, an address for service in Montserrat shall be filed by every applicant for or in respect of —

- (a) the registration of a trade mark or series of marks, collective mark or certification mark;
- (b) an application for the division or merger of trade marks;
- (c) the revocation, invalidation and rectification of trade marks;
- (d) the alteration, renewal or restoration of trade marks;
- (e) leave to intervene in any proceeding; and
- (f) any other matter or proceeding before Registrar under these Rules.

(2) An address for service shall be provided using Form 1.

(3) The address for service of an applicant for registration of a trade mark shall, upon registration of the mark, be deemed to be the address for service of the registered proprietor, subject to any filing to the contrary under these Rules.

Agents

Applications may be made by authorised agent

6. Except as otherwise provided by these Rules—

- (a) an application, request or notice that is required or permitted by the Act or these Rules to be made or given to the Registrar; and

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- (b) all other communications—
 - (i) between an applicant or a person making such request or giving such notice and the Registrar; or
 - (ii) between a registered owner or a licensee of a trade mark and the Registrar,

may be made, signed or given through an agent.

Appointment of Agent

7. (1) A person referred to in Rule 6 may, by signing and sending to the Registrar an authorisation using Form 2, appoint an agent to act for that person in any proceeding or matter under the Act or these rules.

(2) Where an agent has been appointed under this rule—

- (a) service upon the agent of any documentation relating to the proceeding or matter for which the agent has been appointed, is service upon the person who appointed him;
- (b) all communications that relate to any proceedings or matter referred to in paragraph (a) that are directed to be made to an applicant, person making a request or giving a notice, or to any registered owner or licensee, may be addressed to the agent; and
- (c) the attendances upon the Registrar relating to any proceeding or matter referred to in paragraph (a) may be made by or through the agent.

(3) Notwithstanding sub rules (1) and (2) the Registrar may in a particular case require the personal signature or presence of an applicant under these Rules.

(4) Where after a person has become a party to proceedings before the Registrar, he appoints an agent for the first time or appoints one agent in substitution for another, a new form of authorization using Form 2 shall be submitted to the Registrar and any act required or authorised by the Act or these Rules in connection with the registration of a trade mark or any procedure relating to a trade mark may not be done by the newly appointed agent until on or after the date on which the form is submitted to the Registrar.

Registrar may refuse to deal with certain agents

8. Notwithstanding Rule 7, the Registrar may refuse to recognise as agent in respect of any business under the Act or these Rules—

- (a) a person who has been convicted of an offence under sections 82, 83 or 84 of the Act;
- (b) an individual whose name has been erased from and not restored to the register of trade mark agents on the ground of misconduct; and

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- (c) a partnership or body corporate of which one of the partners or directors is a person whom the Registrar could refuse to recognise under paragraph (a) or (b).

Registration of Trade Marks

Application for registration

9. (1) An application under section 3 of the Act for the registration of a trade mark, including a collective mark, certification mark, series of marks and all other forms of marks under the Act or these Rules, shall be made on Form 3.

(2) An application under sub rule (1) shall—

- (a) be made in respect of one or more of the classes of goods and services set out in the Nice Classification;
- (b) specify the class or classes to which it relates and list the goods or services appropriate to that class;
- (c) if it relates to more than one class, set out the classes in consecutive numerical order;
- (d) if made in relation to a three-dimensional mark, contain a statement to that effect; and
- (e) if made in relation to a trade mark in respect of which a colour is claimed, include a statement to that effect and specify the colour.

(3) An application for the registration of a three-dimensional mark shall not be treated as such unless sub rule (2)(d) has been complied with.

(4) Where colour is claimed as an element of the trade mark, it shall not be treated as such unless sub rule (2)(e) has been complied with.

(5) An application to register a trade mark which is or includes a word shall be treated as an application to register that word in the graphical form shown in the application, unless the applicant includes a statement that the application is for registration of the word without regard to its graphical form.

(6) An application which has been accepted for registration shall, for the purposes of section 9(1) of the Act, be published as soon after such acceptance as may be practicable.

(7) The Registrar shall send to the applicant a copy of any documents containing observations made under section 9(3) of the Act.

(8) On the registration of a trade mark the Registrar shall publish the registration, specifying the date upon which the trade mark was entered in the register.

Classification of goods and services

10. (1) For the purpose of section 5 of the Act, goods and services shall, except as provided in sub rule (2), be classified in accordance with the Nice Classification.

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(2) If the specification contained in an application under this rule lists items by reference to a class in which they do not fall, the applicant may request an amendment to the application by filing an application using Form 7.

Non-compliant applications

11. (1) Where an application for registration of a trade mark does not satisfy the requirements of section 3 (2), (3) or (4) of the Act or sub rules (1), (2)(a), 2(b) or 2(c) of rule 9, the Registrar shall send notice to the applicant to remedy the non-compliance or, in the case of section 3 (4) of the Act, to remedy the default in payment.

(2) If within three months of the date of the notice or such longer period as the Registrar may permit, the applicant fails to remedy the non-compliance or default in payment, the application shall be deemed to have been abandoned.

Oppositions Proceedings

Procedure in cases of opposition to the registration of trade marks

12 (1) A notice to the Registrar of opposition to the registration of a trade mark under section 9(2) of the Act shall be given on Form 4 within three months of the date on which the application was published and shall include a statement of the grounds of opposition.

(2) The Registrar shall as soon as may be practicable after a notice of opposition under sub rule (1), send a copy of the notice to the applicant who may, within three months of the date on which a copy of the notice was sent by the Registrar under sub rule (1), file a notice of defence and counter-statement in the form set out as Form 5.

(3) Where a notice of defence and counter-statement is filed within the period specified in sub rule (2), the Registrar shall send a copy to the person opposing the application.

(4) Subject to sub rule (5), at any time before the expiry of the period specified in sub rule (2) for the filing of a notice of defence and counter-statement by the applicant, the Registrar may, on a request in writing made by the applicant and on the concurrence of the other party, grant an extension of up to three months.

(5) The Registrar may on a further request by one of the parties on Form 6, extend the period under sub rule (4) by a further period of up to three months.

(6) Within one month after the expiry of the extended period under sub rule (4) or (5), the applicant may file a defence and counter-statement using Form 5. Where filed within the period of one month the Registrar shall send a copy of the defence and counter-statement to the person opposing the application.

(7) Where a defence and counter-statement are not filed by the applicant within the period prescribed by sub rule (2) or (6), the applicant shall be deemed to have withdrawn the application for registration.

(8) Within three months of the date upon which a copy of the defence and counter-statement is sent by the Registrar to the person opposing the registration, that

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person may file evidence in support of his grounds of opposition and shall send a copy to the applicant.

(9) If the person opposing the registration files no evidence under sub rule (8), he shall, unless the Registrar otherwise directs, be deemed to have withdrawn his opposition.

(10) If the person opposing the registration files evidence under sub rule (8) or the Registrar otherwise directs under sub rule (9), the applicant who has filed a defence and counter-statement under sub rule (2) or (6) may, within three months of the date on which either a copy of the evidence or a copy of the direction is sent to him, file evidence in support of his application for registration and shall send a copy to the person opposing the application.

(11) Within three months of the date upon which a copy of the applicant's evidence is sent to him under sub rule (10), the person opposing the application may file evidence in reply which shall be confined to matters strictly in reply to the applicant's evidence, and shall send a copy to the applicant.

(12) No further evidence may be filed, except that, in relation to any proceedings before the Registrar, the Registrar may at any time give leave to either party to file such evidence upon such terms as the Registrar thinks fit.

(13) Upon completion of the evidence the Registrar shall request the parties to state by notice to the Registrar whether they wish to be heard.

(14) If any of the parties make a request to be heard the Registrar shall send to the parties, notice of a date for the hearing.

Decision of Registrar

13. (1) When the Registrar has made a decision on the acceptability of an application for registration following the procedure under rule 12, the Registrar shall send the applicant and the person opposing the application written notice of it, stating the reasons for the decision.

(2) For the purpose of any appeal against the Registrar's decision the date of the decision shall be the date when notice of the decision is sent under sub rule (1).

Amendment of application

14. (1) A request to amend an application under section 10 of the Act to correct an error or to change the name or address of the applicant or in respect of any amendment requested after publication of the application shall be made on Form 7.

(2) Where, pursuant to section 10 of the Act, a request is made for amendment of an application which has been published and the amendment affects the representation of the trade mark or the goods or services covered by the application, the amendment or a statement of the effect of the amendment shall be published.

(3) Notice of opposition to the amendment shall be filed on Form 4 within one month of the date on which the amended application was published under sub rule (1),

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and shall include a statement of the grounds of objection and, in particular, how the amendment would be contrary to section 10(2) of the Act.

(4) The provisions of rule 12 shall apply to proceedings relating to the opposition to the amendment of the application as they apply to proceedings relating to opposition to the registration of a trade mark.

Division, merger and series of marks

Provisions for division of applications made pursuant to section 12 (1) (a) of the Act

15 (1) An applicant may, at any time before registration of a trade mark, apply to the Registrar on Form 8 for a division of the original application for registration into two or more separate divisional applications indicating for each division the specification of goods or services.

(2) Each divisional application shall be treated as a separate application for registration with the same filing date as the original application.

(3) Where an application to divide an application is made after publication of the application, any objections in respect of, or opposition to, the original application shall be taken to apply to each divisional application and shall be proceeded with accordingly.

(4) Upon the division of an original application in respect of which notice has been given to the Registrar of particulars relating to the grant of a license, or a security interest or any right in or under it, the notice and the particulars shall be deemed to apply in relation to each of the applications into which the original application has been divided.

Provisions for merger of applications made pursuant to section 12 (1) (b) of the Act

16 (1) An applicant may, at any time before the publication of two or more applications for the registration of trade marks, apply to the Registrar to merge the separate applications into a single application.

(2) An application under sub rule (1) shall be made on Form 9.

(3) The Registrar shall merge the applications into a single application if satisfied that all the applications which are the subject of the request for merger are all in respect of the same trade mark, bear the same date of application, and are, at the time of the request, in the name of the same person.

(4) The proprietor of two or more registrations of a trade mark may apply to the Registrar using Form 10 to merge them into a single registration.

(5) The Registrar shall, if satisfied that the registrations are in respect of the same trade mark, merge them into a single registration.

(6) Where any registration of a trade mark to be merged under sub rule (5):

(a) is subject to a disclaimer or limitation; or

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- (b) has registered in relation to it, particulars relating to the grant of a licence or a security interest or any right in or under it, or of any memorandum or statement of the effect of a memorandum,

the Registrar shall enter in the register the same particulars in relation to the merged registration.

(7) If the separate registrations bear different dates of registration, the date of registration of the merged registration shall be the latest of those dates.

Provisions for the registration of a series of trade marks pursuant to section 12(1)(c) of the Act

17 (1) The proprietor of a series of **trade marks** may apply to the Registrar for their registration as a series in a single registration.

(2) An application under sub rule (1) shall—

- (a) be in the form set out as Form 3; and
(b) include a representation of each mark of the series.

(3) The Registrar shall, if satisfied that the marks constitute a series, accept the application.

(4) At any time before publication of the application an applicant under sub rule (1) may apply to the Registrar under rule 15 for the division of the application into separate applications in respect of one or more marks in that series and the Registrar shall, if satisfied that the marks resemble each other as to their material particulars and differ only as to matters of a non-distinctive character not substantially affecting the identity of the trade mark within the meaning of section 12(2) of the Act, divide the application accordingly.

(5) The applicant for the registration of a series of trade marks or the proprietor of a registered series of trade marks may at any time request the deletion of a mark in that series, and the Registrar shall delete the mark accordingly.

(6) The division of an application into one or more applications shall be subject to the payment of a divisional fee and such application and class fees as are appropriate.

Collective marks and certification marks

Filing of Regulations

18. An applicant for the registration of a collective mark or certification mark shall, within nine months of the date of such application file a copy of Form 11 accompanied by a copy of the regulations governing the use of the mark.

Amendment of Regulations

19 (1) Form 12 shall be filed in respect of any application for the amendment of the regulations governing the use of a registered collective mark or certification mark.

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(2) Where it appears expedient to the Registrar that amended regulations should be made available to the public, the Registrar shall publish a notice indicating that copies of the amended regulations may be inspected at the Trade Marks Registry.

(3) Any person may, within three months of the date of publication of a notice under sub rule (2), make observations to the Registrar with respect to the amendments to a collective mark or a certification mark.

(4) The Registrar shall send a copy of a notice under sub rule (3) to the applicant.

(5) Any person may, within three months of the date of publication of the notice, give notice to the Registrar using Form 4, of opposition to the amendment, accompanied by a statement of the grounds of opposition, indicating why the amended regulations do not comply with the requirements of the Act or these Rules.

(6) The Registrar shall send a copy of the notice and the statement to the applicant, and thereafter the procedure in sub rules (3) and (6) to (12) of rule 12 shall apply to the proceedings as they apply to proceedings relating to opposition to an application for registration of a trade mark.

*Disclaimers, limitations, alteration and
surrender of registered trade mark*

Registration subject to disclaimer or limitation

20. Where the applicant for registration of a trade mark or the proprietor by notice in writing sent to the Registrar—

- (a) disclaims any right to the exclusive use of any specified element of the trade mark, or
- (b) agrees that the rights conferred by the registration shall be subject to a specified territorial or other limitation,

the Registrar shall make the appropriate entry in the register and publish such disclaimer or limitation.

Alteration of registered trade mark

21 (1) An application to alter a registered trade mark pursuant to section 23 of the Act shall be made on Form 13.

(2) The Registrar may require an applicant under sub rule (1) to support the application by submitting such evidence by statutory declaration or otherwise as to the circumstances in which the application is made.

(3) Any application for an alteration permitted by the Registrar shall be published.

(4) Any person claiming to be affected by the alteration may within three months of the date of publication of the alteration under sub rule (3) send a notice on Form 4 to the Registrar of opposition to the alteration and shall include a statement of the grounds of opposition.

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(5) The Registrar shall send a copy of the notice and the statement to the proprietor and thereafter the procedure in sub rules (3) and (6) to (12) of rule 12 shall apply to the proceedings as they apply to proceedings relating to opposition to an application for registration.

Surrender of registered trade mark

22 (1) The proprietor of a registered trade mark may by notice to the Registrar surrender a trade mark in respect of all the goods or services for which it is registered or in respect only of those goods or services specified by him in the notice.

(2) Either Form 14 or 15 shall be used in respect of an application to surrender under sub rule (1).

(3) A notice under sub rule (1) shall be of no effect unless the proprietor in that notice gives the name and address of any person having a registered interest in the mark, and certifies that any such person has been sent not less than three months' notice of the proprietor's intention to surrender the mark, or is not affected, or if affected consents thereto.

(4) The Registrar shall, upon the surrender taking effect, make the appropriate entry in the register and publish notice of the surrender.

Renewal and restoration of registered trade mark

Reminder of renewal of registration

23. At any time not earlier than six months nor later than one month before the expiration of the last registration of a trade mark, the Registrar shall, except where renewal has already been effected under rule 24, send to the registered proprietor notice of the approaching date of expiration and inform him at the same time that the registration may be renewed as set out in rule 24.

Renewal of registration

24. The registration of a trade mark may be renewed by the filing of a request for renewal on Form 16 within the period of six months ending on the date of the expiration of the registration.

Delayed renewal and removal of registration

25 (1) If on the expiration of the last registration of a trade mark, the renewal fee has not been paid, the Registrar shall so notify the applicant and if within six months from the date of the expiration of the last registration, an application is filed using Form 16 accompanied by the renewal fee, the Registrar shall renew the registration without removing the mark from the register.

(2) Where no request for renewal is filed, the Registrar shall, subject to rule 26, remove the mark from the register.

(3) The removal of the registration of a trade mark shall be published.

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Restoration of registration

26 (1) Where the Registrar has removed a mark from the register for failure to renew its registration in accordance with rule 25, the Registrar may, upon an application filed within six months of the date of the removal of the mark accompanied by the renewal and restoration fees, restore the mark to the register and renew its registration if, having regard to the circumstances of the failure to renew, the Registrar is satisfied that it is just to do so.

(2) A request under sub rule (1) shall be filed using Form 17.

(3) The restoration of the registration shall be published showing the date of restoration.

Revocation, invalidation and rectification

Procedure on application for revocation on the grounds of non-use

27 (1) An application to the Registrar under sections 66(1)(a) and (b) of the Act for the revocation of a registered trade mark shall be made on Form 18 which shall be filed together with a statement of the grounds on which the application is made. The Registrar shall send a copy of the application and the statement to the proprietor.

(2) Within three months of the date on which a copy of the notice and statement is sent by the Registrar to the proprietor, the proprietor may file a counter-statement, in conjunction with a notice on Form 5 and either—

- (a) two copies of evidence of use made of the mark; or
- (b) reasons for non-use of the mark.

(3) Where such a notice and counter-statement, and evidence of use of the mark or reasons for non-use of the mark, are filed within the prescribed period, the Registrar shall send a copy of Form 5 and the counter-statement, and the evidence of use of the mark or the reasons for non-use of the mark, to the applicant.

(4) Where the documentation and information referred to in sub rule (3) are not filed by the proprietor within the period specified therein, the Registrar may treat the opposition to the application as having been withdrawn.

(5) Within three months of the date upon which a copy of Form 5 and counter-statement is sent by the Registrar to the applicant, the applicant may file such evidence as the applicant may consider necessary to adduce in support of the grounds stated in the application and shall send a copy to the proprietor.

(6) If the applicant files no evidence under sub rule (5) in support of the application, the applicant shall, unless the Registrar otherwise directs, be deemed to have withdrawn his application.

(7) If the applicant files evidence under sub rule (5), or the Registrar otherwise directs under sub rule (6), the proprietor who has filed a notice and counter-statement under sub rule (2) may, within three months of the date on which either a copy of the evidence or a copy of the direction is sent to him, file such further evidence as he may

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consider necessary in support of the reasons stated in the counter-statement and shall send a copy to the applicant.

(8) Within three months of the date upon which a copy of the proprietor's evidence is sent to him under sub rule (7), the applicant may file evidence in reply which shall be confined to matters strictly in reply to the proprietor's evidence, and shall send a copy to the proprietor.

(9) No further evidence may be filed, except that, in relation to any proceedings before the Registrar, the Registrar may at any time give leave to either party to file such evidence upon such terms as may be specified.

(10) Upon completion of the evidence the Registrar shall request the parties to state by notice to the Registrar in writing whether they wish to be heard, and if any party so requests, the Registrar shall send to the parties, notice of a date for the hearing.

(11) When the Registrar has made a decision on the application the Registrar shall send the parties to the proceedings written notice of it, stating the reasons for the Registrar's decision.

(12) For the purposes of any appeal against the Registrar's decision the date when the notice of the decision is sent shall be taken to be the date of the decision.

Procedure on application for revocation (on grounds other than non-use)

28 (1) An application to the Registrar for revocation of the registration of a trade mark under sections 66(1) (c) and (d) of the Act shall be made on Form 18 which shall be filed together with a statement of the grounds on which the application is made. The Registrar shall send a copy of the application and the statement to the proprietor.

(2) Within six weeks of the date on which a copy of the application and statement is sent by the Registrar to the proprietor, the proprietor may file a counter-statement, in conjunction with notice of the same in the form set out as Form 5 and where such a notice and counter-statement are filed within the prescribed period, the Registrar shall send a copy of Form 5 and the counter-statement to the applicant.

(3) Where a notice and counter-statement are not filed by the proprietor within the period prescribed by sub rule (2), the Registrar may treat the opposition to the application as having been withdrawn.

(4) Within six weeks of the date upon which a copy of the counter-statement is sent by the Registrar to the applicant, the applicant may file such evidence as he may consider necessary to adduce in support of the grounds stated in his application and shall send a copy to the proprietor.

(5) If the applicant files no evidence under sub rule (4) in support of his application, he shall, unless the Registrar otherwise directs, be deemed to have withdrawn his application.

(6) If the applicant files evidence under sub rule (4) or the Registrar directs under sub rule (5), the proprietor who has filed a notice and counter-statement under sub rule (2) may, within six weeks of the date on which either a copy of the evidence or a copy of the direction is sent to him, file such evidence as he may consider necessary in

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support of the reasons stated in the counter-statement and shall send a copy to the applicant.

(7) Within six weeks of the date upon which a copy of the proprietor's evidence is sent to him under sub rule (6), the applicant may file evidence in reply which shall be confined to matters strictly in reply to the proprietor's evidence, and shall send a copy to the proprietor.

(8) No further evidence may be filed, except that, in relation to any proceedings before the Registrar, the Registrar may at any time give leave to either party to file such evidence upon such terms as the Registrar may think fit.

(9) Upon completion of the evidence the Registrar shall request the parties to state by notice to the Registrar in writing whether they wish to be heard; if any party requests to be heard the Registrar shall send to the parties, notice of a date for the hearing.

(10) When the Registrar has made a decision on the application the Registrar shall send the parties to the proceedings written notice of it, stating the reasons for the Registrar's decision.

(11) For the purposes of any appeal against the Registrar's decision the date when the notice of the decision is sent shall be taken to be the date of the decision.

Procedure on application for invalidation

29 (1) An application to the Registrar for a declaration of invalidity of the registration of a trade mark under section 67(1) or (2) of the Act shall be made on Form 19 accompanied by a statement of the grounds on which the application is made.

(2) The Registrar shall send a copy of the application and the statement under sub rule (1) to the proprietor.

(3) Within six weeks of the date on which a copy of the application and statement is sent by the Registrar in accordance with sub rule (2), the proprietor may file a counter-statement, in conjunction with notice on Form 5.

(4) If the notice and counter-statement are filed within the period specified in sub rule (3), the Registrar shall send a copy of Form 5 and the counter-statement to the applicant.

(5) Where a notice and counter-statement are not filed by the proprietor within the period prescribed by sub rule (3), the Registrar may treat the opposition to the application as having been withdrawn.

(6) The applicant may, within six weeks of the date upon which a copy of the counter-statement is sent by the Registrar to the applicant, file such evidence as the applicant may consider necessary to adduce in support of the grounds stated in the application and shall send a copy to the proprietor.

(7) If the applicant files no evidence under sub rule (6) in support of the application, he shall, unless the Registrar otherwise directs, be deemed to have withdrawn the application.

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(8) If the applicant files evidence under sub rule (6) or the Registrar directs under sub rule (7), the proprietor who has filed a notice and counter-statement under sub rule (3) may, within six weeks of the date on which either a copy of the evidence or a copy of the direction is sent to him, file such evidence as he may consider necessary to adduce in support of the reasons stated in the counter-statement and shall send a copy to the applicant.

(9) Within six weeks of the date upon which a copy of the proprietor's evidence is sent to him under sub rule (6), the applicant may file evidence in reply which shall be confined to matters strictly in reply to the proprietor's evidence, and shall send a copy to the proprietor.

(10) No further evidence may be filed, except that, in relation to any proceedings before the Registrar, the Registrar may at any time give leave to either party to file such evidence upon such terms as the Registrar may think fit.

(11) Upon completion of the evidence the Registrar shall request the parties to state by notice to the Registrar in writing whether they wish to be heard, and if any party requests to be heard the Registrar shall send to the parties, notice of a date for the hearing.

(12) When the Registrar has made a decision on the application the Registrar shall send the parties to the proceedings written notice of it, stating the reasons for the decision.

(13) For the purposes of any appeal against the Registrar's decision the date when the notice of the decision is sent shall be taken to be the date of the decision.

Procedure on application for rectification

30 (1) An application for rectification of an error or omission in the register under section 64(1) of the Act shall be made on Form 20 and shall be accompanied by a statement of the grounds on which the application is made and any evidence to support those grounds.

(2) Where an application is made under sub rule (1) by a person other than the proprietor of the registered trade mark the Registrar shall send a copy of the application and the statement, together with any evidence filed, to the proprietor; and may give such direction with regard to the filing of subsequent evidence upon such terms as the Registrar may think fit.

(3) Upon completion of the evidence the Registrar shall request the parties to state by notice to the Registrar in writing whether they wish to be heard, and if any party requests to be heard the Registrar shall send to the parties, notice of a date for the hearing.

(4) When the Registrar has made a decision on the application the Registrar shall send the parties to the proceedings written notice of it, stating the reasons for the decision.

(5) For the purposes of any appeal against the Registrar's decision the date when the notice of the decision is sent shall be taken to be the date of the decision.

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Procedure for intervention

31 (1) Any person, other than the registered proprietor, claiming to have an interest in proceedings on an application under these Rules may file an application to the Registrar on Form 21 for leave to intervene, stating the nature of his interest and the Registrar may, after hearing the parties concerned if so required, refuse leave or grant leave upon such terms and conditions, including any undertaking as to costs.

(2) Any person granted leave to intervene shall, subject to any terms and conditions imposed in respect of the intervention, be treated as a party to the proceedings in respect of which application to intervene was made.

Case Management Conference and Pre-Hearing Review

Case Management Conference

32. At any stage of any proceedings before the Registrar, the Registrar may direct that the parties to the proceedings attend a case management conference where they shall have an opportunity to be heard with regard to the future conduct of the proceedings, and in particular with regard to the proposed exercise of any of the Registrar's powers. The Registrar shall give the parties at least fourteen days notice of the date of the case management conference.

Pre-trial review

33. (1) Before hearing any party that desires to be heard in any proceedings before the Registrar, the Registrar may direct that the parties to the proceedings attend a pre-trial review at which the Registrar may give such directions as to the conduct of the hearing.

(2) The Registrar shall give the parties at least fourteen days notice of the date of the pre-hearing review.

The Register

Form of register

34. The register required to be maintained by the Registrar under section 63(1) of the Act may be kept in documentary, electronic or other form.

Entry of particulars of registered trade marks

35. In addition to the entries in the register of registered trade marks required to be made by section 63(2) of the Act, there shall be entered in the register in respect of each trade mark the following particulars—

- (a) the date of registration of each trade mark;
- (b) the actual date of entry in the register;
- (c) the priority date, if any, to be accorded pursuant to a claim to a right to priority under provisions made pursuant to section 34 of the Act;
- (d) the name and address of the proprietor;

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- (e) the address for service, if any, as furnished pursuant to rule 5;
- (f) any disclaimer or limitation of rights under the Act or under provisions made pursuant to the Act;
- (g) any memorandum or statement of the effect of any memorandum relating to a trade mark of which the Registrar has been notified;
- (h) the goods or services in respect of which the mark is registered;
- (i) where the mark is a collective or certification mark, that fact; and
- (j) any other particulars which the Registrar determines should be entered in the Register.

Entry in register of particulars of registrable transactions

36. Upon application made to the Registrar under section 20(1)(a) or (b) of the Act, there shall be entered in the register the following particulars of registrable transactions—

- (a) in the case of an assignment of a registered trade mark or any right in it—
 - (i) the name and address of the assignee,
 - (ii) the date of the assignment, and
 - (iii) where the assignment is in respect of any right in the mark, a description of the right assigned,
- (b) in the case of the grant of a licence under a registered trade mark—
 - (i) the name and address of the licensee,
 - (ii) where the licence is an exclusive licence, that fact,
 - (iii) where the licence is limited, a description of the limitation, and
 - (iv) the duration of the licence if the same is or is ascertainable as a definite period,
- (c) in the case of the grant of any security interest over a registered trade mark or any right in or under it—
 - (i) the name and address of the grantee,
 - (ii) the nature of the interest, whether fixed or floating, and
 - (iii) the extent of the security and the right in or under the mark secured;
- (d) in the case of the making by personal representatives of an assent in relation to a registered trade mark or any right in or under it—
 - (i) the name and address of the person in whom the mark or any right in or under it, vests by virtue of the assent, and
 - (ii) the date of the assent; and

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- (e) in the case of a court or other competent authority transferring a registered trade mark or any right in or under it—
 - (i) the name and address of the transferee,
 - (ii) the date of the order, and
 - (iii) where the transfer is in respect of a right in the mark, a description of the right transferred;
- and, in each case, there shall be entered the date on which the entry is made.

Application to register or give notice of transaction

37. (1) An application to register particulars under section 20 of the Act or to give notice to the Registrar of particulars of a transaction under section 20 shall be made, subject to sub rule (2) —

- (a) relating to an assignment or transaction other than a transaction referred to in paragraphs (b) to (d), on Form 22;
- (b) relating to a grant of a licence, on Form 23;
- (c) relating to an amendment to, or termination of a licence, on Form 24; and
- (d) relating to the grant, amendment or termination of any security interest, on Form 25.

(2) An application under sub rule (1) shall—

- (a) where the transaction is an assignment, be signed by or on behalf of the parties to the assignment;
- (b) where the transaction falls within sub rule (1) (b), (c) or (d), be signed by or on behalf of the grantor of the licence or security interest;

and be accompanied by such documentary evidence as suffices to establish the transaction.

(3) Where the transaction is effected by an instrument chargeable with duty, the application shall be subject to the Registrar being satisfied that the instrument has been duly stamped.

(4) Where an application to give notice to the Registrar has been made of particulars relating to an application for registration of a trade mark, upon registration of the trade mark, the Registrar shall enter those particulars in the register.

Public inspection of register

38. (1) The register shall be open for public inspection at the trade marks office during the normal hours of business of the office.

(2) Where any portion of the register is kept otherwise than in documentary form, the right of inspection is a right to inspect the material on the register.

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Supply of certified copies etc

39. The Registrar shall supply a certified copy or extract or uncertified copy or extract, as requested on Form 26, of any entry in the register.

Request for change of name or address in register

40. (1) The Registrar shall, on the application made by the proprietor or a licensee or any person having an interest in or charge on a registered trade mark which has been registered under rule 9 enter any change in his name or address as recorded in the register.

(2) An application under sub rule (1) shall be made on Form 27;

Removal of matter from register

41. (1) The Registrar may, subject to sub rule (2), remove from the register any matter which ceased to have effect.

(2) Before removing a matter from the register under sub rule (1) the Registrar shall—

- (a)** where the Registrar considers it appropriate, publish the Registrar's intention to remove that matter, and
- (b)** notify any person who appears to the Registrar to be affected by the removal.

(3) Within three months of the date on which notice under sub rule (2) (a) or (b) is given —

- (a)** any person may file notice of opposition to the removal on Form 4; and
- (b)** the person to whom a notice is sent under sub rule (2)(b) may file, in writing;
 - (i)** his objections, if any, to the removal, or
 - (ii)** a request to have his objections heard orally;

and where such opposition or objections are made, the procedure in rule 12 shall apply.

(4) If the Registrar is satisfied after considering any objections or opposition that the matter referred to in sub rule (1) has not ceased to have effect, the Registrar shall not remove it.

(5) Where no response to the Registrar's notice under sub rule (2) is received, the Registrar may remove the matter.

(6) Where representations objecting to the removal of the entry have been made, whether in writing or orally, the Registrar may, if the Registrar is of the view after considering the objections that the entry or any part thereof has ceased to have effect, remove the matter or part thereof.

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Change of classification

Change of classification

42. (1) Subject to section 69 of the Act, the Registrar may—

- (a) in order to reclassify the specification of a registered trade mark, or
- (b) consequent upon an amendment of the Nice Classification,

make such amendments to entries on the register for the purposes of reclassifying the specification of the registered trade mark.

(2) Before making any amendment to the register under sub rule (1) the Registrar shall give the proprietor of the mark written notice of the proposal to amend and shall at the same time advise the proprietor -

- (a) that written objections to the proposals may be made within three months of the date of the notice, stating the grounds of the objections, and
- (b) that if no written objections are received within the period specified the Registrar will publish the proposals and the proprietor will not be entitled to make any objections.

(3) If the proprietor makes no written objections within the period specified in sub rule (2)(a) or at any time before the expiration of that period gives the Registrar written notice of his intention not to make any objections, the Registrar shall as soon as practicable after the expiration of that period or upon receipt of the notice, publish the proposals.

(4) Where the proprietor makes written objections within the period specified in sub rule (2)(a), the Registrar shall, as soon as practicable after the Registrar has considered the objections, publish the proposals or, where the Registrar has amended the proposals, publish the proposals as amended.

Opposition to proposals

43. (1) Notice of any opposition shall be filed on Form 4 within three months of the date of publication of the proposals under rule 42 stating the grounds of opposition and, in particular, how the proposed amendments would be contrary to section 69(3) of the Act.

(2) The Registrar may require or admit evidence regarding the opposition under sub rule (1) and if so requested by any person opposing the proposal give that person the opportunity to be heard before deciding the matter.

(3) If no notice of opposition under sub rule (1) is filed within the time specified, or where any opposition has been determined, the Registrar shall make the amendments as proposed and shall enter in the register the date when they were made.

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*Request for information, inspection of
documents and confidentiality*

Request for information

44. A request for information relating to an application for registration or to a registered trade mark shall be made using Form 28.

Information available before publication

45. (1) Before publication of an application for registration the Registrar shall make available for inspection by the public the application and any amendments made to it and any particulars contained in a notice given to the Registrar under rule 44.

(2) Nothing in section 71(2) of the Act relating to publication of information shall be construed as preventing the publication of decisions on cases relating to trade marks decided by the Registrar.

Inspection of documents

46. (1) Subject to sub rules (2) and (3), the Registrar shall permit the inspection at the trade marks registry, of all documents filed or kept at the trade marks registry in relation to a registered mark or, where an application for the registration of a trade mark has been published, in relation to that application.

(2) The Registrar shall not be obliged to permit the inspection of any such document under sub rule (1) until the Registrar has completed any procedure, or the stage in the procedure which is relevant to the document in question, which the Registrar is required or permitted to carry out under the Act or these Rules.

(3) The right of inspection under sub rule (1) does not apply to—

- (a) any document until fourteen days after it has been filed at the trade marks registry;
- (b) any document prepared in the registry solely for use in the registry;
- (c) any document sent to the registry, whether at its request or otherwise, for inspection and subsequent return to the sender;
- (d) any request for information under rule 44;
- (e) any document issued by the registry which the Registrar considers should be treated as confidential;
- (f) any document in respect of which the Registrar issues directions under rule 47 that it be treated as confidential.

(4) Nothing in sub rule (1) shall be construed as imposing on the Registrar any duty of making available for public inspection—

- (a) any document or part of a document which in the Registrar's opinion disparages any person in a way likely to damage him;

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- (b) any document or information filed at or sent to or by the registry before the date of commencement of the Act, or
- (c) any document or information filed at or sent to or by the registry after the date of commencement of the Act relating to an application for registration of a trade mark under the previous Act.

(5) No appeal shall lie from a decision of the Registrar under sub rule (4) not to make any document or part of a document available for public inspection.

Confidential documents

47 (1) Where a document other than a prescribed form is filed at the registry and the person filing it requests, at the time of filing or within fourteen days of the filing, that it or a specified part of it be treated as confidential, giving his reasons, the Registrar may direct that it or part of it, as the case may be, be treated as confidential, and the document shall not be open to public inspection while the matter is being determined by the Registrar.

(2) Where the Registrar directs that a document is to be treated as confidential, nothing in this rule shall be taken to authorise or require any person to be allowed to inspect the document or part of it to which the direction relates except by leave of the Registrar.

(3) The Registrar shall not withdraw any direction given under this rule without prior consultation with the person at whose request the direction was given; unless the Registrar is satisfied that such prior consultation is not reasonably practical.

(4) The Registrar may where the Registrar considers that any document issued by the registry should be treated as confidential so direct, and upon such direction that document shall not be open to public inspection except by leave of the Registrar.

(5) Where a direction is given under this rule for a document to be treated as confidential a record of the fact shall be filed with the document.

Decision of Registrar, evidence and costs

Decisions of Registrar to be taken after hearing

48 (1) Without prejudice to the provisions of the Act or these Rules requiring the Registrar to hear any party to proceedings under the Act or these Rules, or to give such party an opportunity to be heard, the Registrar shall, before taking any decision on any matter under the Act or these Rules which is or may be adverse to any party to any proceedings before the Registrar, give that party an opportunity to be heard.

(2) The Registrar shall give a party at least fourteen days' notice of the time when he may be heard unless that party consents to shorter notice.

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Evidence in proceedings before the Registrar

49. (1) Where under these Rules evidence may be admitted by the Registrar in any proceedings before the Registrar, it shall be by the filing of a statutory declaration or affidavit.

(2) The Registrar may in any particular case take oral evidence in lieu of or in addition a statutory declaration or affidavit shall, unless the Registrar otherwise directs, allow any witness to be cross-examined on his statutory declaration, affidavit or oral evidence.

(3) Where these Rules provide for the use of an affidavit or statutory declaration, a witness statement verified by a statement of truth may be used as an alternative.

(4) The Registrar may give a direction in any particular case that evidence must be given by affidavit or statutory declaration instead of or in addition to a witness statement verified by a statement of truth.

(5) The practice and procedure of the High Court with regard to witness statements and their form and contents and the procedure governing their use are to apply as appropriate to all proceedings under these Rules.

(6) Where in proceedings before the Registrar, a party adduces evidence of a statement made by a person otherwise than while giving oral evidence in the proceedings and does not call that person as a witness, the Registrar may permit any other party to the proceedings to call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the statement were his evidence in chief.

Making and subscription of statutory declaration or affidavit

50 (1) Any statutory declaration or affidavit filed under the Act or these Rules shall be made and subscribed as follows-

- (a) in Montserrat by an attorney at law, notary public or commissioner of oaths;
- (b) in the United Kingdom, before any justice of the peace or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceedings; and
- (c) where, before a commissioner for oaths, notary public, judge or magistrate.

(2) Any document purporting to have affixed, impressed or subscribed thereto or thereon the seal or signature of any person authorised by sub rule (1) to take a declaration 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.

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Registrar's power to require documents, information or evidence

51. At any stage of any proceedings before the Registrar, the Registrar may direct that such documents, information or evidence as the Registrar may reasonably require shall be filed within such period as the Registrar may specify.

Registrar to have power of an official referee

52 (1) The Registrar shall in relation to the examination of witnesses on oath and the disclosure and production of documents have all the powers of an official referee of the Supreme Court.

(2) The rules applicable to the attendance of witnesses before such a referee shall apply in relation to the attendance of witnesses in proceedings before the Registrar.

Hearings before Registrar to be in public

53. The hearing before the Registrar of any dispute between two or more parties relating to any matter in connection with an application for the registration of a mark or a registered mark shall be in public unless the Registrar, after consultation with those parties who appear in person or are represented at the hearing, otherwise directs.

Costs of proceedings

54. In any proceedings before the Registrar under the Act or these Rules, the Registrar may by order award costs to any party and direct how and by what time they are to be paid.

Security for costs

55. (1) The Registrar may require any person who is a party in any proceedings before the Registrar under the Act or these Rules to give security for costs in relation to those proceedings and may require security for the costs of any appeal from the Registrar's decision.

(2) In default of such security being given, the Registrar, in the case of the proceedings before the Registrar, or, in the case of an appeal, the court may treat the party in default as having withdrawn his application, opposition, objection or intervention, as the case may be.

Decision of Registrar

56. (1) When, in any proceedings before the Registrar, the Registrar has made a decision, the Registrar shall send to each party to the proceedings written notice of it, and for the purposes of any appeal against that decision, subject to sub rule (2), the date on which the notice is sent shall be taken to be the date of the decision.

(2) Where a statement of the reasons for the decision is not included in the notice sent under sub rule (1), any party may, within one month of the date on which the notice was sent to him, apply to the Registrar on Form 29 to send to him a statement of the reasons for the decision and upon such request the Registrar shall send the statement;

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and the date on which that statement is sent shall be deemed to be the date of the Registrar's decision for the purpose of any appeal against it.

Appeals

Appeals from decision of Registrar

57 The procedures for the hearing of an appeal by the court of appeal with respect to a decision of the Magistrate shall be applied mutatis mutandis for the purpose of the hearing of an appeal by the High Court with respect to a decision of the Registrar under section 75 of the Act.

Transitional provisions

Revocation of previous Rules

58. The Trade Mark Rules 1937 and the Registration of United Kingdom Trade Mark Rules 1947 are hereby revoked.

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SCHEDULE

FEES FOR REGISTRATION OF TRADE MARKS

Application to register a local trade mark in one series/class		\$400
Registration of a series of trade marks		
(a)	For the first mark	\$400
(b)	For each additional mark	\$100
Registration of trade mark in different classes		
(a)	For the first class	\$400
(b)	For each additional class	\$75
Renewal of a general/local trade mark on or before the date of expiration of 10 years		\$175
(a)	Within three months after expiration	\$200
(b)	More than three months after expiration	\$300
(c)	For each additional mark/class	\$50
(d)	Restoration of mark to the register	\$300
Registration of trade mark in one series/class on production of UK certificate		\$250
Registration of a series of U.K. trade marks		
(a)	For the first mark	\$250
(b)	For each additional mark	\$100
Registration of U.K. trade mark in different classes		
(a)	For the first class	\$250
(b)	For each additional class	\$75
Renewal of a U.K. trade mark at expiration of 10 years		\$200
(a)	For each additional mark/class	\$50
(b)	For late payment	\$50
(c)	For restoration to the register	\$100
Fees applicable to both general/local and U.K. trade marks:		
Request for change or amendment to an application		\$50
Settling a special case by the Registrar		\$175

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Inspecting the register	\$25
Office copies, per page	\$15
Certificates and certified copies	\$50
Recording change of name or address	\$40
Request for filing counterstatement or any opposition proceedings document	\$100
Request for filing of licence contract	\$50
Application to remove or amend the records of a licence	\$75
Filing of regulations governing the use of certification or collective marks	\$200
Application to amend the regulations governing the use of a certification or collective mark	\$100
Application to invalidate registered trade mark	\$200
Request for an extension of time to resolve filing deficiencies,	\$100
Filing of any other document	\$25
Application to record Assignment of trade mark	\$75

Made by the Governor acting on the advice of Cabinet this 4th day of October, 2012.

Angela Greenaway (Sgd.)
CABINET SECRETARY

Published by exhibition by the Cabinet Secretary at the Office of the Legislature, Farara Plaza, Brades, this 15th day of October, 2012.

Angela Greenaway (Sgd.)
CABINET SECRETARY