

CHAPTER 239

TRADE MARKS DECREE

*(4th January, 1978)*Dec. 18 of 1977.
Act 15 of 1991.

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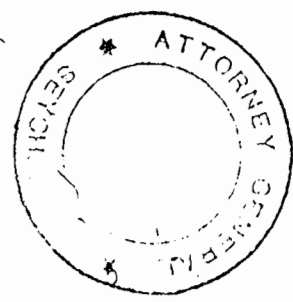
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LAWS OF SEYCHELLES

TRADE MARKS DECREE

CHAPTER 239

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PART I. - PRELIMINARY

- Short title.
Commencement.
S.I. 111/1977.
Interpretation.
2/15/1991.
- 1. This Decree may be cited as the Trade Marks Decree.
 - 2. This Decree shall come into operation on such date as the President may, by order, appoint.
 - 3.(1) In this Decree, unless the context otherwise requires —
“appointed day” means the day appointed under section 2
for the commencement of this Decree;
“assignment” means assignment by act of the parties concerned;
“Court” means the Supreme Court;

["limitations" means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor of the mark, including limitations of that right as to —

- (a) mode of use;
- (b) use in relation to goods to be sold or otherwise traded in, or services to be provided in any place, within Seychelles, or

(c) use in relation to goods to be exported or services to be provided in any place outside Seychelles;]

"mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof;

"permitted use" has the meaning assigned to it by section 25(2);

"prescribed" means in relation to proceedings before the Court, prescribed by rules to Court, and in other cases, prescribed by this Decree or the regulations;

"the Register" means the Register of Trade Marks kept under this Decree;

"registered trade mark" means a trade mark that is actually on the Register;

"registered user" means a person who is for the time being registered as such under section 25;

"relevant date" means the date of commencement of the Trade Marks (Amendment) Act, 1991.

*Act 15 of 1991

"the Registrar" means the Registrar General;

"the repealed Act" means the Trade Marks Act (Cap. 218 of 1952 Edition of the Laws of Seychelles);

"trade mark" means, except in relation to a certification trade mark, a mark used or proposed to be used in relation to goods [or services] for the purpose of indicating, or so as to indicate, a connection in the course of [business] between the goods [or services], and some person the having right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that

* Act 15 of 1991 came into operation on 1st October 1992. The words within the square bracket have been inserted by this Act. The bracket may now be ignored.

person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under section 34;

“transmission” means transmission by operation of law, devolution on the heirs or legatees, or legal representatives of a deceased person and any other mode of transfer not being an assignment.

[(2) In this Decree, references to the use of a mark shall be construed as references to the use of the printed or other visual representation of the mark and references to the use of a mark —

- (a) in relation to goods, shall be construed as references to the use of the mark upon, or in physical or other relation to, goods, or
- (b) in relation to services, shall be construed as references to the use of the mark in any relation to the provision of the services.

(3) For the purposes of this Decree, goods and services are associated with each other if it is likely that the goods or same description of goods might be sold or otherwise traded in and the services or same description of services might be provided by the same business.]

PART II - REGISTRATION AND OTHER SUBSTANTIVE PROVISIONS

Division I - The Register

Register of trade
marks.
2/15/1991.

4.(1) The Registrar shall cause to be kept a Register of Trade Marks in which shall be entered the matters relating to trade marks required by this Decree to be entered in the Register and such other matters as may be prescribed.

(2) The Register shall be in such form as the Registrar determines.

(3) [Subject to such regulations as may be prescribed] the

Register may, [during the hours of business of Government offices] be inspected and copies of all or any part of any entry in the Register taken —

- (a) without payment, by —
- (i) any officer in the public service acting in the course of his duty; and
 - (ii) any person exempted by the regulations from payment of a fee; or
- (b) on payment of such fee as may be prescribed, by any other person.

(4) The Register shall be received in proceedings before any court or tribunal as evidence of the matters required by or under this Decree to be entered in it, and any instrument purporting to be certified by the Registrar to be a true copy of an entry in the Register shall be received in proceedings before any court or tribunal as evidence of any such matters contained in the entry.

5.(1) A trade mark may be registered only in respect of particular goods or [services in one or more classes in accordance with the prescribed classification of goods or services].

Registration to be in respect of particular goods [or services]
2/15/1991.

(2) Any question concerning the class within which any goods [or services] fall shall be determined by the Registrar whose decision shall be final.

(3) [The Registrar shall, in the case of a trade which was registered before the commencement of this Decree, classify the goods in respect of which the trade mark was registered in accordance with the prescribed classification of goods.]

6. The rights given by registration in the Register shall be as provided in the First Schedule and the provisions of that Schedule shall apply in relation to any infringement of those rights.

Rights given by registration.

Division 2 - Registration

7.(1) In order for a trade mark (other than a certification trade mark) to be registrable, it must contain or consist of at least one of the following essential particulars, namely —

Distinctiveness requisite for registration.
2/15/1991.

- (a) the name of a company, individual, or firm represented in a special or particular manner;
- (b) the signature of the applicant for registration or some predecessor in his business;
- (c) an invented word or invented words;
- (d) a word or words having no direct reference to the character or quality of the goods [or services] and not being according to its ordinary signification a geographical name or a surname; and
- (e) any other distinctive mark, but a name, signature or word or words, other than such as fall within the description in paragraphs (a), (b), (c) and (d), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness.

(2) For the purposes of this section, "distinctive" means adapted, in relation to the goods [or services] in respect of which a trade mark is registered, or proposed to be registered to distinguish goods [or services] with which the proprietor of the trade mark is or may be connected in the course of [business] from goods [or services] in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid, the Registrar may have regard to the extent to which —

- (a) the trade mark is inherently adapted to distinguish as aforesaid; and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish as aforesaid.

8. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be

Prohibition of registration of deceptive, etc., matter.

disentitled to protection in a court or would be contrary to law or morality, or any scandalous design.

9.(1) Subject to the provisions of subsection (2), no trade mark shall be registered in respect of any goods [or services] or description of goods [or services] that is identical with a trade mark belonging to a different proprietor and already on the Register in respect of the same goods [or services] or description of goods [or services] or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion.

Prohibition of registration of identical and resembling trade marks.
2/15/1991.

(2) In the case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper so to do, the Court or the Registrar may permit the registration of trade marks that are identical or nearly resemble each other in respect of the same goods [or services] or description of goods [or services] by more than one proprietor subject to such conditions and limitations, if any, as the Court or the Registrar, as the case maybe, may think it right to impose.

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks that are identical or nearly resemble each other, in respect of the same goods [or services] or description of goods [or services] the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or, on an appeal, by the Court.

10. If a trade mark —

Registration subject to Disclaimer.
2/15/1991.

(a) contains any part not separately registered by the proprietor as a trade mark; or

(b) contains matter common to the [business] or otherwise of a non-distinctive character,

the Registrar or the Court, in deciding whether the trade mark shall be entered or shall remain on the Register, may require as a condition of its being on the Register —

(i) that the proprietor shall disclaim any right to the

exclusive use of any part of the trade mark, or to the exclusive use of all or any portion of any such matter aforesaid, to the exclusive use of which the Registrar or, as the case may be, the Court holds him not to be entitled; or

- (ii) that the proprietor shall make such other disclaimer as the Registrar or, as the case may be, the Court may consider necessary for the purpose of defining his rights under the registration:

Provided that no disclaimer on the Register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Words used as
name or descrip-
tion of an article
or substance [or
services].
2/15/1991.

[11.(1) The registration of a trade mark shall not become invalid by reason only of any use, after the date of registration, of a word or words which the trade mark contains or of which it consists, as the name or description of an article or substance or service:

Provided that if it is proved—

- (a) that there is a well-known and established use of the word or words as the name or description of the article or substance or service by a person carrying on business in relation to the article, substance or service, not being used in relation to goods or services connected in the course of business with the proprietor or registered user of the trade mark or, in the case of a certification trade mark, goods or services certified by the proprietor; or

- (b) in the case of a word or words which is or are the name or description of an article or substance, that the article or substance, was formerly manufactured under a patent, that a period of two years or more after the ceasing of the patent has elapsed and that the word or words is or are the only practical name or description of the article or substance

subsection (2) shall have effect.]

(2) where the facts mentioned in paragraph (a) or paragraph (b) of the proviso to subsection (1) are proved with respect to any word or words, then—

(a) if the trade mark consists solely of that word or those words, the registration of the trade mark, so far as regards registration in respect of the article or substance [or services] in question or of any goods of the same description, shall be deemed for the purposes of section 29 to be an entry wrongly remaining on the Register ;

(b) if the trade mark contains that word or those words and other matter, the Court or the Registrar, in deciding whether the trade mark shall remain on the Register, so far as regards registration in respect of the article or substance [or services] in question and of any goods [or services] of the same description, may in case of a decision in favour of its remaining on the Register require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance [or services] and any goods [or services] of the same description of that word or those words, so, however, that no disclaimer on the Register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made; and

(c) for the purposes of any other legal proceedings relating to the trade mark —

(i) if the trade mark consists solely of that word or those words, all rights of the proprietor, whether by registration or otherwise, to the exclusive use of the trade mark in relation to the article or substance [or services] in question or to any goods [or services] of the same description; or

- (ii) if the trade mark contains that word or those words and other matter, all such rights of the proprietor to the exclusive use of that word or those words in such relation, as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in paragraph (a) of the proviso to subsection (1) first became well known and established, or at the expiration of the period of two years mentioned in paragraph (b) of that proviso.

(3) No word which is the commonly used and accepted name of any single chemical element or single chemical compound, as distinguished from a mixture shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration in force on the appointed day or thereafter shall, notwithstanding anything in section 16 be deemed for the purposes of section 29 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the Register, as the circumstances may require :

Provided that this subsection shall not have effect in relation to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

Effect of
limitation as to
colour and of
absence thereof.

12.(1) A trade mark may be limited in whole or in part to one or more specified colours, and in any such case the fact that it is so limited shall be taken into consideration by the Registrar or the Court in deciding on the distinctive character of the trade mark.

(2) If and so far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.

Division 3 - Procedure for and Duration of Registration

Application for
registration.
2/15/1991.

13.(1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it must apply in writing to the Registrar in the prescribed manner for registration.

(2) Subject to the provisions of this Decree, the Registrar may refuse the application, or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

(3) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat, and the decision shall be subject to appeal to the Court.

(4) An appeal under this section shall be made in the prescribed manner, and on the appeal, the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what amendments, modifications, conditions or limitations, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials stated as aforesaid by the Registrar and no further grounds of objection to the acceptance of the application shall be taken by the Registrar, other than those so stated as aforesaid by him, except by leave of the Court; and, where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or connection with the application or may permit the applicant to amend his application upon such terms as the Registrar or the Court, as the case may be, may think fit.

14.(1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted to be advertised in the prescribed manner, and the advertisement shall set forth all conditions and limitations subject to which the application has been accepted :

Provided that the Registrar may cause an application to be advertised before acceptance if it is made under section 7(1) (e)

Opposition to
registration.

or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice to the Registrar of opposition to the registration.

(3) The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(4) The Registrar shall send a copy of the notice to the applicant, and within the prescribed time after receipt thereof the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such a counter-statement as aforesaid, the Registrar shall furnish a copy thereof to the person giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence decide whether, and subject to what conditions or limitations, if any registration is to be permitted.

(6) The decision of the Registrar shall be subject to appeal to the Court.

(7) An appeal under this section shall be made in the prescribed manner, and on the appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(8) On the hearing of an appeal under this section, any party may, either in the manner prescribed or by special leave of the Court, bring forward further material for the consideration of the Court.

(9) On an appeal under this section, no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar, other than those so stated as aforesaid by the opponent, except by leave of the Court; and, where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(10) On an appeal under this section, the Court may, after hearing the Registrar, permit the trade mark proposed to be modified in any manner not substantially affecting the identity thereof, but in any such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(11) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such a notice, or an appellant, neither resides nor carries on business in Seychelles, the Court or the Registrar may require him to give security for costs of the proceedings before the Court or the Registrar relative to the opposition or to the appeal, as the case may be, and in default of such security being duly given may treat the opposition or application or the appeal, as the case may be, as abandoned.

15.(1) When an application for registration of a trade mark has been accepted, and either :—

Registration.
2/15/1991.

- (a) the application has not been opposed and the time for notice of opposition has expired; or
- (b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the application has been accepted in error, register the trade mark and the trade mark, when registered, shall be registered as of the date of the application for registration, and that date shall be deemed for the purposes of this Decree to be the date of registration :

Provided that the provisions of this subsection, relating to the

date as of which a trade mark shall be registered and to the date to be deemed to be the date of registration, shall, as respect a trade mark registered under this Decree with the benefit of any enactment relating to international or inter-Commonwealth arrangements, have effect subject to the provisions of that enactment.

(2) On the registration of a trade mark, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Office of the Registrar General.

(3) 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 may, after giving notice of the non-completion to the applicant in writing in the prescribed manner treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

Registration to be
conclusive as to
validity after 7
years.
2/15/1991.

16.(1) Subject to subsection (2), in all legal proceedings relating to a registered trade mark (including applications under section 29) the original registration of the trade mark shall, after expiration of 7 years from the date of that registration, be taken to be valid in all respect, unless —

- (a) the registration was obtained by fraud; or
- (b) the trade mark offends against the provisions of section 8.

(2) A trade mark which before the relevant date was registered under Part B of the Register shall not be taken to be valid in all respect for the purposes of this Decree until a period of 7 years has elapsed from the relevant date.

Duration and
renewal of
registration.

17.(1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section :

Provided that, in relation to a registration as of a date before the appointed day, the period of seven years shall commence to run on the appointed day.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fourteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be, which date is in this section referred to as "the expiration of the last registration".

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the trade mark from the Register, subject to such conditions as may be prescribed.

(4) Where a trade mark has been removed from the Register for non-payment of the fee for renewal it shall, nevertheless, for the purpose of any application for the registration of a trade mark during one year next after the date of the removal, be deemed to be a trade mark that is already on the Register :

Provided that this subsection shall not have effect where the Court or the Registrar is satisfied either —

- (a) that there has been no bona fide trade use of the trade mark that has been removed during the two years immediately preceding its removal; or
- (b) that no deception or confusion would be likely to arise from the use of the trade mark that is the subject of the application for registration by reason of any previous use of the trade mark that has been removed.

18.(1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and any such part as separate trade marks.

Registration of
part of trade mark
and of trade
marks as a series.
2/15/1991.

(2) Each such separate trade mark must satisfy all the conditions of an independent trade mark and shall, subject on the provisions of section 20(4) and section 27(2) have all the incidents of an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks, in respect of the same goods [or services] or description of goods [or services], which, while resembling each other in the material particulars thereof, yet differ in respect of—

- (a) statements of the goods [or services] in relation to which they are respectively used or proposed to be used; or
- (b) statements of number, price, quality or names of places; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
- (d) colour,

seeks to register those trade marks, they may be registered as a series in one registration.

Division 4 - Assignment and Transmission

Powers of and
restrictions on,
assignment and
transmission.
2/15/1991.

19.(1) Notwithstanding any rule of law to the contrary, a registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible either in connection with the goodwill of a business or not.

(2) A registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible in respect either of all the goods [or services] in respect of which it is registered, or was registered, as the case may be, or of some (but not all) of those goods [or services.]

(3) The provisions of subsections (1) and (2) shall have effect in the case of an unregistered trade mark used in relation to any

goods [or services] as they have effect in the case of registered trade mark registered in respect of any goods [or services], if at the time of the assignment or transmission of the unregistered trade mark it is or was used in the same business as a registered trade mark, and if it is or was assigned or transmitted at the same time and to the same person as that registered trade mark and in respect of goods [or services] all of which are goods [or services] in relation to which the unregistered trade mark is or was used in that business and in respect of which that registered trade mark is or was assigned or transmitted.

(4) Notwithstanding anything in subsections (1), (2) and (3), a trade mark shall not be, or be deemed to have been, assignable or transmissible in a case in which as a result of an assignment or transmission there would in the circumstances subsist, or have subsisted, whether by registration or otherwise, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods [or services] or description of goods [or services], of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods [or services] and of the trade marks, the use of the trade marks in exercise of those rights would be, or have been, likely to deceive or cause confusion :

Provided that, where a trade mark is or has been assigned or transmitted in such a case as aforesaid, the assignment or transmission shall not be deemed to be, or have been, invalid under this subsection if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, or were, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in [or services to be provided] within Seychelles, (otherwise than for export therefrom) or in relation to goods to be exported [or services to be provided] to the same place outside Seychelles.

(5) The proprietor of a registered trade mark who proposes to assign it in respect of any goods [or services] in respect of which it is registered may submit to the Registrar in the prescribed

manner a statement of case setting out the circumstances, and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods [or services] and of the trade marks referred to in the case, the proposed assignment of the first mentioned trade mark would or would not be invalid under subsection (4), and a certificate so issued shall, subject to the provisions of this section as to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation be conclusive as to the validity or invalidity under that subsection of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 22 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

(6) Notwithstanding anything in subsections (1) (2) and (3), a trade mark shall not, on or after the appointed day, be assignable or transmissible in case in which as a result of an assignment or transmission thereof there would in the circumstances subsist, whether by registration or otherwise, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold or otherwise traded in [or services or goods provided] in a place or places in Seychelles, and an exclusive right in another of those persons to the use of a trade mark nearly resembling the first mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods, [or same services or description of services] limited to use in relation to goods to be sold, or otherwise traded in (or services or goods provided) in another place or other places in Seychelles :

Provided that, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or of a person who claims that a trade mark has been transmitted to him or to a predecessor in title of his on or after the appointed day, in any such case, the Registrar, if he is satisfied that in all the circumstances the use of the trade marks in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmis-

sion so approved shall not be deemed to be, or to have been, invalid under this subsection or under subsection (4), so, however, that in the case of a registered trade mark this provision shall not have effect unless application for the registration under section 22 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of transmission, was made before that date.

(7) Where an assignment in respect of any goods [or services] of a trade mark that is at the time of the assignment used in a business in those goods [or services] is made, on or after the appointed day, otherwise than in connection with the goodwill of that business, the assignment shall not take effect until the following requirements have been satisfied, that is to say, the assignee must, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, apply to him for directions with respect to the advertisement of the assignment, and must advertise it in such form and manner and within such period as the Registrar may direct.

(8) Any decision of the Registrar under this section shall be subject to appeal to the Court.

20.(1) Trade marks that are registered as, or that are deemed by virtue of this Decree to be, associated trade marks shall be assignable and transmissible only as a whole and not separately but they shall for all other purposes be deemed to have been registered as separate trade marks.

[(2) Where a trade mark that is registered or is the subject of an application for registration is identical to or so resembles another trade mark which is registered or is the subject of an application for registration in the name of the same proprietor that the use of the trade marks by different persons in relation to goods or services or closely related goods or services in respect of which the trade marks are registered or proposed to be registered would be likely to deceive or cause confusion, the Registrar may at any time require that the trade marks shall be entered in the Register as associated marks.]

Certain trade
marks to be
associated so as
to be assignable
and
transmissible as
a whole only.
2/15/1991.

(3) Any decision of the Registrar under subsection (2) shall be subject to appeal to the Court.

(4) Where a trade mark and any part or parts thereof are, by virtue of section 18(1) registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(5) All trade marks that are, by virtue of section 18(2), registered as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(6) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by another person in relation to any of the goods [or services] in respect of which it is registered, and may amend the register accordingly.

(7) Any decision of the Registrar under subsection (6) shall be subject to appeal to the Court.

Power of
registered
proprietor to
assign and give
receipts.

21. Subject to the provisions of this Decree, the person for the time being entered in the Register as proprietor of a trade mark shall, subject to any rights appearing from the Register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for an assignment thereof.

Registration of
assignments and
transmissions.
2/15/1991.

22.(1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of trade mark in respect of the goods [or services] in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the Register.

(2) Any decision of the Registrar under this section shall be subject to appeal to the Court.

(3) Except for the purposes of an appeal under this section or of an application under section 29, a document or instrument in respect of which no entry has been made in the Register in accordance with the provisions of subsection (1) shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs.

Division 5 - Use and Non-use

23.(1) Subject to the provision of section 24 a registered trade mark may be taken off the Register in respect of any of the goods [or services] in respect of which it is registered on application by any person aggrieved to the Court or, at the option of the applicant and subject to the provisions of section 46, to the Registrar, on the ground that either —

Removal from
Register and
imposition of
limitations on
grounds of non-
use.
2/15/1991.

(a) the trade marks was registered without any bona fide intention on the part of applicant for registration that it should be used in relation to those goods [or services] by him, and that there has in fact been no bona fide use of the trade mark in relation to those goods [or services] by any proprietor thereof for the time being up to the date one month before the date of the application; or

(b) up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods [or services] by any proprietor thereof for the time being :

Provided that (except where the applicant has been permitted under section 9(2) to register an identical or nearly resembling trade mark in respect of the goods [or services] in question or where the Court or the Registrar is of opinion that he might properly be permitted so to register such a trade mark) the Court or the Registrar, as the case may be, may refuse an application made under paragraph (a) or paragraph (b) in relation to any goods [or services] if it is shown that there has been, [upto the

(3) Except for the purposes of an appeal under this section or of an application under section 29, a document or instrument in respect of which no entry has been made in the Register in accordance with the provisions of subsection (1) shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs.

Division 5 - Use and Non-use

23.(1) Subject to the provision of section 24 a registered trade mark may be taken off the Register in respect of any of the goods [or services] in respect of which it is registered on application by any person aggrieved to the Court or, at the option of the applicant and subject to the provisions of section 46, to the Registrar, on the ground that either —

Removal from
Register and
imposition of
limitations on
grounds of non-
use.
2/15/1991.

(a) the trade marks was registered without any bona fide intention on the part of applicant for registration that it should be used in relation to those goods [or services] by him, and that there has in fact been no bona fide use of the trade mark in relation to those goods [or services] by any proprietor thereof for the time being up to the date one month before the date of the application; or

(b) up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods [or services] by any proprietor thereof for the time being .

Provided that (except where the applicant has been permitted under section 9(2) to register an identical or nearly resembling trade mark in respect of the goods [or services] in question or where the Court or the Registrar is of opinion that he might properly be permitted so to register such a trade mark) the Court or the Registrar, as the case may be, may refuse an application made under paragraph (a) or paragraph (b) in relation to any goods [or services] if it is shown that there has been, [upto the

date of one month before the date of filing of the application] or during the relevant period, as the case may be, bona fide use of the trade mark by any proprietor thereof for the time being in relation to goods [or services] of the same description, being goods [or services] in respect of which the trade mark is registered.

[(2) Where in relation to any goods or services in respect of which a trade mark is registered —

(a) the matters referred to in subsection (1) (b) are shown so far as regards non-use of the trade mark in relation to goods to be sold or otherwise traded in, or services to be provided, in Seychelles, or in relation to goods to be exported to or services to be provided in a particular place outside Seychelles; and

(b) a person has been permitted under section 9(2) to register an identical or nearly resembling trade mark in respect of goods or services under a registration extending to use in relation to goods to be sold or otherwise traded in, or services to be provided, in Seychelles, or in relation to goods to be exported to or services to be provided in the particular place outside Seychelles, or the Court or the Registrar is of opinion that the person might properly be permitted so to register such a trade mark,

on the application by that person to the Court, or at the option of the applicant and subject to section 46, to the Registrar, the Court or Registrar may impose on the registration of the first-mentioned trade mark such limitations as the Court or the Registrar thinks proper for securing that that registration shall cease to extend to the use of the trade mark as permitted to be registered under section 9(2)]

(3) An applicant shall not be entitled to rely for the purposes of subsection (1) (b), or for the purpose of subsection (2), on any non-use of a trade mark that is shown to have been due to special circumstances in the trade and not to any intention not to use or

46, to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of subsection (1) are no longer satisfied in respect of any goods [or services] in respect of which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods [or services] in respect of which it is registered as a defensive trade mark on the ground there is no longer any likelihood that the use of the trade mark in relation to those goods [or services] would be taken as giving the indication mentioned in subsection (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Decree shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

Registered users.
2/15/1991.

25.(1) Subject to the provisions of this section, a person otherwise than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods [or services] in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

(2) The use of a trade mark by a registered user thereof in relation to goods [or services] with which he is connected in the course of [business] and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject, is in this Decree referred to as the permitted use thereof.

(3) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for the purposes of section 23, and for any other purpose for which such use is material under this Decree or otherwise.

(4) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and, if the proprietor refuses or neglects to do so within two months after being so called upon, the registered user may institute proceedings for infringement in his own name, as if he were the proprietor, making the proprietor a defendant.

(5) A proprietor so added as defendant shall not be liable for any costs unless he takes part in the proceedings.

(6) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner and must furnish him with a statutory declaration made by the proprietor, or by some person authorised to act on his behalf and approved by the Registrar —

- (a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered user application may be made;
- (b) stating the goods [or services] in respect of which registration is proposed;
- (c) stating any conditions or restrictions proposed with respect to the characteristics of the goods [or services] to the mode or place of permitted use or to any other matter; and
- (d) stating whether the permitted use is to be for a period or without limit of period, and if for a period the duration thereof,

and with such further documents, information or evidence as may be required under the regulations or by the Registrar.

(7) When the requirements of subsection (6) have been complied with, if the Registrar, after considering the information furnished to him under that subsection, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or services or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar thinks proper would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods or services as to which he is so satisfied subject as aforesaid.

(8) The Registrar shall refuse an application under the foregoing provisions of this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(9) The Registrar shall, if so required by an applicant, take steps for securing that information given for the purposes of an application under the foregoing provisions of this section (other than matter entered in the Register) is not disclosed to rivals in trade.

(10) Without prejudice to the provisions of section 29 the registration of a person as registered user may be —

- (a) varied by the Registrar as regards the goods [or services] in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;
- (b) cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark; or
- (c) cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say —

- (i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion;
- (ii) that the proprietor or the registered user misrepresents, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;
- (iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(11) Provision shall be made by the regulations for the notification of the registration of a person as a registered user to any other registered user of the trade mark, and for the notification of an application under subsection (10) to the registered proprietor and each registered user (not being the applicant) of the trade mark, and for giving to the applicant on such an application, and to all persons to whom such an application is notified and who intervene in the proceedings in accordance with the regulations, an opportunity of being heard.

(12) The Registrar may at any time cancel the registration of a person as a registered user of a trade mark in respect of any goods [or services] in respect of which the trade mark is no longer registered.

(13) Any decision of the Registrar under the foregoing provisions of this section shall be subject to appeal to the Court.

(14) Nothing in this section shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

26.(1) No application for the registration of a trade mark in respect of any goods [or services] shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark if —

Proposed use of
trade mark by
corporation to be
constituted etc.,
2/15/1991.

(a) the Registrar or the Court is satisfied that a body corporate is about to be constituted, and that the applicant intends to assign the trade mark to the corporation with a view to the use thereof in relation to those goods [or services] by the corporation, or

(b) the application is accompanied by an application for the registration of a person as a registered user of the trade mark, and the Registrar or the Court is satisfied that the proprietor intends it to be used by that person in relation to those goods [or services] and the Registrar or the Court is also satisfied that that person will be registered as a registered user thereof immediately after the registration of the trade mark.

(2) The provisions of section 23 shall have effect, in relation to a trade mark registered under the power conferred by subsection (1), as if for the reference, in subsection (1) (a) of that section, "to intention on the part of an applicant for registration that a trade mark should be used by him" there were substituted a reference "to intention on his part that it should be used by the corporation or registered user concerned."

(3) The Registrar or the Court may, as a condition of the exercise of the power conferred by subsection (1) in favour of an applicant who relies on intention to assign to a corporation as aforesaid require him to give security for the costs of any proceedings before the Registrar or the Court relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(4) Where a trade mark is registered in respect of any goods [or services] under the power conferred by subsection (1) in the name of an applicant who relies on intention to assign to a corporation as aforesaid, then unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar may on application being made to him in the prescribed manner allow, the corporation has been registered as the proprietor of the trade mark in respect of those goods [or

services], the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the Register accordingly.

27.(1) Where under this Decree use of a registered trade mark is required to be proved for any purpose, the Registrar or the Court may, if and so far as the Registrar or the Court thinks right, accept use of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

Use of one of associated or substantially identical trade marks equivalent to use of another.

(2) The use of the whole of a registered trade mark shall for the purposes of the Decree be deemed to be also a use of any registered trade mark, being a part thereof, registered in the name of the same proprietor by virtue of section 18 (1).

28. The application in Seychelles of trade mark to goods to be exported [or services to be provided outside Seychelles] and any other act done in Seychelles in relation to goods to be so exported or services to be provided outside Seychelles which, if done in Seychelles, would constitute use of the trade mark in relation to those goods [or services] for any purpose for which such use is material under this Decree or otherwise.

Use of trade mark for export trade or provision of services outside Seychelles. 2/15/1991.

Division 6 - Rectification and Correction of Register

29.(1) Any person aggrieved by the non-insertion in or omission from the Register of an entry, or by any entry made in the Register without sufficient cause, or by any entry wrongly remaining on the Register, or by any error or defect in any entry in the Register, may apply in the prescribed manner to the Court or, at the option of the applicant and subject to the provisions of section 46, to the Registrar, and the Court or the Registrar may make such order for making, expunging or varying the entry as the Court or the Registrar, as the case may be, may think fit.

General power to rectify entries in Register. 2/15/1991.

(2) The Court or the Registrar may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the Register.

(3) In case of fraud in the registration, assignment or transmission of a registered trade mark, the Registrar may himself apply to the Court under this section.

(4) Any order of the Court rectifying the Register shall be served in the prescribed manner on the Registrar, and the Registrar shall, on receipt of the notice, rectify the Register accordingly.

(5) The power to rectify the Register conferred by this section shall include power to remove a registration.

Power to expunge
or vary registra-
tion for breach of
condition.

30. On application by any person aggrieved to the Court, or at the option of the applicant and subject to the provisions of section 46, to the Registrar, or on application by the Registrar to the Court, the Court or the Registrar may make such order as the Court or the Registrar may think fit for expunging or varying the registration of a trade mark on the ground of any contravention of, or failure to observe, a condition entered on the Register in relation thereto.

Correction of
Register.
2/15/1991.

31.(1) The Registrar may, on request made in the prescribed manner by the registered proprietor —

- (a) correct any error in the name, address or description of the registered proprietor of a trade mark;
- (b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;
- (c) cancel the entry of a trade mark on the register;
- (d) strike out any goods [or services] or classes of goods [or services] from those in respect of which a trade mark is registered; or
- (e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on request made in the prescribed

manner by a registered user of a trade mark, correct any error, or enter any change, in the name, address or description of the registered user.

(3) Any decision of the Registrar under this section shall be subject to appeal to the Court.

32.(1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

Alteration of
registered trade
mark.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Any decision of the Registrar under this section shall be subject to appeal to the Court.

(4) Where leave as aforesaid is granted the trade mark as altered shall be advertised in the prescribed manner, unless it has already been advertised, in the form to which it has been altered, in an advertisement under sub-section (2).

33.(1) The President may from time to time make such regulations, prescribe such forms and generally do such things as he thinks expedient, for empowering the Registrar to amend the Register, whether by making or expunging or varying entries therein, so far as may be requisite for the purpose of adapting the designation therein of the goods [or services] or classes of goods [or services] in respect of which trade marks are registered to any amended or substituted classification that may be prescribed.

Adaptation of
entries in
Register to
amended or
substituted
classification of
goods
[or services].
2/15/1991.

(2) The Registrar shall not, in exercise of any power conferred on him for the purpose aforesaid, make any amendment of the Register that would have the effect of adding any goods [or

services] or classes of goods [or services] to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of ante-dating the registration of a trade mark in respect of any goods [or services].

Provided that this subsection shall not have effect in relation to goods as to which the Registrar is satisfied that compliance with this subsection in relation thereto would involve undue complexity and that the addition or ante-dating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(3) A proposal for the amendment of the Register for the purpose aforesaid shall be notified to the registered proprietor of the trade mark affected, shall be subject to appeal by the registered proprietor to the Court, shall be advertised with any modifications, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes subsection (2) and the decision of the Registrar on any such opposition shall be subject to appeal to the Court.

Division 7 - Certification Trade Marks

Certification
trade marks.
2/15/1991.

34.(1) A mark adapted in relation to any goods [or services] to distinguish in the course of business goods [or services] certified by any person in respect of origin, material, mode or manufacture, quality, accuracy or other characteristic from goods [or services] not so certified shall be registrable as a certification trade mark in respect of those goods [or services] in the name, as proprietor thereof, of that person :

Provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods [or services] of the kind certified.

(2) In determining whether a mark is adapted to distinguish as aforesaid, the Registrar may have regard to the extent to which —

(a) the mark is inherently adapted to distinguish as afore-

said in relation to the goods [or services] in question,
and

(b) by reason of the use of the mark or of any other circumstances, the mark is in fact adapted to distinguish as aforesaid in relation to the goods [or services] in question.

(3) Subject to the provisions of subsections (4), (5) and (6) and of the First Schedule, the registration of a person as proprietor of a certification trade mark in respect of any goods [or services] shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods [or services,] and without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a person authorised by him under the regulations in that behalf using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion in the course of business, in relation to any goods [or services] in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either —

(a) as being use as a trade mark; or

(b) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or by his authorisation under relevant regulations to use the trade mark or to goods [or services] certified by the proprietor.

(4) The right to the use of a certification trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the Register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in [or services to be provided] in any place, in relation to goods to be exported [or services to be provided in any place outside Seychelles], or in

any other circumstances, to which having regard to any such limitations, the registration does not extend.

(5) The right to the use of a certification trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person —

(a) in relation to goods [or services] certified by the proprietor of the trade mark if, as to those goods [or services] or a bulk of which they form part, [or those services] the proprietor or another in accordance with his authorization under the relevant regulations had applied the trade mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the trade mark; or

(b) in relation to goods [or services] adapted to form part of, or to be accessory to, other goods [or services] in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods [or services] are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods [or services] are certified by the proprietor :

Provided that paragraph (a) shall not have effect in the case of use consisting of the application of any such mark as aforesaid to any goods [or services], notwithstanding that they are such goods [or services] as are mentioned in that paragraph, if such application is contrary to the relevant regulations.

(6) Where a certification trade mark is one of two or more registered trade marks that are identical or nearly resemble each other, the use of any of those trade marks in exercise of the right to the use of that trade mark given by registration shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

(7) There shall be deposited at the office of the Registrar in respect of every trade mark registered under this section regulations for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the trade mark, and may contain any other provisions that the Registrar may require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorize the use of the trade mark in accordance with the regulations); and regulations so deposited shall be open to inspection in like manner as the Register.

(8) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Court.

(9) The provisions of the Second Schedule shall have effect with respect to the registration of a mark under this section and to marks so registered.

PART III - GENERAL

Division 1 - Regulations and Fees

35.(1) The President may make such regulations, prescribe such forms and generally do such things as he thinks expedient —

Power to make
regulations.
2/5/1991.

- (a) for regulating the practice under the Decree including the service of documents;
- (b) for classifying goods [or services] for the purposes of registration of trade marks;
- (c) for making or requiring duplicates of trade marks and other documents;
- (d) for securing and regulating the publishing and selling or distributing, in such manner as he thinks fit, of copies of trade marks and other documents;
- (e) generally, for regulating the business of the Registrar in relation to trade marks and all things by this Decree placed under the direction or control of the Registrar.

(2) Regulations may be made under this section for the purpose of giving effect to any Convention relating to trade marks ratified, or acceded to, by the Republic, or otherwise having effect in relation to Seychelles, or to any international agreement relating to trade marks to which Seychelles is a party; and for the purpose of so giving effect the regulations may in particular provide for the registration in stated circumstances of trade marks registered in another country.

(3) There shall be paid in respect of applications and registration and other matters under this Decree such fees as may be prescribed by the President.

Division 2- Powers and Duties of Registrar

Preliminary
advice by
Registrar as to
the distinctive-
ness.
2/15/1991.

36.(1) The power to give a person who proposes to apply for the registration of a trade mark advice as to whether the trade mark appears to the Registrar *prima facie* to be inherently adapted to distinguish, shall be a function of the Registrar under this Decree.

(2) Any such person who is desirous of obtaining such advice must make application to the Registrar therefor in the prescribed manner.

(3) If on application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative, made within three months after the advice is given, the Registrar, after further investigation or consideration, gives notice to the applicant of objection on the ground that the trade mark is not adapted to distinguish, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee on the filing of the application.

Hearing before
exercise of
Registrar's
direction.

37. Where any discretionary or other power is given to the Registrar by this Decree or the regulations, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving to the applicant or registered proprietor an opportunity of being heard.

38.(1) In all proceedings before the Registrar under this Decree, the Registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order of the Court to the same effect.

Power of
Registrar to
award costs.

(2) The Court may make rules in regard to the amount of and generally as to costs.

Division 3 - Legal Proceedings and Appeals

39. In all legal proceedings relating to a registered trade mark (including application under section 27) the fact that a person is registered as proprietor of the trade mark shall be prima facie evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

Registration to
be *prima facie*
evidence of
validity.

40. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of the trade mark, the Court may certify to that effect, and if it so certifies then in any subsequent legal proceeding in which the validity of the registration comes into question the proprietor of the trade mark on obtaining a final order or judgement in his favour shall have his full costs, charges and expenses as between attorney and client, unless in the subsequent proceeding the Court certifies that he ought not to have them.

Certificate of
validity.

41. In all proceedings before the Court under this Decree the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay costs of any of the parties.

Costs of
Registrar in
proceedings
before Court, and
payment of costs
by Registrar.

42. In any action or proceedings relating to a trade mark or business name, the Court or the Registrar, as the case may be, shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

Trade usage, etc.,
to be considered.
2/15/1991.

Registrar's
appearance in
proceedings
involving
rectification.

43.(1) In any legal proceedings in which the relief sought includes alteration or rectification of the Register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court.

(2) Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting it or of the practice of the office of the Registrar in like cases or of such other matters relevant to the issues, and within his knowledge as Registrar, as he thinks fit, and the statement shall be deemed to form part of the evidence in the proceeding.

Court's power to
review
Registrar's
decision.

44. The Court, in dealing with any question of the rectification of the Register (including all application under the provisions of section 17) shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Discretion of
Court in Appeals

45. In any appeal from a decision of the Registrar to the Court under this Decree, the Court shall have and exercise the same discretionary powers under this Decree as are conferred upon the Registrar.

Procedure in
cases of option to
apply to Court or
Registrar.

46. Where under any of the foregoing provisions of this Decree an applicant has an option to make an application either to the Court or to the Registrar —

- (a) if an action concerning the trade mark in question is pending, the application must be made to the Court;
- (b) if in any other case the application is made to the Registrar, he may, at any stage of the proceedings, refer the application to the Court, or he may after hearing the parties determine the question between them, subject to appeal to the Court.

Division 4 - Evidence

47.(1) In any proceedings under this Act before the Registrar, the evidence shall, in the absence of directions to the contrary, be given by declaration made on oath before any person before whom an affidavit may be sworn, but, in any case in which the Registrar thinks it right so to do, he may take evidence viva voce in lieu of or in addition to evidence by declaration.

Mode of giving
evidence.

(2) Any such declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

(3) In case any part of the evidence is taken viva voce the Registrar shall, in respect of requiring the attendance of witnesses and taking evidence on oath, be in the same position in all respects as a magistrate.

48.(1) A printed or written copy of any entry in the Register purporting to be certified by the Registrar and sealed with his seal shall be admitted in evidence in all Courts, and in all proceedings, without further proof or production of the original.

Evidence of
entries in
Register.

(2) Any person requiring a copy of any entry in the Register certified and sealed by the Registrar as aforesaid shall be entitled to obtain it on payment of the prescribed fee.

49. A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Decree or the regulations to make or do shall be prima facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Evidence of
things done by
Registrar.

Division 5 - Offence

50. If any person makes or causes to be made a false entry in the Register, or a writing falsely purporting to be a copy of an entry in the Register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence and

Falsification of
entries in
Register.

liable to imprisonment for a term of not exceeding five years or to a fine not exceeding ten thousand rupees, or to both.

Fine for falsely
representing a
trade mark as
registered.
2/15/1991.

51.(1) Any person who makes a representation —

- (a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark; or
- (b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is so registered; or
- (c) to the effect that a registered trade mark is registered in respect of any goods [or services] in respect of which it is not registered; or
- (d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not give that right,

shall be guilty of an offence and liable to a fine not exceeding five thousand rupees.

(2) For the purposes of this section, the use in Seychelles in relation to a trade mark of the word "registered", or of any other word referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the Register, except —

- (a) where that word is used in physical association with other words delineated in characters at least as large as those in which that word is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside Seychelles, being a country under the law of which the registration referred to is in fact in force;
- (b) where that word (being a word other than the word

"registered") is of itself such as to indicate that the reference is to such registration as last aforesaid; or

- (c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside Seychelles and in relation to goods to be exported to [or services to be provided in] that country.

PART IV. - MISCELLANEOUS

52. The use of a registered trade mark in relation to goods [or services] between which and the person using it any form of connection in the course of business subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the trade mark has been, or is, used in relation to goods [or services] between which and that person or a predecessor in title of his a different form of connection in the course of business subsisted or subsists.

Change of form
of trade connection
not to be
deemed to cause
deception.
2/15/1991.

53.(1) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the others of them to use it except—

Jointly owned
trade marks.
2/15/1991.

- (a) on behalf of both or all of them; or
(b) in relation to an article with which both or all of them are connected in the course of business.

those persons may be registered as joint proprietors of the trade mark, and this Decree shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

(2) Subject as aforesaid, nothing in this Decree shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

54. There shall not be entered in the Register any notice of any trust express, implied or constructive nor shall any such notice be receivable by the Registrar.

Trusts.

Trade Mark
Agents.

55. The President may make regulations with respect to trade mark agents, including regulations with respect to-

- (a) the registration of trade mark agents and the removal from the Register of any person so registered;
- (b) the privileges of trade mark agents;
- (c) the entitlement to practice as a trade mark agent;
- (d) trade mark agents and their functions;
- (e) the prohibition of certain acts by trade mark agents;
- (f) the prohibition of certain acts by persons who are not trade mark agents.

Address for
service.

56. When an applicant for the registration of a trade mark or an agent does not reside or carry on business in Seychelles, he shall give the Registrar an address for service in Seychelles, and if he fails to do so the Registrar may refuse to proceed with the application until such address has been given.

Transitional
provisions and
savings.

57. The transitional provisions and savings set out in the Third Schedule shall have effect with respect to the matters therein mentioned.

FIRST SCHEDULE (Section 6)

Rights given by Registration

Rights given by
registration and
infringement
thereof.
2/15/1991.

1.(1) Subject to this Schedule, the registration of a person as proprietor of a trade mark (other than a certification trade mark) in respect of any goods [or services] shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods [or services], and, without prejudice to the generality of the foregoing words, the right shall be deemed to be infringed by a person who, not being proprietor of the trade mark or a registered user thereof using by way of permitted use, uses a mark identical with it or so nearly

resembling it as to be likely to deceive or cause confusion, in the course of business, in relation to any goods [or services] in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either —

(a) as being use as a trade mark; or

(b) in a case in which the use is the use upon the goods [or services] or in physical relation thereto or in respect of services, or an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or as registered user to use the trade mark or to goods [or services] with which such a person as aforesaid is connected in the course of business.

(2) The right to the use of a trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the Register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode in relation to goods to be sold or otherwise traded [or services to be provided] in any place, in relation to goods to be exported to any market, or services to be provided in any place outside Seychelles or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(3) The right to the use of a trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any mark as aforesaid by any person —

(a) in relation to goods [or services] connected in the course of [business] with the proprietor or a registered user of the trade mark if, as to those goods [or services] or a bulk of which they form part [or those services], the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or

(b) in relation to goods [or services] adapted to form part of, or to be accessory to, other goods [or services] in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods [or services] are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connexion in the course of [business] between any person and the goods [or services].

(4) The use of a registered trade mark, being one of two or more registered trade marks that are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

2(1) Subject to section 16 (2) and sub-paragraph (2), where, before the relevant date, a person was registered in Part B of the Register as proprietor of a trade mark in respect of any goods, the registration shall, if valid, give to that person the like right in relation to those goods as if the registration had been valid in all respect under section 16 and paragraph 1 shall have effect in respect of the trade mark.

(2) In any action infringement of the right to the use of a trade mark given by registration, before the relevant date, in Part B of the Register no injunction or other relief shall be granted to the plaintiff if the defendant establishes to the satisfaction of the court that the use of which the plaintiff complains is not likely to deceive or cause confusion or to be taken as indicating a connection in the course of trade between the goods and some person having the right either as a proprietor or as registered user to use the trade mark.

3. Nothing in this Decree shall entitle the proprietor or a registered user of a registered trade mark to interfere with or

Right given by
registration in
Part B and
infringement
thereof.

Savings for
vested rights.

restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods [or services] in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date anterior —

- (a) to the use of the first-mentioned trade mark in relation to those goods [or services] by the proprietor or a predecessor in title of his; or
- (b) to the registration of the first-mentioned trade mark in respect of those goods [or services] in the name of the proprietor or a predecessor in title of his, which ever is the earlier, or to object (on such use being proved) to that person being put on the Register for that identical or nearly resembling trade mark in respect of those goods [or services] under section 9 (2).

4. No registration of a trade mark shall interfere with —

- (a) any *bona fide* use by a person of his own name or of the name of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business; or
- (b) the use by any person of any *bona fide* description of the character or quality of his goods [or services], not being a description that would be likely to be taken as importing any such reference as is mentioned in paragraph 1(1) (b) or in section 34(3) (b).

Saving for use of name, address or description of goods or services.

SECOND SCHEDULE

(Section 34)

Certification Trade Marks

1.(1) An application for the registration of a mark under section 34 must be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof.

Applications.

(2) The provisions of subsection (2) to (6) of section 13 shall have effect in relation to an application under section 34 as they have effect in relation to an application under section 13(1).

(3) In dealing under the said provisions with an application under section 34, the Court or the Registrar shall have regard to the like considerations, so far as relevant, as if the application were an application under section 19 and to any other considerations relevant to applications under section 34, including the desirability of securing that a certification trade mark shall comprise some indication that it is such a trade mark.

(4) An applicant for the registration of a mark under section 34 shall transmit to the Registrar draft regulations for governing the use thereof in accordance with section 34(7).

(5) The Registrar shall consider the application with regard to the following matters, that is to say —

(a) whether the applicant is competent to certify the goods [or services] in respect of which the mark is to be registered;

(b) whether the draft regulations are satisfactory; and

(c) whether in all the circumstances the registration applied for would be to the public advantage;

and may either —

(i) refuse to accept the application; or

(ii) accept the application and approve the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modifications of the application or of the regulations, which he thinks requisite having regard to any of the matters aforesaid,

but, except in the case of a direction for acceptance and approval without modification and unconditionally, the Registrar shall not decide the matter without giving to the applicant an opportunity of being heard.

Procedure after
acceptance of
application.

2.(1) When an application has been accepted, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner, and the provisions of subsections (2) to (11) of section 14 shall have effect in relation to the registration of the mark as if the application had been an application under section 13 :

Provided that, in deciding under the said provisions, the Registrar shall have regard only to the considerations referred to in paragraph 1(3), and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Registrar under sub-paragraph (2) of this paragraph of any opposition relating to any of the matters referred to in paragraph 1(5).

(2) When notice of opposition is given relating to any of the matters referred to in paragraph 1(5), the Registrar shall, after hearing the parties, if so required, and considering any evidence, decide whether, and subject to what conditions or limitations, or amendments or modifications of the application or of the regulations, if any, registration is, having regard to those matters, to be permitted.

Alteration of
regulations.

3.(1) The regulations deposited in respect of a certification trade mark may, on the application of the registered proprietor, be altered by the Registrar.

(2) The Registrar may cause an application for his consent to be advertised in any case where it appears to him that it is expedient so to do, and where the Registrar causes an application to be advertised, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar of opposition to the application, the Registrar shall not decide the matter without giving the parties an opportunity of being heard.

Application to
Court.

4.(1) The Court may, on the application in the prescribed manner of any person aggrieved, or on the application of the Registrar, make such order as it thinks fit for expunging or varying any entry in the Register relating to a certification trade mark, or for varying the deposited regulations, on the ground —

- (a) that the proprietor is no longer competent, in the case of any of the goods [or services,] in respect of which the trade mark is registered, to certify those goods [or services];
- (b) that the proprietor has failed to observe a provision of the deposited regulations to be observed on his part;
- (c) that it is no longer to the public advantage, that the trade mark should be registered; or
- (d) that it is requisite for the public advantage, that, if the trade mark remains registered, the regulations should be varied;

and the Registrar shall have no jurisdiction to make an order under section 29 on any of these grounds.

(2) This Registrar shall rectify the Register and the deposited regulations in such manner as may be requisite for giving effect to an order under sub-paragraph (1).

Cost not to be awarded.

5. Notwithstanding anything in section 38, the Registrar shall not have any jurisdiction to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods [or services] or to authorise the use of the trade mark.

Appeal from Registrar.

6. Any decision of the Registrar under the provisions of this Schedule shall be subject to appeal to the Court.

Certain provisions not to have effect.

7. The following provisions of this Decree shall not have effect in relation to a certification trade mark, that is to say, sections 7, 13 and 14 (except as expressly applied by this Schedule), sub-sections (4) to (8) of section 19, sections 23 to 26, section 52, paragraphs 1 of the First Schedule.

day to which he would not have been subject under the repealed Act.

(4) Nothing in this Decree shall affect any order, rule, regulation or requirement made, table of fees or certificate issued, notice, decision, determination, direction or approval given, application made, or thing done under the repealed Act; and every such order, rule, regulation, requirement, table of fees, certificate, notice, decision, determination, direction, approval, application or thing shall, if in force at the appointed day, continue in force and shall, so far as it could have been made, issued, given or done under this Decree, have effect as if made, issued, given or done under the corresponding provision of this Decree,

(5) Any document referring to any provision of the repealed Act shall be construed as referring to the corresponding provision of this Decree.

THIRD SCHEDULE)

Transitional Provisions and Savings

1. The retrospective provisions contained in section 19 shall have effect without prejudice to any determination of a competent court or registrar that was made before the appointed day, or to determination of any appeal from a determination so made, or to any title acquired for valuable consideration before the appointed day.

Retrospective provisions.

2. Where a person is registered as a registered user of a trade mark on an application made within one year from the appointed day, section 25(2) shall have effect in relation to any previous use (whether before or after the appointed day) of the trade mark by that person, being use in relation to the goods in respect of which he is registered and, where he is registered subject to conditions or restrictions, being use such as to comply substantially therewith, as if such previous use had been permitted use.

Previous use of Trade Mark.

3. Section 28 shall be deemed to have had effect in relation to an act done before the appointed day as it has effect in relation to an act done after the appointed day.

Use of Trade Mark for export.

4.(1) Nothing in this Decree shall be taken to invalidate the original registration of a trade mark which immediately before the appointed day was validly on the Register maintained under the repealed Act.

Savings in respect of repealed Act.

(2) No trade mark which is upon the Register maintained under the repealed Act on the appointed day and which, having regard to any differences as between the provisions of this Decree and the provisions of the repealed Act whether as respects limitations which may be imposed on registration or as respects any other matter, was then a registrable trade mark under the repealed Act shall be removed from the Register on the ground that it was not registrable under the law in force at the date of its registration.

(3) Nothing in this Decree shall subject any person to any liability in respect of any act or thing done before the appointed