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TRADE MARKS RULES

(Made under section 91 of the Trade Marks Ordinance () of 1998)
with the approval of the Financial Secretary)

PART I

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of section 91 of the Trade Marks Ordinance () of 1998).

2. Interpretation

(1) In these Rules, unless the context otherwise requires -

“International Classification of Goods and Services” () means the International (Nice) Classification of Goods and Services for the purposes of the Registration of Marks, as established under the Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks, concluded at the Nice Diplomatic Conference on 15 June 1957, and revised at Stockholm in 1967 and at Geneva in 1977; as revised or amended from time to time;

“old law” () has the same meaning as in section 1(1) of Schedule 4 to the Ordinance (transitional matters);

“send” () includes give;

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

(2) In these Rules, except where otherwise provided -

(a) a reference to a section is a reference to that section in these Rules; and

(b) a reference to a Schedule is a reference to that Schedule in these Rules.

(3) Any reference in these Rules to an applicable fee shall be construed as a reference to the fee or fees applicable in accordance with section 4 (requirement as to fees) and Schedule 1 (fees).

(4) Unless the context otherwise requires, any reference in these Rules to the filing of a document, or to a document being filed or having been filed, shall be construed as a reference to the filing of the document with the Registrar, or to it being or having been filed with the Registrar, in accordance with section 63 (filing of documents).

3. Forms and directions of Registrar

(s. 72 of Ordinance)

(1) In these Rules, “specified form” (), in relation to any matter or proceeding, means the relevant form specified by the Registrar in connection with that matter or proceeding and published by notice in the official journal under section 72 of the Ordinance (power to require use of forms).

(2) A requirement under these Rules to use a specified form is satisfied by the use of either -

(a) a replica of the specified form; or

(b) a form which is acceptable to the Registrar and contains the information required by the specified form,
and which complies with any directions of the Registrar as to the use of the specified form.

4. Requirement as to fees

(s. 88 of Ordinance)

(1) The fees to be paid in relation to any matter or proceeding under the Ordinance are those specified in Schedule 1 (fees).

(2) The fees to be paid in respect of a matter or proceeding shall be paid at the time specified in Schedule 1 (fees) in respect of that matter or proceeding.

(3) Fees shall be paid by such means and in such manner as the Registrar directs.

(4) Where a fee has been paid in error or a fee is paid in excess of the amount specified in Schedule 1 (fees), the Registrar shall repay the amount paid in error or the excess amount accordingly.

PART II

APPLICATION FOR REGISTRATION

5. Application for registration

(s. 36 of Ordinance)

(1) An application for the registration of a trade mark shall be filed on the specified form.

(2) An application for the registration of a three-dimensional trade mark shall not be treated as such unless the application contains a statement to that effect.

(3) Where colour is claimed as an element of a trade mark, it shall not be treated as such unless the application contains a statement to that effect and specifies the colour.

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

(5) The Registrar may require the applicant to furnish representations of the trade mark which are, in the Registrar's opinion, suitable for publication.

6. Classification of goods and services

(s. 38 of Ordinance)

(1) For the purposes of trade mark registrations in respect of goods dated before 1 January 1955, goods are classified in accordance with Schedule 2 (classification of goods), except where a specification has been converted, whether under the old law or under section 40 (change of classification), to Schedule 3 (classification of goods and services).

(2) For the purposes of -

(a) trade mark registrations dated on or after 1 January 1955 in respect of goods;

(b) trade mark registrations dated before 1 January 1955 in respect of which the specifications were converted under the old law; and

(c) trade mark registrations in respect of services,

goods and services are classified in accordance with Schedule 3 (classification of goods and services), which sets out the current version of the classes of the International Classification of Goods and Services.

7. Application may relate to more than one class and shall specify the class

- (1) An application may be made for registration in more than one class of Schedule 3 (classification of goods and services).
- (2) Every application shall specify the class in Schedule 3 (classification of goods and services) to which it relates.
- (3) If the application relates to more than one class in Schedule 3 (classification of goods and services), the specification contained in it shall set out the classes in consecutive numerical order and list under each class the goods or services appropriate to that class.
- (4) If the specification contained in the application lists items by reference to a class in Schedule 3 (classification of goods and services) in which they do not fall, the applicant may request, by filing the specified form, that his application be amended to include the appropriate class for those items, and upon the payment of the applicable fee the Registrar shall amend his application accordingly.

8. Claim to priority

(s. 39 of Ordinance)

- (1) Where a right to priority is claimed under section 39 of the Ordinance (claim to priority) by reason of an application for protection of a trade mark filed in, or in respect of, a Paris Convention country or WTO member, particulars of that claim shall be included in the application for registration under section 5 of these Rules (application for registration) and, where no certificate as is referred to in subsection (2) is filed with the application, such particulars shall include the name of each country, territory or area for which a right of priority is claimed and the date or dates of filing.
- (2) Unless it has been filed at the time of the filing of the application for registration, there shall be filed, within 3 months of the filing of the application under section 5 of these Rules (application for registration), a certificate by the registering or other competent authority of each country, territory or area for which a right of priority is claimed certifying, or verifying to the satisfaction of the Registrar -
 - (a) the date of the filing of the application;
 - (b) the country, territory or area or the registering or competent authority;
 - (c) the representation of the trade mark; and
 - (d) the goods or services covered by the application.

PART III

ADDRESS FOR SERVICE

9. Address for service

- (1) An address for service in Hong Kong shall be filed on the specified form by -
 - (a) every applicant for the registration of a trade mark;
 - (b) every person opposing an application for registration of a trade mark;
 - (c) every person applying to the Registrar for -
 - (i) the revocation of the registration of a trade mark under section 50 of the Ordinance (revocation of registration);

- (ii) a declaration of invalidity of the registration of a trade mark under section 51 of the Ordinance (declaration of invalidity or registration);
 - (iii) the variation of the registration of a trade mark under section 52 of the Ordinance (variation of registration); or
 - (iv) the rectification of an error or omission in the register under section 55 of the Ordinance (rectification or correction of register);
- (d) every person granted leave to intervene under section 30(11) of these Rules (procedure on application for revocation, etc.); and
 - (e) every owner of a registered trade mark which is the subject of an application to the Registrar referred to in paragraph (c).

(2) The address for service of an applicant for registration of a trade mark shall upon registration of the trade mark be deemed to be the address for service of the registered owner, subject to any filing to the contrary under subsection (1) or section 37(2) (request for change of name or address in register).

(3) In any case in which an address for service is filed at the same time as the filing of a form which requires the furnishing of an address for service, the address shall be filed on that form, and in any other case it shall be filed on the specified form.

(4) Anything sent to an applicant, opponent, intervener or registered owner at his address for service shall be deemed to be properly sent.

(5) The Registrar may, where no address for service is filed, treat as the address for service of the person concerned his trade or business address in Hong Kong, if any.

(6) An address for service in Hong Kong may be filed at any time by the owner of a registered trade mark and by any person having an interest in or charge on a registered trade mark which has been registered under section 33 (entry in the register of particulars of registrable transactions).

(7) Where an address for service is not filed as required by subsection (1), the Registrar shall send the person concerned notice to file an address for service within 2 months of the date of the notice and if that person fails to do so -

- (a) in the case of an applicant as is referred to in subsection (1)(a) or (c), the application shall be treated as abandoned;
- (b) in the case of a person as is referred to in subsection (1)(b) or (d), he shall be deemed to have withdrawn from the proceedings; and
- (c) in the case of the owner referred to in subsection (1)(e), he shall not be permitted to take part in any proceedings.

PART IV

DEFICIENCIES, PUBLICATION, OPPOSITIONS AND REGISTRATION

Deficiencies in application for registration

10. Deficiencies in application (s. 36 of Ordinance)

Where it appears to the Registrar that an application for registration of a trade mark does not satisfy the requirements of section 36 of the Ordinance (application for registration) or section 5 (application for registration), 7(2) or (3) (application may relate to more than one class) of these Rules, the Registrar shall send written notice thereof to the applicant to remedy the deficiencies and if within 2 months of the date of the notice the applicant -

- (a) fails to remedy any deficiency notified to him in respect of section 36(2) of the Ordinance, the application shall be deemed never to have been made; or
- (b) fails to remedy any deficiency notified to him in respect of section 36(3), (4) or (5) of the Ordinance or section 5, 7(2) or (3) of these Rules, the Registrar shall refuse to accept the application.

Publication of particulars of application

11. Publication of particulars

(s. 41 of Ordinance)

(1) An application for registration of a trade mark which has been accepted by the Registrar under section 40(5) of the Ordinance (examination of applications) shall be published by the applicant in the official journal in accordance with the Registrar's directions.

(2) Where the applicant fails to comply with subsection (1) within 3 months from the date on which the Registrar has accepted the application, the Registrar may give notice to the applicant requesting compliance with subsection (1) on such terms as the Registrar may specify in the notice.

(3) If within 1 month of the date of the notice the applicant fails to comply with subsection (1) or any terms of compliance specified in the notice, the application shall be treated as abandoned.

Opposition proceedings

12. Opposition proceedings

(s. 42 of Ordinance)

(1) Notice of opposition to the registration of a trade mark shall be filed in duplicate on the specified form within 3 months of the date on which particulars of the application for registration are published under section 11 (publication of particulars), and shall include a statement of the grounds of opposition.

(2) The Registrar shall send a copy of the notice of opposition and statement to the applicant.

(3) Within 3 months of the date of receipt by the applicant of the copy of the notice of opposition and statement, the applicant shall file in duplicate a counter-statement on the specified form, setting out the grounds on which he relies as supporting his application and the facts, if any, alleged in the notice of opposition which he admits; and if he does not do so he shall be deemed to have abandoned his application.

(4) The Registrar shall send a copy of the counter-statement to the person opposing the application.

(5) Within 6 months of the date on which a copy of the counter-statement is received by the person opposing the registration, that person shall file such evidence by way of statutory

declaration or affidavit as he may consider necessary to adduce in support of his opposition; and he shall send a copy of that evidence to the applicant.

(6) If the person opposing the registration files no evidence under subsection (5), he shall be deemed to have abandoned his opposition unless the Registrar otherwise directs.

(7) If the person opposing the registration files evidence under subsection (5) or the Registrar otherwise directs under subsection (6), the applicant shall, within 6 months of the date on which either a copy of the evidence or a copy of the direction is received by the applicant, file such evidence by way of statutory declaration or affidavit as he may consider necessary to adduce in support of his application; and he shall send a copy of that evidence to the person opposing the application.

(8) Within 6 months of the date on which a copy of the applicant's evidence is received by him, the person opposing the application may file evidence in reply by statutory declaration or affidavit, which shall be confined to matters strictly in reply to the applicant's evidence, and he shall send a copy of that evidence to the applicant.

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

(10) On completion of the filing of evidence, the Registrar shall, if a hearing is requested by any party to the proceedings, send to the parties notice of a date for the hearing; within 7 days from the date of receipt of the notice any party who intends to appear shall give notice by filing the specified form; and any party who does not do so may be treated as not desiring to be heard, and the Registrar may act accordingly.

(11) If a copy of any exhibits under a statutory declaration or affidavit filed under this section cannot conveniently be sent, the original of the exhibits shall be filed with the Registrar in order that they may be open to inspection by the other party.

(12) The original of the exhibits referred to in subsection (11) shall be produced at the hearing unless the Registrar otherwise directs.

(13) A notice of opposition or counter-statement may be amended on such terms as the Registrar thinks fit.

13. Decision of Registrar in opposition proceedings

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

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

Publication of registration

14. Publication of registration

(s. 45(2) of Ordinance)

On the registration of a trade mark, the Registrar shall publish notice of the registration in the official journal, specifying the date on which particulars of the trade mark were entered in the register.

PART V

AMENDMENT OF APPLICATION FOR REGISTRATION

15. Amendment of application

(s. 44 of Ordinance)

A request pursuant to section 44 of the Ordinance (amendment of application) to amend an application for the registration of a trade mark shall be made on the specified form.

16. Amendment of application after publication

(s. 44 of Ordinance)

(1) This section applies where, pursuant to section 44 of the Ordinance (amendment of application), a request is made for amendment of an application for registration of a trade mark particulars of which have been published under section 11 of these Rules (publication of particulars).

(2) If the amendment affects the representation of the trade mark, the applicant shall publish the amendment or a statement of the effect of the amendment in the official journal.

(3) If the amendment affects the goods or services covered by the application, the applicant shall publish the amendment or a statement of the effect of the amendment in the official journal if directed to do so by the Registrar.

(4) The Registrar may at any time require the applicant to re-publish the amendment or statement, in accordance with the Registrar's directions, if he is satisfied, having regard to the effect of the proposed amendment, that it is just to do so.

(5) Notice of opposition to the amendment shall be filed on the specified form within 1 month of the date on which the application as amended, or the statement of its effect, is published under this section, and shall include a statement of the grounds of opposition and, in particular, explain how the amendment would be contrary to section 44 of the Ordinance (amendment of application).

(6) The procedure in section 12(3) to (13) (opposition proceedings) of these Rules shall apply to proceedings relating to the opposition to the amendment of the application as they apply to proceedings relating to opposition to the registration of a trade mark.

PART VI

DIVISION, MERGER AND REGISTRATION
OF SERIES OF TRADE MARKS

17. Division of application

(s. 49 of Ordinance)

(1) At any time after an application for registration of a trade mark has been assigned a filing date under section 37 of the Ordinance (filing date) and before the registration of the trade mark, the applicant may file a request on the specified form for a division of his application (the "original application") into 2 or more separate applications ("divisional applications"), each of which claims the same protection under the Ordinance as the original application (for example, for protection as a defensive mark), indicating for each divisional application the specification of goods or services.

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

(3) Where the request for a division is filed after the original application is published under section 11 (publication of particulars), any opposition to the original application shall be taken to apply to each divisional application and shall proceed accordingly.

(4) On division of an original application in respect of which notice has been received by the Registrar of particulars relating to the grant of a licensee, or a security interest or any right in or under it, the notice and the particulars shall be deemed to apply in relation to each of the divisional applications.

18. Merger of separate applications

(s. 49 of Ordinance)

(1) An applicant who has filed separate applications for registration of a trade mark, each of which claims the same protection under the Ordinance, may at any time before any of those applications has been published under section 11 of these Rules (publication of particulars), file a request on the specified form to merge those applications into a single application.

(2) The Registrar shall merge the applications which are the subject of the request into a single application if he is satisfied that all of the applications -

- (a) are in respect of the same trade mark;
- (b) claim the same protection under the Ordinance (for example, for protection as a defensive mark);
- (c) bear the same date of application; and
- (d) are, at the time of the request, in the name of the same person.

19. Merger of separate registrations

(s. 49 of Ordinance)

(1) The owner of 2 or more registrations of a trade mark may file a request on the specified form to merge them into a single registration; and the Registrar shall, if he is satisfied that the registrations are in respect of the same trade mark, merge them into a single registration.

(2) Where any registration of a trade mark to be merged under subsection (1) is subject to a disclaimer, limitation or condition, the merged registration shall be subject to the same disclaimer, limitation or condition.

(3) Where any registration of a trade mark to be merged under subsection (1) has had registered in relation to it particulars relating to the grant of a licence or a security interest or any right in or under it, or of any memorandum or statement of the effect of a memorandum, the Registrar shall enter in the register the same particulars in relation to the merged registration.

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

20. Registration of series of trade marks

(s. 49 of Ordinance)

(1) The owner of a series of trade marks may apply to the Registrar on the specified form for their registration as a series in a single registration and there shall be included in such application a representation of each trade mark claimed to be in the series; and the Registrar shall, if satisfied that the trade marks constitute a series, accept the application.

(2) At any time before registration, the applicant under subsection (1) may file a request on the specified form for a division of his application into separate applications in respect of one or more of the trade marks in the series and the Registrar shall, if he is satisfied that the division conforms with section 17 (division of application), divide the application accordingly.

(3) At any time the applicant for registration of a series of trade marks or the owner of a registered series of trade marks may request the deletion of a trade mark in that series, and the Registrar shall delete it accordingly.

(4) The division of an application into one or more applications under subsection (2) shall be subject to the payment of the applicable fee.

(5) The provisions of section 17(2) to (4) (division of application) shall apply to the division of an application under subsection (2).

PART VII

COLLECTIVE MARKS AND CERTIFICATION MARKS

21. Filing of regulations for collective marks and certification marks

(Schs. 2 & 3 of Ordinance)

An applicant for registration of a collective mark or certification mark shall file a copy of the regulations governing the use of the mark, together with the specified form, within 9 months of the date of the application for registration.

22. Amendment of regulations of collective marks and certification marks

(Schs. 2 & 3 of Ordinance)

(1) An application by the owner of a registered collective mark or registered certification mark for the amendment of the regulations governing the use of the mark shall be filed on the specified form.

(2) Where it appears expedient to the Registrar that the amended regulations should be made available to the public he shall publish a notice in the official journal indicating where copies of the amended regulations may be inspected.

(3) Any person may, within 3 months of the date of publication of the notice, file notice on the specified form of opposition to the amendment, which shall be accompanied by a statement of the grounds of opposition indicating why the amended regulations do not comply with the requirements of sections 6(1) and (2) of Schedule 2 to the Ordinance or sections 7(1) and (2) of Schedule 3 to the Ordinance, as the case may be.

(4) The Registrar shall send a copy of the notice of opposition and the statement to the owner and thereafter the procedure in section 12(3) to (13) of these Rules (opposition proceedings) shall apply to the proceedings as they apply to proceedings relating to opposition to an application for registration.

PART VIII

DISCLAIMERS, LIMITATIONS AND CONDITIONS

23. Registration subject to disclaimer, limitation or condition

(s. 14(1) of Ordinance)

Where the applicant for registration of a trade mark or the owner of a registered trade mark by notice in writing filed with the Registrar -

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

the Registrar shall make the appropriate entry in the register and publish the disclaimer, limitation or condition in the official journal.

PART IX

ALTERATION OR SURRENDER OF REGISTERED TRADE MARK

24. Alteration of registered trade mark

(s. 53 of Ordinance)

(1) The owner of a registered trade mark may, by filing the specified form, request the Registrar to make such alteration of the trade mark as is permitted under section 53 of the Ordinance (alteration of registered trade mark).

(2) The Registrar may require the applicant to file evidence by statutory declaration or otherwise as to the circumstances in which the application is made.

(3) Where the Registrar proposes to allow the alteration of the trade mark, he shall publish the trade mark, as altered, in the official journal.

(4) Any person claiming to be affected by the alteration may within 3 months of the date of publication under subsection (2) file a notice of opposition to the alteration on the specified form, which shall be accompanied by a statement of the grounds of opposition.

(5) The Registrar shall send a copy of the notice of opposition and the statement to the owner and thereafter the procedure in section 12(3) to (13) of these Rules (opposition proceedings) shall apply to the proceedings as they apply to proceedings relating to opposition to an application for registration.

25. Surrender of registered trade mark

(s. 54 of Ordinance)

(1) The owner of a registered trade mark may surrender the registration of the trade mark by filing a notice of surrender in the specified form.

(2) A notice under subsection (1) shall be of no effect unless the owner in that notice -

- (a) states that the registration is to be surrendered in respect of either -
 - (i) all of the goods or services for which the trade mark is registered;
or
 - (ii) those goods or services specified in the notice;
- (b) gives the name and address of each other person having a registered interest in the trade mark; and
- (c) certifies, in respect of every such person, that the person -
 - (i) has been sent not less than 3 months' notice of the owner's intention to surrender the trade mark, or
 - (ii) is not affected or, if affected, consents to the surrender.

(3) The surrender takes effect on receipt by the Registrar of a notice which complies with subsection (2).

(4) A surrender of the registration of a trade mark has the same effect in respect of the goods or services for which the registration is surrendered as the registration of the trade mark ceasing to have effect in respect of those goods or services.

(5) The Registrar shall, on the surrender taking effect, make the appropriate entry in the register and publish notice of the surrender in the official journal.

PART X

RENEWAL AND RESTORATION

26. Renewal of registration

(s. 48(1) of Ordinance)

Renewal of the registration of a trade mark shall be effected by filing a request for renewal on the specified form at any time within the period of 6 months ending on the date of the expiration of the registration.

27. Reminder of renewal of registration

(s. 48(2) of Ordinance)

(1) Subject to subsection (2), at any time not earlier than 6 months nor later than 1 month before the expiration of the last registration of a trade mark, the Registrar shall (except where renewal has already been effected under section 26 (renewal of registration)) send to the registered owner notice of the approaching expiration and inform him at the same time that the registration may be renewed in the manner described in section 26 (renewal of registration).

(2) If it appears to the Registrar that a trade mark may be registered under section 45 of the Ordinance (registration) at any time within 6 months before or after the date on which the renewal would be due (by reference to the date of application for registration), the Registrar shall be taken to have complied with subsection (1) if he sends to the applicant notice thereof within 1 month following the date of actual registration.

28. Delayed renewal and removal of registration

(s. 48(3) & (5) of Ordinance)

(1) Subject to subsection (2), if on the expiration of the last registration of a trade mark, the applicable fee payable on renewal has not been paid, the Registrar shall publish that fact in the official journal; and if, within 6 months from the date of the expiration of the last registration, the request for renewal is filed on the specified form and is accompanied by that fee and any other applicable fee, the Registrar shall renew the registration without removing the trade mark from the register.

(2) Where a trade mark is due to be registered after the date on which it is due for renewal (by reference to the date of application for registration), the request for renewal shall be filed together with the applicable fee payable on renewal and any other applicable fee within 6 months after the date of actual registration.

(3) Where the fees payable under subsection (1) or (2) are not paid within the period specified in that subsection, the Registrar shall, subject to section 29 (restoration of registration), remove the trade mark from the register.

(4) The Registrar shall publish a notice of the removal of the trade mark from the register in the official journal.

29. Restoration of registration

(s. 48(6) of Ordinance)

(1) Where the Registrar has removed the registration of a trade mark from the register in accordance with section 28(3) (delayed renewal and removal of registration), he may, on a request filed on the specified form within 6 months of the date of the removal and accompanied by

the applicable fee, restore the trade mark to the register and renew its registration if, having regard to the circumstances of the failure to renew, he is satisfied that it is just to do so.

(2) The Registrar shall publish a notice of the restoration of the registration and of the date of restoration in the official journal.

PART XI

REVOCAION, INVALIDATION, VARIATION AND RECTIFICATION

30. Procedure on application for revocation (other than on grounds of non-use), declaration of invalidity, variation and rectification

(ss. 50, 51, 52 & 55 of Ordinance)

- (1) An application to the Registrar for -
- (a) the revocation of the registration of a trade mark under section 50(2)(b), (c) or (d) of the Ordinance (revocation of registration);
 - (b) a declaration of invalidity of the registration of a trade mark under section 51 of the Ordinance (declaration of invalidity or registration);
 - (c) the variation of the registration of a trade mark under section 52 of the Ordinance (variation of registration); or
 - (d) the rectification of an error or omission in the register under section 55 of the Ordinance (rectification or correction of register),

shall be filed in duplicate on the specified form together with a statement of the grounds on which the application is made.

(2) Where any application is made under subsection (1) by a person other than the owner of the registered trade mark, the Registrar shall send a copy of the application and statement to the owner.

(3) Within 3 months of the date of receipt by the owner of the copy of the application and statement, the owner shall file in duplicate a counter-statement on the specified form, which shall include a statement of the grounds of opposition, and if he does not do so, he shall be deemed to have abandoned his opposition unless the Registrar otherwise directs.

(4) The Registrar shall send a copy of the counter-statement to the applicant.

(5) Within 6 months of the date on which a copy of the counter-statement is received by him, the applicant shall file such evidence by way of statutory declaration or affidavit as he may consider necessary to adduce in support of his application; and he shall send a copy of that evidence to the owner.

(6) If the applicant files no evidence under subsection (5), he shall be deemed to have abandoned his application unless the Registrar otherwise directs.

(7) If the applicant files evidence under subsection (5) or the Registrar otherwise directs under subsection (6), the owner may, within 6 months of the date on which either a copy of the evidence or a copy of the direction is received by him, file such evidence by way of statutory declaration or affidavit as he may consider necessary to adduce in support of his registration; and he shall send a copy of that evidence to the applicant.

(8) Within 6 months of the date on which a copy of the owner's evidence is received by him, the applicant may file evidence in reply by way of statutory declaration or affidavit, which shall

be confined to matters strictly in reply to the owner's evidence, and he shall send a copy of that evidence to the owner.

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

(10) On completion of the filing of evidence, the Registrar shall, if a hearing is requested by any party to the proceedings, send to the parties notice of a date for the hearing; within 7 days from the date of receipt of the notice any party who intends to be heard shall give notice of his intention in accordance with section 49 (hearings by Registrar); and any party who does not do so may be treated as not wishing to be heard, and the Registrar may act accordingly.

(11) Any person, other than the owner, claiming to have an interest in proceedings on an application under this section may file an application on the specified form for leave to intervene, stating the nature of his interest, and the Registrar may, after hearing the parties concerned if so required, refuse such leave or grant leave on such terms or conditions (including any undertaking as to costs) as he thinks fit.

(12) Any person granted leave to intervene shall, subject to the terms and conditions imposed in respect of the intervention, be treated as a party to the proceedings on an application under this section.

(13) When the Registrar has made a decision on the application following any application, intervention or proceedings held in accordance with this section, he shall send the owner, the applicant and the intervener (if any) written notice of it, stating the reasons for his decision; and for the purposes of any appeal against the Registrar's decision the date when the notice of the decision is sent shall be taken to be the date of the decision.

31. Procedure on application for revocation on grounds of non-use

(s. 50(2)(a) of Ordinance)

(1) An application to the Registrar for the revocation of the registration of a trade mark under section 50(2)(a) of the Ordinance (revocation of registration) shall be filed in duplicate on the specified form together with a statement of the grounds on which the application is made.

(2) The Registrar shall send a copy of the application and statement to the owner.

(3) Within 3 months of the date of receipt by the owner of the copy of the application and statement, the owner shall file in duplicate a counter-statement on the specified form, which shall include a statement of the grounds of opposition, and if he does not do so he shall be deemed to have abandoned his opposition unless the Registrar otherwise directs.

(4) The Registrar shall send a copy of the counter-statement to the applicant.

(5) Within 6 months of the date of receipt by the owner of the copy of the application and statement, the owner shall file evidence of use by him of the trade mark in relation to the goods or services for which it is registered and such further evidence as he may consider necessary to adduce in support of his registration; and he shall send a copy of that evidence to the applicant.

(6) If the owner fails to file such evidence of use under subsection (5), or to provide in the counter-statement reasons for non-use, he shall be deemed to have abandoned his opposition unless the Registrar otherwise directs.

(7) Within 6 months of the date on which a copy of the owner's evidence is received by him, the applicant may file such evidence by way of statutory declaration or affidavit as he may

consider necessary to adduce in support of his application; and he shall send a copy of that evidence to the owner.

(8) Within 6 months of the date on which a copy of the applicant's evidence is received by him, the owner may file evidence in reply by statutory declaration or affidavit which shall be confined to matters strictly in reply to the applicant's evidence, and he shall send a copy of that evidence to the applicant.

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

(10) The provisions of sections 30(10) to (13) (procedure on application for revocation other than on grounds of non-use, etc.) apply to proceedings under this section as they apply to proceedings under section 30.

PART XII

THE REGISTER

32. Entry in register of particulars of registered trade marks

(s. 45(1) of Ordinance)

The Registrar shall register a trade mark under section 45(1) of the Ordinance (registration) by entering the following particulars in the register-

- (a) the date of registration as determined in accordance with section 46 of the Ordinance (date of registration), that is to say, the filing date of the application for registration);
- (b) the actual date of registration, that is to say, the date of the entry in the register of the particulars required to be entered under this section;
- (c) the date of priority (if any) to be accorded pursuant to a claim to a right to priority made under section 39 of the Ordinance (claim to priority);
- (d) the name and address of the owner;
- (e) the address for service (if any) as furnished or filed pursuant to section 9 of these Rules (address for service);
- (f) any disclaimer, limitation or condition under section 14(1)(a) or (b) of the Ordinance (disclaimer or limitation of rights);
- (g) any memorandum or statement of the effect of any memorandum relating to a trade mark of which the Registrar has been notified on the specified form;
- (h) the goods or services in respect of which the trade mark is registered:
 - (i) where the trade mark is a defensive trade mark, a collective mark or a certification mark, that fact; and
 - (j) where the trade mark is registered pursuant to section 11(8) of the Ordinance (relative grounds for refusal of registration) with the consent of the owner of an earlier trade mark or other earlier right, that fact.

33. Entry in the register of particulars of registrable transactions

(s. 27 of Ordinance)

- (1) On application made to the Registrar by such person as is mentioned in section 27(1)(a) or (b) of the Ordinance (registration of transactions affecting registered trade mark), there shall be entered in the register the following particulars of registrable transactions, that is to say -
- (a) in the case of an assignment of a registered trade mark or any right in it -
 - (i) the name and address of the assignee;
 - (ii) the date of the assignment; and
 - (iii) where the assignment is in respect of any right in the trade mark, a description of the right assigned;
 - (b) in the case of the grant of a licence under a registered trade mark -
 - (i) the name and address of the licensee;
 - (ii) where the licence is an exclusive licensee, that fact;
 - (iii) where the licensee is limited, a description of the limitation; and
 - (iv) the duration of the licensee if the same is or is ascertainable as a definite period;
 - (c) in the case of the grant of any security interest over a registered trade mark or any right in or under it -
 - (i) the name and address of the grantee;
 - (ii) the nature of the interest (whether fixed or floating); and
 - (iii) the extent of the security and the right in or under the trade mark secured;
 - (d) in the case of the making by personal representatives of an assent in relation to a registered trade mark or any right in or under it -
 - (i) the name and address of the person in whom the trade mark or any right in or under it vests by virtue of the assent; and
 - (ii) the date of the assent; and
 - (e) in the case of a court or other competent authority transferring a registered trade mark or any right in or under it -
 - (i) the name and address of the transferee;
 - (ii) the date of the order; and
 - (iii) where the transfer is in respect of a right in the mark, a description of the right transferred.
- (2) In each case, there shall be entered in the register the date on which the entry is made.

34. Application to register or give notice of transaction

(ss. 27 & 29(3) of Ordinance)

(1) Subject to subsections (2) and (3), an application to register particulars of a transaction to which section 27 of the Ordinance (registration of transactions affecting registered trade mark) applies, or to give notice to the Registrar of particulars of a transaction to which section 29(3) of the Ordinance (application for registration of a trade mark as an object of property) applies, shall be made on the specified form.

(2) Where the transaction is an assignment, the application shall be signed by or on behalf of the parties to the assignment, or be accompanied by such documentary evidence as suffices to establish the assignment.

(3) Where the transaction relates to -

- (a) a grant of a licence;
- (c) an amendment to, or termination of, a licence; or
- (d) the grant, amendment or termination of any security interest,

the application shall be signed by or on behalf of the grantor of the licence or security interest; or be accompanied by such documentary evidence as suffices to establish the transaction.

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

35. Public inspection of register

(s. 66(1) of Ordinance)

(1) The register shall be open for public inspection at the Registry during the hours of business of the Registry as published in accordance with section 64 (directions on hours of business).

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

36. Supply of certified copies, etc.

(s. 67(3) of Ordinance)

The Registrar shall, on application by any person made on the specified form and on payment of the applicable fee, supply the person making the application with a certified copy or extract or uncertified copy or extract of any entry in the register.

37. Request for change of name or address in register

(s. 55(5) of Ordinance)

(1) The Registrar shall, on a request made on the specified form by the owner of a registered trade mark or a licensee or any person having an interest in or charge on a registered trade mark which has been registered under section 33 (entry in the register of particulars of registrable transactions), enter any change in his name or address as recorded in the register.

(2) The Registrar may at any time, on request made on the specified form by any person who has furnished or filed an address for service under section 9 (address for service) which is recorded in the register, change that address for service.

38. Procedure where Registrar proposes to correct entry in register

(s. 55(6) of Ordinance)

(1) Where the Registrar proposes to correct any error made by him in any entry in the register under section 55(6) of the Ordinance (rectification or correction of the register), he shall send written notice of the proposed correction to any person who appears to him to be concerned.

(2) Any person to whom notice is sent under subsection (1) may, within 3 months of the date of the notice, make written objections to the proposed correction, stating the grounds of his objections.

(3) If no written objections are received within the 3-month period, the Registrar may proceed to make the proposed correction in the register.

(4) Where any person to whom notice is sent under subsection (1) makes written objections within the 3-month period, the Registrar shall consider objections and either abandon the proposal (if he is satisfied that the objections have merit) or correct the entry as proposed (if he is satisfied that the objections are without merit).

39. Removal of matter from register

(s. 55(7) of Ordinance)

(1) Where it appears to the Registrar that any matter in the register has ceased to have effect, before removing it from the register -

- (a) he may, where he considers it appropriate, publish notice of his intention to remove that matter in the official journal; and
 - (b) he shall, where any person appears to him to be affected by the removal, send notice of his intention to that person.
- (2) Where the Registrar publishes notice of his intention to remove a matter from the register, any person may, within 3 months of the date of publication, file a notice of opposition on the specified form, which shall be accompanied by a statement of the grounds of opposition.
- (3) Where the Registrar sends any person notice of his intention to remove a matter from the register, that person may, within 3 months of the date of the notice is sent, file in writing -
- (a) his objections to the removal, if any; or
 - (b) a request to have his objections heard orally.
- (4) Where such opposition or objections are made, section 49 (hearings by Registrar) shall apply.
- (5) If the Registrar is satisfied, after considering any opposition and objections, that the matter has not ceased to have effect, he shall not remove it from the register.
- (6) If no notice of opposition is filed under subsection (2) and no objections are made under subsection (3), or where any opposition and objections have been determined, the Registrar may, if he is satisfied that the matter or any part of it has ceased to have effect, remove the matter or that part of it from the register.

PART XIII

CHANGE OF CLASSIFICATION

40. Change of classification

(s. 56 of Ordinance)

- (1) Subject to section 56(5) of the Ordinance (adaptation of entries in register to new classification), the Registrar may -
- (a) in order to reclassify the specification of a registered trade mark founded on Schedule 2 (classification of goods) to one founded on Schedule 3 (classification of goods and services), or
 - (b) consequent upon an amendment of the International Classification of Goods and Services referred to in section 6(2) (classification of goods and services),

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

(2) Before making any amendment to the register under subsection (1), the Registrar shall give the owner of the trade mark written notice of his proposals for amendment and shall at the same time advise him that -

- (a) he may make written objections to the proposals, within 3 months of the date of the notice, stating the grounds of his objections; and
 - (b) if no written objections are received within the period specified, the Registrar will publish the proposals in the official journal and he will not be entitled to make any objections thereto upon such publication.
- (3) If the owner makes no written objections within the period specified in subsection (2)(a) or at any time before the expiration of that period gives the Registrar written notice of his

intention not to make any objections, the Registrar shall as soon as practicable after the expiration of that period or upon receipt of the notice publish the proposals in the official journal.

(4) Where the owner makes written objections within the period specified in subsection (2)(a), the Registrar shall, as soon as practicable after he has considered the objections, publish the proposals or, where he has amended the proposals, publish the proposals, as amended, in the official journal.

41. Opposition to proposals

(s. 56 of Ordinance)

(1) Notice of any opposition shall be filed on the specified form within 3 months of the date of publication of the proposals under section 40 (change of classification), and there shall be stated in the notice the grounds of opposition and, in particular, how the proposed amendments would be contrary to section 56(5) of the Ordinance (adaptation of entries in register to new classification).

(2) The Registrar may require or admit evidence directed to the questions in issue and, if so requested by any person opposing the proposal, give that person the opportunity to be heard thereon before deciding the matter.

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

PART XIV

INSPECTION OF DOCUMENTS, REQUESTS FOR INFORMATION AND CONFIDENTIALITY

42. Inspection of documents

(1) Subject to subsections (2) and (3), the Registrar shall permit all documents filed or kept at the Registry in relation to a registered trade mark or, where an application for the registration of a trade mark has been published, in relation to that application, to be inspected.

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

(3) The right of inspection under subsection (1) does not apply to -

- (a) any document until 14 days after it has been filed at the Registry;
- (b) any document prepared in the Registry solely for use in the Registry;
- (c) any document sent to the Registry, whether at its request or otherwise, for inspection and subsequent return to the sender;
- (d) any request for information under section 43 (request for information);
- (e) any document issued by the Registry which the Registrar considers should be treated as confidential; or
- (f) any document in respect of which the Registrar issues directions under section 45 (confidential documents) that it be treated as confidential.

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

- (a) any document or part of a document which in his opinion disparages any person in a way likely to damage him; or
- (b) any document filed with or sent to the Registry before the day on which these Rules came into operation.

43. Request for information

(s. 73(1) of Ordinance)

A request for information under section 73(1) of the Ordinance (information about applications and registered trade marks) shall be made on the specified form.

44. Information available before publication

(s. 73(3) of Ordinance)

Before publication of particulars of an application for registration of a trade mark, the Registrar shall make available for inspection by the public the application and any amendments made to it and any particulars contained in a notice given to the Registrar under section 34 (application to register or give notice of transaction).

45. Confidential documents

(1) Where a document other than a specified form is filed at the Registry and the person filing it requests, at the time of filing or within 14 days of the filing, that it or a specified part of it be treated as confidential, giving his reasons, the Registrar may direct that it or part of it, as the case may be, be treated as confidential, and the document shall not be open to public inspection while the matter is being determined by the Registrar.

(2) Where such direction has been given and not withdrawn, nothing in this section shall be taken to authorise or require any person to be allowed to inspect the document or part of it to which the direction relates except by leave of the Registrar.

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

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

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

PART XV

AGENTS

46. Proof of authorisation of agent may be required

(s. 87 of Ordinance)

(1) Where a person has been authorised to act as an agent in accordance with section 87 of the Ordinance (recognition of agents), the Registrar may in any particular case require the personal signature or presence of the agent or the person authorising him to act as agent.

(2) Where after a person has become a party to proceedings before the Registrar, he appoints an agent for the first time or appoints one agent in substitution for another, the newly

appointed agent shall file the specified form, and any act required or authorised by the Ordinance or these Rules in connection with the registration of a trade mark or any procedure relating to a trade mark may not be done by or to the newly appointed agent until on or after the date on which he files that form.

(3) The Registrar may by notice in writing sent to an agent require him to produce evidence of his authority.

47. Registrar may refuse to deal with certain agents

(s. 87(2) of Ordinance)

The Registrar may refuse to recognise as agent in respect of any business under the Ordinance or these Rules -

- (a) a person who has been convicted of a criminal offence;
- (b) a person whose name has been struck off the roll of barristers or roll of solicitors kept under and in accordance with the Legal Practitioners Ordinance (Cap. 159) or any person who has been suspended from acting as an attorney or a solicitor; or
- (c) a partnership or body corporate of which one of the partners or directors is a person whom the Registrar could refuse to recognise as an agent under paragraph (a) or (b).

48. Signature of documents by partnerships, corporations, etc.

(1) A document signed for or on behalf of a firm shall be signed by its partners, by any partner stating that he signs on behalf of the firm or by any other person who satisfies the Registrar that he is authorized to sign the document.

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

(3) A document signed for or on behalf of an unincorporated body or association of persons other than a firm may be signed by a director, manager, secretary or other similar officer of that body or association, or by any person who satisfies the Registrar that he is authorized to sign the document.

PART XVI

HEARINGS BEFORE REGISTRAR

49. Hearings before Registrar

(1) Without prejudice to any provisions of the Ordinance or these Rules requiring the Registrar to hear any party to proceedings under the Ordinance or these Rules, or to give such party an opportunity to be heard, the Registrar shall, before exercising adversely to that party any discretion vested in him under the Ordinance or these Rules, give that party an opportunity to be heard.

(2) The Registrar shall give that party at least 14 days' notice of the time when he may be heard unless that party consents to shorter notice.

- (3) If the party intends to be heard, he shall give notice of his intention by filing the specified form and paying the applicable fee.
- (4) A party may attend a hearing in person or by such means as the Registrar allows.
- (5) A party may make representations in writing before or during a hearing.
- (6) The Registrar may adjourn a hearing by notifying each party to the hearing accordingly.
- (7) Subject to these Rules, the Registrar may give any direction that is reasonably necessary for the conduct of the hearing.

50. Registrar not required to hold hearings in certain cases

- (1) The Registrar is not required to proceed to hear a matter if -
 - (a) the Registrar reasonably believes that no party wishes to be heard; or
 - (b) at least one of the following circumstances applies in relation to each party notified of the hearing under section 49(2) (hearings by Registrar) -
 - (i) the party has not indicated to the Registrar that he wishes to be heard;
 - (ii) the party has informed the Registrar that he does not wish to be heard; or
 - (iii) the party does not attend the hearing.
- (2) The Registrar may decide a matter referred to in subsection (1) -
 - (a) without a hearing; and
 - (b) by reference to relevant information concerning the matter that is held in the Registry.

51. Hearings before Registrar to be public

The hearing before the Registrar of any dispute between 2 or more parties relating to any matter in connection with an application for registration of a trade mark or a registered trade mark shall be held in public unless the Registrar, after consultation with those parties who appear in person or are represented at the hearing, otherwise directs.

52. Language of hearings

- (1) Any party in a hearing before the Registrar, or any witness or expert called to give evidence by such party, may use a language other than the language of the proceedings on condition that, at least 10 days before the date laid down for the hearing, the party gives to the Registrar and to the other parties notice of his intention to use, or to call a witness or expert who intends to use, a language other than the language of the proceedings.
- (2) The Registrar -
 - (a) may require a party who gives notice under subsection (1) to make provision for interpretation into the language of the proceedings; and
 - (b) may authorize interpretation into one of the official languages and may give directions as to who should bear the expenses thereof.

PART XVII

EVIDENCE, SECURITY FOR COSTS, TAXATION OF COSTS
AND DECISION OF REGISTRAR

53. Evidence in proceedings before Registrar

- (1) Where under the Ordinance or these Rules evidence may be admitted by the Registrar in any proceedings before him, it shall be done by the filing of a statutory declaration or affidavit.
- (2) The Registrar may in any particular case take oral evidence in lieu of or in addition to such evidence and shall, unless he otherwise directs, allow any witness to be cross-examined on his statutory declaration, affidavit or oral evidence.

54. Statutory declarations and affidavits

(1) Any statutory declaration or affidavit required by the Ordinance or these Rules, or used in any proceedings, shall be made and subscribed as follows -

- (a) in Hong Kong, before any commissioner, notary, or other person authorized by the law of Hong Kong to administer an oath for the purpose of any legal proceeding; and
- (b) in any place outside Hong Kong, before any court, judge, justice of the peace, notary, notary public, officer or other person authorized by law to administer an oath or to exercise notarial functions in that place for the purpose of any legal proceeding.

(2) A person signing a declaration by virtue of the provisions of section 48 (signature of documents by partnerships, corporations, etc.) shall state thereon the capacity in which he makes the declaration.

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

55. Registrar's power to require documents, information or evidence

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

56. Security for costs

(1) If a party in any proceedings before the Registrar who neither resides nor carries on business in Hong Kong -

- (a) files a notice of opposition under section 12 of the Rules (opposition proceedings); or
- (b) applies to the registrar under sections 50 (revocation of registration), 51 (declaration of invalidity or registration), 52 (variation of registration) or 55 of the Ordinance (rectification or correction of register),

the Registrar may require him to give security for the costs in such form and in such amount as the Registrar considers sufficient.

(2) If the Registrar requires security to be given by any party in respect of an application, request or notice of opposition filed by him and the party fails to give such security as required, the Registrar may treat the application, request or notice of opposition as abandoned or withdrawn.

(3) The Registrar may at any stage in the proceedings require further security to be given at any time before giving his decision in the case.

(4) This section is without prejudice to the Registrar's power under section 30(11) (procedure on application for revocation other than on grounds of non-use, etc.) to require an undertaking as to costs.

57. Taxation of costs

The Registrar shall have the power to tax any costs awarded by him under the section 86 of the Ordinance (costs of proceedings before the Registrar).

58. Decision of Registrar

(1) When, in any proceedings before him, the Registrar has made a decision, he shall send written notice of it to each party to the proceedings.

(2) Subject to subsection (3), for the purpose of any appeal against a decision made by the Registrar, the date on which the notice is sent under subsection (1) shall be taken to be the date of the decision.

(3) Where a statement of the reasons for the decision is not included in the notice sent under subsection (1), any party may, within 1 month of the date on which the notice was sent to him, request the Registrar on the specified form to send him a statement of the reasons for the decision and upon such request the Registrar shall send such a statement; and the date on which that statement is sent shall be deemed to be the date of the Registrar's decision for the purpose of any appeal against it.

PART XVIII

CORRECTION OF ERRORS, IRREGULARITIES, CALCULATION
AND EXTENSION OF TIME

59. Correction of irregularities of procedure

Subject to section 62 (alteration of time limits), any error in any document or any irregularity in procedure in or before the Registry or the Registrar may be rectified, on such terms as he may direct.

60. Amendments and irregularities

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

61. Calculation of times and periods

(1) Where, on any day, there is an event or circumstances causing an interruption in the normal operation of the Registry, the Registrar may notify the day as being one on which there is an "interruption" and, where any period of time specified in the Ordinance or these Rules for the giving, making or filing of any notice, application or other document expires on a day so notified the period shall be extended to the first day next following (not being an excluded day) which is not so notified.

(2) Any notification of the Registrar given pursuant to this section shall be posted in the Registry.

(3) In this section, "excluded day" () means a day which is not a business day of the Registry under the Registrar's direction pursuant to section 89 of the Ordinance (hours of business and business days), as published in accordance with section 64 of these Rules (directions on hours of business).

62. Alteration of time limits

- (1) Subject to subsection (2), any time or period -
 - (a) prescribed by these Rules, other than a time or period prescribed by the sections mentioned in subsection (5), or
 - (b) specified by the Registrar for doing any act or taking any proceedings,may, at the written request of the person or party concerned, be extended by the Registrar as he thinks fit and upon such terms as he may direct.
- (2) Where a request for the extension of a time or periods prescribed by these Rules is filed after particulars of the application have been published under section 11 (publication of particulars), the request shall be made on the specified form.
- (3) In any other case, the request shall be made on the specified form if the Registrar so directs.
- (4) Where a request for the extension of a time or periods prescribed by these Rules is sought in respect of a time or periods prescribed by sections 12 (opposition proceedings), 16 (amendment of application after publication), 22 (amendment of regulations of collective marks and certification marks), 24 (alteration of registered trade mark), 30 or 31 (procedure on application for revocation, etc.) the party seeking the extension shall send a copy of the request to every other party to the proceedings.
- (5) The sections excepted from subsection (1) are -
 - (a) section 9(7) (failure to file address for service);
 - (b) section 10 (deficiencies in application);
 - (c) section 12(1) (time for filing opposition);
 - (d) section 12(3) (time for filing counter-statement);
 - (e) section 22(3) (time for filing opposition);
 - (f) section 24(4) (time for filing opposition);
 - (g) section 28 (delayed renewal);
 - (h) section 29 (restoration of registration);
 - (i) section 39(2) (time for filing opposition);
 - (j) section 41 (time for filing opposition); and
 - (k) section 71(4) (time for filing notice of withdrawal).
- (6) A request for extension under subsection (1) may be made before or after the time or period in question has expired.
- (7) Where -
 - (a) the period within which any party to any proceedings before the Registrar may file evidence under these Rules is to begin on the expiry of any period during which any other party may file evidence; and
 - (b) the other party notifies the Registrar that he does not wish to file any, or any further, evidence,the Registrar may direct that the period within which the party mentioned in paragraph (a) may file evidence shall begin on such date as may be specified in the direction and shall notify all parties to the dispute of that date.
- (8) Notwithstanding subsections (1) to (7), in the case of an irregularity or prospective irregularity in procedure in or before the Registry or the Registrar -
 - (a) which consists of a failure to comply with any limitation as to times or periods specified in the Ordinance or these Rules and which has occurred or appears to the Registrar as likely to occur in the absence of a direction under this section; and

- (b) which is attributable wholly or in part to an error, default or omission on the part of the Registry or the Registrar and which it appears to him should be rectified,

the Registrar may direct that the time or period in question shall be altered in such manner as he may specify.

PART XIX

FILING OF DOCUMENTS, HOURS OF BUSINESS
AND TRANSLATIONS

63. Filing of documents

(1) Any application, notice, form, evidence or other document required or authorized to be filed with the Registrar under the Ordinance or by these Rules must be filed by hand during the normal business hours of the Registry or by post.

(2) Filing by hand shall, unless the contrary is proved, be deemed to be effected at such time as the document is received at the Registry during the normal business hours of the Registry.

(3) Filing by post shall be deemed to be effected by properly addressing, preparing and posting a letter containing the document, and, unless the contrary is proved, shall be deemed to have been received at the time at which the letter, properly addressed and the postage thereon prepaid, would be delivered in the ordinary course of post.

(4) The Registrar may at his discretion permit, as an alternative to the filing by hand or by post, the filing of a document by electronic means subject to such terms or conditions as he may specify either generally by notice published in the official journal or in any particular case by written notice to the person desiring to file the document by such means.

64. Directions on hours of business

(s. 89 of Ordinance)

Any directions given by the Registrar under section 89 of the Ordinance (hours of business and business days) specifying the hours of business of the Registry and business days of the Registry shall be posted in the Registry and published in the official journal.

65. Translations of documents, etc.

(1) Except as expressly provided in these Rules, where any document or part of a document which is not in one of the official languages is filed at the Registry or sent to the Registry in pursuance of the Ordinance or these Rules, it shall be accompanied by a translation into the language of the proceedings and such translation must be verified to the satisfaction of the Registrar as corresponding to the original text.

(2) The Registrar may, in respect of any document to be used for the purposes of evidence in proceedings before the Registrar and which is in a language other than the language of the proceedings, give directions as to -

- (a) the filing of the document in that other language;
- (b) the filing of a translation of the document into the language of the proceedings.

(3) Where a person is required by the Ordinance or these Rules to furnish his name on any application, request, form or other document and his name is not in the Roman alphabet, the document shall contain a transliteration of the name in the Roman alphabet.

(4) In any application for registration of a trade mark -

- (a) where the trade mark consists of or contains a word in characters other than Roman, there shall, unless the Registrar otherwise directs, be endorsed on the application a sufficient transliteration and translation to the satisfaction of the Registrar of that word, and every such endorsement shall state the

language to which that word belongs and shall be signed by the applicant or his agent; and

- (b) where the trade mark consists of or contains a word in a language other than English or Chinese, the Registrar may request an exact translation of that word together with the name of the language, and such translation and name, if he so requires, shall be endorsed and signed by the applicant or his agent.

(5) The Registrar may, in respect of any information required to be supplied by any person in connection with any proceedings before the Registrar, require the person to supply the information in one or both of the official languages on such terms as the Registrar thinks fits.

(6) The Registrar may specify periods within which translations of documents are to be provided by a party to proceedings before the Registrar, and he may provide for extensions of such periods on request by that party pursuant to section 62 (alteration of time limits).

PART XX

MISCELLANEOUS

66. Publication and sale of documents

The Registrar may arrange for the publication and sale of documents and information by the Registry on such terms as he thinks fit.

67. Filing of court orders, declarations or certificates

(1) Where any order or declaration is made or any certificate is granted by the court under the Ordinance, the person in whose favour such order, declaration or certificate has been made or granted or, if there is more than one, such one of them as the Registrar may direct, shall file a certified copy of the order, declaration or certificate with the Registrar and, if rectification of the Register is required, the specified form.

(2) Where appropriate, the register shall be rectified by the Registrar accordingly.

68. Publication of order of court

Whenever an order is made by the court under the Ordinance for the rectification or correction of the register, the Registrar may, if he thinks that the order should be made public, cause it to be published in the official journal by and at the expense of the person in whose favour the order has been made, or such one of them, if more than one, as the Registrar may direct.

69. Search of register

(1) The Registrar may permit any person, on request made on the specified form and on payment of the applicable fee, to -

- (a) inspect and make a search in the register of pending applications for registration and particulars recorded in the register, which include the particulars specified in sections 32 and 33 (particulars of registered trade marks and registrable transactions); or
- (b) inspect a notice of opposition, counter-statement or decision in connection with any opposition or application for rectification of the register relating to any particular trade mark.

(3) The Registrar shall supply, on request made on the specified form by any person and on payment of the prescribed fee, a list of the numbers and the class of all pending applications made by any person identified in the request or a list of the numbers and the class of registered trade marks which are owned by a registered owner identified in the request.

70. Official search for specified goods or services

(1) Any person may request the Registrar, by filing the specified form, to cause a search to be made in respect of specified goods or services classified in any one class of Schedule 3 (classification of goods and services) to ascertain whether any trade mark is on record at the date of the search, and whether pending registration or registered, which resembles a trade mark of which a representation is affixed to the form.

(2) The form shall be filed together with 2 duplicates of the representation and the applicable fee.

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

71. Preliminary advice by Registrar

(s. 70 of Ordinance)

(1) Any person who proposes to apply for the registration of a trade mark may, by filing the specified form, apply to the Registrar for advice as to whether the trade mark appears to the Registrar prima facie capable of distinguishing goods or services of one undertaking from those of other undertakings within the meaning of section 3(1) of the Ordinance (meaning of “trade mark”).

(2) Separate applications under subsection (1) shall be made in respect of goods or services comprised within different classes as set out in Schedule 3 (classification of goods and services).

(3) An application for advice under subsection (1) shall contain a representation of the trade mark to be affixed on the form and be filed together with 2 duplicates of such representation.

(4) Where pursuant to section 70 of the Ordinance (power to give preliminary advice, etc.) the Registrar gives notice of objection to the applicant, a notice of withdrawal of an application for the registration of a trade mark which is given under section 43(1) of the Ordinance (withdrawal or restriction of application) for the purpose of obtaining repayment of any fees paid on the filing of the application must be given in writing within 3 months from the date of the notice of the Registrar's objection.

72. Defensive trade marks

(1) An application for the registration of a defensive trade mark under sections 58 of the Ordinance (defensive trade marks) shall be filed on the specified form and shall be accompanied by a statement of case setting forth full particulars of the facts on which the applicant relies in support of his application, verified by a statutory declaration made by the applicant or some other person approved for the purpose by the Registrar.

(2) The applicant shall file the statutory declaration within 9 months of the filing of the application on the specified form, failing which the Registrar may treat the application as abandoned.

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

73. Change of language of proceedings

The Registrar may, subject to the consent of the parties concerned, give directions relating to the change of the language of proceedings on such terms as he may direct.

74. Service of documents

(1) Any notice or other document required or permitted by the Ordinance or these Rules to be sent to any person or place must be sent by hand or by post.

(2) Sending by post shall be deemed to be effected by properly addressing, preparing and posting a letter containing the document, and the document shall be deemed to have been received at the time when the letter, properly addressed and the postage thereon prepaid, would be delivered in the ordinary course of post.

PART XXI

TRANSITIONAL

75. Pending applications for registration

(para. 10(2) of Sch. 4 of Ordinance)

When an application for registration of a mark made under the old law is advertised in accordance with section 14 of the repealed Ordinance on or after the date on which Schedule 4 to the Ordinance (transitional matters) comes into operation, the period within which notice of opposition may be filed shall be 3 months from the date of advertisement, and such period shall not be extendible.

76. Form for conversion of pending application

(para. 11(2) of Sch. 4 of Ordinance)

A notice to the Registrar under section 11(1) of Schedule 4 to the Ordinance (transitional matters), claiming to have the registrability of the mark determined in accordance with the provisions of the Ordinance, shall be given in the specified form.

SCHEDULE 1

[ss. 2(3) & 4]

FEES

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SCHEDULE 2

[s. 6]

CLASSIFICATION OF GOODS

(Note: This was the Classification in the Third Schedule to the Trade Marks Rules under the Trade Marks Ordinance (Chapter 43, Laws of Hong Kong, Revised Edition 1950).

Class	Goods included in class
1.	Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.
2.	Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.
3.	Chemical substances prepared for use in medicine and pharmacy.
4.	Raw, or partly prepared, vegetable, animal, and mineral substances used in manufactures, not included in other classes.
5.	Unwrought and partly wrought metals used in manufacture.
6.	Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines and their parts included in class 7.
7.	Agricultural and horticultural machinery, and parts of such machinery.
8.	Philosophical instruments, scientific instruments, and apparatus for useful purposes; instruments and apparatus for teaching.
9.	Musical instruments.
10.	Horological instruments.
11.	Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals.
12.	Cutlery and edge tools.
13.	Metal goods, not included in other classes.
14.	Goods of precious metals and jewellery, and imitations of such goods and jewellery.
15.	Glass.
16.	Porcelain and earthenware.
17.	Manufactures from mineral and other substances for building or decoration.
18.	Engineering, architectural, and building contrivances.
19.	Arms, ammunition, and stores, not included in class 20.
20.	Explosive substances.
21.	Naval architectural contrivances and naval equipments not included in other classes.
22.	Carriages.
23.	(a) Cotton yarn. (b) Sewing cotton.
24.	Cotton piece goods.
25.	Cotton goods not included in other classes.
26.	Linen and hemp yarn and thread.
27.	Linen and hemp piece goods.
28.	Linen and hemp goods not included in other classes.
29.	Jute yarns and tissues, and other articles made of jute, not included in other classes.
30.	Silk, spun, thrown or sewing.
31.	Silk piece goods.
32.	Silk goods not included in other classes.

33. Yarns of wool, worsted or hair.
34. Cloths and stuffs of wool, worsted or hair.
35. Woollen and worsted and hair goods, not included in other classes.
36. Carpets, floor-cloth, and oil-cloth.
37. Leather, skins unwrought and wrought, and articles made of leather not included in other classes.
38. Articles of clothing.
39. Paper (except paper hangings), stationery, and bookbinding.
40. Goods manufactured from india-rubber and gutta-percha not included in other classes.
41. Furniture and upholstery.
42. Substances used as food or as ingredients in food.
43. Fermented liquors and spirits.
44. Mineral and aerated waters, natural and artificial, including ginger beer.
45. Tobacco, whether manufactured or unmanufactured.
46. Seeds for agricultural and horticultural purposes.
47. Candles, common soap, detergents; illuminating, heating, or lubricating oils; matches; and starch, blue, and other preparations for laundry purposes.
48. Perfumery (including toilet articles, preparations for the teeth and hair and perfumed soap).
49. Games of all kinds and sporting articles not included in other classes.
50. Miscellaneous -
 - (1) Goods manufactured from ivory, bone or wood, not included in other classes.
 - (2) Goods manufactured from straw or grass, not included in other classes.
 - (3) Goods manufactured from animal and vegetable substances, not included in other classes.
 - (4) Tobacco pipes.
 - (5) Umbrellas, walking sticks, brushes and combs for the hair.
 - (6) Furniture cream, plate powder.
 - (7) Tarpaulins, tents, rick-cloths, rope (jute or hemp), twine.
 - (8) Buttons of all kinds other than of precious metal or imitations thereof.
 - (9) Packing and hose.
 - (10) Other goods not included in the foregoing classes.

SCHEDULE 3

[s. 6]

CLASSIFICATION OF GOODS AND SERVICES
NAMES OF THE CLASSES

PART 1

(Note: Parts of an article or apparatus are, in general, classified with the actual article or apparatus, except where such parts constitute articles included in other classes).

Class	Goods included in class
1.	Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.
2.	Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colourants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.
3.	Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
4.	Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.
5.	Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.
6.	Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.
7.	Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements (other than hand operated); incubators for eggs.
8.	Hand tools and implements (hand operated); cutlery; side arms; razors.
9.	Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.
10.	Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.
11.	Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
12.	Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.
14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments.
15. Musical instruments.
16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks.
17. Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.
18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
19. Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.
20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.
21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; un-worked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.
22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.
23. Yarns and threads, for textile use.
24. Textiles and textile goods, not included in other classes; bed and table covers.
25. Clothing, footwear, headgear.
26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.
27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
28. Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.
29. Meat, fish, poultry and game; meat extract; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.
30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice.
31. Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.

32. Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
33. Alcoholic beverages (except beers).
34. Tobacco; smokers' articles; matches.

PART 2

Services included in class

35. Advertising; business management; business administration; office functions.
36. Insurance; financial affairs; monetary affairs; real estate affairs.
37. Building construction; repair; installation services.
38. Telecommunications.
39. Transport; packaging and storage of goods; travel arrangement.
40. Treatment of materials.
41. Education; providing of training; entertainment; sporting and cultural activities.
42. Providing of food and drink; temporary accommodation; medical, hygienic and beauty care; veterinary and agricultural services; legal services; scientific and industrial research; computer programming; services that cannot be placed in other classes.