

## TRADE MARKS ACT, 1993

### TRADE MARKS REGULATIONS, 1993

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The Minister of Trade and Industry has, in terms of section 69 of the Trade Marks Act, 1993 (Act 194 of 1993), made the regulations and prescribed the tariff set forth hereunder:

#### 1. Definitions

In these regulations, unless the context otherwise indicates, any expression to which a meaning has been assigned in the Trade Marks Act, 1993 (Act 194 of 1993), bears a meaning so assigned, and-

**'access code'** means the unique identification particulars, whether alphanumeric, biometric or otherwise, enabling the CIPRO system to identify a person;

**'the Act'** means the Trade Marks Act, 1993 (Act 194 of 1993);

**'CIPRO'** means the Companies and Intellectual Property Registration Office that constitutes a combined administrative office for the various registration offices established or deemed to be established under the Act, the Patents Act, 1978 (Act 194 of 1993), the Designs Act, 1993 (Act 195 of 1993), the Registration of Copyright in Cinematograph Films Act, 1977 (Act 62 of 1977), the Close Corporations Act, 1984 (Act 69 of 1984) and the Companies Act, 1973 (Act 61 Of 1973);

**'CIPRO customer'** means any person using electronic services and includes any person who has been allowed by the Registrar to use electronic services, who is legally entitled to act on behalf of a natural or juristic person, and who has thus been allowed to use or provide electronic services or to act as an intermediary in respect of electronic services;

**'CIPRO portal'** means the Internet website or other electronic portal forming part of the CIPRO system;

**'CIPRO record retention system'** means the system used by CIPRO to store records for subsequent access, whether in paper, microfilm, electronic or any other form;

**'CIPRO system'** means the computer system, including the CIPRO portal, through which CIPRO provides electronic services, irrespective of the medium or form of technology underlying or forming part of such services;

**'electronic services'** means the services provided or made available by CIPRO through the CIPRO system in terms of regulation 1A;

**'inspect'** includes obtaining access to a record via the CIPRO system;

**'lodge'** includes the creation of a record on the CIPRO system;

**'Patent Journal'** means the official journal of patents, designs, trade marks and copyright in cinematograph films of the Republic of South Africa;

**'Office'** means the Trade Marks Office referred to in section 5 of the Act;

**'operational requirements'** means the requirements provided for in regulation 1A(2);

**'record'** includes a document and vice versa;

**'send'** includes give;

**'specification'** means the designation of goods or services in respect of which a trade mark is registered or proposed to be registered

#### 1A. **ELECTRONIC SERVICES**

- (1) The Registrar may direct by notice in the Gazette that any requirement under the Act or these regulations, including requirements in respect of information, records and payment, may or must be satisfied in electronic form, subject to the provisions of the operational requirements.
- (2) The Registrar must publish operational requirements on the CIPRO portal setting out the requirements, processes and procedures in respect of all or certain electronic services, including -
  - (a) registration procedures;
  - (b) identification, authentication and verification;
  - (c) form and format of records;
  - (d) manner and form of payment;
  - (e) information security requirements; and
  - (f) record retention requirements.
- (3) The operational requirements may be published in different forms over different parts of the CIPRO portal.
- (4) Unless another form of electronic signature is specified in the operating requirements, any signature requirement under the Act or these regulations in respect of a record to be accessed from or lodged with CIPRO is satisfied by the CIPRO customer entering his access code on the CIPRO system and any record lodged after the CIPRO customer having entered the access code shall be deemed to have been duly signed by the person whose signature is required under the Act or these regulations for purposes of such record.
- (5) Where any form under the Act or regulations makes provision for a signature and such form is deemed to be signed as provided for in sub-regulation (4), it shall not be necessary to have recorded on such form that it had been signed.
- (6) Unless CIPRO receives prior written notification from the holder of an access code to disable such access code, CIPRO shall be entitled to accept that the person using electronic services is the person to whom the access code was issued or such person's duly authorized representative acting within the scope of such person's authority.

- (7) CIPRO may suspend or terminate electronic services at any time without incurring any liability for doing so: Provided that proper notice of such suspension or termination shall be given and that such suspension or termination will not effect existing rights of any person who has been using such electronic services.

## 2. Fees

*[Sections 65 and 69 (1)]*

- (1) The fees to be paid in pursuance of the Act shall be the fees specified in Schedule 1 to these regulations.
- (2) All such fees shall, subject to such conditions as the Registrar may impose, be payable in such a manner as the Registrar may direct.

## 3. Forms

*[Section 69 (2)]*

- (1) The forms referred to in these regulations are the forms contained in Schedule 2, and such forms, whether in paper form or in any electronic form authorized by the Registrar for electronic services, shall be used in all cases to which they are applicable, but may be modified or amended to the extent necessary in the circumstances of a particular case.
- (2) Any request, notification or application to the Registrar for which no specific form is prescribed in these regulations shall be made on Form TM2 quoting the section of the Act or the regulation or both in terms of which the request, notification or application is made.

## 4. Classification of goods and services

*[Sections 11 and 69 (2)]*

- (1) For the purposes of trade mark, certification mark and collective mark applications made under the Act, goods and services are classified in accordance with Schedule 3 to these regulations.
- (2) For the purposes of classifying goods and services in accordance with Schedule 3 to these regulations and of interpreting this Schedule, reference shall be had to the 6th Edition of the International Classification of Goods and Services for the purposes of the registration of marks under the Nice Agreement of 15 June 1957 (as revised) published by the World Intellectual Property Organisation in 1992, including the explanatory notes and lists of goods and services published therein.
- (3) In the event of the aforesaid 6th Edition of the International Classification of Goods and Services, 1992, being amended by the World Intellectual Property Organisation at any future stage, the Registrar shall publish such amendments in the Patent Journal and shall, to the extent that such amendments necessitate an amendment of Schedule 3 to these regulations, so amend Schedule 3 and publish such amendment.
- (4) If any doubt arises as to the class in which any particular description of goods or services belongs, the matter shall be determined by the Registrar.

## 5. Documents

*[Section 69 (2)]*

Subject to any directions that may be given by the Registrar, all documents required by the Act or by these regulations to be filed with the Registrar shall be typewritten, lithographed or printed in one of the official languages of the Republic in legible roman characters with black ink upon strong paper, on one side of the paper only, of A4 standard size and shall have on the left hand side a margin of at least 35 mm. Provided that the requirements of this regulation are met if documents have been lodged in

accordance with the operational requirements and proof of payment of the prescribed fee (if any), has been provided.

**6. Service of documents**

[Section 66]

- (1) Any document to be filed with the Registrar may be send through the post or in such electronic form and by such electronic means as authorized by the Registrar for electronic services. Any such document so sent shall not be deemed to has been duly sent until it is received by the Registrar.
- (2) Any document to be served on any person other than the Registrar may be sent by registered post. Any document so sent shall be deemed to have been delivered in the ordinary course of post, and in proving such service or sending it shall be sufficient to prove that such document was properly addressed and put into the post and registered.
- (3) Any affidavit to be filed with the Registrar or served on any other person in terms of regulations 19 and 52 (2) may be sent by facsimile transmission or in such electronic form and by such electronic means as authorized by the Registrar for electronic services. Such transmitted copy or original electronic document, as the case may be, shall be received and accepted by the Registrar and any such other person and shall be deemed to be in compliance with these regulations: Provided that the original version of such affidavit is filled with the Registrar before noon on the court day but one day preceding the day upon which the matter is to be heard, or within 15 court days of the date of signature of the document, whichever is earlier.
- (4) Any other document or copy to be filed with the Registrar or served on any other person in terms of the Act may be filed or served by facsimile transmission or by means of electronic transfer: Provided that the original document or copy, as the case may be, is filed or served within 15 court days of the date of the signature thereof, unless the document or copy so transmitted complies with the requirements of regulation 1A(4) and is, therefore, deemed to be original.
- (5) All documents relating to an entry in the register to be served on the proprietor of the trade mark shall be served at his address for service.
- (6) All documents to be sent to or served on a registered user or assignee shall be sent to or served on the registered user or assignee of the trade mark at his address for service as recorded with the Registrar.
- (7) Whenever the Registrar is not satisfied as to the effectiveness of service, he may order such further steps to be taken as to him seems meet.

**7. Address for service**

[Section 66]

- (1) An address for service shall in all cases be in the Republic and shall include a street address.
- (2) Where an address for service is in an area where there is no street, the address given shall contain such further indications as the Registrar may deem necessary to find the exact location of such address.
- (3) An address for service may, in addition, contain a post office box number, a facsimile transmission number and an e-mail address.

**8. Alteration of address and address for service**

[Sections 23 and 66 (3)]

- (1) Any person who alters his address or address for service may apply to the Registrar on Form TM2 to record such alteration on the relevant documents and on the register and the Registrar shall act accordingly.
- (2) Any party to any proceedings under the Act who alters his address or address for service shall forthwith-
  - (a) apply to the Registrar on Form TM2 to record such alteration on the notice of opposition or other documents or the register, and the Registrar shall act accordingly; and
  - (b) give notice of such alteration to every other person who is a party to the proceedings.

#### **9. Agents**

[Section 8]

- (1) All communications to the Registrar relating to trade marks or trade mark applications may be signed by and all attendances upon the Registrar may be made by or through an agent practising in the Republic and duly authorised to the satisfaction of the Registrar. In any particular case the Registrar may, if he thinks fit, require the personal signature of an applicant, objector or other person.
- (2) Service upon such agent shall be deemed to be service upon the person so appointing him and all communications directed to be made to such person may be addressed to such agent.
- (3) Where the address of an agent has been used as the address for service in respect of any entry in the register and such agent changes his address, he shall forthwith apply to the registrar on Form TM2 for the form of advertisement of the change of address for publication in the Patent Journal.

#### **10. Unregistrable marks**

[Section 10 (8)-(10)]

- (1) Subject to the provisions of any other law, the Registrar may refuse to accept any application upon which any of the following appear:
  - (a) The words 'patent', 'patented', 'by letters patent', 'registered', 'registered trade mark', 'registered design', 'copyright', 'certified', 'guaranteed' or words to like effect; and
  - (b) the letters '(r)', '(c)' or similar combinations which may be construed to import a reference to registration.
- (2) Where a representation of arms, insignia, a decoration or a flag appears on a mark, the Registrar may call for such justification, including such consent as he may deem necessary as the circumstances of the case may require.

#### **11. Application for registration**

[Section 16]

- (1) An application for a trade mark registration shall be made on Form TM1.
- (2) The application shall be dated and signed by the applicant(s) or his/their duly authorised agent.
- (3) The application shall be in triplicate and a separate and distinct application is required for each class of goods or services and for each separate mark.

- (4) If the application is made by a firm or partnership it may be signed in the name or for and on behalf of the firm or partnership by any one or more members or partners thereof.
- (5) If the application is made by a body corporate it may be signed by any authorised person.

## **12. Convention applications**

[Section 63]

If the applicant claims convention priority under section 63 of the Act, by reason of an application made or deemed to have been made to register the trade mark in a convention country as defined in section 2 of the Act, the applicant shall, within three months of the date of the application in the Republic, lodge with the Registrar a copy of the application in the convention country duly certified, to the satisfaction of the Registrar, by the Trade Marks Office of such country. If such application is in a language other than one of the official languages of the Republic, it shall be accompanied by a translation into one of the official languages of the Republic, verified to the satisfaction of the Registrar.

## **13. Representation of marks**

- (1) Every application for the registration of a trade mark shall contain a representation, suitable for reproduction, affixed to it in the space provided on Form TM1 for this purpose.
- (2) A representation shall not exceed 8,5 cm in width and 10 cm in length.
- (3) Where the trade mark applied for is not a word, letter, numeral or combination thereof (but a mark represented in a special or particular manner) there shall be sent with every application for the registration of the trade mark a representation of the mark annexed to Form TM1 and-
  - (a) two additional unmounted representations of the mark exactly corresponding to the mark affixed to Form TM1; and
  - (b) such additional representations of the mark as the Registrar may deem necessary.
- (4) All representations of the marks shall be of a durable nature and on one side of the paper only. Letters, figures and lines shall be clear and distinct. If, in the opinion of the Registrar, the representations of the mark are not satisfactory, he may at any time require other representations, satisfactory to him, to be substituted before proceeding with the application.
- (5) Where a representation cannot be given in the manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale and in such form as the Registrar may think most convenient.
- (6) The Registrar may also call for a deposit in the office of a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer to it in the register in such manner as he may think fit.

## **14. Translation of languages**

- (1) Where a trade mark or application contains a word or numeral in other than roman characters, there shall be endorsed on Form TM1 a transliteration and/or translation to the satisfaction of the Registrar of each such word or numeral.

- (2) Where a trade mark contains a word in a language other than an official language of the Republic the Registrar may ask for a translation thereof, and if he so requires, such translation shall be endorsed on Form TM1.

**15. Procedure on receipt of application**

- (1) On or after the receipt of any application for the registration of a trade mark, the Registrar shall furnish the applicant with an acknowledgement thereof. Such acknowledgement shall contain the official number and date of the application.
- (2) The Registrar shall after receipt of the application for the registration of the trade mark cause a search to be made amongst registered marks and pending applications for the purpose of ascertaining whether there are on record any marks for goods or services which may conflict with the trade mark forming the subject of the application in terms of section 10.
- (3) If after such search and a consideration of the application the Registrar considers that there is no objection to the mark being registered, he shall accept it absolutely or subject to conditions, modifications or amendments which he shall communicate to the applicant or his agent.
- (4) If after such search and consideration of the application any objections exist, a statement of those objections shall be sent to the applicant, in writing, and unless within three months of the date of the statement the applicant submits arguments, in writing, or applies for a hearing or an extension of time, the application shall be deemed to have been abandoned.
- (5) If the Registrar accepts an application subject to any conditions, modifications or amendments, and the applicant objects to such conditions, modifications or amendments, he shall within three months from the date of the notice of conditional acceptance submit arguments in writing or apply for a hearing or for an extension of time. If he does not do so the application shall be deemed to have been abandoned. If the applicant does not object to such conditions, modifications or amendments, he shall within three months so notify the Registrar, in writing, or apply for an extension of time and, if he fails to do so, the application shall be deemed to have been abandoned.

**16. Application for registration of a trade mark to be used by body corporate to be established**

[Section 19]

An application in terms of section 19 of the Act, shall be supported by an affidavit to the effect that a body corporate is about to be established and that the applicant intends to assign the trade mark to that body corporate with a view to its use by the body corporate in relation to the goods or services in question.

**17. Honest concurrent user and other special circumstance applications**

[Section 14]

An application in terms of the provisions of section 14 (1) of the Act shall be made on Form TM1 accompanied by a statement of case and an affidavit in support of it.

**18. Advertisement of application**

[Section 17]

- (1) Every application for registration of a trade mark shall be advertised once in the Patent Journal by the applicant, in the form and wording required by the Registrar.

- (2) In respect of any other application or notice the provisions of subregulation (1) shall *mutatis mutandis* apply.

**19. Proceedings before the Registrar**

[Sections 21, 24, 26, 27 and 45]

- (1) All proceedings brought before the Registrar in terms of section 21, 24, 26 and 27 of the Act shall be brought on notice of opposition or notice of rectification, as the case may be, supported by an affidavit as to the facts upon which the applicant relies for relief.
- (2) (a) A notice of opposition in terms of section 21 shall be brought on or as near as may be in accordance with Form TM3 of the second schedule.
- (b) A notice of rectification in terms of sections 24, 26 and 27 shall be brought on or as near as may be in accordance with Form TM3 of the second schedule.
- (c) A copy of such notice, and all annexures to it, shall be served upon every interested party.
- (d) In the notice the applicant shall appoint an address for service in terms of regulation 7 (1) at which he will accept notice and service of all documents in such proceedings, and shall set forth a day, not less than one month after service of it on the respondent, on or before which such respondent is required to notify the applicant and the Registrar, in writing, whether he intends to defend such application, and the notice shall further state that if no such notification is given, the application will be set down for hearing on a stated date, being not less than 10 days after expiry of the one-month period referred to above.
- (e) If the respondent does not, on or before the day mentioned for that purpose in such notice, notify the applicant and the Registrar of his intention to defend, the applicant may set the matter on the roll for hearing by giving the Registrar notice of set-down before noon on the court day but one preceding the day upon which the matter is to be heard.
- (f) Any person opposing the grant of an order sought shall-
- (i) within the time stated in the said notice, give the applicant notice in writing on Form TM4 that he intends to oppose the application;
- (ii) appoint an address for service in terms of regulation 7 (1) at which he will accept notice and service of all documents;
- (ii) within two months of notifying the application of his intention to oppose the application, deliver his answering affidavit, if any; and
- (iv) if he intends to raise any question of law only, deliver notice of his intention to do so within the time stated in the preceding subparagraph, setting forth such question.
- (g) Within one month of the service upon him of the affidavit and documents referred to in subregulation (2) (f) (ii) the applicant may deliver a replying affidavit. The Registrar may in his discretion permit the filing of further affidavits.
- (h) Where no answering affidavit, or notice in terms of subregulation 2 (f) (iii) is delivered within the period referred to in subregulation 2 (f) (ii), the applicant may within 10 court days of its expiry apply to the Registrar to

allocate a date for the hearing of the application. Where an answering affidavit is delivered the applicant may apply for such allocation within 10 court days of the delivery of his replying affidavit or, if no replying affidavit is delivered, within 10 court days of the expiry of the period referred to in paragraph (g) and where such notice is delivered the applicant may apply for such allocation within 10 court days after delivery of such notice. If the applicant fails to apply to the Registrar to allocate a date within the appropriate period aforesaid, the respondent may do so immediately upon its expiry. Notice of set-down in writing of the date allocated by the Registrar shall forthwith be given by the applicant or respondent, as the case may be, to the opposite party.

- (i) Where an application cannot properly be decided on affidavit, the Registrar may refer the matter to the Supreme Court or make such order as to him seems meet with a view to ensuring a just and expeditious decision.
- (j) On notice the Registrar may order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client. The Registrar shall not grant the application unless he is satisfied that the applicant will be prejudiced in his case should it not be granted.
- (3) (a) Notwithstanding the foregoing subregulations, an interlocutory or other application incidental to pending proceedings or a pending application, including an application for an extension of time and condonation, may be brought on notice supported by such affidavits as the case may require and be set down at a time assigned by the Registrar.
- (b) If the applicant in such an application wishes to rely on particular facts not apparent from the official record, an affidavit must be filed at the Office at least 10 court days before the hearing. In the event that the applicant does not file an affidavit, it shall be presumed that he intends to rely on those facts which are properly before the Registrar. At any time within the period allowed for the filing of such an affidavit by the applicant, he may give written notification to the other party and to the Registrar that he intends to rely on the facts which are properly before the Registrar.
- (c) After the applicant has filed his affidavit, the other party may file an answering affidavit at least seven court days before the hearing. In the event that the applicant does not file an affidavit in support of his application, the other party may file an affidavit at least seven court days before the hearing, setting out such facts as he may consider relevant.
- (d) At least four court days before the hearing, the applicant may file an affidavit replying to any facts set out in the answering affidavit.
- (e) A copy of an affidavit filed with the Registrar in accordance with the foregoing shall be delivered to the other party to the proceedings at its appointed address for service.
- (f) A notice of set-down shall be served upon every party to whom notice of it is to be given at least 10 court days prior to the hearing and both parties shall pay the prescribed hearing fee on Form TM2 prior to the hearing date.
- (g) Failure to comply with these provisions shall result in the matter being struck off the roll, and an appropriate award of costs shall be made by the Registrar.
- (4) (a) In any opposed proceedings before the Registrar in terms of this regulation which result in a hearing before the Registrar, both parties to the matter

shall file heads of argument at the Office of the Registrar not later than two court days before the date which has been set down for the hearing.

- (b) Such heads of argument shall consist of a concise and succinct statement of the main points (without elaboration) intended to be argued. A list of authorities relied upon in support of each point shall also be supplied.

**20. Non-completion**

[Section 20]

The Registrar shall give notice in writing to the applicant on Form O.1 of the non-completion of the registration of the trade mark.

**21. Entry in the register**

[Section 22 (1)]

- (1) As soon as practicable after the expiration of three months from the date of the advertisement in the Patent Journal of any application, the Registrar shall, subject to the provisions of regulation 52 (1) and 52 (5) and subject to the provisions of section 29 (1) (b) of the Act and the provisions thereto, enter the trade mark in the register and record the date of issue of the certificate of registration.
- (2) There shall be entered in the register particulars of-
  - (a) all applications to register trade marks and all registrations of trade marks with the names and addresses for service of the proprietors and all registered users together with the date of registration, the date of any renewal of the registration and the date of its expiration;
  - (b) disclaimers, and conditions of registrations;
  - (c) endorsements of deeds of security and other endorsements;
  - (d) notifications of assignments, transmissions and attachments;
  - (e) any other matters relating to registered trade marks which are prescribed; and
  - (f) such other particulars as the Registrar may deem necessary.

**22. Associated marks**

[Section 31]

- (1) Where a mark is registered as associated with any other mark or marks, the Registrar shall note in the register in connection with such mark the numbers of the marks with which it is associated and shall also note in the register in connection with each of the associated marks the number of the newly registered mark as being an associated mark with each of them.
- (2) An application by a registered proprietor in terms of section 30 (5) of the Act to the Registrar to dissolve the association between two or more associated trade marks shall be made on Form TM2 and shall include a statement of the grounds of the application. The registration fee for recording such dissolution shall be paid on lodgement.

**23. Certificate of registration**

[Section 29]

Upon the registration of a trade mark the Registrar shall, as required by section 29 (2) of the Act, issue to the applicant a certificate on Form O.2.

**24. Renewal**

[Sections 11 and 37]

- (1) The notice under section 37 (3) of the Act shall be sent by the Registrar not less than six months prior to the expiration of the last registration. The notice shall be on Form O.3.
- (2) If trade marks having the same date of registration and owned by the same proprietor and which were previously registered in different classes fall, for whatever reason, in the same class, such marks shall on renewal be consolidated into one registration having one distinguishing number and shall, for the purposes of these regulations, be deemed to be a single trade mark.
- (3) On renewal, the Registrar shall be required to make any entries or amendments in the register in order to record changes resulting from a revised or replaced classification resulting from whatever reason.

**25. Application for renewal by proprietor**

[Sections 11 and 37]

- (1) An application to the Registrar for the renewal of the registration of a trade mark, including a variation of the class, in terms of section 11 of the Act, shall be made on Form TM5 within the period commencing six months prior to the expiration of the last registration and ending six months after the said expiration.
  - (2) Failure to pay the renewal fee before the expiration of the last registration shall attract an additional fee; and failure to pay within the time limit of regulation 25 (1) shall attract a further additional fee.
26. If the renewal fee has not been paid before the expiry of the period referred to in regulation 25 (1) the Registrar shall advertise the fact forthwith in the Patent Journal. If within one month of such expiration the renewal fee upon Form TM5, together with the additional fees, is received, he may renew the registration without removing the mark from the register.
27. Whenever after the expiry of the said period of one month such fees have not been paid, the Registrar may remove the mark from the register as of the date of the expiration of the last registration, but may upon payment of the renewal fee upon Form TM5, together with the additional fee, restore the mark to the register if satisfied that it is just so to do and upon such conditions as he may think fit to impose.
28. Where the application for the renewal of the trade mark is not made by the registered proprietor, the Registrar, before taking any further steps, may require the applicant to furnish within two months evidence at his authority to make such application and in the absence of such evidence may return the application and treat it as not having been received.
29. Where a trade mark has been removed from the register, the Registrar shall cause to be entered in the register a record of such removal and its cause and shall advertise the fact in the Patent Journal.
- (1) Upon the renewal of the registration, notice on Form TM5 to that effect shall be sent to the registered proprietor at his registered address or at the address given on Form TM5, as the case may be.
  - (2) Thereafter, the renewal shall be advertised forthwith by the Registrar in the Patent Journal.

**31. Assignment or transmission**

*[Sections 39 and 40]*

Where a person becomes entitled by assignment or transmission to a registered trade mark, he may make application to the Registrar on Form TM6 to register his title and if the application is not made to register the assignment or transmission within 12 months of its effective date, a penalty specified in Schedule 1 to these regulations shall be payable in respect of each period of 12 months or portion thereof following the expiration of 12 months from the effective date.

32. An application in terms of regulation 31 shall contain the name and address of the applicant and the name and address of the person claiming to be so entitled, and in the case of a body corporate, the state or country under whose law it is incorporated, together with particulars of the instrument or a copy thereof, if any, under which he claims.
33. Where in the case of an application on Form TM6 the person applying for registration of his title does not claim under any document or instrument which is capable in itself of furnishing proof of his title, he shall, unless the Registrar otherwise directs, with the application, file a statement of case setting out the facts upon which he claims to be the proprietor of the trade mark.
34. The Registrar may call on any person who applies to be registered as proprietor of a registered trade mark for such proof of title as he may require.
35. When the Registrar is satisfied as to the title of the person claiming to be registered, he shall cause him to be registered as proprietor of the trade mark in respect of the relevant goods or services and shall enter in the register his name, address and particulars of the assignment or transmission and the effective date of assignment.
36. Where pursuant to an application under regulation 31 and as the result of a division and separation of the goods or services or a division and separation of places or markets, different persons become registered separately under the same official number as subsequent proprietors of a trade mark, each of the resulting separate registrations in the name of those different persons shall be deemed to be a separate registration for the purposes of the Act and each such registration shall be given a distinguishing number by the Registrar.
37. Any person who desires to obtain the Registrar's certificate under section 39 (6) of the Act shall send to the Registrar with his application on Form TM2 a statement of case in duplicate setting out the circumstances and a copy of any instrument or proposed instrument effecting the assignment or transmission. The Registrar may call for any evidence that he may consider necessary and the statement of case, if required, shall be verified by an affidavit. The Registrar may hear the applicant and any other interested person. The Registrar shall consider the matter and issue a certificate thereon or a notification in writing of disapproval thereof, as the case may be. The Registrar shall bind and seal a copy of the statement of case to the certificate or notification.

**38. Substitution of applicants**

*[Sections 39 or 46 (2)]*

- (1) Notwithstanding anything contained in these regulations and subject to section 39 (5) of the Act, any person may apply on Form TM6 for a substitution of applicant in respect of a trade mark which is the subject of a pending application for registration; and the Registrar may, if satisfied that there is good reason to grant the application, approve of the substitution subject to such conditions as he deems necessary.

- (2) The application to substitute a body corporate in terms of section 46 (2) of the Act for another applicant in the case of a pending application shall likewise be made on Form TM6 and dealt with in terms of subregulation (1) of this regulation.

**39. Registered users**

[Section 38]

An application to the Registrar for the registration under section 38 (6) of the Act of a person as a registered user of a registered trade mark, shall be made by the registered proprietor on Form TM7 and shall be accompanied by-

- (a) an affidavit executed by or on behalf of the proprietor confirming the particulars set out in Form TM7; or
  - (b) a certified copy of the licence agreement regulating the use of the trade mark and the relationship between the parties.
40. The date of an entry of a registered user in the register shall be the date on which the application for registration as a registered user was made. In addition to the address of the registered user, the application shall include the address for service of the registered user which may be the same, or different to, that of the registered proprietor. A notification, in writing, of the registration of a registered user shall be sent to the registered proprietor of the trade mark, and shall be inserted in the Patent Journal.
41. An application in terms of section 38 (8) (a) shall be made on Form TM7 and shall be accompanied by a statement of the grounds on which it is made. If the application is made by the registered proprietor a copy of the Form TM7 and the supporting statement shall be sent to any registered user recorded against the trade mark and, if the application is made by a registered user, copies shall likewise be sent to the registered proprietor and to any other registered user.
42. An application by the registered proprietor in terms of section 38 (8) (b) to maintain the entry of registered user on assignment shall be made on Form TM 7 and shall be accompanied by-
- (a) an affidavit confirming the facts set out in the Form TM7; or
  - (b) a certified copy of the licence agreement or agreements between the parties which regulates their relationship.

**43. Attachment and hypothecation**

[Section 41]

- (1) An attachment order in respect of a registered trade mark shall be made on Form TM6 and served on the Registrar for endorsement in the register, and copies of the order shall be served on the registered proprietor at his address for service. Proof of service on the registered proprietor shall be furnished to the satisfaction of the Registrar
- (2) An endorsement of attachment may be removed from the register on a request made to the Registrar on Form TM6, accompanied by proof to the satisfaction of the Registrar that the attachment may so be removed. Copies of the order and Form TM6 shall be served on all interested parties appearing from the register.
- (3) The hypothecation of a registered trade mark by a deed of security shall be endorsed in the register by application on Form TM6, accompanied by the deed of security. The application shall be served on the registered proprietor and any other person recorded in the register as having an interest in the trade mark, and proof of service shall be furnished to the satisfaction of the Registrar.

- (4) The endorsement of the hypothecation may be removed from the register on application to the Registrar on Form TM6, accompanied by such proof of the termination of the hypothecation as the Registrar may require. Copies of the Form TM6 and said proof shall be served on all interested parties appearing from the register.

**44. Amendment of register of application**

[Section 16 (5) or 23 or 46 (1)]

- (1) Applications under section 16 (5) or 46 (1) or 23 of the Act, as the case may be, to the Registrar may be made by the applicant, or the registered proprietor or registered user or, where the registered proprietor or registered user is a company in liquidation, by the liquidator and in other cases by such person as the Registrar may decide to be entitled to act in the name of the registered proprietor or the registered user. The application may be made on Form TM2.
- (2) Where such application is made, the Registrar may require any evidence on affidavit or sworn declaration or otherwise as he may think fit as to the circumstances in which the application is made.
- (3) An application to the Registrar under section 23 of the Act for the correcting of any entry in the register shall, if so required by the Registrar, be accompanied by a statement of case setting out fully the nature of the applicant's interest, the facts upon which he based his case and the relief which he seeks.
- (4) Where application is made to enter a disclaimer or memorandum relating to a trade mark, the Registrar, before deciding upon such application, may direct that the application be advertised once in the Patent Journal in order to enable any person desiring so to do to object thereto. The provisions of section 21 and the regulations relating thereto shall mutatis mutandis apply.

**45. Alteration of mark**

[Section 25]

Where a person desires to apply under section 25 of the Act to alter or add to a trade mark, he shall make his application, in writing, on Form TM2 and shall furnish the Registrar with two copies of the mark as it will appear when altered.

46. Before proceeding with such application, the Registrar shall direct that the application be advertised once in the Patent Journal in order to enable any person desiring so to do to object thereto. The provisions of section 21 and the regulations relating thereto shall mutatis mutandis apply.

**47. Search**

The Registrar, if requested so to do in writing upon form TM2, shall cause a search to be made in any class to ascertain whether any marks are on record at the date of such search which may conflict with any mark in terms of section 1 sent to him by the person requesting such search and may cause that person to be informed of the result of such search.

**48. Caveat**

- (1) (a) Any person may apply to the Registrar by lodging Form TM2 for notice to be given by the Registrar of any proceedings relating to the publication of the acceptance of a trade mark application, the registration of a trade mark or of any application for the marking of any entry in the register of trade marks which take place from the date of lodgement of Form TM2 until the date of issue of the certificate of registration of the trade mark.

- (b) Any person may apply to the Registrar by lodging Form TM 2 for notice to be given by the Registrar of any proceedings relating to a registered trade mark or of any application for the making of an entry in the register of trade mark in respect of a registered trade mark which take place within 12 months from the date of lodgement of Form TM2.
- (2) As soon as may be practicable after any such procedures are taken and in the case of an application for making an entry, before such entry is made, the Registrar shall give notice of any such proceedings to such person.

**49. Inspection of documents**

Subject to the provisions of section 48 (7) of the repealed Act, all documents filed with the Registrar pursuant to the Act, including all correspondence and notifications to or from the Registrar shall, subject to payment of the prescribed fees, be open to inspection an interested person during office hours. Any interested person may request the Registrar to furnish copies of any such documents subject to the payment of the prescribed fee.

**50. Office hours**

*[Section 22 (4)]*

- (1) From Mondays to Fridays the Office will be open to the public from 08:00 to 15:00, except on the following days:
  - (a) All days which are public holidays in terms of section 1 of the Public Holidays Act or which have been proclaimed public holidays in terms of section 2 of that Act; and
  - (b) days which may from time to time be notified by the Registrar by displaying a notice in a conspicuous place at the Office.
- (2) Whenever the last day fixed by the Act or by these regulations for doing anything shall fall on a day when the Office is not open to the public it shall be lawful to do any such thing on the day next following such excluded day or days if two or more of them occur consecutively.

**51. Discretionary powers**

*[Section 47]*

Where under these regulations any person is required to do any act or thing or to sign any documents or to make any affidavit on behalf of himself or of any body corporate or any document or evidence is required to be produced to or left with the Registrar or at the Office and it is shown to the satisfaction of the Registrar that for any reasonable cause such person is unable to do such act or thing or to sign such document or make such affidavit or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Registrar and upon the production of such other evidence and subject to such terms as he may think fit, to dispense with any such act or thing, document, affidavit or evidence.

**52. Extension of time and condonation**

*[Section 45 (3)]*

- (1) Any person interested in opposing a trade mark application may request the Registrar, on written notice before the expiry of the term in which the enter opposition to the application in terms of section 21, not to issue the certificate of registration for a period of three months from the date of expiry of the aforementioned term, and the Registrar shall not do so.

- (2) In the absence of an agreement between the parties the Registrar may, upon application on notice in terms of regulation 19 (4) and on good cause shown, make an order extending or abridging any time prescribed by these regulations or by an order of the Registrar or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to him seems meet.
- (3) Any such extension may be ordered although the application is not made until after the expiry of the time prescribed or fixed, and the Registrar, when ordering any such extension, may make such order as to the recalling, varying or cancelling of the results flow from the terms of any order or from these regulations.
- (4) The registrar may, on good cause shown, condone any non-compliance with these regulations.
- (5) Where an extension has been agreed to between the parties, prior to the filing of opposition, the Registrar shall be informed by the party seeking the extension of the extension and the Registrar shall not issue the certificate of registration within the agreed extended period.

### **53. Discovery, inspection and production of documents**

- (1) Any party to any proceedings before the Registrar may, at any time before the hearing of the proceedings, deliver a notice to any party in whose affidavits or sworn declarations reference is made to any document or tape recording to produce such document or tape recording for his inspection and to permit him to make a copy or transcription. Any party failing to comply with such notice shall not, save with the leave of the Registrar, use such document or tape recording in such proceedings: Provided that any other party may use such document or tape recording.
- (2) The provisions of the rules governing procedure in the Transvaal Provincial Division of the Supreme Court relating to discovery shall mutatis mutandis apply, in so far as the Registrar may direct, to opposed proceedings before the Registrar.

### **54. Registrar's written reasons and appeals**

- (1) When any person objects to any order or decision of the Registrar he may apply on Form TM2, within three months of the date of the Registrar's order or decision, or such further time as the Registrar may allow, requiring the Registrar to state in writing the grounds of his decision and the date used by him in arriving at it. The date of such statements shall be deemed to be the date of the Registrar's order or decision for the purpose of appeal.
- (2) All written reasons for decisions and judgements of the Registrar shall be published in the Patent Journal within three months from the date of signing by the Registrar if the Registrar so directs.

### **55. Applications to and orders of the court**

- (1) Where an order has been made by the court in any matter under the Act, the person in whose favour such order has been made or such one of them, if more than one, as the Registrar may direct, shall forthwith leave at the office a copy of such order. Thereupon, the register, if necessary, shall be rectified or altered by the Registrar.

- (2) Whenever an order is made by the court under the Act, the Registrar may, if he thinks that such order should be made public, publish it in the Patent Journal at the expense of the person in whose favour such order has been made.
- (3) Any addition to or alteration or correction of the register shall be advertised by the Registrar (save where otherwise expressly provided) once in the Patent Journal.

#### **56. Certification marks**

[Section 42]

- (1) An application for the registration of a certification mark under the provisions of section 42 of the Act shall be made on Form TM1 and the provisions of regulations 11 to 14 shall mutatis mutandis apply to such application.
- (2) In further proceedings relating to an application for the registration of a certification mark the provisions of regulation 15 shall mutatis mutandis apply.
- (3) The application for the registration of a certification mark shall be accompanied by a statement by the applicant that he does not carry on a trade in the goods or services in respect of which registration is sought and by rules governing the use of the mark. The rules shall specify the conditions for the use of the mark, the circumstances in which the proprietor is to certify the goods or services and in respect of which characteristics of the goods or services or other aspects referred to in section 42 (1) the applicant will certify the goods or services.
- (4) The Registrar shall consider whether the requirements mentioned in this regulation have been complied with. If, after such consideration, the Registrar accepts the application for the mark he shall notify the applicant accordingly, in writing, and thereafter the application shall mutatis mutandis proceed as an ordinary application. If it appears to the Registrar that those requirements are not met, he shall inform the applicant accordingly, in writing, and thereafter the provisions of regulation 15 (4) shall mutatis mutandis apply.
- (5) An application for the amendment of the rules of a registered certification mark or the rules accompanying an application for the registration of a certification mark shall be made on Form TM2. The amendment sought shall be indicated by showing in square brackets all words that are to be omitted; and by underlining all words that are to be added. The applicant shall file a copy of the amended rules within one month of the approval of the rules by the Registrar. If the applicant fails to file a copy of the amended rules within the time stipulated, the application for amendment shall be deemed to have been abandoned.

#### **57. Collective marks**

[Section 43]

- (1) An application for the registration of a collective mark under the provisions of section 43 of the Act shall be made on Form TM1 and the provisions of regulations 11 to 14 shall mutatis mutandis apply to such application.
- (2) In further proceedings relating to an application for the registration of a collective mark the provisions of regulation 15 shall mutatis mutandis apply.
- (3) An application for the registration of a collective mark shall be accompanied by rules governing the use of the mark. The rules shall specify the persons authorised to use the mark, the conditions of membership of the association and, when applicable, the conditions of the use of the mark, including any sanctions against misuse.
- (4) The Registrar shall consider whether the requirements mentioned in this regulation have been complied with. If, after such consideration, the Registrar

accepts the application for the mark he shall notify the applicant accordingly, in writing, and thereafter the application shall mutatis mutandis proceed as an ordinary application. If it appears to the Registrar that those requirements are not met, he shall inform the applicant accordingly, in writing, and thereafter the provisions of regulation 15 (4) shall mutatis mutandis apply.

- (5) An application for the amendment of the rules of a registered collective mark or the rules accompanying an application for the registration of a collective mark shall be made on Form TM2. The amendment sought shall be indicated by showing in square brackets all words that are to be omitted; and by underlining all words that are to be added. A copy of the application shall be sent to all persons authorised to use the mark. The applicant shall file a copy of the amended rules within one month of the approval of the rules by the Registrar. If the applicant fails to file the copy of the amended rules within the time stipulated, the application for amendment shall be deemed to have been abandoned.

## **58. Certificates**

[Section 22]

- (1) The Registrar, when required otherwise than under section 29 of the Act to give a certificate as to any entry, matter or thing which he is authorised by the Act or any of these regulations to make or do, may
- (2) The following certificates shall be issued in respect of matters set out in the title to the forms enumerated:

Certificate of Assignment: Form O.4;  
Certificate of Registration of Registered User: Form O.5;  
Certificate of Change of Name: Form O.6;  
Certificate of Extract from Register: Form O.7,

and the certificates may be amended as directed by the Registrar to meet any contingency.

## **59. Authentication of affidavits executed outside the Republic for use within the Republic**

- (1) Any affidavit executed in any place outside the Republic shall be deemed to be sufficiently authenticated for the purposes of use in the Republic if it is duly authenticated at such foreign place by the signature and seal of office of a notary public.
- (2) Notwithstanding anything in this regulation contained, the Registrar may accept as sufficiently authenticated any affidavit which is shown to the satisfaction of the Registrar to have been actually signed by the person purporting to have signed such affidavit.
- (3) No document required to be filed with the Registrar in terms of these regulations shall be required to be authenticated unless the Registrar specifically otherwise directs in any particular instance.

60. These regulations shall be called the Trade Mark Regulations, 1995, and shall come into operation on 1 May 1995.

## Schedule 1

### FEES

The following fees shall be paid in connection with applications, registrations and other matters under the Act. Such fees must in all cases be paid before or at the time of doing the matter in respect of which they are to be paid:

Item No.	Description	Corresponding Forms	Fees
1.	Application for registration of-		R
	(i) a trade mark for a specification of goods/services included in one class (sections 9, 14, 16 and 63 - regulation 11)	TM1	590,00
	(ii) a honest concurrent user for a specification of goods/services included in one class (section 14 - regulation 17)	TM1	310,00
	(iii) a certification mark for a specification of goods/services included in one class (section 42 - regulation 56)	TM1	310,00
	(iv) a collective mark for a specification of goods/services included in one class (section 43 - regulation 57)	TM1	310,00
2.	Applications, notifications or request to the Registrar:		
	(a) Request for advertisement [section 8 - regulation 9 (3)]	TM2	90,00
	(b) Request for statement of a decision [section 16 (4) - regulation 54 (1)]	TM2	363,00
	(c) Application to dissolve association between a registered trade mark and another registered trade mark [section 30 (5) - regulation 22 (2)] for each entry	TM2	48,00
	(d) Application for alteration of address or address for service [sections 23, 46 (1) or 66 (3) - regulation 8] for each entry	TM2	19,00
	(e) Applicant for correction of clerical error or for permission to amend application or document [sections 16 (5), 23 or 46 (1) - regulation 44 and 56 (5)] for each mark	TM2	19,00
	(f) Application to enter change of name or description of applicant, registered proprietor or registered user (section 23 - regulation 44) for each mark	TM2	19,00
	(g) Application to cancel entry on register (section 23 - regulation 44) for each mark	TM2	19,00

	(h) Request to strike out goods/services (section 23 - regulation 44) for each mark	TM2	19,00
	(i) Request to enter disclaimer or memorandum (section 23 - regulation 44) for each mark	TM2	26,00
	(j) Application to add or after a trade mark [section 25 (1) - regulation 45] for each mark registered	TM2	100,00
	(k) Request for search (regulation 47) for each mark per class	TM2	190,00
	(l) Notification of application to Court [section 55 - regulation 3 (2)]	-	-
	(m) Request for information (CAVEAT) as to future proceedings [regulation 48 (1)] for each mark	TM2	100,00
	(n) Application for the certificate of the Registrar with reference to the proposed assignment of a trade mark [section 39 (6) - regulation 37]	TM2	48,00
	(o) Notice of payment of hearing fee [regulation 19 (3) (f)]	TM2	261,00
	(p) Application for certificate [section 22 (5) - regulation 58 (1)]	TM2	34,00
	(q) Any other applications, notifications or request not provided for [regulation 3 (2)]	TM2	26,00
3.	Notice of opposition/rectification (sections 21, 24, 26 and 27 - regulation 19)	TM3	260,00
4.	Notice of intention to defend (sections 21, 24, 26 and 27 - regulation 19)	TM4	48,00
5.	Renewal of registration (sections 11 and 37 - regulations 25, 26 and 27):		
	(i) For an ordinary registration	TM5	260,00
	(ii) For a honest concurrent user registration	TM5	260,00
	(iii) For a certification mark	TM5	260,00
	(iv) For a collective mark	TM5	260,00
	Additional fee within one month of the date of expiration		48,00
	Additional fee for restoration of trade mark removed for non-payment of renewal fees		145,00
6.	Application to record a transaction affecting the		

	rights in a trade mark assignment, transmission, hypothecation or attachment (sections 39, 40, 41 and 46 - regulations 31, 33, 38 and 43):		
	For first mark	TM6	150,00
	For each additional mark	TM6	26,00
	Penalties for late registration of cession or transmission of a registered mark - for each period of 12 months or portion thereof	TM6	48,00
7.	Application for-		
	(i) registration of registered user [section 38 (6) - regulation 39]:		
	For the first mark	TM7	150,00
	For each additional mark	TM7	26,00
	(ii) variation of the registration of a registered user entry (section 38 (8) (a) - regulation 41	TM7	60,00
	(iii) cancellation of entry of a registered user [section 38 (8) (a) - regulation 41]	TM7	60,00
	(iv) maintenance of a registered user entry [section 38 (8) (b) - regulation 42]	TM7	60,00
8.	For leave to make copies of documents in respect of each application or registered mark		1,00
9.	For inspecting register, file or document		4,00
10.	For collating documents for certification - for every 100 words or part thereof		4,00
11.	For photocopy of any document, per page (regulation 49)		1,00
12.	Certification of extracts from register or documents - (per document)		24,00
13.	Upon each entry in the register of a mark or a note that the mark is associated with a newly registered mark		5,00

**Schedule 2  
TRADE MARK FORMS**

**Form 0.1**

**NOTICE OF NON-COMPLETION OF REGISTRATION**  
(Section 20 – Regulation 20)

The Registrar has to call your attention to section 20 of the Trade Marks Act, 1993 and to regulation of the Trade Marks regulations made thereunder.

Application for trade mark.....  
No.....  
was made on the.....  
day of.....20.....

Registration has not been completed by reason of your default. Unless it is completed within two months from the date hereof, the application will be treated as abandoned.

Dated....., this..... day of..... 20.....

.....  
Registrar of Trade Marks

**CERTIFICATE OF REGISTRATION**

THE TRADE MARKS ACT, 1993

No.

I hereby certify, in terms of section 29 (2) of the Act, that subject to the terms and conditions specified therein the under-mentioned trade mark has been registered in the Trade Marks Office.

Dated....., this..... day of..... 20.....

.....  
Registrar of Trade Marks

**NOTICE BEFORE REMOVAL OF TRADE MARK FROM THE REGISTER UNDER SECTION 37 (3)**

Your Reference.....  
Our Reference.....  
Enquiries.....

Sir/Gentlemen,

You are hereby notified that, under the provisions of section 37 (3) of the Act and regulation 24, your Trade Mark..... No.....registered in Class ....., will be removed from trade marks register unless the prescribed fee of R..... (payable on Form TM 5) is received at this office on or before the..... on which date this existing registration will expire.

Yours faithfully,

Dated....., this..... day of..... 20.....

.....  
Registrar of Trade Marks

Note.—The full renewal fee is payable in respect of each separate class.

**CERTIFICATE OF ASSIGNMENT  
THE TRADE MARKS ACT, 1993**

I hereby certify, in terms of section 40 of the Act and regulation 35, that the name of the subsequent proprietor of Trade Mark:

No.

Has been entered in my register to read as follows:

Dated....., this..... day of..... 20.....

.....  
Registrar of Trade Marks

**CERTIFICATE OF REGISTRATION OF REGISTERED USER**  
(Pursuant to section 38 (7) and Regulation 40)

I hereby certify that the following entry appears in my register in relation to the under-mentioned Trade Mark:

No.

Dated....., this..... day of..... 20.....

.....  
Registrar of Trade Marks

**CERTIFICATE OF REGISTRATION OF CHANGE OF NAME**  
(Pursuant to section 23)

This is to certify that the name of the proprietor/registered user of Trade Mark:

No.

has been altered in my register to read

Dated....., this..... day of..... 20.....

.....  
Registrar of Trade Marks

**CERTIFICATE**

THE TRADE MARKS ACT, 1993  
[Pursuant to Regulation 58 (1)]

No.
-----

I hereby certify that the following extract from my register in relation to the abovementioned Trade Mark number is correct:

Dated....., this..... day of..... 20.....

.....  
Registrar of Trade Marks

**Form TM 1**

(To be lodged in triplicate)  
 REPUBLIC OF SOUTH AFRICA  
 TRADE MARKS ACT, 1993

Fees payable in terms of Schedule 1 to the Regulations
<b>OFFICIAL DATE STAMP</b>
The one copy will be returned to the applicant's address for service as proof of lodging but is not valid unless endorsed with the official stamp.

**APPLICATION FOR THE REGISTRATION OF A TRADE MARK**

Sections 9, 14, 16, 42, 43 and 63 –  
 Regulations 11, 56 and 57

APPLICATION FOR REGISTRATION OF THE ACCOMPANYING TRADE MARK IS  
 HEREBY MADE BY THE UNDERMENTIONED APPLICANT

For office use only		
21	Application Number	
22	Filing Date	

Applicant's or agent's reference	
GPA number	

NA	Nature (O=Ordinary, CE=Certification, CO=Collective, CU=Honest Concurrent User)		
73	Applicant	74	Address for service
57	Specification of goods / services	51	International Classification
58	Endorsement(s)		
Convention priority claimed	31	Number	32
			Date
			33
			Country
54	Representation of trade mark	AS	Association No. (if applicable)
<p>If trade mark is a word, letter, numeral or combination, insert in inner block</p> <div style="border: 1px dashed black; width: 150px; height: 20px; margin: 10px auto;"></div> <p>If trade mark is represented in a special or particular manner, affix representation in outer block (Maximum size 8.5 cm width and 10 cm length)</p>			

The applicant claims to be the proprietor of the accompanying trade mark which is proposed to be or is being used in respect of the aforementioned specification of goods/ services.

Dated this.....day of ..... 20.....

.....  
 Signature of applicant or authorised agent

**Form TM 2**

REPUBLIC OF SOUTH AFRICA

TRADE MARKS ACT, 1993

**APPLICATION, NOTIFICATION OR  
REQUEST TO THE REGISTRAR**

Section 69 (2) – Regulation 3

Fees payable in terms of Schedule 1 to  
the Regulations

OFFICIAL DATE STAMP

21	Application/Registration No.(1) (3)	54	Trade Mark	51	Class
Full name of applicant/registered proprietor/registered user (1)					
In terms of section..... of the Act and/or regulation..... of the Trade Mark Regulations, the applicant/registered proprietor/registered user (1) hereby requests/gives notice of/applies for the following:					
The entry at present standing in the register is (where applicable)					
Reasons (if any)					
Documents, if any, lodged in support (2)					
Address for service					

Dated at....., this .....day of ..... 20.....

.....

Signature of applicant or authorised agent

To the Registrar and to:

(Copies, if so required, must be served upon all interested persons and proof of service to the satisfaction of the Registrar must be furnished.)

- (1): Delete words not applicable.
- (2): Any document in support should be annexed to this form.
- (3): Additional numbers may be given in a signed schedule attached to this form.

**Form TM 3**

REPUBLIC OF SOUTH AFRICA  
 TRADE MARKS ACT, 1993

Fees payable in terms of Schedule  
 1 to the Regulations

OFFICIAL DATE STAMP

**NOTICE OF OPPOSITION/  
 RECTIFICATION (1)**  
 Section 21, 24, 26 and 27 – Regulation 19

21	Application/Registration No.(1) (3)	54	Trade Mark	51	Class
Full name of applicant (opponent or applicant for rectification) (1)					
Full name of respondent (trade mark applicant or proprietor) (1)					
Nature of proceedings		Section:		Regulation:	
Documents lodged in support (2)					
Address for service					
<p>TAKE NOTICE THAT the applicant seeks an order:</p> <p>(a).....</p> <p>(b).....</p> <p>(c).....</p> <p>(here set forth the form of order sought and the section (5) of the Act relied upon) and that the accompanying affidavit of..... will be used in support thereof.</p> <p>TAKE NOTICE FURTHER that the applicant has appointed.....</p> <p>.....</p> <p>(here set forth an address referred to in regulation 7 (1) at which he will accept notice and service of all process in this proceedings).</p> <p>TAKE NOTICE FURTHER that if you intend opposing this application you are required—</p> <p>Section 37 to notify the applicant's attorney in writing on or before the.....</p> <p>Section 37 and within two months after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any. You are further required to appoint on such notification an address referred to in regulation 7 (1) at which you will accept notice and service of all documents in the proceedings.</p> <p>If no such notice of intention to oppose be given, the application will be made on the.....at..... [time]</p>					

Dated at....., this ..... day of.....20.....

.....  
 Signature of applicant (opponent or applicant for rectification) or authorised agent

TO:	The Registrar Trade Marks Office PRETORIA
AND TO: (Name and address of proprietor of trade mark and other interested persons)	

- (1): Delete words not applicable.
- (2): Any document in support should be annexed to this form.
- (3): Additional numbers may be given in a signed schedule attached to this form.

**Form TM 4**

REPUBLIC OF SOUTH AFRICA  
 TRADE MARKS ACT, 1993

**NOTICE OF INTENTION TO DEFEND**  
 Section 21, 24, 26 and 27 – Regulation 19

Fees payable in terms of Schedule 1 to the Regulations

OFFICIAL DATE STAMP

21	Application/Registration No.(1)	54	Trade Mark	51	Class
Full name of applicant (opponent or applicant for rectification) (1)					
Full name of respondent (trade mark applicant or proprietor) (1)					
Nature of proceedings		Section:		Regulation:	
Address for service					

Dated at....., this ..... day of.....20.....

.....  
 Signature of applicant (opponent or applicant for rectification)  
 or authorised agent

To the Registrar and to:  
 (Copies, if so required, must be served upon all interested persons and proof of service to the satisfaction of the Registrar must be furnished.)

(1): Delete words not applicable.

**Form TM 5**

REPUBLIC OF SOUTH AFRICA  
TRADE MARKS ACT, 1993

**PAYMENT (including additional fee)  
AND CERTIFICATE OF RENEWAL /  
RESTORATION**

Section 37 – Regulations 25, 26, 27 and 30(1)

Fees payable in terms of Schedule 1 to the Regulations. The full renewal fee is payable in respect of each separate class  OFFICIAL DATE STAMP
The duplicate will be returned to the applicant's address for service as proof of renewal and is not valid unless endorsed with the official stamp.

21	Registration No.(3)	54	Trade Mark	51	Class
Full name and Address Proprietor					
Date of expiration:					
Address for Service					

I/We hereby transmit the undermentioned prescribed renewal fees marked

- 1. The amount of R..... being the renewal fee in respect of the abovementioned trade mark.
- 2. The amount of R..... being the additional fee payable within one month of the date of expiration.
- 3. The amount of R..... being the additional fee payable for the restoration of the abovementioned trade mark removed through the non-payment of the renewal fee.

Dated at....., this ..... day of.....20.....

.....  
Signature of respondent/registered proprietor or authorised agent

**FOR OFFICE USE ONLY**

I hereby certify in terms of section 37 of the Act that the abovementioned trade mark has been renewed in the Trade Marks Office for a period of 10 years from the due date.

Signed this.....day of..... 20.....

.....  
Registrar of Trade Marks

**Form TM 6**

REPUBLIC OF SOUTH AFRICA

TRADE MARKS ACT, 1993

Fees payable in terms of  
Schedule 1 to the Regulations

**APPLICATION TO RECORD A TRANSACTION  
AFFECTING THE RIGHTS IN A TRADE MARK –  
ASSIGNMENT, TRANSMISSION, HYPOTHECATION  
OR ATTACHMENT**

OFFICIAL DATE STAMP

Sections 39 (5), 40, 41 or 46 – Regulations 31, 32, 33, 36, 38 and 43

21	Registration No.(3)	54	Trade Mark	51	Class
Full name of existing applicant/proprietor (assignor) and business address (1)					
Full name of proposed applicant/assignee and business address (1)					
Section of Act under which application is made	Section 39 (5)	Section 40	Section 41	Section 46	
Effective date					
Reasons for application					
Documents lodged in support of this application (2)					
Address for Service					

Dated at....., this ..... day of.....20.....

.....  
Signature of applicant or authorised agent

- (1): Delete words not applicable.
- (2): Any document in support should be annexed to this form.
- (3): Additional numbers may be given in a signed schedule attached to this form.

**Form TM 7**

REPUBLIC OF SOUTH AFRICA  
TRADE MARKS ACT, 1993

Fees payable in terms of Schedule 1 to the Regulations

OFFICIAL DATE STAMP

**APPLICATION FOR REGISTRATION, VARIATION, CANCELLATION OR MAINTENANCE OF A REGISTERED USER**

Section 38 – Regulations 39, 41 and 42

The Registration / Variation / Cancellation / Maintenance (1) of a Registered User is hereby requested by the under-mentioned.

21	Registration No.(3)	54	Trade Mark	51	Class
Full name and address of registered proprietor					
Full name and address of proposed registered user/registered user (1)					
Full name and address of applicant for registration/variation/cancellation/maintenance (1)					
Relationship, existing or proposed, between the proprietor and the proposed registered user (if applicable)					
Goods or services in respect of which the person is to be registered as a registered user (if applicable)					
Documents lodged in support of this application (2)					
Address for Service					

Dated at....., this ..... day of.....20.....

.....  
Signature of applicant/registered proprietor and/or proposed registered user or authorised agent

Note: (i) Application for the registration of a registered user shall be accompanied by an affidavit executed by or on behalf of the proprietor confirming the above particulars or a certified copy of the licence agreement.

(ii) Application for the variation or cancellation of a registered user shall be accompanied by a statement of grounds on which it is made.

(iii) Application for the maintenance of the registered user shall be accompanied by an affidavit or a certified copy of the licence agreement between the parties.

- (1): Delete words not applicable.
- (2): Any document in support should be annexed to this form.
- (3): Additional numbers may be given in a signed schedule attached to this form.

**Schedule 3**  
**LIST OF CLASSES OF GOODS AND SERVICES**  
[Schedule 3 substituted by GenN 211 of 15 February 2002]  
Nice Classification: 7th Edition

**GOODS**

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.

Class 2

Paints, vanishes, 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.

Class 3

Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

Class 4

Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

Class 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.

Class 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.

Class 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.

Class 8

Hand tools and implements (hand operated); cutlery; side arms; razors.

Class 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.

Class 10

Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopaedic articles; suture materials.

Class 11

Apparatus for lighting, heating, steam generating, cooking, refrigerating, rying, ventilating, water supply and sanitary purposes.

Class 12

Vehicles; apparatus for locomotion by land, air or water.

Class 13

Firearms; ammunition and projectiles; explosives; fireworks.

Class 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.

Class 15

Musical instruments.

Class 16

Papers, 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.

Class 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.

Class 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.

Class 19

Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

Class 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.

#### Class 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; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

#### Class 22

Ropes, strings, nets, tents, awnings, tarpaulins, sail, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

#### Class 23

Yarns and threads, for textile use.

#### Class 24

Textiles and textile goods, not included in other classes; bed and table covers.

#### Class 25

Clothing, footwear, headgear.

#### Class 26

Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

#### Class 27

Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).

#### Class 28

Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

#### Class 29

Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, Jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

#### Class 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.

#### Class 31

Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.

Class 32

Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

Class 33

Alcoholic beverages (except beers).

Class 34

Tobacco; smokers' articles; matches.

## SERVICES

Class 35

Advertising; business management; business administration; office functions; offering for sale and the sale of goods in the retail and wholesale trade.

Class 36

Insurance, financial affairs; monetary affairs; real estate affairs.

Class 37

Building construction; repair; installation services.

Class 38

Telecommunications.

Class 39

Transport; packaging and storage of goods; travel arrangements.

Class 40

Treatment of materials.

Class 41

Education; providing of training; entertainment, sporting and cultural activities.

Class 42

Scientific and technological services and research and design relating thereto;  
industrial analysis and research services;  
design and development of computer hardware and software;  
legal services.

Class 43

Services for providing food and drink;  
temporary accommodation.

Class 44

Medical services;  
veterinary services;  
hygienic and beauty care for human beings or animals;

agriculture, horticulture and forestry services.  
Class 45

Personal and social services rendered by others to meet the needs of individuals;  
security services for the protection of property and individuals.