

## TRADE MARKS ORDINANCE,

No. 35 OF 1938.

AN ORDINANCE TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE MARKS INCLUDING TRADE MARKS REGISTERED ABROAD.

BE IT ENACTED by the High Commissioner for Palestine, with the advice of the Advisory Council thereof :—

- Short title.           1. This Ordinance may be cited as the Trade Marks Ordinance, 1938.
- Interpretation.       2. In this Ordinance, unless the context otherwise requires :—  
“register” means the register prescribed by section 3;  
“registrar” means the registrar appointed under section 3;  
“trade mark” means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale;  
“His Majesty’s Dominions” includes the British Protectorates and Protected States and any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty.
- Register of trade marks.   3. There shall be kept for the purpose of this Ordinance a record called the register of trade marks wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of a registrar appointed by the High Commissioner.
- Incorporation of existing register.   4. The register of trade marks existing at the date of the commencement of this Ordinance, shall be incorporated with and form part of the register. Subject to the provisions of section 30 of this Ordinance, the validity of the original entry of any trade mark upon the register so incorporated shall be determined in accordance with the Ordinance in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Ordinance.
- Inspection of and extract from register.   5. The register kept under this Ordinance shall at all convenient times be open to inspection by the public subject to such regulations as may be prescribed, and certified copies of any entry

in such register shall be given to any person requiring the same on payment of the prescribed fee.

6. A person desiring to have the exclusive use of a trade mark in order to distinguish goods of his own production, manufacture, working, selection, certification or which he deals with or offers for sale, or intends to deal with or offer for sale, may apply for registration in accordance with the provisions of this Ordinance.

Application for registration.

7.—(1) Trade marks capable of registration must consist of characters, devices or marks or combinations thereof which have a distinctive character.

Marks capable of registration as trade marks.

(2) For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade marks from those of other persons.

(3) In determining whether a trade mark is so adapted, the registrar or the court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for goods with respect to which it is registered or proposed to be registered.

(4) A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by the registrar or court having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

(5) A trade mark must be registered in respect of particular goods or classes of goods.

(6) Any question arising as to the class within which any goods fall shall be determined by the registrar, whose decision shall be final.

8. The following marks are not capable of registration as trade marks :—

Marks not capable of registration as trade marks.

- (a) public armorial bearings, crests, insignia, or decorations of Palestine or of His Majesty's Dominions or Foreign States or nations, unless authorised by the competent authorities;
- (b) official hall marks or signs indicating an official warranty; unless put forward or authorised by the competent authority owning or controlling the mark;
- (c) representations of royal arms or royal crests, or arms or crests so nearly resembling them as to lead to mistake, or of national flags, or the word "royal" or any other words, letters, or devices calculated to lead persons to think that the applicant has royal patronage or authorisation;

(d) marks in which the following words appear :—

“Patent”, “Patented”, “By Royal Letters Patent”,  
“Registered”, “Registered design”, “Copyright”, “To  
counterfeit this is forgery” or words to like effect;

(e) marks which are or may be injurious to public order or  
morality or which are calculated to deceive the public; or  
marks which encourage unfair trade competition, or contain  
false indications of origin;

(f) marks consisting of figures, letters or words which are in  
common use in trade to distinguish or describe goods or  
classes of goods or which bear direct reference to their  
character or quality; words whose ordinary signification is  
geographical or a surname, unless represented in a special  
or particular manner: provided that nothing herein con-  
tained shall be deemed to prohibit the registration of marks  
of the nature described in this paragraph which have a  
distinctive character within the meaning of subsections (2)  
and (3) of section 7.

(g) marks identical with or similar to emblems of exclusively  
religious significance;

(h) marks which are or contain, or which so nearly resemble  
as to be calculated to deceive, the representation, name or  
the trade name of a person, or the name of a body corporate  
or of an association, unless the consent of the person or per-  
sons concerned has been obtained; in the case of persons re-  
cently dead the registrar may call for consents from their  
legal representatives;

(i) a mark identical with one belonging to a different pro-  
prietor which is already on the register, in respect of such  
goods or description of goods, or so nearly resembling such  
trade mark as to be calculated to deceive.

Name or  
description of  
goods.

9. Where the name or a description of any goods appears on a  
trade mark the registrar may refuse to register such mark in respect  
of any goods other than the goods so named or described. Where  
the name or description of any goods appears on a trade mark,  
which name or description in use varies, the registrar may permit  
the registration of the mark with the name or description upon it  
for goods other than those named or described, the applicant stat-  
ing in his application that the name or description varies.

Standardisation,  
etc., trade marks.

10. Where any association or person undertakes to certify the  
origin, material, mode of manufacture, quality, accuracy, or other  
characteristic of any goods by mark used upon or in connection  
with such goods, the registrar if and so long as he is satisfied that  
such association or person is competent to certify as aforesaid, may,  
if he shall judge it to be to the public advantage, permit such

association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such certifying. When so registered, such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the registrar.

11.—(1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering the same shall apply in writing to the registrar in the prescribed manner.

Applications  
for registration.

(2) Subject to the provisions of this Ordinance, the registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose.

(3) Any refusal by the registrar to register a mark shall be subject to appeal to the Supreme Court sitting as a High Court of Justice.

(4) The registrar or the Supreme Court sitting as a High Court of Justice, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with an application, or may permit an applicant to amend his application upon such terms as they may think fit.

12. If a trade mark contains matter common to the trade or otherwise of a non-distinctive character, the registrar or the Supreme Court sitting as a High Court of Justice in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Disclaimers.

13. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the registrar shall, as soon as may be after such acceptance, and at the expense of the applicant, cause the application as accepted to be advertised in the prescribed manner. Such adver-

Advertisement  
of application

tisement shall set forth all conditions and/or limitations subject to which the application has been accepted.

Opposition to registration.

14.—(1) Any person may within three months, or within such other time as may be prescribed, from the date of the advertisement of an application for the registration of a trade mark, file with the registrar a notice of opposition to such registration :

Provided that in the case of applications advertised before the commencement of this Ordinance, the period within which, and the manner in which, the notice of opposition thereto may be filed, shall be as prescribed under the Trade Marks Ordinance which was in force at the date of the advertisement.

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

(3) The registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice the applicant shall send to the registrar, in the prescribed manner, a counterstatement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counterstatement the registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the registrar shall be subject to appeal to the Supreme Court sitting as a High Court of Justice.

(6) An appeal under this section shall be made within thirty days from the date of the decision of the registrar, and on such appeal the Supreme Court sitting as a High Court of Justice shall, if required, hear the parties and the registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the Supreme Court sitting as a High Court of Justice bring forward further material for the consideration of the Supreme Court sitting as a High Court of Justice.

(8) On an appeal under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the registrar other than those stated by the opponent as herein-above provided except by leave of the Supreme Court sitting as a High Court of Justice hearing the appeal. Where any further grounds of objection are taken, the applicant

shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the Supreme Court sitting as a High Court of Justice may, after hearing the registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

15.—(1) When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the registrar shall on the payment of the prescribed fee, unless the application has been accepted in error or unless the court otherwise direct, register the said trade mark. The mark when registered shall be registered as of the date of the application for registration or, in the case of an application filed in compliance with the provisions of section 41, as of the date of application for registration in the foreign state, and such date shall be deemed for the purposes of this Ordinance to be the date of registration.

Date of registration.

(2) On the registration of a trade mark the registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark.

Certificate of registration.

16. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

Non-completion of registration.

17. Where separate applications are made by different persons to be registered as proprietors respectively of trade marks which are identical or nearly resemble each other, in respect of the same goods or description of goods, the registrar may refuse to register any of such persons until their rights in respect of such trade mark have been settled either :—

Rival claims to identical marks.

(a) by an agreement between themselves which meets with the approval of the registrar, or

(b) by the Supreme Court sitting as a High Court of Justice to which, failing such an agreement, the registrar shall refer the dispute.

18.—(1) In a case of honest concurrent user or of other special circumstances which, in the opinion of the registrar, make it proper so to do, the registrar may permit the registration of trade

Concurrent user.

marks which are identical or nearly resemble each other, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as the registrar may think it right to impose.

(2) A decision of the registrar under this section shall be subject to appeal to the Supreme Court sitting as a High Court of Justice and the court shall on appeal have the same powers as are by this section conferred upon the registrar.

(3) An appeal under this section shall be brought within thirty days from the date of the decision of the registrar.

Assignment of trade marks and apportionment on dissolution of partnership.

19.—(1) A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill.

(2) In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business and the goodwill of such person does not pass to one successor but is divided, the registrar may, on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the registrar under this subsection shall be subject to appeal to the Supreme Court sitting as a High Court of Justice.

Duration of registration.

20. The period of duration of trade mark rights shall be seven years from the date of registration but may be renewed from time to time in accordance with the provisions of this Ordinance: Provided that, in so far as the initial period of duration of trade mark rights is concerned, this section shall only apply to applications made subsequent to the enactment of this Ordinance, and shall not apply to any registration obtained under any previous Ordinance.

Renewal of registration.

21.—(1) The registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration".

Procedure on expiry of period of registration.

(2) At the prescribed time before the expiration of the last registration of a trade mark, the registrar shall send notice in the prescribed manner to the registered proprietor of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such

registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the registrar may remove such trade mark from the register, subject to such conditions, if any, as to its restoration to the register as may be prescribed.

(3) Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered :

Status of  
unrenewed trade  
mark.

Provided that the foregoing provisions of this section shall not have effect where the registrar is satisfied either —

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

22.—(1) Without prejudice to the generality of the provisions of section 25 of this Ordinance, application for the cancellation of the registration of a trade mark may be made by any person interested on the ground that there was no bona fide intention to use the trade mark in connection with the goods for which it is registered and that there has in fact been no bona fide user of the trade mark in connection with the goods for which it is registered, or that there had not been any such user during the two years immediately preceding the application for cancellation, unless in either case such non user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

Cancellation of  
registration on  
grounds of  
non-user.

(2) Application for cancellation may be made by the applicant in the prescribed manner either to the Supreme Court sitting as a High Court of Justice or, at the option of the applicant, may be made in the first instance to the registrar.

(3) The registrar may at any stage of the proceedings, refer any such application to the Supreme Court sitting as a High Court of Justice, or he may, after hearing the parties, determine the question between them subject to appeal to the Supreme Court sitting as a High Court of Justice.



Registration of  
assignment, etc.

23.—(1) Where a person becomes entitled by assignment, transmission or other operation of law to a registered trade mark, he shall make application to the registrar to register his title and the registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of the trade mark, and shall cause an entry to be made in the prescribed manner on the register of the assignment, transmission or other instrument affecting the title. Any decision of the registrar under this section shall be subject to appeal to the Supreme Court sitting as a High Court of Justice.

(2) Except in cases of appeals under this section, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of subsection (1) aforesaid shall not be admitted in evidence in any court in proof of the title to a trade mark unless the court otherwise directs.

Alteration of  
registered trade  
mark.

24.—(1) The registered proprietor of any trade mark may apply in the prescribed manner to the registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the registrar may refuse such leave or may grant the same on such terms and subject to such limitations as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Supreme Court sitting as a High Court of Justice.

(2) If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of  
register.

25. Subject to the provisions of this Ordinance —

(1) Any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may make application in the prescribed manner to the Supreme Court sitting as a High Court of Justice, or may, at his option, make such application in the first instance to the registrar.

(2) The registrar may, at any stage of the proceedings, refer any such application to the Supreme Court sitting as a High Court of Justice, or he may, after hearing the parties, determine the question between them subject to appeal to the Supreme Court sitting as a High Court of Justice.

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

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

(5) Application for the removal from the register of a trade mark on the ground that it is not entitled to registration within the provisions of sections 6, 7 or 8 of the Ordinance, or on the ground that the registration of the mark creates an unfair competition in respect of the applicant's rights in Palestine, must be made within five years of the registration of the mark.

(6) Any order of the Supreme Court rectifying the register shall direct that notice of the rectification shall be served upon the registrar by the successful party and the registrar shall, upon receipt of such notice, rectify the register accordingly.

26. Subject to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the right to the exclusive use of such trade mark upon or in connection with the goods in respect of which it is registered : Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the registrar or by the Supreme Court sitting as a High Court of Justice) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Rights of proprietor of trade mark.

27. The registrar may, on request made in the prescribed manner by the registered proprietor, —

Correction of register.

(a) correct any error in the name or address of the registered proprietor of a trade mark; or

(b) enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(c) strike out any goods or classes of goods from those for which a trade mark is registered; or

(d) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark; or

(e) cancel the entry of a trade mark on the register.

Any decision of the registrar under this section shall be subject to appeal to the Supreme Court sitting as a High Court of Justice.

Adaptation of entries in register to amended or substituted classification of goods.

28.—(1) The registrar may, with the approval of the High Commissioner, from time to time make such rules, prescribe such forms and generally do such things as he thinks expedient, for empowering him to amend the register, whether by making or expunging or varying entries therein, so far as may be requisite for the purpose of adapting the designation therein of the goods or classes of goods in respect of which trade marks are registered to any amended or substituted classification that may be prescribed.

(2) The registrar shall not, in exercise of any power conferred on him for the purpose aforesaid, make any amendment of the register that would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of any goods :

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

(3) A proposal for the amendment of the register for the purpose aforesaid shall be notified to the registered proprietor of the trade mark affected, shall be subject to appeal by the registered proprietor to the Supreme Court sitting as a High Court of Justice, shall be advertised with any modifications, and may be opposed before the registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of the last foregoing subsection, and the decision of the registrar on any such opposition shall be subject to appeal to the Supreme Court sitting as a High Court of Justice.

Registration to be prima facie evidence of validity.

29. In all legal proceedings relating to a registered trade mark the fact that a person is registered as proprietor of such trade mark shall be prima facie evidence of the validity of the original registration of such trade mark and all subsequent assignments and transmissions of the same.

Trade marks registered under previous Ordinances, and transitional provisions.

30. No trade mark which is upon the register at the commencement of this Ordinance and which under this Ordinance is a registerable trade mark shall be removed from the register on the ground that it was not registerable under the Ordinances in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Ordinance

to which he would not have been subject under the Ordinances then in force.

31. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the registrar shall have the right to appear and be heard, and shall appear if so directed by the court. Unless otherwise directed by the court, the registrar in lieu of appearing and being heard may submit to the court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

Registrar to have notice of proceeding for rectification.

32. A certificate purporting to be under the hand of the registrar as to any entry, matter, or thing which he is authorised by this Ordinance or rules made thereunder to make or do, shall be prima facie evidence of the entry having been made and of the contents thereof, and of the matter or thing having been done or not done.

Certificate of registrar to be evidence.

33.—(1) Any person who represents a trade mark as registered which is not so registered, shall be liable for every offence on conviction to a fine not exceeding fifty pounds.

Penalty on falsely representing a trade mark as registered.

(2) A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered if he uses in connection with the trade mark the word "registered" or any words expressing or implying that registration has been obtained for the trade mark.

34. No person shall be entitled to institute any proceedings to recover damages for the infringement of a trade mark not registered in Palestine.

Unregistered trade mark.

35. In an action for the infringement of a trade mark, the court trying the question of infringement shall admit evidence of the usages of the trade in respect of the get-up of the goods for which the trade mark is registered and of any trade marks or get-up legitimately used in connection with such goods by other persons.

Infringement.

36. No registration under this Ordinance shall interfere with any genuine use by a person of his own name or place of business, or that of any of his predecessors in business, or the use by any person of any genuine description of the character or quality of his goods.

User of name, address, or description of goods.

“Passing-off”  
action.

37. Nothing in this Ordinance shall be deemed to affect the right to bring an action against any person for passing off goods as those of another person or the remedies in respect thereof.

Offences.

38.—(1) Any person who with intent to deceive, commits or attempts to commit or aids or abets any other person in committing any of the following acts shall be guilty of an offence against this Ordinance and shall be liable upon conviction to imprisonment for a period not exceeding one year or to a fine not exceeding one hundred pounds, or to both such penalties :

(a) not being the proprietor thereof makes use of a trade mark registered under this Ordinance or of an imitation of such trade mark upon the same class of goods as that in respect of which the mark is registered;

(b) sells, stores for the purposes of sale, or exposes for sale, goods bearing a mark the use of which is an offence under paragraph (a);

(c) uses a mark duly registered by another person under this Ordinance for the purpose of advertising in the public press or in any other manner, goods of the same classification as those for which registration has already been obtained by another person;

(d) makes, engraves, prints, or sells, any plate, die, block or other representation of a duly registered mark or any other imitation thereof for the purpose of enabling any person other than the registered proprietor of such mark to make use of such mark or an imitation thereof in connection with goods of the same classification as those for which registration has already been obtained by another person;

(e) makes or causes to be made a false entry in the register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false;

(2) In all such cases in lieu of or in addition to penalties prescribed by subsection (1), the court shall have power to grant an injunction against a continued repetition or any offence committed under this section.

Order for con-  
fiscation or  
destruction.

39. The court before which any person charged under the last preceding section is brought, may order that all goods, wrapping, packing and advertising material, and blocks, dies and other apparatus and material for printing the mark or packing, wrapping, advertising or other material in respect of which the offence is committed, be confiscated or destroyed.

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

Exercise of discretionary power by registrar.

41.—(1) If His Majesty on behalf of the Administration of Palestine is pleased to make any arrangement with the Government of any foreign state for mutual protection of trade marks, then any person who has applied for protection for a trade mark in that state, or his legal representative or assignee, shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants; and the registration shall have the same date as the date of the application in the foreign state :

Trade marks registered abroad to be recognised on adhesion of Palestine to International Conventions.

Provided that —

(a) the application is dated within six months from the application for protection in the foreign state, and

(b) nothing in this section shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the actual date on which his trade mark is registered in Palestine.

(2) The registration of a trade mark shall not be invalidated by reason only of the use of the trade mark in Palestine during the period specified in this section as that within which the application may be made.

42. The application for the registration of a trade mark under the last preceding section shall be made in the same manner as an ordinary application under this Ordinance, provided that any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Ordinance.

Procedure for registration of marks.

43. The provisions of sections 41 and 42 of this Ordinance shall apply in the case of those foreign states with respect to which the High Commissioner may by Order in Council declare them to be applicable, and so long only in the case of each of such foreign states as the Order continues in force in respect to that state.

Declaration of states adhering to the International Conventions.

44. Where it is made to appear to the High Commissioner that the legislature of any part of His Majesty's Dominions outside Palestine has made satisfactory provision for the protection of trade marks registered in Palestine it shall be lawful for the High Commissioner by Order in Council to apply the provisions of sections 41 and 42 of this Ordinance to such part of His

Power of High Commissioner to apply provisions of sections 41 and 42 to His Majesty's Dominions.

Majesty's Dominions with such variations and additions, if any, as may be stated in the Order.

Power of the Chief Justice to make rules of court.

45. The Chief Justice may with the approval of the High Commissioner make rules of court for regulating the practice and procedure in appeals, oppositions, applications and references under this Ordinance to the Supreme Court sitting as a High Court of Justice.

Power of registrar to make rules.

46. Subject to the provisions of this Ordinance, the registrar may with the approval of the High Commissioner from time to time make such rules, prescribe such forms, and generally do such things as he may think expedient —

- (a) for regulating the practice under this Ordinance;
- (b) for prescribing the fees payable under this Ordinance;
- (c) for classifying goods for the purpose of registration of trade marks;
- (d) for making or requiring duplicates of trade marks and other documents;
- (e) for securing and regulating the publishing and selling or distributing in such manner as the registrar thinks fit, of copies of trade marks and other documents;
- (f) generally, for regulating the business of the office in relation to trade marks and all things by this Ordinance placed under the direction or control of the registrar.

Fees.

47.—(1) There shall be paid in respect of applications and registrations and other matters under this Ordinance such fees as may be prescribed by rules.

(2) All fees payable in pursuance of such rules shall be paid to the registrar, who will pay them into the Treasury.

Cap. 144.  
Repeal.

48. The Trade Marks Ordinance is hereby repealed :

Provided that all rules and orders lawfully made under the provisions of that Ordinance shall remain in full force and effect until amended, varied or revoked by rules or orders respectively made under the provisions of this Ordinance.

21st November, 1938.

HAROLD MACMICHAEL  
*High Commissioner.*