

eSwatini

## Patents, Designs and Trade Marks Act, 1936

### Act 72 of 1936

Legislation as at 1 December 1998

FRBR URI: /akn/sz/act/1936/72/eng@1998-12-01

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# Patents, Designs and Trade Marks Act, 1936

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## eSwatini

# Patents, Designs and Trade Marks Act, 1936

Act 72 of 1936

Commenced on 20 November 1936

*[This is the version of this document at 1 December 1998.]*

**An Act to provide for the protection of inventions the subject of patents subsisting in the United Kingdom and the Republic of South Africa and of designs and trade marks the subject of registrations subsisting in those countries.**

### Part I – Introductory

#### 1. Short title

This Act may be cited as the Patents, Designs and Trade Marks Act, 1936.

#### 2. Interpretation

In this Act unless the context otherwise requires:

“**Court**” means the High Court;

“**Minister**” means the Deputy Prime Minister;

“**registrar**” means the public officer designated by the Deputy Prime Minister to be the registrar of patents, designs and trade marks or the assistant registrar of patents, designs and trade marks.

### Part II – United Kingdom patents

#### 3. Proprietor of United Kingdom patent protected in Swaziland

Subject to this Part, the registered proprietor of a patent granted in the United Kingdom under the law there relating to patents shall enjoy in Swaziland, as from the commencement of this Act, the like privileges and rights as though the patent granted in the United Kingdom had been granted with an extension to Swaziland.

#### 4. Damages for infringement of patent

The registered proprietor of such patent shall not be entitled to recover any damages in respect of any infringement of the patent from a defendant who proves that at the date of the infringement he was not aware nor had any reasonable means of making himself aware of the existence of the patent, and the marking of an article with the word “patent” or “patented” or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless such word or words are accompanied by the number of the patent:

Provided that nothing in this section shall affect any proceedings for an interdict.

#### 5. Declaration that no exclusive privilege acquired

- (1) The Court may upon the application of any person who alleges that his interests have been prejudicially affected declare upon any of the grounds upon which, under the law for the time being in force in the United Kingdom, the invention the subject of the United Kingdom patent might

be found invalid so far as claimed in any claim of the complete specification of the patent, that exclusive rights and privileges in the invention so far as claimed in any such claim have not been acquired in Swaziland under the provisions of this Part.

- (2) Such grounds shall be deemed to include the use or publication in Swaziland of the invention so far as claimed in any claim as aforesaid prior to the priority date of such claim.

### **Part III – South African patents**

#### **6. Register of South African patents**

The registrar shall cause a register of South African patents to be kept in which shall be entered—

- (a) the names and addresses of persons entitled to certificates in respect of patents under this Part;
- (b) notifications, under this Part, of assignments and transmissions of rights granted in respect of patents and of amendments, prolongations or revocations in respect of the patents and licences granted under them; and
- (c) particulars of such other matters as the registrar may require.

#### **7. Right to registration of South African patents**

- (1) A person whose name appears in the register of patents of the Republic of South Africa, under the law there relating to patents, as the proprietor of a patent, may on application to the registrar and on proof of that registration, and, on payment of the prescribed fee, have his name entered in the register of South African patents kept under [section 6](#).
- (2) Upon entry of a name in accordance with subsection (1), the registrar shall issue the person concerned with a certificate of registration.

#### **8. Effect of registration**

Any person registered under [section 6](#) shall so long as the patent registration in respect of which he is registered remains in force in South Africa and so long as he is the proprietor of the patent, have and enjoy in Swaziland the same rights and privileges and be subject to the same duties, obligations and conditions as have been conferred or imposed upon him by the said patent registration within South Africa.

#### **9. Removal from register**

The name of any person registered under this Part in the register of South African patents as proprietor of a patent may be removed from the register concerned by the registrar—

- (a) if the patent registration in respect of which he was so registered has been revoked or cancelled or has expired by effluxion of time, or has been transferred; or
- (b) if any fees which may have been prescribed for the renewal or extension of the patent registration are not duly paid:

Provided that before the name of any person is so removed, written notice shall be served on him at his registered address if it is within Swaziland, or sent to such address by registered post if it is outside Swaziland, calling upon him to show cause why his name should not be removed.

#### **10. Notice of assignment or other dealing with patent**

Notice shall be given to the registrar of any assignment or transmission of a patent in respect of which any person is registered as proprietor under this Part, and of any amendment, prolongation, or revocation of such patent, or of any licence granted thereunder, and the registrar on being satisfied that such assignment or transmission, or such amendment, prolongation or revocation, or such licence, has been

duly registered in the patents register of South Africa, and on payment of the prescribed fee, shall cause an entry to be made accordingly in the register of South African patents, kept under this Part, and in the case of assignment or transmission shall issue to the assignee or transmittee a certificate of registration as proprietor.

#### **11. Grounds of defence to action**

In any action which may be brought for infringement of the rights granted in respect of a patent under this Part, any ground upon which the name of the person by whom or in whose right the action is brought could be removed from the register concerned may be applied by way of defence.

#### **12. Fees (First Schedule)**

The fees set forth in the First Schedule shall be due and payable for the several acts therein specified, and such fees shall be collected by means of revenue stamps to be affixed to the document in respect of which such act may be done.

#### **13. Notification of changes**

- (1) The registered proprietor of a patent shall, not later than three months after the change takes place, notify the registrar of a change in the name or address, of the registered proprietor of the patent entered in the register kept under this Part.
- (2) On receipt of such notification and on payment of the prescribed fees, the registrar shall alter the register accordingly, and issue a certificate of the change.
- (3) Where the registrar has reason to believe that a registered proprietor has failed to comply with subsection (1), he shall send a letter requesting the proprietor to inform the registrar whether there is a change in the name or address appearing in the register kept under this Part by registered post, to the registered proprietor or the agent, if any, for service of process.
- (4) If within one month after sending the letter, the registrar does not receive an answer to it, he shall send a second letter by registered post which shall repeat the contents of the first letter, and inform the registered proprietor that he may, at the expiry of one month after the date of the second letter, remove his name from the register.
- (5) On the expiry of one month from the date of the dispatch of the second letter, the name of the registered proprietor may be removed by the registrar unless he is satisfied that no change has taken place, or the person in question has notified the registrar of the change and has paid the prescribed fees.

*[Added L.11/1967]*

#### **14. Saving**

- (1) This Part of this Act shall be without prejudice to any rights lawfully acquired under the Patents Proclamation, 1902 (No. 22 of 1902), of the Transvaal, as amended by the Patents (Amendment) Proclamation, 1902 (No. 29 of 1902), of the Transvaal, and Government Notices Nos. 179 and 191 of 1902, and 1280 of 1903 of the Transvaal, in so far as concerns patents and applications for patents granted or lodged before the date of commencement of this Act and subsisting or pending at that date and patents granted pursuant to such applications after that date and the registrar shall be deemed to be the commissioner of patents for the purposes of those Proclamations.

## Part IV – United Kingdom designs

### 15. Privileges and rights of United Kingdom proprietors

Subject to this Part, the registered proprietor of a design registered in the United Kingdom under the law there relating to designs shall enjoy in Swaziland the like privileges and rights as though the certificate of registration in the United Kingdom was issued with an extension to Swaziland.

### 16. Damages where registration not known

The registered proprietor of a design shall not be entitled to recover any damages in respect of any infringement of copyright in a design from any defendant who proves that at the date of the infringement he was not aware nor had any reasonable means of making himself aware of the existence of the registration of the design:

Provided that nothing in this section shall affect any proceedings for an interdict.

### 17. Jurisdiction

- (1) The Court may upon the application of any person who alleges that his interests have been prejudicially affected declare for any of the grounds upon which the United Kingdom registration might be cancelled under the law for the time being in force in the United Kingdom that exclusive privileges and rights in a design have not been acquired in Swaziland under this Act.
- (2) Such grounds shall be deemed to include the publication of the design in Swaziland prior to the date of registration of the design in the United Kingdom.

## Part V – South African designs

### 18. Register of South African designs

The registrar shall cause a register of South African designs to be kept in which shall be entered—

- (a) the names and addresses of persons entitled to certificates in respect of designs under this Part;
- (b) notifications, under this Part, of assignments and transmissions of rights granted in respect of designs and of rectifications, extensions or expungements in respect of the designs and licences granted under them; and
- (c) particulars of such other matters as the registrar may require.

### 19. Right to registration of South African designs

- (1) A person whose name appears in the register of designs of the Republic of South Africa, under the law there relating to designs, as the proprietor of a registered design, may on application to the registrar and on proof of that registration, and, on payment of the prescribed fee, have his name entered in the register of South African designs to be kept under [section 18](#).
- (2) Upon entry of a name in accordance with subsection (1), the registrar shall issue the person concerned with a certificate of the registration.

### 20. Effect of registration

Any person registered under [section 18](#) shall, so long as the design registration in respect of which he is registered remains in force in South Africa and so long as he is the proprietor of the registered design, have and enjoy in Swaziland the same rights and privileges and be subject to the same duties, obligations



and conditions as have been conferred or imposed upon him by the said design registration within South Africa.

## **21. Removal from register**

The name of any person registered under this Part in the register of South African designs as proprietor of a registered design, may be removed from the register concerned by the registrar—

- (a) if the design registration in respect of which he was so registered has been revoked or cancelled or has expired by effluxion of time, or has been transferred; or
- (b) if any fees which may be prescribed for the renewal or extension of the design registration are not duly paid:

Provided that before the name of any person is so removed, written notice shall be served on him at his registered address if it is within Swaziland, or sent to such address by registered post if it be outside Swaziland, calling upon him to show cause why his name should not be removed.

## **22. Notice of assignment or other dealing with registered design**

Notice shall be given to the registrar of any assignment or transmission of a design registration in respect of which any person is registered as proprietor under this Part, or of any rectification, extension or expungement of such design registration, and of any licence granted thereunder, and the registrar on being satisfied that such assignment or transmission, or such rectification, extension or expungement, or such licence, has been duly registered in the designs register of South Africa, and on payment of the prescribed fee, shall cause an entry to be made accordingly in the register of South African designs kept under this Part, and in the case of assignment or transmission shall issue to the assignee or transmittee a certificate of registration as proprietor.

## **23. Grounds of defence to action**

In any action which may be brought for infringement of the rights granted in respect of a design under this Part, any ground upon which the name of the person by whom or in whose right the action is brought could be removed from the register concerned may be applied by way of defence.

## **24. Fees (First Schedule)**

The fees set forth in the First Schedule shall be due and payable for the several acts therein specified and such fees shall be collected by means of revenue stamps to be affixed to the document in respect of which such act may be done.

## **25. Notification of changes**

- (1) The registered proprietor of a registered design shall, not later than three months after the change takes place, notify the registrar of a change in the name, or address, of the registered design as entered in the appropriate register kept under this Part.
- (2) On receipt of such notification and on payment of the prescribed fees, the registrar shall alter the appropriate register accordingly, and issue a certificate of the change.
- (3) Where the registrar has reason to believe that a registered proprietor has failed to comply with subsection (1), he shall send a letter requesting the proprietor to inform the registrar whether there is a change in the name or address appearing in the register kept under this Part, by registered post to the registered proprietor, or the agent, if any, for service of process.
- (4) If, within one month after sending the letter, the registrar does not receive an answer to it, he shall send a second letter by registered post which shall repeat the contents of the first letter, and inform the registered proprietor that he may, at the expiry of one month after the date of the second letter, remove his name from the register.

- (5) On the expiry of one month from the date of dispatch of the second letter, the name of the registered proprietor may be removed by the registrar from the register kept under this Part, unless he is satisfied that no change has taken place, or the person in question has notified the registrar of the change and has paid the prescribed fees.

## Part VI – United Kingdom trade marks

### 26. Application for registration

A person who—

- (a) is, in the United Kingdom, the registered proprietor of a trade mark by virtue of an entry in the register of trade marks kept under the law relating to trade marks; or
- (b) by assignment or other mode of transfer, derives title from such a registered proprietor;

may, at any time during the existence of the registration in the United Kingdom, apply to have the trade mark registered in Swaziland in respect of some or all of the goods comprised in the United Kingdom registration.

### 27. Documents to accompany application

An application for registration of a trade mark under this Part shall be made to the registrar and shall be accompanied by eight certified representations of the trade mark and a certificate of the Controller-General of the United Kingdom Patent Office (under his title of Registrar of Trade Marks) giving full particulars of the registration of the trade mark in the United Kingdom.

### 28. Certificate of registration

Upon such application being lodged, together with the documents mentioned in [section 27](#), the registrar shall enter the prescribed particulars in the register, and shall issue a certificate of registration to the applicant, who shall then be the registered proprietor in Swaziland of the trade mark in respect of the goods entered in the register kept under [section 35](#).

### 29. Privileges and rights of registered proprietor

Subject to this Act a registered proprietor shall have in Swaziland such privileges and rights in the use of the trade mark in respect of goods entered in the register as *mutatis mutandis* would be conferred on him by the law for the time being in force in the United Kingdom.

### 30. Period for which privileges and rights granted

The privileges and rights conferred by [section 29](#) shall date from the date of registration in the United Kingdom and shall continue in force, subject to [section 37](#), for so long as the registration in the United Kingdom remains in force in respect of the goods for which the trade mark is registered in Swaziland:

Provided that no action for infringement of the trade mark shall be entertained in respect of the use of the trade mark prior to the date of issue of the certificate of registration in Swaziland.

### 31. Right of action for “passing off” preserved

Nothing in this Act shall affect any right of action against any person for passing off goods as those of another person or any remedy in respect thereof.

### 32. Powers of Court on application for cancellation

The Court may upon the application of any person who alleges that his interests have been prejudicially affected by the issue of a certificate of registration declare on any of the grounds *mutatis mutandis* on which the United Kingdom registration might be cancelled under the law for the time being in force in the United Kingdom that the exclusive privileges and rights have not been acquired.

### 33. Registration of assignment of privileges and rights

Subject to this Act, if a person becomes entitled by assignment or other mode of transfer to the privileges and rights conferred on a registered proprietor by this Act, the registrar shall, on application being made in the prescribed manner, and on proof of title to his satisfaction, cause such person to be entered in the register kept under [section 35](#) as subsequent registered proprietor of the trade mark.

### 34. Registered users

- (1) A person whose name appears in the United Kingdom register of trade marks, under the law there relating to trade marks, as a registered user, in respect of goods, of a trade mark in respect of which there is in force a certificate of registration under this Act, may apply to the registrar to be registered in Swaziland as a registered user of the trade mark in respect of all the goods, or some of the goods, in question, subject to like conditions or restrictions, if any, as are entered in the United Kingdom register of trade marks.
- (2) Upon such an application, together with a certificate of the United Kingdom registrar of trade marks giving full particulars of the entry in the United Kingdom register of trade marks, being lodged, and on payment of the prescribed fees, the registrar shall cause the name of the applicant to be entered in the register kept under [section 35](#) as a registered user of the trade mark, and shall issue him with a certificate of registration to that effect.
- (3) Upon such entry, the registered user shall be entitled, subject to any such conditions and restrictions, to similar privileges and rights in respect of the goods for which his name is entered as are conferred on him, by the law for the time being in force in the United Kingdom, as the registered user in the United Kingdom of the trade mark in respect of those goods.

### 35. Keeping of register and inspection thereof

- (1) The registrar shall keep a register of trade marks in respect of which certificates of registration have been issued, wherein shall be entered the dates of applications for registration, the names and addresses of applicants, the particulars of the trade marks, notifications of assignments and transfers, and such other particulars as may be prescribed:  
  
Provided that no notice of a trust expressed or implied or constructive shall be entered in the register.
- (2) The register shall at all convenient times be open to the inspection of the public on payment of the prescribed fee.
- (3) Any person may, on payment of the prescribed fee, obtain a certified copy or extract from the register.
- (4) The register shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

### 36. Notification of changes

- (1) The registered proprietor of a trade mark and the registered user of a trade mark shall, not later than three months after the change takes place, notify the registrar of a change in the name, or

address, of the registered proprietor or of the registered user as the case may be, entered in the register kept under [section 35](#).

- (2) On receipt of such notification and on payment of the prescribed fees, the registrar shall alter the register accordingly, and issue a certificate of the change.
- (3) If the registrar has reason to believe that a registered proprietor or a registered user has failed to comply with subsection (1), he shall send a letter by post requesting the proprietor or user to inform him whether there is a change in the name or address as entered in the register, to the registered proprietor or the registered user, as the case may be, or the agent, if any, for service of process.
- (4) Where, within one month after sending the letter, the registrar does not receive an answer to it, he shall send a second letter by post in which he shall repeat the contents of the first letter and inform the registered proprietor or the registered user that the registrar may, at the expiry of one month after the date of the second letter, cancel the registration in question.
- (5) The registrar shall cancel the registration unless—
  - (a) before the expiry of one month after the date of the second letter, the person in question notifies him of the change and pays the prescribed fees; or
  - (b) he is satisfied that there is no such change.

### **37. Renewal or alternatively cancellation of registration**

- (1) If the registration in the United Kingdom of a trade mark registered under this Act is renewed, the registered proprietor may, within such time after the date of renewal in the United Kingdom as may be prescribed, notify the registrar, who shall then, on sufficient evidence thereof and on payment of the prescribed fee, renew the registration in the register kept under [section 35](#) in the prescribed manner.
- (2) If the registration in the register is not renewed as aforesaid it shall be cancelled by the registrar.

### **38. Cancellation and correction of entries in register**

The registrar may, on request in writing made by the registered proprietor, and on payment of the prescribed fee—

- (a) cancel the registration of a trade mark or of a registered user thereunder either wholly or as regards any particular goods in respect of which the trade mark or the registered user is registered;
- (b) correct any clerical error in or in connection with any application under this Part or in any matter which is entered in the register;
- (c) enter in the said register any change in the name, description or address of the person who is registered as proprietor or user of a trade mark.

### **39. Rules and forms**

- (1) Subject to this Part the registrar may make such Rules as he considers expedient for—
  - (a) prescribing anything which is to be, or may be, prescribed; and
  - (b) generally, regulating procedure under this Part.
- (2) The registrar may approve forms for the purposes of this Part.

## Part VII – South African trade marks

### 40. Register of trade marks

The registrar shall cause a register of trade marks comprised of such parts as he considers necessary to be kept, in which there shall be entered the names and addresses of persons entitled to certificates under this Part, notifications of assignments and transmissions of rights granted under this Part and particulars of such other matters as he may require.

### 41. Application for registration

A person whose name appears in the register of trade marks of the Republic of South Africa, under the law there relating to trade marks, as the proprietor of a trade mark, may on production of the certificate of registration of such trade mark, accompanied by such number of representations thereof as the registrar may require, and on payment of the prescribed fee, be registered in the register of trade marks to be kept under [section 40](#), and a certificate of such registration shall thereupon be issued to him by the registrar.

### 42. Rights and privileges of registered persons

Any person registered under [section 40](#) shall, so long as the registration of the trade mark in respect of which he is registered remains in force in the Republic of South Africa, and so long as he is the proprietor thereof, have and enjoy in Swaziland the same rights and privileges, and be subject to the same duties, obligations and conditions, as have been conferred or imposed upon him by the registration of the said trade mark within the Republic of South Africa.

### 43. Removal from register

The name of any person registered under this Act as proprietor of a trade mark may be removed from the register kept under [section 40](#) by the registrar—

- (a) if the registration of the trade mark in respect of which he was so registered has been revoked, or if the period of such registration has expired by effluxion of time, or if the trade mark has been assigned or transferred; and
- (b) if any fees which may be prescribed for the renewal of registration are not duly paid:

Provided that before the name of any person is so removed, written notice shall be served on him at his registered address if it is within Swaziland, or sent to such address by registered post if it is outside Swaziland, calling upon him to show cause within a time to be specified therein why his name should not be removed.

### 44. Assignment of trade marks

Notice shall be given to the registrar of any assignment of a trade mark in respect of which any person is registered as a proprietor under this Part, and of any amendment or extension of the period of registration of such trade mark, and the registrar on being satisfied that such assignment, amendment or extension has been duly registered in the trade marks register of the Republic of South Africa, and on payment of the prescribed fee, shall cause an entry to be made accordingly in the trade marks register kept under this Part, and in the case of assignment shall issue to the assignee a certificate of registration as proprietor.

### 45. Registered users

- (1) A person whose name appears in the register of trade marks of the Republic of South Africa, under the law there relating to trade marks, as a registered user, in respect of goods, of a trade mark in respect of which there is in force a certificate of registration under this Part, may apply to the registrar to be registered in Swaziland as a registered user of the trade mark in respect of all the

goods, or some of the goods, in question, subject to the like conditions and restrictions, if any, entered in the register of trade marks of the Republic of South Africa.

- (2) Upon such an application, together with a certificate of the registrar of trade marks of the Republic of South Africa giving full particulars of the entry in the register of trade marks of the Republic of South Africa being lodged, and on payment of the prescribed fees, the registrar shall cause the name of the applicant to be entered in the register of trade marks, kept under this Part, as a registered user of the trade mark, and shall issue him with a certificate of registration.
- (3) Upon such entry, the registered user shall, in Swaziland, be entitled, subject to any such conditions and restrictions, to similar privileges and rights in respect of the goods for which his name is entered similar to those conferred on him by the law for the time being in force in the Republic of South Africa, as the registered user in the Republic of South Africa of the trade mark in respect of those goods.

#### **46. Actions for infringement**

In any action which may be brought for infringement of rights granted under this Part, any ground upon which the name of the person by whom or in whose right the action is brought could be removed from the register kept under [section 40](#) may be applied by way of defence.

#### **47. Fees (Second Schedule)**

The fees set out in the Second Schedule shall be due and payable for the several acts therein specified, and such fees shall be collected by means of revenue stamps to be affixed to the document in respect of which any such act may be done.

#### **48. Notification of changes**

- (1) The registered proprietor of a trade mark and the registered user of a trade mark shall, not later than three months after the change takes place, notify the registrar of a change in the name, or address, of the registered proprietor or of the registered user, as the case may be, entered in the register of trade marks kept under [section 40](#).
- (2) On receipt of such notification and on payment of the prescribed fees the registrar shall alter the register of trade marks accordingly, and issue a certificate of such change.
- (3) If the registrar has reason to believe that a registered proprietor or a registered user has failed to comply with subsection (1) he shall send such person a letter by registered post requesting him to inform the registrar whether there is a change in the name or address as entered in the register of trade marks.
- (4) If, within one month after sending such letter, the registrar does not receive an answer to it, he shall send a second letter by registered post in which he shall repeat the contents of the first letter, and inform the registered proprietor or the registered user, as the case may be, that the registrar may, at the expiry of one month after the date of the second letter, remove the name of the registered proprietor or the registered user (as the case may be), from the register of trade marks.
- (5) On the expiry of one month from the date of dispatch of the second letter, the name of the registered user as the case may be, may be removed from the register of trade marks by the registrar unless—
  - (a) the registrar is satisfied that no change has taken place; or
  - (b) the person in question has notified the registrar of the change and has paid the prescribed fee.

#### 49. Saving

This Part of this Act shall be without prejudice to any rights lawfully acquired by a person under the Trade Marks [Proclamation No. 23 of 1902](#) of the Transvaal as amended by the Trade Marks Registration Amendment [Ordinance No. 3 of 1904](#) of the Transvaal and in force in Swaziland on the 20th June, 1947, and under [Government Notice No. 180 of 1902](#) of the Transvaal as in force in Swaziland at that date.

### Part VIII – Subsisting registered trade marks

#### 50. Interpretation

In this Part, unless the context otherwise requires—

“**assignment**” means assignment by act of the parties concerned;

“**permitted use**” has the meaning assigned to it by [section 56](#);

“**registered user**” means a person registered for the time being as such under [section 56](#);

“**repealed legislation**” means the Trade Marks Registration Proclamation (No. 23 of 1902), as amended by the Trade Marks Registration Ordinance (No. 3 of 1904), and [Government Notice No. 180 of 1902](#) of the Transvaal, as formerly applied to Swaziland;

“**subsisting registered mark**” means a trade mark in respect of which rights were lawfully acquired under the repealed legislation, and in respect of which rights are subsistent under and by virtue of [section 49](#);

“**transmission**” means transfer by operation of law, devolution on the executor of a deceased person, and any other mode of transfer not being assignment.

#### 51. Keeping of register

- (1) The register of trade marks kept under the repealed legislation shall continue to be kept for the purposes of this Part, and as constituting the register thereunder.
- (2) The register shall be kept under the control and management of the registrar at Mbabane or such other place as may be designated by the Minister by notice in the *Gazette*.
- (3) Notifications of assignments and transmissions of subsisting registered trade marks in the register, the names, addresses and descriptions of all registered users of these marks, disclaimers, conditions, restrictions, and such other matters relating to subsisting registered marks as may be prescribed shall be entered in the register with respect to the entries of subsisting registered marks therein.

#### 52. Powers of, and restrictions on, assignment and transmission

- (1) A subsisting registered mark shall be, and shall be deemed always to have been, assignable and transmissible either in connection with the goodwill of a business or not.
- (2) A subsisting registered mark shall be, and shall be deemed always to have been, assignable and transmissible in respect either of all the goods in respect of which it is registered, or was registered as the case may be, or of some (but not all) of those goods.
- (3) Subsections (1) and (2) shall have the same effect in the case of an unregistered trade mark used in relation to any goods as in the case of a subsisting registered mark registered in respect of any goods, if at the time of the assignment or transmission of the unregistered trade mark it is or was used in the same business as a subsisting registered mark, and if it is or was assigned or transmitted at the same time and to the same person as that registered trade mark and in respect of goods all of which are goods in relation to which the unregistered trade mark is or was used in that business, and in respect of which that subsisting registered mark is or was assigned or transmitted.



- (4) Notwithstanding anything in subsections (1), (2) and (3), a trade mark shall not be, or be deemed to have been, assignable or transmissible in a case in which as a result of an assignment or transmission there would in the circumstances subsist, or have subsisted, whether under the common law or under this Part or otherwise, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks closely resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be, or have been, likely to deceive or cause confusion.
- (5) Where an assignment, in respect of any goods, of a trade mark which is at the time of the assignment used in a business in these goods is made, on or after the commencement of this Act, otherwise than in connection with the goodwill of that business, the assignment shall not take effect until the following requirements have been satisfied, that is to say, the assignee must, not later than six months from the date on which the assignment is made or within such extended period, if any, as the registrar may allow, apply to him for directions with respect of the advertisement of the assignment in the *Gazette*, and must advertise it in such form and manner and within such period in the *Gazette*, as the registrar may direct.
- (6) Any decision of the registrar under this section shall be subject to appeal to the Court.

### 53. Certain trade marks to be assignable and transmissible as a whole only

- (1) The registrar may refuse to register an assignment or transmission otherwise than as a whole of—
  - (a) subsisting registered marks which are entered in the register in the name of the same proprietor and of which one is either a part of the other or others, or is identical with such other or others a differs therefrom only in respect of matter of a non-distinctive character which does not affect the identity of the marks; or
  - (b) a subsisting registered mark entered on the register and a trade mark which is identical therewith or so nearly resembles such subsisting registered mark as to be likely to deceive or cause confusion if used by a person other than the proprietor and which is registered under Part VI or VII of the Patents, Designs and Trade Marks Act.
- (2) Any decision of the registrar under subsection (1) shall be subject to appeal to the Court.

### 54. Power of registered proprietor to assign and give receipts

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

### 55. Registration of assignments and transmissions

- (1) If a person becomes entitled by assignment or transmission to a subsisting registered mark, he shall make application to the registrar to register his title, and the registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the subsisting registered mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.
- (2) Any decision of the registrar under this section shall be subject to appeal to the Court.
- (3) Except for the purposes of an appeal under this section or of an application under [section 9](#), a document or instrument in respect of which no entry has been made in the register in accordance with subsection (1) shall not be admitted in evidence in any Court in proof of the title to a subsisting registered mark unless the Court otherwise directs.



## 56. Registered users

- (1) Subject to this section, a person other than the proprietor of a subsisting registered mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered and either with or without conditions or restrictions.
- (2) The use of a subsisting registered mark by a registered user upon or in connection with goods in respect of which he is registered as the registered user, and complying with any conditions or restrictions to which his registration is subject, is in this Act referred to as the “permitted use” thereof.
- (3) Subject to any agreement subsisting between the parties, a registered user of a subsisting registered mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and, if the proprietor refuses or neglects to do so within two months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant:

Provided that a proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

- (4) If it is proposed that a person should be registered as a registered user of a subsisting registered mark, the proprietor and the proposed registered user must apply in writing to the registrar in the prescribed manner and must furnish him with a sworn declaration made by the proprietor, or by some person authorised to act on his behalf and approved by the registrar—
  - (a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;
  - (b) stating the goods in respect of which registration is proposed;
  - (c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter; and
  - (d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof;

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

- (5) If the requirements of subsection (4) have been complied with, and the registrar, after considering the information furnished to him under that subsection, is satisfied that in all the circumstances the use of the subsisting registered mark in relation to the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the registrar thinks proper would not be contrary to the public interest, he may register the proposed registered user as a registered user in respect of the goods as to which he is so satisfied subject as aforesaid.
- (6) The registrar shall refuse an application under subsections of this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.
- (7) The registrar shall, if required by an applicant, take steps for securing that information given for the purposes of an application under this section (other than matter entered in the register) is not disclosed to rivals in trade.

- (8) The registration of a person as a registered user may be—
- (a) varied by the registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing of the proprietor of the subsisting registered mark to which the registration relates;
  - (b) cancelled by the registrar on the application in writing of the proprietor or of the registered user or of any other registered user of the subsisting registered mark; or
  - (c) cancelled by the registrar on the application in writing of any person on any of the following grounds, that is to say—
    - (i) that the registered user has used the subsisting registered mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion;
    - (ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;
    - (iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.
- (9) The registrar shall give notification in writing of the registration of a person as a registered user to any other registered user of the subsisting registered mark, and shall also give notification in writing of an application under subsection (8) to the proprietor and each registered user (not being the applicant) of the subsisting registered mark, and shall give to the applicant on such an application, and to all persons to whom such application is notified and who apply to the registrar in writing for leave to intervene in the proceedings, an opportunity of being heard.
- (10) The registrar may at any time cancel the registration of a person as a registered user of a subsisting registered mark in respect of any goods in respect of which the subsisting registered mark is no longer registered.
- (11) Any decision of the registrar under this section shall be subject to appeal to the Court.
- (12) Nothing in this section shall confer on a registered user of a subsisting registered mark any assignable or transmissible right to the use thereof.

## **57. General power to rectify entries in register**

- (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 in the register, or by an error or defect in an entry in the register, may apply to the Court, and the Court may make such order for making, expunging or varying the entry as it may think fit.
- (2) The 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.
- (3) In case of fraud in the registration, assignment or transmission of a registered trade mark, the registrar may, himself, apply to the Court under this section.
- (4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served on the registrar, who shall on receipt of such notice rectify the register accordingly.

## **58. Power to expunge or vary registration for breach of condition**

On application by any person aggrieved to the Court, or on application by the registrar to the Court, the Court may make such order as it may think fit for expunging or varying the registration of a subsisting registered mark on the ground of any contravention of, or failure to observe, a condition entered on the register in relation thereto.

**59. Amendment of register by proprietor or registered user**

- (1) The registrar may, on request made by the registered proprietor—
  - (a) correct any error in the name, address or description of the proprietor of a subsisting registered mark;
  - (b) enter any change in the description of the person who is registered as proprietor of a subsisting registered mark;
  - (c) cancel the entry of a subsisting registered mark on the register;
  - (d) strike out any goods or classes of goods from those in respect of which a subsisting registered mark is registered; or
  - (e) enter a disclaimer or memorandum relating to a subsisting registered mark which does not in any way extend the rights subsistent therein.
- (2) The registrar may, on request made in writing by a registered user of a subsisting registered mark, correct any error, or enter any change in the description of the registered user.
- (3) Any decision of the registrar under this section shall be subject to appeal to the Court.

**60. Notification of changes**

- (1) The registered proprietor and the registered user of a subsisting registered mark shall, not later than three months after the change takes place, notify the registrar of a change in the name, and a change in the address, of the registered user, of the registered proprietor or, as the case may be, as entered in the register.
- (2) On receipt of such notification and on payment of the prescribed fee, the registrar shall alter the register accordingly and issue a certificate of the change.
- (3) If the registrar has reason to believe that a registered proprietor or a registered user has failed to comply with subsection (1), he shall send a letter to by registered post, the registered proprietor or the registered user, as the case may be, or the agent, if any, for the service of the process, requesting the proprietor or user to inform the registrar whether there is a change in the name or address as entered in the register.
- (4) If, within one month after sending the letter, the registrar does not receive an answer to it, he shall send a second letter by registered post which shall repeat the contents of the first letter, and inform the registered proprietor or the registered user that the registrar may, at the expiry of one month after the date of the second letter, cancel the registration in question.
- (5) The registrar shall cancel the registration unless—
  - (a) before the expiry of one month after the date of the second letter, the person in question notifies him of the change, and pays the prescribed fee; or
  - (b) he is satisfied that there is no such change.

**61. Alteration of subsisting registered mark**

- (1) The registered proprietor of a subsisting registered mark may apply in writing to the registrar for leave to add to or alter the subsisting registered mark in any manner which does not substantially affect the identity thereof, and the registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.
- (2) The registrar may cause an application under this section to be advertised in the *Gazette* in any case where it appears to him that it is expedient to so do, and where he does so, if within one month

from the date of advertisement any person gives notice to the registrar in writing of opposition to the application, the registrar shall, and if so required, after hearing the parties, decide the matter.

- (3) Any decision of the registrar under this section shall be subject to appeal to the Court.
- (4) Where such leave is granted, the subsisting registered mark as altered shall be advertised in the *Gazette*, in the form to which it has been altered, in an advertisement under subsection (2), unless it has been already advertised.

## **62. Requirement of renewal of subsisting registered mark**

- (1) Subject to subsection (2), the registrar may remove the name of a person registered as the proprietor of a registered mark from the register if that person fails—
  - (a) within a period of ten years commencing on 26th July, 1968, or within each subsequent period of ten years, to apply for renewal of the registration; or
  - (b) within such period or subsequent period, to pay the fee prescribed for renewal of the registration;and, in any other case, fails, within the time specified in the notice sent under subsection (2), to show cause why his name should not be so removed.
- (2) Before so removing a name, the registrar shall send a notice by registered post, to the registered proprietor, or the agent, if any, for the service of process, calling upon him to show cause, within a time specified in the notice, why his name should not be so removed.

## **63. Change of form of trade relationship**

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

## **64. Registration to be *prima facie* evidence of validity**

In all legal proceedings relating to a subsisting registered mark (including applications under [section 9](#)) the fact that the subsisting registered mark is entered in the register in the name of a person as proprietor, shall be *prima facie* evidence of the validity of the original registration and of all subsequent assignments and transmissions thereof.

## **65. Court's power to review registrar's decision**

The Court may in dealing with any question of the rectification of the register (including applications under [section 9](#)) review any decision of the registrar relating to the entry in question or the correction sought to be made.

## **66. Discretion of Court in appeals**

In an appeal from a decision of the registrar to the Court under this Act, the Court shall have and exercise the same discretionary powers as under this Act are conferred upon the registrar.

## **67. Evidence of entries in register**

- (1) A copy of any entry in the register, purporting to be certified by the registrar, shall be admitted in evidence in all Courts, and in all proceedings without further proof or production of the original.
- (2) Any person requiring such a certified copy shall be entitled to obtain it on payment of the prescribed fee.

**68. Evidence of things done by registrar**

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

**69. Offences**

If any person makes or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence, and liable on conviction to a fine not exceeding two hundred emalangeni, or in default of payment thereof to imprisonment not exceeding six months, or to such imprisonment without the option of a fine.

**70. Power to make Regulations**

Subject to this Act, the registrar may make such Regulations and do such things as he may think expedient, for regulating procedure under this Act, and generally for prescribing such things, other than fees, as may be prescribed.

**71. Fees**

- (1) The fees set forth in the Third Schedule shall be due and payable for the several acts therein specified and such fees shall be collected by means of revenue stamps to be affixed to the document in respect of which any such act may be done.
- (2) The Minister may by notice in the *Gazette* amend the Schedule.

**First Schedule (Schedule 12 and 24)**

*[Replaced in its entirety by L.N.84/1994; L.N. 102/2006]*

	<b>Matter</b>	<b>Fees</b>
(1)	Filing an application for registration of a South African/ United Kingdom patent and design	E350.00
(2)	Registration of a South African/ United Kingdom patent or design	E350.00
(3)	Each renewal of a South African/ United Kingdom patent or each extension of a South African/ United Kingdom design	E300.00
(4)	Registration of any assignment, transmission of a patent or design	E350.00
(5)	Registration of any amendment, prolongation or revocation of a patent, or rectification or expungement of a design	E250.00
(6)	The issue of a certificate of registration to be used in legal proceedings	E250.00
(7)	Inspection of the register of South African/United Kingdom patents of South African/United Kingdom (for every quarter-hour)	E50.00
(8)	Extracts from such a register (per hundred words or part thereof)	E100.00
(9)	Certification of copy of entry	E100.00
(10)	Entering in such a register any change in the name, description or address of the person who is registered as the proprietor of a patent or design	E300.00
(11)	Every entry in such a register or a rectification thereof, or an	E100.00

	alteration thereto, not otherwise charged	
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**Second Schedule (Section 47)**

	<b>Matter</b>	<b>Fees</b>
(1)	For filing an application for the registration of a trade mark	E2.00
(2)	For the registration of a trade mark	E4.00
(3)	For renewal of registration	E4.00
(4)	For registration of a subsequent proprietor of a trade mark in cases of assignment or other mode of transfer	E4.00
(5)	For registration of a registered user	E4.00
(6)	For cancelling the registration of a trade mark or registered user wholly or as regards any particular goods in respect of which the trade mark or registered user is registered	E2.00
(7)	For any change in the name, description or address of the person who is registered as proprietor or user of a trade mark	E2.00
(8)	For every entry in the register or a rectification thereof, or an alteration thereto, not otherwise charged	E2.00
(9)	For certificate of registration to be used in legal proceedings or other specified purpose	E2.00
(10)	For inspecting the register or other documents in connection with trade mark registrations; for every quarter of an hour	E0.25



(11)	For copies of extracts; for every hundred words or part thereof	E0.50
(12)	For certifying copies of extracts	E1.00

*[Amended G.N.122/1963]*

### Third Schedule (Section 70)

	Matter	Fees
(1)	On application to register any assignment or transmission	E4.00
(2)	On application to cancel, correct or amend any entry of a subsisting registration in the register	E2.00
(3)	On application to alter a subsisting registered mark	E4.00
(4)	On application to register any registered user or to vary or cancel the entry of a registered user	E4.00
(5)	On application to register an order of Court for rectification of the register	E4.00