

LEGAL NOTICE NO. 47 OF 1989

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THE TRADE MARKS ACT, 1981

(Act No. 6 of 1981)

THE TRADE MARKS REGULATIONS, 1989

(Under Section 14)

In exercise of the powers conferred by Section 14 of the Trade Marks Act, 1981, the Minister for Justice hereby makes the following Regulations—

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### PART I: GENERAL REGULATIONS

#### *Citation and commencement.*

1. These Regulations may be cited as the Trade Marks Regulations, 1989 and shall come into operation on a date appointed by the Minister by notice in the Gazette.

#### *Interpretation.*

2. In these Regulations, unless the context otherwise requires—
  - “the Act” means the Trade Marks Act, 1981;
  - “agent” means an agent duly authorised to the satisfaction of the Registrar;
  - “the Office” means the Trade Marks Office established under section 3;
  - “specification” means the designation of goods or services in respect of which a trade mark, or a registered user of a trade mark, is registered or proposed to be registered.

#### *Administrative instructions.*

3. (1) The Registrar may establish administrative instructions to deal with matters in respect of which these Regulations expressly refer and with details in respect of the application of these Regulations.  
(2) The administrative instructions and any modification thereof shall be published by notice in the Gazette.  
(3) The Registrar may by notice in the Gazette amend any administrative instructions made under this regulation.

### PART II: REGULATIONS CONCERNING PART II OF THE ACT

#### *Fees.*

4. The fees to be paid under the Act or these Regulations shall be those prescribed in Schedule I hereto.

*Forms.*

5. The forms contained in Schedule II of these Regulations shall be used in all cases to which they are applicable and may be modified by the Registrar in a manner not inconsistent with the Act or these Regulations.

*Classification.*

6. The International Classification of goods and services which applies under the Act and these Regulations is reproduced in Schedule III.

*Hours of the office and the register.*

7. The Trade Marks office shall be open to the public for business and the register shall, on payment of the prescribed fee, be open for inspection by the public during normal working hours namely, Monday — Friday: 8.30 a.m. — 3.30 p.m.

*Contents and keeping of the register.*

8. In addition to those particulars listed in section 6(1) of the Act, the register shall contain, in respect of each trade mark registered therein, the following particulars—

- (a) where relevant, the dates on which such particulars were received by the office;
- (b) the date and the number of the registration and the dates and numbers, if any, of all subsequent entries relating to that registration;
- (c) the class numbers and specifications of goods and services covered by the registration;
- (d) the name and address of any registered user and of any authorised agent, any address for service, and any changes therein;
- (e) the country or countries of nationality and of residence of the registered proprietor;
- (f) the reference to the date and number of the Gazette in which the registration and any subsequent changes and entries relating thereto were published.

*Registrar's certificates and certified copies.*

9. Upon receipt of a request by any person on TM Form No. 25, together with the payment of the prescribed fee, the Registrar shall issue—

- (a) a certificate, sealed and signed by him, other than a certificate under section 28(2) of the Act, certifying that any entry or any other act which he is authorised or required by the Act or these Regulations to make or do has or has not been made or done;
- (b) a certified and sealed copy of a registered trade mark or of a document relating thereto or of any other entry or extract thereof.

*Documents size and format.*

10. Subject to any other directions that may be given by the Registrar, all applications, notices, statements, papers having representations affixed or other documents authorised or required by the Act or these Regulations to be submitted to the Trade Marks Office or to the Registrar shall be upon strong paper and on one side only of a size (A4 or foolscap) paper and shall have on the left-hand part a margin of not less than one inch and half.

*Signatures by partnerships, companies and associations.*

11. A document purporting to be signed for or on behalf of—
- (a) partnership shall contain the names of all the partners in full and shall be signed by all the partners or by any qualified partner stating that he signs on behalf of the partnership, or by any other person who satisfies the Registrar that he is authorized to sign the document;
  - (b) a body corporate shall be signed by a director or by the secretary or other principal officer of the body corporate, or by any other person who satisfies the Registrar that he is authorized to sign the document; and
  - (c) an association of persons may be signed by any person who appears to the Registrar to be duly qualified.

*Service.*

12. (1) All applications, notices, statements, paper having representations affixed, or other documents authorized or required by the Act or the Regulations to be submitted to the Trade Marks Office or to the Registrar or to any other person may be sent through the post by a prepaid letter and any application or any document so sent shall be deemed to have been submitted at the time when the letter containing the same would be delivered in the ordinary course of post.

(2) In proving sending under this regulation, it shall be sufficient to prove that the letter was properly addressed and sent by registered mail.

*Address.*

13. (1) Where any person is by the Act or these Regulations required to furnish the Registrar with an address, the address given shall in all cases be as full as possible for the purpose of enabling any person to easily find the place of trade or business of the person whose address is given.

(2) The address shall include the name of the street and the number in the street or name of the premises, if any.

*Address for service.*

14. (1) Any applicant or other person requesting matters to be dealt with under the Act or these Regulations shall give to the Registrar an address for service within Swaziland, and such address may be treated as the actual address of that person for all purposes connected with the matter in question.

(2) In any case in which no address for service is entered in the Register, the Registrar may treat any trade or business address in Swaziland of the registered proprietor or registered user as therein entered as his address for service for all purposes connected with the registration.

(3) Any written communication addressed to a party or person at an address given by him, or treated by the Registrar as his address for service under this Regulation, shall be deemed to be properly addressed.

*Agency.*

15. (1) Subject to the requirement of an agent under section 21(2)(e) of the Act, and except as otherwise required by these Regulations, any application, request or notice which is required or permitted by the Act or these Regulations to be made or to be given to the Registrar, and all other communications between an applicant or a person making such

request or giving such a notice and the Registrar and between the registered proprietor or a registered user of a trade mark and the Registrar or any other person, may be signed, made or given by or through an agent.

(2) Any applicant, person making a request or giving notice, registered proprietor or registered user may appoint an agent to act for him in any proceeding or matter before or affecting the Registrar under the Act or the Regulations by signing and sending to the Registrar an authority to that effect on TM Form No. 1, and in the case of such appointment, service upon the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so appointing him.

(3) All communications to be made to a person who has appointed an agent under subregulation (2) in respect of the proceeding or matter may be addressed to the agent, and all attendances upon the Registrar relating thereto may be made by or through such agent, but in any particular case in which he deems it necessary, the Registrar may require the personal signature or presence of an applicant, applicant, registered proprietor, registered user or other person.

(4) The Registrar shall not recognise as an agent any person whose name is not entered on the Register of Trade Marks Agents kept under section 62 of the Act.

*Extension of time.*

16. (1) If in any particular case the Registrar is satisfied that the circumstances are such as to justify an extension of time for doing any act or taking any proceeding under the Act or these Regulations, he may extend the time upon such notice to the parties and upon such terms as he may direct and the extension may be granted though the time has expired for doing the act or taking the proceeding.

(2) Whenever the last day fixed by the Act or by these Regulations for doing any act or taking any proceeding falls on a day when the Trade Marks Office is not open, the act may be done or the proceeding may be taken on the first following day on which the office is open.

*Hearing.*

17. (1) Before exercising adversely to any person indicated in section 8 any discretionary power given to the Registrar by the Act or these Regulations, the Registrar shall notify such person of the opportunity to be heard thereon, indicating a time limit, which shall not be less than one month, for filing a request for a hearing.

(2) The request for a hearing shall be made on TM Form No. 13.

(3) Upon receiving such request, the Registrar shall give the person applying at least two weeks' notice of the date and time of the hearing.

**PART III: REGULATIONS CONCERNING PART V OF THE ACT-APPLICATION FOR REGISTRATION OF TRADE MARKS**

*Application form.*

18. (1) An application to the Registrar for the registration of a trade mark shall be made in writing, in the English language, on TM Form No. 2, together with the payment of the prescribed fee, and shall be signed by the applicant or his authorised agent.

(2) Each application may be made for the registration of a trade mark in respect of goods or services in one or more classes of the International Classification.

*Name, address and nationality of applicant.*

19. (1) Names of natural persons shall be given in full, indicating forenames and surnames.

(2) Names of legal entities shall be indicated by their full official designation.

(3) Addresses shall be as full as possible to ensure prompt postal delivery, and, in the case of an applicant having an address outside Swaziland, the address shall include the name of the country of his residence.

(4) The applicant's nationality shall be indicated by the name of the country of which he is a national, and legal entities shall indicate the country under whose laws they are constituted.

*Reproduction of trade mark.*

20. (1) Every application for the registration of a trade mark shall contain a durable graphic reproduction of the mark in the space provided therefor on TM Form No. 2, and, where the reproduction exceeds such space in size, it shall be mounted upon hard and durable paper, and part of the mounting shall be affixed in the space aforesaid and the rest may be folded.

(2) With all applications for the registration of a trade mark, three additional reproduction of the mark on separate TM Form No. 3 shall be submitted but the reproduction of the mark on the application and the additional reproduction shall be identical.

(3) The additional reproduction referred to in subregulation (2) shall in all cases be noted with all such particulars as may from time to time be required by the Registrar, and such particulars shall, if required, be signed by the applicant or his authorised agent.

(4) Subregulation (1) shall apply *mutatis mutandis* to subregulation (2) and (3).

(5) If the Registrar considers any reproduction of a mark unsuitable, he may, at any time, require a suitable reproduction to be substituted.

(6) Where a drawing or other reproduction cannot be given in the aforesaid manner, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale and in such a form as the Registrar may think most convenient.

*Transliteration and translation of trade mark.*

21. (1) Where a trade mark consists of or, Contains a word or words in characters other than Roman, the application on TM Form No. 2 and the accompanying TM Form No. 3, shall be accompanied, unless the Registrar otherwise directs, by a sufficient transliteration and translation to the satisfaction of the Registrar of each of such words, stating the language to which each word belongs.

(2) Where a trade mark consists of or contains one or more words in a language other than English, TM Form No. 2, and the accompanying TM Form No. 3, shall be accompanied, unless the Registrar otherwise directs, by a sufficient translation to the satisfaction of the Registrar of each of such words into English, stating the language to which each word belongs.

*Claim to priority under the Convention.*

22. (1) Every applicant who claims priority for his application under the provisions of section 22 of the Act shall indicate in his application on TM Form 2—

- (a) that a priority claim is made under the Convention;
- (b) the date and the number of the earlier application in the Convention country; and
- (c) the name of the Convention country or, where the earlier application is a regional or international application, the notice with which it was filed.

(2) The applicant shall furnish, together with his application or not later than three months after the filing date of the application, a copy of the earlier application certified as correct by the office with which it was filed.

(3) Where the earlier application is not in English, the Registrar may require the applicant to furnish him, within four months of the filing date of the application, with a translation of the earlier application into English.

*Declaration as to use of trade mark.*

23. The declaration referred to in section 21(2)(f) of the Act shall be made on TM Form No. 2.

*Filing date.*

24. The Registrar shall accord as filing date of the application the date on which the following elements are received—

- (a) the name of the applicant;
- (b) an address to which communications can be directed;
- (c) a reproduction of the trade mark;
- (d) a specification of goods or services;
- (e) the required filing fee for at least one class of goods or services.

*Serial number.*

25. Applications shall be given a serial number as received.

*Notification.*

26. The Registrar shall notify the applicant of the filing date and the serial number of the application.

*Information as to foreign application or registration.*

27. The applicant shall furnish the information requested under section 23(1) and (2) of the Act within three months from the date of the Registrar's request.

*Application for registration of series of trade marks.*

28. Where application is made for the registration of a series of trade marks under section 25(2) of the Act, a durable graphic reproduction of each trade mark of the series shall be submitted, as provided in Regulation 20 on a TM Form No. 2 and on the accompanying TM Form(s) No. 3.

*Objection to or conditional acceptance of application.*

29. (1) If, upon examination, the Registrar objects to the application for registration of a trade mark, he shall notify the applicant in writing of his objections with all the relevant details and invite the applicant to amend the application, to submit his observations in writing or to apply for a hearing within two months from the date of the notification:

If the applicant does not comply with the invitation within the set period, he shall be deemed to have withdrawn his application.

(2) If the Registrar decides to accept the application subject to any amendments, modifications, conditions, disclaimers or limitations, he shall communicate such decision to the applicant in writing:

If the applicant—

- (a) objects to such amendments, modifications, conditions, disclaimers or limitations, he shall, within two months from the date of the communication, apply for a hearing or submit his observations in writing;
- (b) does not object to such amendments, modifications, conditions, disclaimers or limitations he shall, within two months from the date of the communication, notify the Registrar in writing and amend his application accordingly;
- (c) does not respond in one way or the other within two months of the date of the communication, he shall be deemed to have withdrawn his application.

*Refusal of application or conditional acceptance to which applicant objects.*

30. If, after a hearing or after consideration of the applicant's amendments or observations in writing, the Registrar refuses the application or accepts it subject to any amendments, modifications, conditions, disclaimers or limitations to which the applicant objects, he shall communicate his decision to the applicant in writing:

Provided that within one month from the date of such communication, the applicant may, on TM Form No. 4, together with the payment of the prescribed fee, request the Registrar to state in writing the grounds of his decision and the material used by him in arriving at his decision.

*Advertisement of trade marks upon acceptance of application.*

31. (1) If the Registrar accepts an application for the registration of a trade mark or of a series of trade marks or accepts it subject to any conditions or limitations to which the applicant does not object, he shall promptly notify the applicant in writing and advertise the trade mark.

- (2) (a) For the purposes of the advertisement referred to in sub-regulation (1), the applicant may, at the appropriate time, supply or be required to supply a printed block (or more than one, if necessary) of the trade mark satisfactory to the Registrar, of such dimensions as may from time to time be approved or directed by the Registrar, or shall supply such information or other means of advertising the trade mark as may be required by the Registrar:

If dissatisfied with the printing block supplied by the applicant or his agent, the Registrar may, before proceeding with the advertisement, require the applicant to supply a fresh block.

- (b) When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in section 25(2) of the Act, the applicant may be required to supply a printing block (or more than one, if necessary) satisfactory to the Registrar of any or of each of the trade marks constituting the series; or the Registrar may, if he thinks fit, insert with the advertisement of the application a statement of the manner in which the several trade marks differ from one another.

*Correction of errors in and amendment of application.*

32. The Registrar may, at any time, whether before or after acceptance, correct any error in or inconnection with the application and may permit the applicant to correct or amend his application upon a request made on TM Form No. 5.

*Notice of opposition to registration.*

33. (1) The prescribed time for giving notice of opposition under section 7(1) of the Act shall be three months from the date of the advertisement of the application.

(2) The notice shall be given on TM Form No. 6, in two copies together with the payment of the prescribed fee.

(3) The Registrar shall forthwith send a copy of the notice to the applicant.

*Counter statement.*

34. (1) The counter-statement under section 27(4) of the Act shall be submitted, within two months from the receipt of the copy of the notice of opposition, on TM Form No. 7, in two copies, together with the payment of the prescribed fee.

(2) The Registrar shall forthwith send a copy of the counter-statement to the opponent.

*Evidence in support of opposition to registration.*

35. (1) Within two months from the receipt of the copy of the counter-statement, the opponent shall file with the Registrar, in two copies, evidence by way of statutory declaration in support of his opposition, and the Registrar shall forthwith send a copy of the said evidence to the applicant.

(2) If the opponent does not file evidence within the period specified in this Regulation, he shall, unless the Registrar otherwise directs, be deemed to have abandoned his opposition.

*Evidence in support of application for registration.*

36. If the opponent files evidence, the applicant shall within two months from the receipt of the copy of the evidence, file with the Registrar, in two copies, evidence by way of statutory declaration in support of his application, and the Registrar shall forthwith send a copy of the said evidence to the opponent.

*Evidence in reply by opponent.*

37. Within two months from the receipt of the copy of the applicant's evidence, the opponent may file with the Registrar, in two copies, evidence by way of statutory declaration, strictly confined to matters in reply, and the Registrar shall forthwith send a copy of the said evidence to the applicant.

*Further evidence.*

38. No further evidence shall be filed on either side, but, in any proceedings before the Registrar, he may at any time give leave to either the applicant or the opponent to file any evidence on such terms with regard to costs or otherwise as he may think fit.

*Exhibit.*

39. (1) Where there are exhibits to a declaration filed in an opposition, a copy of each exhibit shall be sent to the other party on his request and at his expense.

(2) If any such copy cannot be furnished conveniently, the original shall be filed with the Registrar in order that it may be open to inspection.

(3) The original exhibit shall be produced at the hearing, unless the Registrar otherwise directs.

*Hearing of arguments.*

40. (1) Upon completion of the evidence, the Registrar shall give at least two month's notice to the parties of the date when he will hear the arguments in the case.

(2) (a) A party who receives such notice but does not, within one month from the date thereof, notify the Registrar on TM Form No. 8, in two copies, together with the payment of the prescribed fee, of his intention to appear may be treated as not desiring to be heard, and the Registrar may act accordingly;

(b) The Registrar shall send forthwith to the other party a copy of the said notice.

(3) (a) If the Registrar fails to notify the parties of a date for the hearing within three months of the completion of the evidence or fails to issue his decision within three months after the conclusion of the hearing, the opponent or the applicant may, after having given the Registrar one month's written notice, elect to refer the matter to the Court for hearing and determination;

(b) The Registrar shall then transmit all relevant documents to the Court.

*Security for costs.*

41. Where the opponent or the applicant does not reside nor carry on business in Swaziland, the Registrar may require him to give security for the costs the opposition proceedings for such amount as he thinks fit.

*Registration and entry in the Register.*

42. (1) As soon as may be practicable after the expiration of three months from the date of the advertisement in the Gazette of any application for the registration of a trade mark, the Registrar shall, subject to any opposition and the determination thereof, and subject to the provisions of section 28(1) of the Act, and upon receipt of TM Form No. 9, transmitting the payment of the prescribed fee, enter the trade mark in the Register.

(2) The entry of a trade mark in the register shall include all the particulars specified in section 6(1) of the Act and Regulation 8(1).

*Certificate of registration.*

43. Upon the registration of a trade mark, the Registrar shall cause to be issued to the applicant a sealed certificate of registration on TM Form 10, which shall bear the copy of the

trade mark, the registration number, the date of registration, the registered proprietor's name and address, the class number(s) and specification of goods and services, and any disclaimer, condition or limitation to which the registration is subject, and such registration shall be published in the Gazette.

#### PART IV: REGULATIONS CONCERNING PART VI OF THE ACT

##### *Renewal reminder.*

44. (1) The Registrar shall notify the registered proprietor in writing of the approaching expiration of the term of registration and of the conditions as to payment of fees and other requirements necessary for obtaining renewal.

(2) The reminder shall be sent at least six months before the expiration of the registration, but failure to send or receive the reminder, or any error in the reminder, shall not affect the expiration date.

##### *Application to renew registration.*

45. (1) The application to renew the registration shall be made on TM Form 11, and the renewal shall be subject to payment of the prescribed fee.

(2) The application and the payment of the fee may be effected either within a six month period before the expiration of the registration or within a six month period after the expiration of the registration and in the latter case, an addition fee shall be transmitted with TM Form 12.

(3) The statements referred to in section 28(2)(a) and (b) of the Act shall be signed by the registered proprietor.

##### *Notice of renewal.*

46. Upon the renewal of a registration of a trade mark, the Registrar shall send a notice to that effect to the registered proprietor, and the renewal shall be advertised in the Gazette.

##### *Removal of trade mark from register.*

47. If an application for renewal, as prescribed, has not been made, the Registrar shall forthwith remove the trade mark from the Register as of the date of the expiration of the registration, entering the reason therefor in the Register and shall notify the registered proprietor in writing of the removal and advertise the fact of such removal in the Gazette.

#### PART V: REGULATIONS CONCERNING PART III OF THE ACT

##### *Application to remove trade mark or to rectify Register entry.*

48. (1) An application to remove a trade mark from the Register on grounds of non-use under section 34(2) of the Act or an application to make, expunge or vary a Register entry under section 37 of the Act shall be made on TM Form No. 14, in two copies, together with the payment of the prescribed fee.

(2) An application under this Regulation shall contain a statement indicating the nature of the aggrieved person's interest, the facts or which he bases his application and the relief sought.

(3) The Registrar shall forthwith send a copy of the said application to the registered proprietor.

*Procedure.*

49. The provisions of Regulations 34 to 41 shall apply *mutatis mutandis* with respect to the said applications, but the Registrar shall not rectify the Register or remove the trade mark from the Register merely because the registered proprietor has not filed a counter-statement:

Provided that in any case of doubt, any party may apply to the Registrar for directions.

*Application by registered proprietor or registered user to correct Register.*

50. (1) Applications under section 40(1) of the Act shall be made—

- (a) on TM Form No. 15 for correction of any error in the name, address or description of the registered proprietor;
- (b) on TM Form No. 16 to enter any change in the name, address or description of the registered proprietor;
- (c) on TM Form No. 17 for the cancellation of the entry of a trade mark in the Register.
- (d) on TM Form No. 18 for the striking out of any goods or services from those for which the trade mark is registered;
- (e) on TM Form No. 19 for entering a disclaimer or memorandum relating to a registered trade mark.

(2) Applications under section 40(2) of the Act shall be made—

- (a) on TM Form 15 for correction of any error in the name, address or description of the registered user;
- (b) on TM Form No. 16 to enter any change in the name, address or description of the registered user.

(3) In the case of applications under this Regulation, the Registrar shall require such evidence by statutory declaration or otherwise as he may think fit with regard to the circumstances in which the application is made.

(4) Where an application is made on TM Form No. 15, No. 16, No. 17, No. 18 or No. 19 by the registered proprietor, the Registrar shall forthwith send a copy thereof to any registered users of the trade mark.

(5) Where an application is made on TM Form No. 15 or 16 by a registered user, the Registrar shall forthwith send a copy thereof to the registered proprietor of the trade mark.

(6) Where an application is made on TM Form No. 17, No. 18 or No. 19, the Registrar, before deciding upon such application, shall advertise the application in the Gazette and allow any person one month from the date of advertisement to object thereto in writing, stating the reasons therefor.

*Application for addition to or alteration of trade mark.*

51. (1) An application under section 36 of the Act shall be made on TM Form No. 20, together with the payment of the prescribed fee and three additional reproductions of the mark as it will appear when added to or altered on separate TM Form No. 3.

(2) The Registrar shall publish an application made under this Regulation in the Gazette and, to the extent relevant, Regulations 29 to 43 shall apply *mutatis mutandis* to the further proceedings thereon.

(3) If the Registrar allows the application, he shall add to or alter the trade mark in the Register and advertise in the Gazette a notification of that fact.

## PART VI: REGULATIONS CONCERNING PART VIII OF THE ACT

### *Application for entry of assignment or transmission.*

52. An application under section 41(3) of the Act shall be made on TM Form No. 21, together with the payment of the prescribed fee and shall contain the following matters—

- (a) the number of the registered trade mark or of the pending application for registration of the trade mark and the name of the proprietor thereof;
- (b) the goods and services in respect of which the trade mark has been assigned or transmitted;
- (c) the full name, address, trade or business description and the country or countries of nationality and of residence of the applicant;
- (d) the date of acquisition of the pending or registered trade mark;
- (e) a statement that the applicant is entitled to the trade mark by virtue of an assignment or of a transmission, giving full particulars of any instrument of assignment or transmission under which he claims to be entitled to the trade mark;
- (f) in the case of an assignment, the signature of the parties to the transfer and, in the case of a transmission, only the signature of the applicant.

### *Evidence of title.*

53. (1) When the person applying for registration of his title claims under any instrument which is capable in itself of furnishing proof of his title, the application on TM Form No. 21 shall be accompanied by the instrument of title verifying the assignment or transmission on a certified copy thereof.

(2) When a person applying for registration of his title does not claim under any instrument which is capable in itself of furnishing proof of his title, he shall state a case, setting forth the full facts upon which his claim of title is based and showing that the trade mark has been assigned.

(3) The Registrar may call on the applicant for such proof or additional proof of title as he may require for his satisfaction.

### *Assignment or transmission in respect of only some of the goods or services.*

54. When the assignment or transmission of a trade mark is in respect of only some, but not all, of the goods or services for which the trade mark is registered, the Registrar may refuse to accept the application if the effect of the transfer is likely to deceive or cause confusion by the fact of the trade mark being owned by different persons for closely related goods or services.

### *Entry in the Register.*

55. When the Registrar has accepted the application for the transfer of title, he shall—

- (a) in the case of a registered trade mark, promptly cause the applicant to be registered as proprietor of the trade mark in respect of the relevant goods and services, enter in the Register his name, address, trade or business description and the particulars of the assignment or transmission and notify in writing the new proprietor accordingly;

- (b) in the case of a pending trade mark, provisionally record the aforementioned matters and enter them in the Register when the trade mark is registered, and, in such case, the registration certificate issued under Regulation 43 shall be made out in the new proprietor's name.

## PART VII: REGULATIONS CONCERNING PART IX OF THE ACT

### *Application for registered user.*

56. An application under section 42 of the Act shall be made jointly by the registered proprietor and the proposed registered user on TM Form No. 22, together with the payment of the prescribed fee.

### *Entry of registered user and notification.*

57. (1) When the Registrar has accepted the application for the registration of a person as a registered user of a trade mark, he shall record the particulars thereof in the register, indicating the date on which such entry was made, and, if applicable, record, in the Register, the licence.

(2) The Registrar shall send a notification in writing of the registration of the registered user to the registered proprietor of the trade mark, to the registered user, and to every other registered user whose name is entered in the Register in relation to the same trade mark and cause such notification to be published in the Gazette.

### *Application by registered proprietor and registered user to vary registered user entry.*

58. An application under section 46(a) of the Act shall be made on TM Form No. 23, together with the payment of the prescribed fee.

### *Application by registered proprietor and registered user to cancel registered user entry.*

59. An application under section 46(b) of the act shall be made on TM Form No. 24, together with the payment of the prescribed fee.

### *Entry in the Register and notification.*

60. (1) When the Registrar has accepted an application made under Regulation 58 or 59, he shall record the variation in the Register or cancel the Register entry, as the case may be, indicating the date on which such variation or cancellation took place.

(2) A notification of the variation or cancellation shall be sent and published as provided for in Regulation 57.

### *Cancellation of entry or striking out of goods and services by Registrar.*

61. (1) In case of the registration of a registered user for a period of permitted use, in accordance with section 43(1)(b)(vi) of the Act, the Registrar shall cancel the entry of the registered user at the end of that period.

(2) Where some of the goods or services are struck out from those for which a trade mark is registered, the Registrar shall at the same time strike them out from those specifications of registered users of the trade mark in which they are comprised.

(3) The Registrar shall send a notification in writing of every cancellation or striking out hereunder to the registered users whose permitted use is affected thereby and to the registered proprietor of the trade mark and publish such notification in the Gazette.

## PART VIII: REGULATIONS CONCERNING PART XII OF THE ACT

*Reclassification.*

62. (1) When a trade mark on the commencement of the Act is registered and classified under a classification other than the International Classification, the registered proprietor shall, upon application for the renewal thereof under section 29 of the Act, affix to his application for renewal a proposal to reclassify, the specification of the goods and services for which the trade mark is registered, in accordance with the International Classification.

- (2) (a) If the Registrar accepts the registered proprietor's proposal, he shall alter the Register entry accordingly and publish the alteration in the Gazette.
- (b) If the Registrar objects or proposes any amendments to the registered proprietor's proposal, he shall notify the registered proprietor in writing, allowing him one month from the date of the notification to object or to submit a counter-proposal, and then he shall forthwith alter the Register entry as he considers correct and publish the alteration in the Gazette.
- (c) The Registrar's decision shall be final.

*Application to be entered in the Register of Trade Marks Agents.*

63. An application under section 62 of the Act shall be made on TM Form No. 26, together with the payment of the prescribed fee.

*Qualifications for entry in the Register of Trade Marks Agents.*

64. (1) In order to be entered in the Register of Trade Marks Agents, the applicant shall satisfy the Registrar that—

- (a) he is admitted enrolled as an attorney or advocate under the Legal Practitioners Act, 1964; or
- (b) he holds a bachelor of arts degree in law or the degree of bachelor of laws of the former University of Botswana, Lesotho and Swaziland or the former University of Botswana and Swaziland or the University of Swaziland, and has passed the examination prescribed for Trade Marks Agents.

(2) Notwithstanding subregulation (1), the Registrar may refuse to enter in the Register of Trade Marks Agents any person having been adjudged guilty of criminal conduct or of conduct discreditable to a trade mark agent.

(3) The Registrar may, at any time, request such proof of the applicant's qualifications as he may require for his satisfaction.

*Entry in the Register of Trade Marks Agents.*

65. When satisfied that the applicant qualifies to be entered in the Register of Trade Marks Agents, the Registrar shall enter his name, address and other particulars in the Register of Trade Marks Agents for a term of five years, to be renewable for successive equal periods on confirmation by the Registrar that the qualifications for entry continue to be satisfied.