

MALTA

**ATT Nru XII tal-2019**

ATT maħruġ b'liġi mill-Parlament ta' Malta.

**ATT biex iħassar u jissostitwixxi l-Att dwar it-*Trademarks*, Kap. 416.**

**ACT No. XII of 2019**

AN ACT enacted by the Parliament of Malta.

**AN ACT to repeal and replace the *Trademarks Act*, Cap. 416.**



Nagħti l-kunsens tiegħi.

(L.S.)

**GEORGE VELLA**  
**President**

9 ta' April, 2019

**ATT Nru XII tal-2019**

*ATT biex iħassar u jissostitwixxi l-Att dwar it-Trademarks, Kap. 416.*

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'ligi dan li ġej:-

**1. (1)** It-titolu fil-qosor ta' dan Att huwa l-Att tal-2019 dwar it-*Trademarks*.

Titolu fil-qosor  
u bidu fis-seħh.

(2) Dan l-Att jidhol fis-seħh f'dik id-data li l-Ministru responsabbli għall-Proprietà Intellettuali jista' b'avviż fil-Gazzetta jstabilixxi, u jistgħu jiġu hekk stabbiliti dati differenti għal għanijiet differenti jew għal dispożizzjonijiet differenti ta' dan l-Att.

**TAQSIMA I – DISPOŻIZZJONIJIET ĠENERALI**

Ambitu, għan u protezzjoni tad-*data*.

2. (1) Dan l-Att japplika għal kull *trademark* fir-rigward ta' oġġetti jew servizzi li tkun soġġetta għal reġistrazzjoni jew għal applikazzjoni għal reġistrazzjoni f'Malta bħala *trademark* individwali, marka ta' ċertifikazzjoni jew marka kollettiva jew ta' reġistrazzjoni internazzjonali li jkollha effett f'Malta.

(2) Dan l-Att jittrasponi d-dispożizzjonijiet tad-Direttiva (UE) 2015/2436 tas-16 ta' Diċembru 2015 biex jiġu approssimati l-liġijiet dwar it-*trademarks* (Riformulazzjoni).

Kap. 586.

(3) L-ipproċessar tad-*data* personali li jsir Malta fil-kuntest ta' dan l-Att għandu jkun soġġett għar-Regolament (UE) 2016/679 u l-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*.

Tifsir.

3. (1) Għall-għan ta' dan l-Att, għandu jkun japplika dan it-tifsir li ġej:

"jippubblika" tfisser jagħmel disponibbli għall-pubbliku, u riferenzi għal pubblikazzjoni għar-rigward ta' reġistrazzjoni, huma riferenzi għal pubblikazzjoni taħt l-artikolu 56(4);

Kap. 417.

"Kontrollur" tfisser il-Kontrollur tal-Proprietà Industrijali kif stabbilit taħt l-artikolu 3 tal-Att dwar il-Privattivi Industrijali u d-Disinni u tinkludi lil kull persuna oħra li tiġi maħtura sabiex teżerċita s-setgħat kollha jew x'uħud minnhom u twettaq id-dmirijiet kollha jew x'uħud minnhom tal-Kontrollur;

"Konvenzjoni ta' Pariġi" tfisser il-konvenzjoni msemmija fl-artikolu 125;

"kummerċ" tinkludi kull kummerċ jew professjoni;

"il-Ministru" tfisser il-Ministru responsabbli għall-protezzjoni tal-Proprietà Industrijali;

Kap. 29.

"l-Ordinanza" tfisser l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrijali;

"preskritt" tfisser ordnat b'dan l-Att jew b'kull regolamenti magħmulin taħtu;

"proċedimenti ta' kontravvenzjoni" għar-rigward ta' *trademark* reġistrata, tinkludi proċedimenti taħt l-artikolu 21;

"reġistru" tfisser ir-reġistru tat-*trademarks* li jinżamm mill-Uffiċċju;

"Stat Membru" tfisser stat li jkun membru tal-Unjoni Ewropea;

"it-Trattat" għandha l-istess tifsir mogħti lilha bl-artikolu 2 tal-Att dwar l-Unjoni Ewropea;

Kap.460.

"l-Uffiċċju" tfisser l-entità Maltija nazzjonali li lilha ufficjalment tingħata r-responsabbiltà li tirreġistra t-*trademarks* f'Malta;

"Unjoni Ewropea" jew "Unjoni" tfisser l-Unjoni Ewropea msemmija fit-Trattat.

(2) Riferenzi f'dan l-Att għal *trademark* jinkludu, kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ xort'oħra, riferenza għal marka ta' ċertifikkazzjoni jew marka kollettiva msemmijin rispettivament fl-artikolu 61(a) u (b).

Riferenzi għal *trademark*.

## TAQSIMA II - TRADEMARKS REĠISTRATI

4. (1) *Trademark* reġistrata hija dritt ta' proprjetà li jinkiseb bir-reġistrazzjoni tat-*trademark* taħt dan l-Att. Il-proprjetarju ta' *trademark* reġistrata jkollu d-drittijiet u r-rimedji provduti b'dan l-Att.

Dritt ta' proprjetà.

(2) *Trademark* tista' tkun tikkonsisti minn kull sinjal, b'mod partikolari kliem, inklużi ismijiet personali, jew disinji, ittri, numri, kuluri, l-ghamla ta' oġġetti jew tal-imballaġġ ta' oġġetti, jew ħsejjes, sakemm dawn is-sinjali jkunu jistgħu:

Sinjali li jistgħu jikkostitwixxu *trademark*.

(a) jiddistingwu l-oġġetti jew is-servizzi ta' impriża waħda minn dawk ta' impriži oħra; u

(b) jitniżżlu fir-reġistru b'manjiera li tkun tippermetti lill-awtoritajiet kompetenti u lill-pubbliku jagħrfu b'mod ċar u preċiż xi jkun is-suġġett tal-protezzjoni mogħtija lill-proprjetarju tat-*trademark*.

5. (1) Dawn li ġejjin m'għandhomx jiġu reġistrati bħala *trademarks* jew, jekk dawn jiġu reġistrati, ikunu jistgħu jiġu dikjarati li huma invalidi:

Raġunijiet assoluti għal rifjut jew invalidità.

(a) sinjali li ma jistgħux jikkostitwixxu *trademark*;

(b) *trademarks* li jkunu neqsin minn kull karattru distintiv;

(ċ) *trademarks* li jikkonsistu esklużivament f'sinjali jew indikazzjonijiet li jistgħu jservu, fil-kummerċ, biex ifissru ix-xorta, kwalità, skop intiż, valur, oriġini ġeografika, żmien ta'

produzzjoni ta' oġġetti jew ta' għoti ta' servizzi, jew karatteristiċi oħra tal-oġġetti jew servizzi;

(d) *trademarks* li jikkonsistu esklużivament f'sinjali jew indikazzjonijiet li saru konswetudinarji fil-lingwa kurrenti jew fil-prattiki bonafidi u stabbiliti tal-kummerċ;

(e) sinjali li jikkonsistu esklużivament -

(i) fil-forma, jew f'xi karatteristika oħra, li tirriżulta min-natura tal-oġġetti nfushom;

(ii) fil-forma, jew f'xi karatteristika oħra, ta' oġġetti li tkun meħtieġa biex jinkiseb riżultat tekniku;

(iii) fil-forma, jew f'xi karatteristika oħra, li tagħti valur sostantiv lill-oġġetti;

(f) *trademarks* li jmorru kontra l-ordni pubbliku jew il-principji aċċettati tal-moralità;

(g) *trademarks* li jkunu ta' tali natura li tqarraq bil-pubbliku jew li x'aktarx tqarraq bil-pubbliku, pereżempju bħal dwar in-natura, kwalità jew oriġini ġeografika tal-oġġetti jew servizzi;

(h) *trademarks* li ma jkunux ġew awtorizzati mill-awtoritajiet kompetenti u li għandhom jiġu rifjutati jew iddikjarati invalidi kif hemm fl-Artikolu 6ter tal-Konvenzjoni ta' Pariġi;

(i) *trademarks* li jkunu esklużi mir-registrazzjoni b'mod konformi mal-leġiżlazzjoni tal-Unjoni jew mal-liġijiet ta' Malta, jew ma' kull ftehim internazzjonali li l-Unjoni jew Malta jkunu jagħmlu parti minnu, u li jkunu jipprovdu dwar il-protezzjoni ta' denominazzjonijiet ta' oriġini u indikazzjonijiet ġeografiċi;

(j) *trademarks* li jkunu esklużi mir-registrazzjoni b'mod konformi mal-leġiżlazzjoni tal-Unjoni jew ma' kull ftehim internazzjonali li l-Unjoni tkun tagħmel parti minnu, u li jkunu jipprovdu dwar il-protezzjoni ta' termini tradizzjonali għall-inbid;

(k) *trademarks* li jkunu esklużi mir-registrazzjoni b'mod konformi mal-leġiżlazzjoni tal-Unjoni jew ma' kull ftehim internazzjonali li l-Unjoni tkun tagħmel parti minnu, u li jkunu jipprovdu dwar il-protezzjoni ta' speċjalitajiet tradizzjonali garantiti;

(1) *trademarks* li jikkonsistu, jew li jirriproduċu fl-elementi essenzjali tagħhom, denominazzjoni preċedenti ta' varjetà ta' pjanta reġistrata b'konformità mal-leġiżlazzjoni tal-Unjoni jew mal-liġijiet ta' Malta, jew ma' kull ftehim internazzjonali li l-Unjoni jew Malta jkunu jagħmlu parti minnu, u li jkunu jipprovdu protezzjoni dwar id-drittijiet fuq varjetajiet ta' pjanti, u li jkunu, fir-rigward ta' varjetajiet ta' pjanti, tal-istess speċi jew ta' speċi relatati mill-qrib.

(2) *Trademark* tkun tista' tiġi dikjarata invalida meta l-applikazzjoni għar-reġistrazzjoni tat-*trademark* tkun saret *in mala fede* mill-applikant.

(3) *Trademark* m'għandhiex tiġi rreġistrata jew, jekk reġistrata, tkun tista' tiġi dikjarata invalida meta u daqskemm:

(a) l-użu ta' dik it-*trademark* jista' jkun projbit b'mod konformi mad-dispożizzjonijiet ta' xi liġi li tkun differenti mill-liġi dwar it-*trademarks* ta' Malta jew tal-Unjoni;

(b) it-*trademark* tkun tinkludi xi sinjal ta' valur simboliku għoli, b'mod partikolari xi simbolu reliġjuż;

(c) it-*trademark* tkun tinkludi *badges*, emblemi u tarki li jkunu differenti minn dawk li jaqgħu taħt l-Artikolu 6ter tal-Konvenzjoni ta' Pariġi u li jkunu ta' interess pubbliku, sakemm ma jkunx ingħata l-kunsens tal-awtorità kompetenti għar-reġistrazzjoni tagħha b'konformità mal-liġijiet ta' Malta.

(4) *Trademark* li tkun tikkonsisti, jew li jkun fiha -

(a) l-istemmi, jew xi waħda mill-armaturi prinċipali tal-istemmi li jkunu jappartjenu lill-President jew lill-Arcisqof Kattoliku Ruman ta' Malta, jew xi insinja jew arma oħra li jkunu daqstant jixbhu dawk l-armi jew dik l-armatura tal-istemmi li x'aktarx jithawdu magħhom;

(b) raffigurazzjoni tal-bnadar Presidenzjali jew Episkopali;

(c) raffigurazzjoni tal-President jew tal-Arcisqof, jew xi tixbiha mlewna tagħhom; jew

(d) kelmiet, ittri jew disinni li x'aktarx iwasslu lil min jaħseb li jew l-applikant għandu jew li reċentement kellu xi patroċinju jew awtorizzazzjoni Presidenzjali jew Episkopali,

m'għandhiex tiġi reġistrata kemm-il darba l-Kontrollur ma jkunx tal-

fehma li jkun ingħata l-kunsens minn jew f'isem il-President jew l-Arcisqof:

Iżda l-Ministru jista' jagħmel regolamenti li jkunu jwessgħu l-mod kif japplikaw id-dispożizzjonijiet ta' dan is-subartikolu sabiex dawn isiru japplikaw *mutatis mutandis* fir-rigward ta' reliġjonijiet oħra minbarra r-Reliġjon Kattolika Appostolika Rumana.

(5) *Trademark* li tkun tikkonsisti f'raffigurazzjoni tal-bandiera nazzjonali ta' Malta m'għandhiex tiġi reġistrata.

(6) *Trademark* li jkun fiha raffigurazzjoni tal-bandiera nazzjonali ta' Malta m'għandhiex tiġi reġistrata jekk il-Kontrollur ikun tal-fehma li l-użu tat-*trademark* ikun wieħed qarrieqi jew gravement offensiv.

(7) *Trademark* m'għandhiex tkun reġistrata fil-każijiet speċifikati fl-artikolu 127 jew fl-artikolu 128 hlief kif provdut f'dawk l-artikoli.

(8) *Trademark* m'għandhiex tiġi rifjutata milli tiġi reġistrata kif hemm fis-subartikolu (1)(b), (ċ) jew (d) jekk, qabel id-data tal-applikazzjoni għar-reġistrazzjoni, din tkun kisbet xorta distintiva bħala riżultat tal-użu li jsir minnha f'Malta. *Trademark* m'għandhiex, għall-istess raġunijiet, tiġi dikjarata invalida, jekk qabel id-data tal-azzjoni għal dikjarazzjoni ta' invalidità, wara l-użu li jkun sar minnha, din tkun akkwistat xorta ta' għamla distintiva bħala riżultat tal-użu tagħha f'Malta.

Raġunijiet  
relattivi għal  
rifjut jew  
invalidità.

6. (1) *Trademark* m'għandhiex tiġi reġistrata jew, jekk tkun reġistrata, tista' tiġi dikjarata invalida meta:

(a) din tkun identika ma' *trademark* preċedenti, u l-oġġetti jew is-servizzi li dwarhom tkun qiegħda ssir l-applikazzjoni jew ir-reġistrazzjoni tat-*trademark* ikunu identiċi għall-oġġetti jew servizzi li dwarhom it-*trademark* preċedenti tkun giet protetta;

(b) minħabba l-identità jew similarità tagħha ma' *trademark* preċedenti u l-identità jew is-similarità tal-oġġetti jew is-servizzi koperti mit-*trademarks*, teżisti l-probabbiltà ta' konfużjoni min-naħa tal-pubbliku, inkluża l-probabbiltà ta' assoċjazzjoni mill-pubbliku mat-*trademark* preċedenti.

(2) "*Trademarks* preċedenti" fil-kuntest tat-tifsira tas-subartikolu (1) tfisser:

(a) *trademarks* tat-tipi li ġejjin b'data ta' applikazzjoni għar-reġistrazzjoni li tkun preċedenti għad-data ta' applikazzjoni għar-reġistrazzjoni tat-*trademark*, b'kont meħud, fejn xieraq, tal-prijoritajiet pretiżi fir-rigward ta' dawk it-*trademarks*:

(i) *trademarks* tal-UE;

(ii) *trademarks* reġistrati f'Malta;

(iii) *trademarks* reġistrati taħt arrangamenti internazzjonali li għandhom effett f'Malta;

(b) *trademarks* tal-UE li fir-rigward tagħhom tiġi validament invokata preċedenza, kif hemm fir-Regolament (UE) 2017/1001, ta' *trademark* imsemmija fis-subartikolu (2)(a)(ii) u (iii), ukoll meta din it-*trademark* tal-aħħar tkun ġiet ċeduta jew thalliet tiskadi;

(ċ) applikazzjonijiet għat-*trademarks* imsemmija fis-subartikolu (2)(a) u (b), sakemm issir ir-reġistrazzjoni tagħhom;

(d) *trademarks* li, meta ssir l-applikazzjoni għar-reġistrazzjoni tat-*trademark* jew, meta jkun xieraq, tal-prijorità pretiża fir-rigward tal-applikazzjoni għar-reġistrazzjoni tat-*trademark*, ikunu magħrufa sew f'Malta, fis-sens li fih il-kliem "magħrufa sew" jintużaw fl-Artikolu 6*bis* tal-Konvenzjoni ta' Pariġi.

(3) Aktar minn hekk, *trademark* m'għandhiex tiġi reġistrata jew, jekk tiġi reġistrata, din tkun tista' tiġi dikjarata invalida meta:

(a) din tkun identika, jew simili, għal *trademark* preċedenti irrispettivament minn jekk l-oġġetti jew is-servizzi li għalihom tiġi applikata jew reġistrata *trademark* ikunux identici, jew simili jew mhux ma' dawk li dwarhom it-*trademark* preċedenti tkun protetta, meta t-*trademark* preċedenti jkollha reputazzjoni f'Malta jew, fil-każ ta' *trademark* tal-UE, għandha reputazzjoni fl-Unjoni u l-użu tat-*trademark* sussegwenti, mingħajr raġuni valida, jieħu vantaġġ ingust mit-*trademark* preċedenti jew huwa detrimental għax-xorta distintiva jew għar-reputazzjoni tat-*trademark* preċedenti;

(b) aġent jew rappreżentant tal-proprjetarju tat-*trademark* japplika għar-reġistrazzjoni tagħha f'ismu stess mingħajr l-awtorizzazzjoni tal-proprjetarju, sakemm l-aġent jew ir-rappreżentant ma jiġġustifikax l-azzjoni tiegħu;

(ċ) sa fejn, b'mod konformi mal-legiżlazzjoni tal-Unjoni

jew mal-ligijiet ta' Malta li jipprovdu dwar il-protezzjoni tad-denominazzjonijiet tal-origini u l-indikazzjonijiet ġeografici:

(i) applikazzjoni għal denominazzjoni tal-origini jew indikazzjoni ġeografika kienet ġiet qabel ipprezentata kif hemm fil-legiżlazzjoni tal-Unjoni jew fil-ligijiet ta' Malta qabel id-data tal-applikazzjoni għar-registrazzjoni tat-*trademark* jew id-data tal-prijorità pretiża għall-applikazzjoni, bla ħsara għar-registrazzjoni sussegwenti tagħha;

(ii) dik id-denominazzjoni tal-origini jew l-indikazzjoni ġeografika tagħti lill-persuna awtorizzata taħt il-liġi rilevanti li teżercita d-drittijiet li jirrizultaw minn din, id-dritt li tipprojbixxi l-użu ta' *trademark* sussegwenti.

(4) *Trademark* m'għandhiex tiġi registrata jew, jekk registrata, din tkun tista' tiġi dikjarata invalida meta, u sa fejn:

(a) id-drittijiet għal *trademark* mhux registrata jew għal xi sinjal ieħor użat fil-kors tal-kummerċ, ikunu nkisbu qabel id-data tal-applikazzjoni għar-registrazzjoni tat-*trademark* sussegwenti, jew id-data tal-prijorità pretiża għall-applikazzjoni tar-registrazzjoni tat-*trademark* sussegwenti, u dik it-*trademark* mhux registrata jew sinjal ieħor jagħtu lill-proprjetarju tagħhom id-dritt li jipprojbixxi l-użu tat-*trademark* sussegwenti;

(b) l-użu tat-*trademark* jista' jiġi projbit bis-saħħa ta' dritt preċedenti, differenti mid-drittijiet imsemmija fis-subartikoli (2) u (4)(a), u b'mod partikolari:

(i) drittijiet tal-awtur;

(ii) disinji registrati;

(iii) drittijiet oħra li jiġu preskritti mill-Ministru b'regolamenti.

(5) *Trademark* m'għandhiex tiġi rifjutata mir-registrazzjoni jew tiġi dikjarata invalida meta l-proprjetarju tat-*trademark* preċedenti jew ta' xi dritt preċedenti ieħor jagħti l-kunsens tiegħu għar-registrazzjoni tat-*trademark* sussegwenti.

Deroga dwar *trademarks* regolati mill-Ordinanza.

7. Ir-raġunijiet għar-rifjut ta' registrazzjoni jew invalidità fis-seħħ f'Malta qabel id-data tal-bidu fis-seħħ tal-Att dwar it-*Trademarks*, għandhom japplikaw għar-rigward ta' *trademarks* li tkun saret applikazzjoni għalihom qabel dak il-bidu fis-seħħ u li baqgħu hekk regolati.

8. Meta l-preċedenza ta' *trademark* nazzjonali jew ta' *trademark* reġistrata taht arrangamenti internazzjonali li għandhom effett f'Malta, li tkun giet ċeduta jew li tkun thalliet tiskadi, tiġi invokata għal *trademark* tal-UE, l-invalidità jew ir-revoka tat-*trademark* li tipprovdi l-bażi għat-talba ta' preċedenza tista' tiġi stabbilita *a posteriori*, sakemm l-invalidità jew ir-revoka tkun setgħet giet dikjarata fil-waqt li t-*trademark* tkun giet ċeduta jew thalliet tiskadi. F'każ bħal dan il-preċedenza għandha tieqaf milli tipproduċi l-effetti tagħha.

Stabbilment *a posteriori* ta' invalidità jew revoka ta' *trademark*.

9. Meta jkunu jeżistu raġunijiet għar-rifjut ta' reġistrazzjoni jew għall-invalidità ta' *trademark* fir-rigward ta' xi whud biss mill-oġġetti jew servizzi li għalihom tkun saret l-applikazzjoni jew ir-reġistrazzjoni ta' dik it-*trademark*, ir-rifjut tar-reġistrazzjoni jew dik l-invalidità għandhom ikunu jkopru biss dawk l-oġġetti jew dawk is-servizzi.

Raġunijiet għal rifjut jew invalidità fir-rigward ta' xi whud biss mill-oġġetti jew servizzi.

10. Azzjoni għal dikjarazzjoni ta' invalidità abbażi ta' *trademark* preċedenti m'għandhiex tintlaqa' fid-data tal-azzjoni għall-invalidità li kieku ma kenitx tkun milqugħa fid-data tal-applikazzjoni jew fid-data ta' prijorità tat-*trademark* sussegwenti għal xi raġuni minn dawn li ġejjin:

Nuqqas ta' xorta ta' għamla distintiva jew ta' reputazzjoni ta' *trademark* preċedenti li tipprekludi dikjarazzjoni ta' invalidità ta' *trademark* reġistrata.

(a) it-*trademark* preċedenti li setgħet tiġi dikjarata invalida b'mod konformi mal-artikolu 5(1)(b), (ċ) jew (d) kienet għadha ma kisbitx xorta ta' għamla distintiva kif imsemmi fl-artikolu 5(8);

(b) l-applikazzjoni għal dikjarazzjoni ta' invalidità tkun ibbażata fuq l-artikolu 6(1)(b) u t-*trademark* preċedenti kienet għadha ma saritx biżżejjed distintiva biex tappoġġa sejba ta' probabbiltà ta' konfużjoni kif hemm fit-tifsira tal-artikolu 6(1)(b);

(ċ) l-applikazzjoni għal dikjarazzjoni ta' invalidità hija bbażata fuq l-artikolu 6(3)(a) u t-*trademark* preċedenti kienet għadha ma kisbitx reputazzjoni kif hemm fit-tifsira tal-artikolu 6(3)(a).

11. (1) Meta, f'Malta, il-proprietarju ta' *trademark* preċedenti, kif imsemmi fl-artikolu 6(2) jew fl-artikolu 6(3)(a) ikun ittollera, għal perjodu ta' hames snin wara xulxin, l-użu ta' *trademark* sussegwenti reġistrata f'Malta huwa m'għandux jibqa' intitolat, abbażi tat-*trademark* preċedenti, li japplika għal dikjarazzjoni ta' invalidità tat-*trademark* sussegwenti fir-rigward tal-oġġetti jew servizzi li dwarhom it-*trademark* sussegwenti tkun intużat, sakemm l-applikazzjoni għar-reġistrazzjoni tat-*trademark* sussegwenti ma kenitx saret *in mala fede*.

Prekluzjoni ta' dikjarazzjoni ta' invalidità minhabba tolleranza

(2) Is-subartikolu (1) għandu japplika għall-proprjetarju ta' kull dritt ieħor preċedenti msemmi fl-artikolu 6(4)(a) jew (b).

(3) Fil-każijiet imsemmija fis-subartikoli (1) u (2), il-proprjetarju tat-*trademark* reġistrata sussegwenti ma jkollux jedd jopponi l-użu tad-dritt preċedenti, minkejja li dak id-dritt ma jkunx jista' aktar jiġi invokat kontra t-*trademark* sussegwenti.

### Drittijiet mogħtija u limitazzjonijiet

Drittijiet  
mogħtija bi  
*trademark*.

**12.** (1) Ir-reġistrazzjoni ta' *trademark* għandha tagħti lill-proprjetarju drittijiet esklużivi b'rabta magħha.

(2) Kull riferenza f'dan l-Att għal kontravvenzjoni ta' *trademark* reġistrata għandha titqies bħala riferenza għal kontravvenzjoni bħal dik tad-drittijiet tal-proprjetarju.

(3) Id-drittijiet tal-proprjetarju jkollhom effett mid-data tar-reġistrazzjoni li titqies kif hemm fl-artikolu 56(3):

Iżda -

(a) ma jistgħu jinbdew ebda proċedimenti ta' kontravvenzjoni qabel id-data meta t-*trademark* tkun fil-fatt reġistrata; u

(b) ma jsir ebda reat taħt l-artikolu 109 b'xi għemil li jseħh qabel id-data tal-pubblikazzjoni tar-reġistrazzjoni.

(4) Mingħajr preġudizzju għad-drittijiet tal-proprjetarji li jkunu nkisbu qabel id-data tal-applikazzjoni jew id-data ta' prijorità tat-*trademark* reġistrata, il-proprjetarju ta' dik it-*trademark* reġistrata jkollu jedd li jipprevjeni lil kull terza parti li ma jkollhiex il-kunsens tiegħu milli tuża fil-kors tal-kummerċ, b'rabta ma' oġġetti jew servizzi, xi sinjal meta:

(a) is-sinjal ikun identiku mat-*trademark* u jintuża b'rabta ma' oġġetti jew servizzi li jkunu identiċi ma' dawk li tkun giet reġistrata għalihom;

(b) is-sinjal ikun identiku, jew simili, mat-*trademark* u jintuża b'rabta ma' oġġetti jew servizzi li jkunu identiċi jew simili mal-oġġetti jew is-servizzi li għalihom tkun giet reġistrata t-*trademark*:

Iżda għandha teżisti l-probabbiltà ta' konfużjoni min-naħa tal-pubbliku:

Iżda wkoll il-probabbiltà ta' konfużjoni tinkludi l-probabbiltà li ssir assoċjazzjoni bejn is-sinjal u *t-trademark*;

(ċ) is-sinjal ikun identiku jew simili għat-*trademark* irrispettivament minn jekk jintużax b'rabta ma' oġġetti jew servizzi li jkunu identiċi, simili jew mhux simili ma' dawk li għalihom tkun giet reġistrata *t-trademark*, meta din tal-aħħar ikollha reputazzjoni f'Malta u meta l-użu ta' dak is-sinjal, mingħajr raġuni valida, ikun jikkostitwixxi vantaġġ ingust mit-*trademark* jew ikun detrimental għax-xorta distintiva jew għar-reputazzjoni tagħha.

(5) Dawn li ġejjin, b'mod partikolari, jistgħu jiġu pprojbiti taht is-subartikolu (4):

(a) it-twaħħil tas-sinjal fuq l-oġġetti jew l-imballaġġ tagħhom;

(b) l-offerta tal-oġġetti jew it-tqegħid tagħhom fis-suq, jew il-ħażna tagħhom għal dawk l-għanijiet, taht is-sinjal, jew l-offerta jew il-provvista ta' servizzi taht dan is-sinjal;

(ċ) l-importazzjoni jew l-esportazzjoni tal-oġġetti taht is-sinjal;

(d) l-użu tas-sinjal bħala l-isem tal-kummerċ jew tal-kumpannija jew bħala parti mill-isem tal-kummerċ jew tal-kumpannija;

(e) l-użu tas-sinjal fuq il-karti tal-kummerċ u fir-reklamar;

(f) l-użu tas-sinjal f'reklamar komparattiv b'tali mod li jmur kontra d-Direttiva 2006/114/KE.

(6) Persuna li tapplika *trademark* reġistrata għal materjal maħsub li jintuża għall-ittikkettjar jew l-imballaġġ ta' oġġetti, bħala kartolerija kummerċjali, jew għar-reklamar ta' oġġetti jew servizzi, għandu jitqies bħallikieku parti fl-użu tal-materjal li jikkontravvjoni *t-trademark* reġistrata jekk meta huwa jkun applika *t-trademark* kien jaf jew kellu għaliex jaħseb li l-applikazzjoni tat-*trademark* ma kenitx debitament awtorizzata mill-proprjetarju jew minn xi detentur tal-liċenzja.

(7) Mingħajr preġudizzju għad-drittijiet tal-proprjetarji li jkunu nkisbu qabel id-data tal-applikazzjoni jew id-data ta' prijorità tat-*trademark* reġistrata, il-proprjetarju ta' dik it-*trademark* reġistrata għandu jkun ukoll intitolat li jipprevjeni lil kull parti terza milli

ddahhal oġġetti, fil-kors tal-kummerċ, ġewwa Malta, mingħajr ma dawn ikunu ġew rilaxxati għaċ-ċirkolazzjoni libera hemmhekk, meta dawk l-oġġetti, inkluż l-imballaġġ tagħhom, jiġu minn pajjiżi terzi u jkollhom *trademark* mingħajr awtorizzazzjoni li tkun identika mat-*trademark* registrata fir-rigward ta' dawk l-oġġetti, jew li ma tkunx tista' tingharaf fl-aspetti essenzjali tagħha minn dik it-*trademark*.

Id-dritt tal-proprjetarju tat-*trademark* skont l-ewwel subparagrafu għandu jiskadi jekk, matul il-proċedimenti biex jiġi deċiż jekk kienx hemm ksur tat-*trademark* registrata, mibdija b'konformità mar-Regolament (UE) Nru 608/2013, tingħata evidenza mid-dikjarant jew mid-detentur tal-oġġetti li l-proprjetarju tat-*trademark* registrata mhuwiex intitolat li jipprojbixxi t-tqegħid tal-oġġetti fis-suq fil-pajjiż tad-destinazzjoni finali.

Kap. 416.  
Kap. 29.

(8) Meta l-użu ta' sinjal b'mod konformi mal-kondizzjonijiet imsemmija fil-paragrafi (b) u (ċ) tas-subartikolu (4) ma setax jiġi projbit qabel id-data tad-dhul fis-sehħ tal-Att dwar it-*Trademarks*, id-drittijiet mogħtija mit-*trademark* ma jistgħux jiġu invokati biex jiġi prevenut l-użu kontinwat tas-sinjal jekk dak l-użu kien beda qabel ma l-imsemmi Att daħal fis-sehħ.

(9) Is-subartikoli (1), (4), (5) u (8) m'għandhomx jaffettwaw dispożizzjonijiet applikabbli taħt kwalunkwe liġi rigward protezzjoni kontra l-użu ta' sinjal minbarra użu għal skop li jiddistingwi oġġetti jew servizzi, fejn l-użu ta' dak is-sinjal mingħajr raġuni valida jiehu vantaġġ inġust mit-*trademark* jew huwa detrimental għax-xorta distintiva jew għar-reputazzjoni tat-*trademark*.

Id-dritt ta' projbizzjoni ta' atti preparatorji fir-rigward tal-użu tal-imballaġġ jew ta' mezzi oħra.

**13.** Meta jkun hemm ir-riskju li l-imballaġġ, it-tikketti, it-tabelli, il-karatteristiċi jew l-apparat ta' sigurtà jew ta' awtenticità, jew kull mezz ieħor li titwahaħal miegħu t-*trademark*, jistgħu jintużaw fir-rigward ta' oġġetti jew servizzi u li dak l-użu jkun jikkostitwixxi kontravvenzjoni tad-drittijiet tal-proprjetarju ta' *trademark* taħt l-artikolu 12(4) u (5), il-proprjetarju ta' dik it-*trademark* ikollu d-dritt li jipprojbixxi l-azzjonijiet li ġejjin jekk dawn isiru fil-kors tal-kummerċ:

(a) it-twahaħil ta' sinjal identiku jew simili mat-*trademark* fuq l-imballaġġ, it-tikketti, it-tabelli, il-karatteristiċi jew l-apparat ta' sigurtà jew ta' awtenticità jew kull mezz ieħor li fuqu t-*trademark* tista' titwahaħal;

(b) l-offerta jew it-tqegħid fis-suq, jew il-ħażna għal dawk l-għanijiet, jew l-importazzjoni jew l-esportazzjoni ta' imballaġġ, tikketti, tabelli, karatteristiċi jew apparat ta' sigurtà jew ta' awtenticità jew kull mezz ieħor li fuqu t-*trademark* tkun imwahaħla.

**14.** Jekk ir-riproduzzjoni ta' *trademark* f'dizzjunarju, enċiklopedija jew xogħol ta' referenza simili f'forma stampata jew elettronika, tkun tagħti l-impressjoni li din tikkostitwixxi l-isem generiku tal-oġġetti jew is-servizzi li għalihom tkun giet reġistrata t-*trademark*, il-pubblikatur tax-xogħol għandu, fuq it-talba tal-proprjetarju tat-*trademark*, jiżgura li r-riproduzzjoni tat-*trademark* tiġi minnufih, u fil-każ ta' xogħlijiet f'forma stampata sa mhux iktar tard mill-edizzjoni li jkun imiss tal-pubblikazzjoni, akkumpanjata minn indikazzjoni li din hija *trademark* reġistrata.

Riproduzzjoni ta' *trademarks* fid-dizzjunarji.

**15.** (1) Meta *trademark* tkun reġistrata fl-isem ta' agent jew ta' rappreżentant ta' persuna li tkun il-proprjetarju ta' dik it-*trademark*, mingħajr il-kunsens tal-proprjetarju, dan tal-aħħar għandu jkun intitolat għal waħda mill-azzjonijiet li ġejjin jew għat-tnejn li huma:

Projbizzjoni tal-użu ta' *trademark* reġistrata f'isem agent jew rappreżentant.

(a) jopponi l-użu tat-*trademark* mill-agent jew mir-rappreżentant tiegħu;

(b) jirrikjedi l-assenjament tat-*trademark* favurih.

(2) Is-subartikolu (1) m'għandux japplika meta l-agent jew ir-rappreżentant jiġġustifika l-azzjoni tiegħu.

**16.** (1) *Trademark* ma għandhiex tagħti d-dritt lill-proprjetarju li jipprojbixxi parti terza milli tuża, fil-kors tal-kummerċ:

Limitazzjoni tal-effetti ta' *trademark* reġistrata.

(a) l-isem jew l-indirizz tal-parti terza, meta dik il-parti terza tkun persuna fiżika;

(b) sinjali jew indikazzjonijiet li mhumiex distintivi jew li jirrigwardaw it-tip, il-kwalità, il-kwantità, l-iskop intiż, il-valur, l-orijini ġeografika, iż-żmien għall-produzzjoni tal-oġġetti jew għall-għoti ta' servizzi, jew xi karatteristika oħra tal-oġġetti jew tas-servizzi;

(c) it-*trademark* bil-għan li tidentifika jew tagħmel referenza għal oġġetti jew servizzi bħala l-oġġetti jew is-servizzi tal-proprjetarju ta' dik it-*trademark*, b'mod partikolari, meta l-użu tat-*trademark* ikun meħtieġ biex jiġi indikat l-iskop intiż ta' prodott jew servizz, b'mod partikolari fir-rigward ta' aċċessorji jew *spare parts*.

(2) Is-subartikolu (1) għandu japplika biss meta l-użu li jsir mill-parti terza jkun b'konformità mal-prattiki onesti f'kwistjonijiet industrijali jew kummerċjali.

(3) (a) *Trademark* ma għandha tagħti ebda dritt lill-

proprjetarju li jipprojbixxi parti terza milli tuża, fil-kors tal-kummerċ f'Malta, dritt precedenti, jekk dak id-dritt ikun rikonoxxut mil-liġi u jekk, jew daqskemm, l-użu tiegħu jkun protett bis-saħħa ta' xi liġi.

(b) Għall-għanijiet ta' dan is-subartikolu "dritt precedenti" tfisser *trademark* mhux reġistrata jew xi sinjal ieħor li jintuża kontinwament għar-rigward ta' oġġetti jew servizzi minn persuna jew mill-predeċessor tagħha fit-titolu minn data li tigi qabel dak li jiġi l-aktar kmieni -

(i) l-użu tat-*trademark* l-ewwel imsemmija għar-rigward ta' dawk l-oġġetti jew servizzi mill-proprjetarju jew mill-predeċessor tagħha fit-titolu; jew

(ii) ir-reġistrazzjoni tat-*trademark* l-ewwel imsemmija għar-rigward ta' dawk l-oġġetti jew servizzi f'isem il-proprjetarju jew il-predeċessor tiegħu fit-titolu.

Eżawriment tad-drittijiet mogħtija minn *trademark*.

**17.** (1) *Trademark* ma tagħti ebda dritt lill-proprjetarju li jipprojbixxi l-użu tagħha fir-rigward ta' oġġetti li jkunu tqiegħdu fis-suq fl-Unjoni taħt dik it-*trademark* mill-proprjetarju jew bil-kunsens tal-proprjetarju.

(2) Is-subartikolu (1) m'għandux japplika meta l-proprjetarju jkollu raġunijiet legittimi biex jopponi aktar kummerċjalizzazzjoni tal-oġġetti, b'mod partikolari meta l-kondizzjoni tal-oġġetti tinbidel jew issirilha l-ħsara wara t-tqiegħid tal-oġġetti fis-suq.

Reġistrazzjoni soġġetta għal ċaħda jew limitazzjoni.

**18.** (1) Applikant għal reġistrazzjoni ta' *trademark*, jew il-proprjetarju ta' *trademark* reġistrata, jista' -

(a) jiċċad kull dritt għall-użu esklużiv ta' xi element speċifikat tat-*trademark*; jew

(b) jaqbel li d-drittijiet mogħtija bir-reġistrazzjoni jkunu soġġetti għal limitazzjoni speċifika territorjali jew ta' kull xort'oħra.

(2) Il-Kontrollur jista' jiċċad kull dritt għall-użu esklużiv ta' xi element speċifikat tat-*trademark*.

(3) Il-Ministru jista' jagħmel regoli li jkunu jipprovdu għall-pubblikazzjoni u l-kitba fir-reġistru ta' xi ċaħda jew limitazzjoni.

(4) Meta r-reġistrazzjoni ta' *trademark* tkun soġġetta għal xi ċaħda jew limitazzjoni, id-drittijiet mogħtija bl-artikolu 12 ikunu ristretti f'dan is-sens.

19. (1) Bla ħsara għad-dispożizzjonijiet tal-artikoli 41 u 42, Azzjoni dwar kontravvenzjoni. kontravvenzjoni ta' *trademark* registrata hi azzjonabbli mill-proprjetarju tat-*trademark* b'rikors ġuramentat li jiġi prezentat fil-Prim'Awla tal-Qorti Ċivili.

(2) F'azzjoni dwar kontravvenzjoni kull rimedju li jista' jkun hekk disponibbli dwar il-kontravvenzjoni ta' kull dritt ieħor ta' proprjetà jkun disponibbli għall-attur.

20. (1) Meta jirrizulta li persuna tkun ikkontravvenjenti Ordni għat-taħsir, eċċ., ta' sinjal kontravvenjenti. *trademark* registrata, il-Qorti tista' toħroġ ordni li tkun teħtiegħa –

(a) tara li s-sinjal kontravvenjenti jithassar, jitneħħa jew jiġi ingassat minn fuq kwalunkwe oġġetti, materjal jew artikli kontravvenjenti fil-pussess, kustodja jew kontroll tagħha; jew

(b) jekk ma jkunx raġonevolment prattikabbli li s-sinjal kontravvenjenti jithassar, jitneħħa jew jiġi ingassat, li tiżgura li sseħħ il-qerda tal-oġġetti, materjal jew artikli kontravvenjenti inkwistjoni.

(2) Jekk ordni taħt is-subartikolu (1) ma jiġix imħares, jew inkella l-Qorti jkun jidhrilha li x'aktarx li dik l-ordni ma tkunx se tithares, il-Qorti tista' tordna li oġġetti, materjal jew artikli kontravvenjenti għandhom jingħataw lil dik il-persuna li l-Qorti tista' ssemmi biex twettaq it-tħassir, tneħħija jew ingassar tas-sinjal, jew għall-qerda, kif jista' jkun il-każ.

21. (1) Il-proprjetarju ta' *trademark* registrata jista', b'rikors, Ordni għall-konsenja tal-oġġetti, materjal jew artikli kontravvenjenti. jitlob lill-Prim'Awla tal-Qorti Ċivili toħroġ ordni għall-konsenja lillu, jew lil min il-Qorti tista' tordna, ta' dawk l-oġġetti, materjal jew artikli kontravvenjenti li persuna jkollha fil-pussess, kustodja jew kontroll tagħha fil-kors ta' xi kummerċ.

(2) Ma għandhiex issir applikazzjoni wara tmiem il-perjodu speċifikat fl-artikolu 23; u ma għandha ssir ebda ordni kemm-il darba l-Qorti ma toħroġ ukoll ordni, jew ikun jidher lill-Qorti li jkun hemm raġunijiet għall-ħruġ ta' ordni, taħt l-artikolu 24.

(3) Persuna li jiġi konsenjat lilha xi oġġett, materjal jew artiklu kontravvenjenti in segwitu ta' ordni taħt dan l-artikolu għandha tibqa' żżommhom sakemm tingħata d-deċiżjoni tal-Qorti taħt l-artikolu 24.

(4) Ebda ħaġa f'dan l-artikolu ma tolqot xi setgħa oħra li għandha l-Qorti.

22. (1) F'dan l-Att, il-frazzjiet "oġġetti kontravvenjenti", Tifsira ta' "oġġetti, materjal jew artikli kontravvenjenti". "materjal kontravvenjenti" u "ħwejjeġ kontravvenjenti" għandhom

jinftehm u kif hawn fis-subartikoli li ġejjin ta' dan l-artikolu.

(2) Ogġetti jkunu "ogġetti kontravvenjenti", għar-rigward ta' *trademark* registrata, jekk l-ogġetti jew l-ippakkettjar tagħhom ikollhom fuqhom sinjal identiku jew jixbah lil dik it-*trademark* u -

(a) l-applikazzjoni tas-sinjal għall-ogġetti jew l-ippakkettjar tagħhom ikun kontravvenzjoni tat-*trademark* registrata; jew

(b) l-ogġetti jkunu qegħdin jiġu proposti li jiġu importati f'Malta u l-applikazzjoni f'Malta tas-sinjal dwarhom jew l-ippakkettjar tagħhom ikun kontravvenzjoni tat-*trademark* registrata; jew

(ċ) is-sinjal ikun xort'oħra ntuża għar-rigward tal-ogġetti b'mod li jikkontravvjoni t-*trademark* registrata.

(3) Materjal ikun "materjal kontravvenjenti", għar-rigward ta' *trademark* registrata, jekk ikollu fuqu sinjal identiku jew jixbah lil dik it-*trademark* u -

(a) ikun użat għat-tikkettjar jew l-ippakkettjar ta' ogġetti, bħala kartolerija kummerċjali, jew għar-reklamar ta' ogġetti jew servizzi, b'mod li jikkontravvjoni t-*trademark* registrata; jew

(b) ikun intiż li hekk jintuża u dak l-użu jkun jikkontravvjoni t-*trademark* registrata.

(4) "Artikli kontravvenjenti", għar-rigward ta' *trademark* registrata, tfisser artikli -

(a) li jkunu speċifikament disinjati jew adattati għall-għemil ta' kopji ta' sinjal identiku jew jixbah lil dik it-*trademark*; u

(b) li persuna jkollha fil-pussess, kustodja jew kontroll tagħha, filwaqt li tkun taf, jew ikollha għaliex taħseb, li jkunu ġew użati jew ikunu se jintużaw biex jipproduċu ogġetti jew materjal kontravvenjenti.

**23.** (1) Applikazzjoni għal ordni taħt l-artikolu 24 ma tistax issir wara tmiem il-perjodu ta' sitt snin -

(a) fil-każ ta' ogġetti kontravvenjenti, mid-data meta t-*trademark* kienet applikata għall-ogġetti jew l-imballaġġ tagħhom;

(b) fil-każ ta' materjal kontravvenjenti, mid-data meta t-*trademark* kienet applikata għall-materjal; jew

(ċ) fil-każ ta' artikli kontravvenjenti, mid-data meta daww ikunu saru,

ħlief kif provdut fis-subartikolu li ġej.

(2) Jekk matul il-perjodu kollu jew parti minnu l-proprjetarju tat-*trademark* registrata ma jithalliex, minħabba fi frodi jew ħabi, milli jikxef il-fatti li jagħtuh jedd japplika għal ordni, tista' ssir applikazzjoni f'kull żmien qabel tmiem il-perjodu ta' sitt snin mid-data meta huwa seta', b'diliġenza raġonevoli, skopra daww il-fatti.

24. (1) Meta oġġetti, materjal jew artikli kontravvenjenti jkunu ġew konsenjati in segwitu ta' ordni taħt l-artikolu 21, tista' ssir kawża permezz ta' rikors ġuramentat quddiem il-Qorti minn kull parti li jkollha interess -

Ordni dwar it-  
tneħħija ta'  
oġġetti, materjal  
jew artikli  
kontravvenjenti.

(a) għal ordni li jiġu meqruda jew konfiskati favur min il-Qorti jista' jidhrilha li jkun xieraq; jew

(b) għal deċiżjoni li ma għandha ssir ebda ordni bħal dik.

(2) Meta tiġi biex tqis id-deċiżjoni tagħha, il-Qorti għandha tqis jekk rimedji oħra disponibbli, f'azzjoni dwar kontravvenzjoni tat-*trademark* registrata, ikunux adegwati biex jikkumpensaw lill-proprjetarju u xi detentur ta' liċenzja biex dawn jiproteġu l-interessi tagħhom.

(3) Il-Qorti għandha tordna n-notifika tar-rikors ġuramentat lil persuni li jkollhom interess fl-oġġetti, materjal jew artikli kontravvenjenti, u kull persuna li jkollha interess għandu jkollha jedd -

(a) tidher waqt proċedimenti għall-ħruġ ta' ordni taħt dan l-artikolu, sew jekk hija kienet notifikata b'avviż sew jekk ma kenitx; u

(b) tappella kontra xi ordni maħruġa, sew jekk hija tkun dehret sew jekk ma tkunx dehret fl-ewwel istanza, u kull ordni bħal dik m'għandhiex isseħħ sa tmiem il-perjodu li fih jista' jiġi ppreżentat appell jew, jekk qabel tmiem dak il-perjodu jkun hekk ġie ppreżentat appell, sad-deċiżjoni finali jew iċ-ċessjoni tal-proċedimenti tal-appell.

(4) Meta jkun hemm aktar minn persuna waħda li jkollha interess fl-oġġetti, materjal jew artikli, il-Qorti għandha toħroġ dak l-

ordni li tqis li jkun idoneu.

(5) Jekk il-Qorti tiddeċiedi li ma kellu jinhareġ ebda ordni taht l-artikolu 21, min kellu fil-pussess, kustodja jew kontroll tiegħu l-oġġetti, materjal jew artikli qabel il-konsenja tagħhom, ikollu obbligu għar-radd lura tagħhom.

Rimedju għal theddid bla raġuni ta' proċedimenti ta' kontravvenzjoni.

**25.** (1) Meta persuna thedded lil persuna oħra bi proċedimenti ta' kontravvenzjoni dwar *trademark* reġistrata li ma tkunx -

(a) l-użu tat-*trademark* fuq oġġetti jew l-imballaġġ tagħhom;

(b) l-importazzjoni ta' oġġetti li dwarhom, jew dwar l-imballaġġ tagħhom, tkun giet applikata t-*trademark*; jew

(ċ) il-provvista ta' servizzi taht it-*trademark*,

kull persuna aggravata tista' tibda proċedimenti għal rimedju taht dan l-artikolu b'rikors ġuramentat quddiem il-Prim'Awla tal-Qorti Ċivili.

(2) Ir-rimedju li tista' ssir applikazzjoni dwaru jista' jkun xi wieħed minn dawn li ġejjin -

(a) dikjarazzjoni li t-theddid ma jkunx ġustifikat;

(b) ordni ta' waqfien kontra t-tkomplija tat-theddid;

(ċ) danni fir-rigward ta' kull telf li seta' ġarrab permezz tat-theddid, u l-attur ikollu jedd għal dak ir-rimedju kemm-il darba l-konvenut ma jurix li l-atti li dwarhom kienu mhedda l-proċedimenti jikkostitwixxu, jew inkella jekk isiru jkunu jikkostitwixxu, kontravvenzjoni tat-*trademark* reġistrata involuta.

(3) Meta l-konvenut juri li l-attijiet li dwarhom kienu mhedda l-proċedimenti kienu jikkostitwixxu jew kienu kieku jikkostitwixxu kontravvenzjoni tat-*trademark* reġistrata, l-attur għandu jkollu madankollu jedd għal rimedju jekk juri li r-reġistrazzjoni tat-*trademark* ma tkunx valida jew li din tista' tiġi revokata.

(4) L-avviż waħdu li *trademark* tkun reġistrata, jew li tkun saret applikazzjoni għar-reġistrazzjoni tagħha, ma jikkostitwixxix theddida ta' proċedimenti għall-iskopijiet ta' dan l-artikolu.

Użu ta' *trademarks*.

**26.** (1) Jekk, fi żmien ħames snin wara d-data li fiha titlesta l-proċedura tar-reġistrazzjoni, il-proprjetarju ma jkunx għamel użu

genwin mit-*trademark* f'Malta b'konnessjoni mal-oġġetti jew is-servizzi li għalihom tkun giet registrata t-*trademark*, jew jekk dan l-użu jkun għe sospiż għal perjodu kontinwu ta' hames snin, it-*trademark* għandha tkun soġġetta għal-limitazzjonijiet u s-sanzjonijiet previsti fl-artikolu 27, l-artikolu 29(1), l-artikolu 51(1) u (2), u l-artikolu 53(3) u (4), sakemm ma jkunx hemm raġunijiet xierqa għal dan in-nuqqas ta' użu.

(2) Bla hsara li Malta ssir membru tal-Protokoll li jirrigwarda l-Ftehim ta' Madrid dwar ir-Registrazzjoni Internazzjonali ta' *Trademarks* adottat f'Madrid fis-27 ta' Ġunju, 1989, il-perjodu ta' hames snin imsemmi fis-subartikolu (1), għal *trademark* registrata taht arrangamenti internazzjonali u li jkollhom effett f'Malta, għandu jiġi kalkulat mid-data meta t-*trademark* ma tistax tibqa' tiġi rrifjutata jew opposta. Jekk tkun giet ipprezentata oppożizzjoni l-perjodu għandu jiġi kalkulat mid-data meta deċiżjoni li ttejjem il-proċedimenti ta' oppożizzjoni tkun daħlet f'għudikat jew l-oppożizzjoni tkun giet irtirata.

(3) Id-data tal-bidu tal-perjodu ta' hames snin, kif imsemmi fis-subartikolu (1), għandha tiddaħhal fir-reġistru.

(4) Dawn li ġejjin għandhom ukoll jikkostitwixxu użu fis-sens tas-subartikolu (1):

(a) l-użu tat-*trademark* f'forma li hija differenti fir-rigward tal-elementi li ma jbidlux ix-xorta distintiva tat-*trademark* fil-forma li fiha tkun giet registrata, irrilevanti minn jekk it-*trademark*, fil-forma użata, tkunx ukoll registrata fl-isem tal-proprjetarju;

(b) it-twaħħil tat-*trademark* fuq oġġetti jew mal-imballaġġ tagħhom f'Malta għall-finijiet ta' esportazzjoni biss.

(5) L-użu tat-*trademark* bil-kunsens tal-proprjetarju għandu jitqies bħala użu mill-proprjetarju.

**27.** Il-proprjetarju ta' *trademark* ikollu jedd li jipprojbixxi l-użu ta' sinjal biss sal-punt li d-drittijiet tal-proprjetarju ma jkunux jistgħu jiġu revokati in segwitu għall-artikolu 29 meta ssir azzjoni għal kontravvenzjoni. Jekk il-konvenut jitlob dan, il-proprjetarju tat-*trademark* għandu jagħti prova li, matul il-perjodu ta' hames snin qabel id-data meta ssir l-azzjoni, it-*trademark* tkun intużat b'mod genwin kif previst fl-artikolu 26 b'rabta mal-oġġetti jew is-servizzi li għalihom giet irregistrata t-*trademark* u li huma kkwotati bħala ġustifikazzjoni għall-azzjoni, jew li hemm raġunijiet xierqa għannuqqas ta' użu, sakemm li fid-data meta ssir l-azzjoni l-proċedura tar-

Nuqqas ta' użu bħala difiża fil-proċedimenti ta' ksur.

A 400

reġistrazzjoni tat-*trademark* tkun ilha li tlestiet aktar minn hames snin qabel.

Dritt intervenjenti bhala difiża fi proċedimenti ta' kontravvenzjoni.

**28.** (1) Fil-proċedimenti ta' kontravvenzjoni, il-proprjetarju ta' *trademark* ma għandux ikun intitolat li jipprojbixxi l-użu ta' *trademark* reġistrata sussegwenti meta dik it-*trademark* sussegwenti ma tiġix dikjarata invalida in segwitu tal-artikolu 10, l-artikolu 11(1) jew (2) jew l-artikolu 53(3).

(2) Fil-proċedimenti ta' kontravvenzjoni, il-proprjetarju ta' *trademark* ma għandux ikun intitolat li jipprojbixxi l-użu ta' *trademark* tal-UE reġistrata sussegwenti meta dik it-*trademark* sussegwenti ma tiġix dikjarata invalida in segwitu tal-Artikolu 60(1), (3) jew (4), 61(1) jew (2), jew 64(2) tar-Regolament (UE) Nru 2017/1001.

(3) Meta l-proprjetarju ta' *trademark* ma jkunx intitolat li jipprojbixxi l-użu ta' *trademark* reġistrata sussegwenti in segwitu tas-subartikolu (1) jew (2), il-proprjetarju ta' dik it-*trademark* reġistrata sussegwenti ma għandux ikun intitolat li jipprojbixxi l-użu tat-*trademark* preċedenti fil-proċedimenti ta' kontravvenzjoni, anke jekk dak id-dritt preċedenti ma jistax jiġix invokat aktar kontra t-*trademark* sussegwenti.

### Revoka tad-drittijiet tat-*trademark* reġistrata

Nuqqas ta' użu ġenwin bhala raġuni għal revoka.

**29.** (1) *Trademark* tkun tista' tiġi revokata jekk, f'perjodu kontinwu ta' hames snin, ma tkunx b'mod ġenwin giet użata f'Malta, b'rabta mal-oġġetti jew is-servizzi li għalihom tkun giet reġistrata, u ma jkunx hemm raġunijiet xierqa għal dan in-nuqqas ta' użu.

(2) Ir-reġistrazzjoni ta' *trademark* m'għandhiex tiġi revokata għar-raġuni msemmija fis-subartikolu (1) jekk dak l-użu li hemm imsemmi f'dak is-subartikolu jkun inbeda jew tkompla wara li jiskadi l-perjodu ta' hames snin u qabel ma ssir l-azzjoni għar-revoka:

Iżda, il-bidu jew tkomplija ta' użu fi żmien il-perjodu ta' tliet xhur qabel ma ssir l-azzjoni m'għandhomx jitqiesu meta t-tnejn għall-bidu jew it-tkomplija mill-ġdid jintgħamlu biss wara li l-proprjetarju jsir jaf li għandha mnejn issir l-azzjoni.

*Trademark* li tkun saret ġenerika jew li hi indikazzjoni qarrieqa bhala raġunijiet għal revoka.

**30.** *Trademark* tkun tista' tiġi revokata jekk, wara d-data meta tkun giet reġistrata:

(a) bhala riżultat tal-attività jew nuqqas ta' attività tal-proprjetarju, tkun saret l-isem komuni fil-kummerċ għal xi oġġett jew servizz li tkun giet reġistrata dwarhom;

(b) bħala riżultat tal-użu li jsir minnha mill-proprjetarju tat-*trademark* jew bil-kunsens tal-proprjetarju fir-rigward tal-oġġetti jew servizzi li tkun giet registrata dwarhom, din tista' tqarraq bil-pubbliku, partikolarment fir-rigward tax-xorta, il-kwalità jew l-orijini ġeografika ta' dawk l-oġġetti jew servizzi.

31. Meta jkun hemm raġunijiet għar-revoka ta' *trademark* fir-rigward ta' xi wħud biss mill-oġġetti jew mis-servizzi li abbażi tagħhom tkun giet registrata dik it-*trademark*, ir-revoka għandha tkun tkopri biss lil dawk l-oġġetti jew servizzi.

Revoka li tapplika biss għal uħud mill-oġġetti jew mis-servizzi.

### **Trademarks registrati jitqiesu bħala proprjetà**

32. *Trademark* registrata hija proprjetà personali ta' sidha.

Xorta ta' *trademark* registrata.

33. (1) Meta *trademark* registrata tingħata lil żewġ persuni jew aktar konguntament, kull wieħed minnhom ikollu jedd, sakemm ma jkunx gie miftiehem xort'oħra, għal sehem indaqş mhux diviż fit-*trademark* registrata.

Komproprjetà ta' *trademark* registrata.

(2) Dawn id-dispożizzjonijiet li ġejjin japplikaw meta tnejn min-nies jew aktar ikunu komproprjetarji ta' *trademark* registrata, bis-saħħa tas-subartikolu (1) jew xort'oħra.

(3) Bla ħsara għal kull ftehim kuntrarju, kull komproprjetarju jkollu jedd, personalment jew bl-aġenti tiegħu, li jagħmel għall-benefiċċju tiegħu nnifsu u mingħajr il-kunsens jew il-ħtieġa li jagħti rendikont lil xi komproprjetarju ieħor, kull att li kieku xort'oħra jammonta għal kontravvenzjoni tat-*trademark* registrata.

(4) Minkejja d-dispożizzjonijiet tas-subartikolu (3), komproprjetarju ma jistax mingħajr il-kunsens tal-ieħor jew tal-oħrajn-

(a) jagħti liċenzja għall-użu tat-*trademark* registrata; jew

(b) jassenja jew iċedi kontroll tas-sehem tiegħu fit-*trademark* registrata.

(5) Proċedimenti ta' kontravvenzjoni jistgħu jinbdew minn kull komproprjetarju, iżda komproprjetarju ma jistax, mingħajr il-permess tal-Qorti, ikompli bl-azzjoni sakemm il-komproprjetarju l-ieħor, jew kull wieħed mill-komproprjetarji l-oħrajn, ma jiġux kjamati fil-kawża.

Komproprjetarju li jigi hekk kjamati fil-kawża ma jbati ebda spejjeż f'dik l-azzjoni.

Ebda haġa f'dan is-subartikolu ma tolqot l-għemil ta' xi mandat kawtelatorju fuq talba ta' komproprjetarju uniku.

(6) Ebda haġa f'dan l-artikolu ma tolqot id-drittijiet u l-obbligazzjonijiet ta' *trustees* jew ta' rappreżentanti personali, jew tad-drittijiet u l-obbligi tagħhom bħala tali.

Trasferiment ta' *trademark* reġistrata.

**34.** (1) *Trademark* reġistrata tista' tiġi trasferita b'assenjament, dispożizzjoni testamentarja jew xi provvediment tal-liġi bl-istess mod bħal kull proprjetà oħra personali jew mobbli.

Trasferiment ta' *trademark* reġistrata.

(2) *Trademark* reġistrata tista' tiġi trasferita, separatament minn kull trasferiment tal-impriza, fir-rigward tal-oġġetti jew is-servizzi kollha jew fir-rigward ta' wħud minnhom li għalihom għet irreġistrata.

(3) It-trasferiment tal-impriza kollha għandu jkun jinkludi t-trasferiment tat-*trademark* ħlief meta jkun hemm qbil kuntrarju jew meta ċ-ċirkostanzi jkun jiddettaw biċ-ċar xort'oħra. Din id-dispożizzjoni għandha tapplika għall-obbligu kuntrattwali biex isir it-trasferiment tal-impriza.

(4) L-assenjament ta' *trademark* reġistrata ma tkunx effettiva kemm-il darba ma ssirx bil-miktub u tkun iffirmata miċ-ċedent jew f'ismu jew inkella, kif jista' jkun il-każ, minn rappreżentant personali tiegħu.

(5) Ebda haġa f'dan l-Att m'għandha tintfiehmet bħala li tolqot l-assenjament jew xi trasferiment ieħor ta' *trademark* mhux reġistrata bħala parti mill-avvjament ta' impriza.

(6) Il-Ministru jista' jagħmel regolamenti dwar ir-reġistrazzjoni ta' trasferimenti fir-reġistru.

Reġistrazzjoni ta' operazzjonijiet li jolqtu *trademark* reġistrata.

**35.** (1) Meta ssir applikazzjoni lill-Kontrollur minn –

(a) persuna li jkollha pretensjoni li tkun intitolata għal xi interess fi *trademark* reġistrata jew taħtha bis-saħħa ta' operazzjoni reġistrabbli; jew

(b) xi persuna oħra li jkollha pretensjoni li tinsab affettwata minn operazzjoni bħal dik,

id-dettalji preskritti tal-operazzjoni għandhom jitniżzlu fir-reġistru.

(2) Dawn li ġejjin huma operazzjonijiet reġistrabbli -

(a) l-assenjament ta' *trademark* reġistrata jew ta' xi dritt fiha;

(b) l-għoti ta' liċenzja taht *trademark* reġistrata;

(ċ) it-trasferiment ta' *trademark* reġistrata permezz ta' dispożizzjoni testamentarja;

(d) ordni tal-Qorti jew ta' xi awtorità kompetenti oħra li tittrasferixxi *trademark* reġistrata jew xi dritt fiha jew taħtha.

(3) Sakemm issir applikazzjoni għar-reġistrazzjoni tad-dettalji preskritti ta' operazzjoni reġistrabbli -

(a) l-operazzjoni ma jkollhiex effett fir-rigward ta' persuna li b'bonafidi tikseb interess konfliġġenti fit-*trademark* reġistrata, u

(b) persuna li jkollha pretensjoni li tkun detentriċi ta' liċenzja bis-saħħa tal-operazzjoni ma jkollhiex il-protezzjoni tal-artikolu 41 jew 42.

(4) Meta persuna ssir il-proprietarju jew detentur ta' liċenzja ta' *trademark* reġistrata bis-saħħa ta' operazzjoni reġistrabbli, hija ma jkollha la jedd għal danni u lanqas għal kont ta' profitti għar-rigward ta' xi kontravvenzjoni tat-*trademark* reġistrata li tigri wara d-data tal-operazzjoni reġistrabbli u qabel ma jiġu reġistrati d-dettalji preskritti tal-operazzjoni, kemm-il darba:

(a) ma ssirx applikazzjoni għal reġistrazzjoni tad-dettalji preskritti tal-operazzjoni qabel tmiem il-perjodu ta' sitt xhur li jibdeu għaddejjin mid-data tal-operazzjoni; jew

(b) il-Qorti ma tkunx sodisfatta li ma kienx prattikabbli li ssir applikazzjoni bħal dik qabel tmiem dak il-perjodu u li tkun saret applikazzjoni kemm seta' kien malajr wara dan.

(5) Il-Ministru jista' jagħmel regolamenti li jkunu jippreskrivu regoli dwar -

(a) l-emenda ta' dettalji reġistrati li jkollhom x'jaqsmu ma' xi liċenzja biex jirriflettu kull tibdil fit-termini tal-liċenzja; u

(b) it-tneħħija ta' dawk id-dettalji mir-reġistru -

(i) meta jkun jidher mid-dettalji reġistrati li l-liċenzja tkun ingħatat għal perjodu fiss u li dak il-perjodu jkun skada;

(ii) meta ma jiġi indikat ebda perjodu bħal dak u, wara dak il-perjodu li jista' jiġi hekk preskritt, u wara li l-

Kontrollur ikun avża lill-partijiet bil-ħsieb li jkollu li jneħhi d-dettalji mir-reġistru u l-partijiet ma jkunux urew li jkunu ftiehem li daww id-dettalji m'għandhomx jitneħhew għal dak il-perjodu li dwaru l-partijiet ikunu qablu u indikaw lill-Kontrollur;

(ċ) l-emenda jew tneħhija mir-reġistru ta' dettalji li jkunu jirrigwardaw interess f'xi titolu fuq talba, jew bil-kunsens tal-persuna li jkollha jedd għall-benefiċċju ta' dak it-titolu.

Applikazzjoni għal reġistrazzjoni ta' *trademark* bħala proprjeta.

**36.** Id-dispożizzjonijiet tal-artikoli 32 sa 35 japplikaw *mutatis mutandis* għar-rigward ta' talba għar-reġistrazzjoni ta' *trademark* bl-istess mod bħallikekku għal *trademark* reġistrata.

Drittijiet *in rem*.

**37.** (1) *Trademark* tista', b'mod indipendenti mill-impriza, tingħata bħala garanzija jew tkun is-sugġett ta' drittijiet *in rem*.

(2) Il-Ministru jista' jagħmel regolamenti għar-reġistrazzjoni tad-drittijiet *in rem* fir-reġistru.

Eżekuzzjoni furzata.

**38.** (1) *Trademark* tista' tkun soġġetta għal miżuri ta' eżekuzzjoni furzata.

(2) Il-Ministru jista' jagħmel regolamenti għar-reġistrazzjoni ta' miżuri ta' eżekuzzjoni furzata fir-reġistru.

Għoti ta' liċenzja.

**39.** (1) *Trademark* tista' tingħata liċenzja għall-oġġetti jew is-servizzi kollha li għalihom giet irreġistrata jew għal uħud minnhom, u għat-territorju kollu ta' Malta jew parti minnu. Liċenzja tista' tkun esklużiva jew mhux esklużiva.

(2) Kemm-il darba l-liċenzja ma tkunx tipprowdi xort'oħra, din tkun vinkolanti fuq suċċessur fit-titolu għall-interess tal-konċedent, u riferenzi f'dan l-Att għall-għemil ta' xi haġa bil-kunsens, jew mingħajru, tal-proprjetarju ta' *trademark* reġistrata għandu jinftiehem f'dan is-sens.

(3) Meta l-liċenzja tkun hekk tipprowdi, tista' tiġi konċessa sotto-liċenzja mid-detentur tal-liċenzja; u riferenzi f'dan l-Att għal xi liċenzja jew detentur ta' liċenzja tinkludi sotto-liċenzja jew detentur ta' sotto-liċenzja.

(4) Il-proprjetarju ta' *trademark* jista' jinvoka d-drittijiet mogħtija b'dik it-*trademark* kontra detentur ta' liċenzja li jikser xi dispożizzjoni fil-kuntratt tiegħu tal-għoti ta' liċenzja dwar:

(a) it-tul ta' żmien tagħha;

(b) il-forma koperta bir-registrazzjoni li fiha tista' tintuża *t-trademark*;

(ċ) l-iskop tal-oġġetti jew is-servizzi li għalihom inghatat il-liċenzja;

(d) it-territorju fejn *it-trademark* tista' titwaħħal; jew

(e) il-kwalità tal-oġġetti manifatturati jew tas-servizzi provduti mid-detentur ta' liċenzja.

(5) Mingħajr preġudizzju għad-dispożizzjonijiet tal-kuntratt tal-għoti ta' liċenzja, id-detentur ta' liċenzja ma jistax iressaq proċedimenti ta' kontravvenzjoni ta' *trademark* hliet bil-kunsens tal-proprjetarju tagħha dwar dan. Madankollu, id-detentur ta' liċenzja esklużiva jista' jibda proċedimenti bħal dawk jekk, b'segwitu għal avviż formali, il-proprjetarju tat-*trademark* ma jkunx huwa stess li jibda proċedimenti ta' kontravvenzjoni f'perjodu ta' żmien xieraq.

(6) Id-detentur ta' liċenzja għandu jkun intitolat, bil-għan li jikseb kumpens għad-danni li jkun soffra, li jintervjeni fi proċedimenti ta' kontravvenzjoni mressqin mill-proprjetarju tat-*trademark*.

(7) Il-Ministru jista' jagħmel regolamenti għar-registrazzjoni ta' liċenzji fir-registru.

**40.** (1) F'dan l-Att "liċenzja esklużiva" tfisser liċenzja (sew ġenerali sew limitata) li tkun tawtorizza lid-detentur tal-liċenzja b'eskluzjoni ta' kull persuna oħra, inkluż min ikun qiegħed jikkonċedi l-liċenzja nnifsu, li juża *trademark* registrata bil-mod awtorizzat fil-liċenzja.

Liċenzji esklużivi.

(2) Detentur ta' liċenzja esklużiva jkollu l-istess drittijiet fir-rigward ta' suċċessur fit-titolu li jkun marbut bil-liċenzja daqskemm ikollu fir-rigward tal-konċedent tal-liċenzja.

**41.** (1) Id-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu japplikaw għar-rigward tad-drittijiet ta' detentur ta' liċenzja għar-rigward ta' kontravvenzjoni ta' *trademark* registrata:

Dispożizzjonijiet ġenerali dwar id-drittijiet ta' detenturi ta' liċenzja f'każijiet ta' kontravvenzjoni.

Iżda dawn ma japplikawx meta u daqskemm, kif hemm fl-artikolu 42(1) detentur ta' liċenzja esklużiv ikollu dritt li jibda proċedimenti f'ismu proprju.

(2) Detentur ta' liċenzja jkollu jedd, kemm-il darba l-liċenzja tiegħu ma tkunx tipprovdi xort'oħra, li jinterpella lill-proprjetarju tat-*trademark* registrata biex jibda proċedimenti ta' kontravvenzjoni fir-rigward ta' kull haġa li tolqot l-interessi tiegħu.

(3) Jekk il-proprjetarju -

(a) jirrifjuta milli jagħmel dan; jew

(b) jonqos milli jagħmel dan fi żmien xahrejn minn meta jkun gie interpellat,

id-detentur tal-liċenzja jista' jibda l-proċedimenti f'ismu stess bħallikieku kien hu l-proprjetarju.

(4) Meta jinbdew proċedimenti ta' kontravvenzjoni minn detentur ta' liċenzja bis-saħħa ta' dan l-artikolu, il-proprjetarju għandu jingħaqad fil-kawża.

(5) Fi proċedimenti ta' kontravvenzjoni mibdijin mill-proprjetarju ta' *trademark* registrata, kull telfien imġarrab jew li x'aktarx jiġi mġarrab minn detenturi ta' liċenzja għandu jiġi kkunsidrat mill-Qorti li għandha tagħti dawk l-ordnijiet kif tqis xierqa dwar id-disponiment u d-distribuzzjoni ta' kull ammont mogħti bħala rimedju għall-kontravvenzjoni.

Detentur ta' liċenzja esklużiva li jkollu d-dritt u r-rimedji ta' taċ-ċessjonarju.

**42.** (1) Liċenzja esklużiva tista' tipprovdi li d-detentur ta' liċenzja jkollu, daqskemm jista' jiġi provdut bil-liċenzja, l-istess drittijiet u rimedji fir-rigward ta' hwejjeg li jiġru wara l-konċessjoni tal-liċenzja bħallikieku l-liċenzja kienet assenjament.

Meta jew daqskemm tittiehed dik il-miżura, id-detentur tal-liċenzja jkollu jedd, bla ħsara għall-provvedimenti tal-liċenzja u tad-dispożizzjonijiet li ġejjin ta' dan l-artikolu, li jibda proċedimenti ta' kontravvenzjoni f'ismu proprju kontra kull persuna minbarra l-proprjetarju.

(2) Kull dritt u rimedju li għandu detentur ta' liċenzja esklużiva jikkonkorru ma' dawk tal-proprjetarju ta' *trademark* registrata; u riferenzi f'dan l-Att għall-proprjetarju ta' *trademark* registrata li jirrigwardaw kontravvenzjonijiet għandhom jinftiehem f'dan il-kuntest.

(3) F'azzjoni li tinbeda minn detentur ta' liċenzja esklużiva taħt dan l-artikolu, konvenut jista' jagħmel użu minn kull difiża li kien ikollu disponibbli li kieku l-azzjoni ingiebet mill-proprjetarju ta' *trademark* registrata.

(4) Meta tinbeda kawża għal kontravvenzjoni ta' *trademark* registrata jew mill-proprjetarju jew mid-detentur ta' liċenzja esklużiva fir-rigward ta' kontravvenzjoni li dwarha jkollhom dritt ta' azzjoni konkorrenti, il-proprjetarju jew id-detentur tal-liċenzja esklużiv, kif ikun il-każ, li ma jkunux l-attur, għandu jingħaqad fil-kawża.

(5) (a) Meta tinbeda kawża għal kontravvenzjoni ta' *trademark* registrata fir-rigward ta' kontravvenzjoni li dwarha l-proprjetarju u d-detentur ta' liċenzja esklużiv ikollhom dritt ta' azzjoni konkorrenti -

(i) meta tiġi biex tagħmel stima tad-danni l-Qorti għandha tqis -

(1) it-termini tal-liċenzja; u

(2) kull rimedju pekunjarju mogħti qabel jew li jkun disponibbli għal xi wiehed minnhom fir-rigward tal-kontravvenzjoni;

(ii) m'għandu jiġi ordnat li jsir ebda kont ta' profitti jekk ikunu ngħataw id-danni, jew ikun ġie ordnat kont tal-profitti, favur xi wiehed minnhom fir-rigward tal-kontravvenzjoni; u

(iii) il-Qorti għandha, jekk ikun ġie ordnat kont ta' profitti, taqsam f'ishma l-profitti, bla ħsara għal kull ftehim bejniethom, hekk kif il-Qorti tqis li jkun ġust.

(b) Id-dispożizzjonijiet ta' dan is-subartikolu japplikaw sew jekk l-azzjoni tinbeda mill-proprjetarju waħdu, sew jekk tinbeda mill-proprjetarju u d-detentur tal-liċenzja esklużiva; u jekk ma jkunux it-tnejn partijiet, il-Qorti tista' tagħti dawk l-ordnijiet hekk kif tqis li jkun xieraq għar-rigward tad-disponiment u t-tqassim ta' kull ammont mogħti bhala rimedju għall-kontravvenzjoni.

(6) Il-proprjetarju ta' *trademark* registrata għandu javża lil kull detentur ta' liċenzja esklużiva li jkollu dritt ta' azzjoni konkorrenti qabel ma japplika għal ordni taħt l-artikolu 21; u l-Qorti tista', fuq talba tad-detentur tal-liċenzja, tagħmel dik l-ordni taħt dak l-artikolu hekk kif tqis li jkun xieraq meta tikkonsidra t-termini tad-detentur tal-liċenzja.

(7) Id-dispożizzjonijiet tas-subartikoli (4) sa (6) għandhom ikunu bla preġudizzju għal kull ftehim kuntrarju bejn id-detentur ta' liċenzja esklużiva u l-proprjetarju.

### **Applikazzjoni għal *trademark***

**43.** (1) Applikazzjoni għar-registrazzjoni ta' *trademark* għandha mill-inqas tinkludi dawn il-htigijiet kollha li ġejjin:

Htigiet relattivi għall-applikazzjoni.

(a) talba għar-registrazzjoni;

(b) informazzjoni li tidentifika lill-applikant;

(c) lista ta' oġġetti jew servizzi li fir-rigward tagħhom tintalab ir-registrazzjoni;

(d) raffigurazzjoni tat-*trademark* li tissodisfa l-htigijiet stipulati fis-subartikolu (2)(b) tal-artikolu 4.

(2) Għandu jithallas id-dritt preskritt għal applikazzjoni għal *trademark*.

Data meta ssir l-applikazzjoni.

44. (1) Id-data meta ssir l-applikazzjoni għal *trademark* għandha tkun id-data li fiha d-dokumenti li jinkludu l-informazzjoni speċifikata fl-artikolu 43(1) jiġu pprezentati mill-applikant fl-Uffiċċju.

(2) L-iffissar tad-data meta ssir l-applikazzjoni għandu jkun soġġett għall-ħlas ta' tariffa kif imsemmi fl-artikolu 43(2):

Iżda meta l-elementi jiġu provduti fi granet differenti, id-data tal-prezentata tkun id-data meta l-aħħar minn dawk l-elementi jkun ġie hekk provdut.

(3) Riferenzi f'dan l-Att għad-data tal-applikazzjoni għar-registrazzjoni għandhom jinftiehm bħala riferenzi għad-data tal-prezentata tal-applikazzjoni.

Denominazzjoni u klassifikazzjoni ta' oġġetti u servizzi.

45. (1) L-oġġetti u s-servizzi li fir-rigward tagħhom issir applikazzjoni għal registrazzjoni ta' *trademark* għandhom jiġu klassifikati b'konformità mas-sistema ta' klassifikazzjoni stabbilita mill-Ftehim ta' Nizza dwar il-Klassifikazzjoni Internazzjonali ta' Oġġetti u Servizzi għall-Finijiet tar-Registrazzjoni tal-Marki, tal-15 ta' Ġunju 1957 ("il-Klassifikazzjoni ta' Nizza").

(2) L-oġġetti u s-servizzi, li għalihom tintalab il-protezzjoni, għandhom ikunu identifikati mill-applikant b'ċarezza u preċiżjoni li jkunu biżżejjed biex l-awtoritajiet kompetenti u l-operaturi ekonomiċi jkunu jistgħu, fuq dik il-bażi biss, jiddeċiedu l-livell tal-protezzjoni li tkun qiegħda tintalab.

(3) Għall-għanijiet tas-subartikolu (2) jistgħu jintużaw l-indikazzjonijiet generali li hemm inklużi fl-intestaturi tal-klassijiet tal-Klassifikazzjoni ta' Nizza jew termini generali oħra, sakemm dawn ikunu b'konformità ma' standards mitluba ta' ċarezza u preċiżjoni stabbiliti f'dan l-artikolu.

(4) L-Uffiċċju għandu jirrifjuta applikazzjoni fir-rigward ta' indikazzjonijiet jew termini li mhumiex ċari jew preċiżi, meta l-applikant ma jissuggerixxix formulazzjoni aċċettabbli f'perjodu stabbilit mill-Uffiċċju għal dak l-għan.

(5) L-użu ta' termini ġenerali, inklużi l-indikazzjonijiet ġenerali tal-intestaturi tal-klassijiet tal-Klassifikazzjoni ta' Nizza, għandu jiġi interpretat bħala li jinkludi l-oġġetti jew is-servizzi kollha koperti b'mod ċar mis-sens litterali tal-indikazzjoni jew it-terminu. L-użu ta' termini jew indikazzjonijiet bħal dawk ma għandux ikun interpretat li jinkludi talba għal oġġetti jew servizzi li ma jistgħux jiġu intiżi bħala tali.

(6) Meta l-applikant jitlob reġistrazzjoni għal aktar minn klassi waħda, l-applikant għandu jiġbor l-oġġetti u s-servizzi fi grupp kif hemm fil-klassijiet tal-Klassifikazzjoni ta' Nizza, b'kull grupp ippreċedut min-numru tal-klassi li għaliha jkun jappartjeni l-grupp ta' oġġetti jew servizzi, u għandu jipprezentahom fl-ordni tal-klassijiet.

(7) L-oġġetti u s-servizzi ma għandhomx jitqiesu bħala simili għal xulxin abbażi tal-fatt li jidhru fl-istess klassi tal-Klassifikazzjoni ta' Nizza. L-oġġetti u servizzi ma għandhomx jitqiesu bħala differenti minn xulxin abbażi tal-fatt li jidhru fi klassijiet differenti taħt il-Klassifikazzjoni ta' Nizza.

(8) Kull kwistjoni li tqum dwar il-klassi li fiha jaqgħu xi oġġetti jew servizzi għandha tiġi deċiża mill-Kontrollur, u dak li jiddeċiedi jkun finali.

46. (1) Min ikun debitament ippreżenta applikazzjoni għall-protezzjoni ta' *trademark* f'pajjiż membru tal-*World Trade Organisation* jew li jkun parti fil-Konvenzjoni ta' Pariġi, hawnhekk iżjed 'il quddiem f'dan l-Att imsejja "applikazzjoni taħt il-Konvenzjoni", jew is-suċċessur tiegħu fit-titolu, ikollu jedd għall-prijorità bil-għan tar-reġistrazzjoni ta' dik it-*trademark* taħt dan l-Att għal xi jew kull wieħed mill-oġġetti jew servizzi li għalihom dik l-applikazzjoni tkun ġiet ippreżentata, għal perjodu ta' sitt xhur mid-data tal-preżentata tal-ewwel applikazzjoni bħal dik.

Pretensjoni ta' prijorità f'applikazzjoni taħt il-Konvenzjoni.

(2) Jekk l-applikazzjoni għar-reġistrazzjoni taħt dan l-Att issir matul dak il-perjodu ta' sitt xhur -

(a) id-data rilevanti għall-għanijiet li jiġu stabbiliti liema drittijiet ikollhom preċedenza għandha tkun id-data tal-preżentata tal-ewwel applikazzjoni taħt il-Konvenzjoni; u

(b) m'għandux jintlaqat il-fatt kemm tista' tiġi reġistrata t-*trademark* b'xi użu tat-*trademark* f'Malta fil-perjodu bejn dik id-data u d-data tal-applikazzjoni taħt dan l-Att.

(3) (a) Kull preżentata li f'pajjiż li jkun membru tal-*World Trade Organisation* jew ikun parti fil-Konvenzjoni ta' Pariġi ssir taħt il-legiżlazzjoni tiegħu jew taħt xi ftehim internazzjonali li dak il-pajjiż

ikun parti fih, meqjusa bhallikieku kienet preżentata nazzjonali regolari, għandha titqies bħala li tagħti lok għad-dritt ta' prijorità.

(b) Għall-għanijiet ta' dan is-subartikolu "preżentata nazzjonali regolari" tisser preżentata li tkun adegwata biex tiġi stabbilita d-data meta l-applikazzjoni tkun giet ippreżentata f'dak il-pajjiż, kienet x'kienet l-applikazzjoni sussegwenti.

(4) Applikazzjoni sussegwenti li tkun tinvolvi l-istess oġġetti jew servizzi bhall-ewwel applikazzjoni taht il-Konvenzjoni, ippreżentata fl-istess pajjiż fil-Konvenzjoni, għandha titqies bħala l-ewwel applikazzjoni tal-Konvenzjoni (bid-data tal-preżentata tagħha tkun id-data tal-bidu tal-perjodu ta' prijorità), jekk fil-waqt tal-applikazzjoni sussegwenti -

(a) l-applikazzjoni ta' qabel tkun giet irtirata, abbandunata jew rifjutata, mingħajr ma tkun inġiebet għall-ispezzjoni pubblika u mingħajr ma thalli xi drittijiet pendenti; u

(b) tkun għadha ma servietx bħala bażi għal pretensjoni ta' dritt ta' prijorità, u l-applikazzjoni ta' qabel ma tkunx tista' wara dan isservi bħala bażi għall-pretensjoni ta' dritt ta' prijorità.

(5) Jista' jiġi pprovdut permezz ta' regoli dwar kif issir pretensjoni ta' dritt ta' prijorità fuq il-baży ta' applikazzjoni taht il-Konvenzjoni.

(6) Dritt għal prijorità li jirriżulta minn applikazzjoni taht il-Konvenzjoni jista' jiġi assenjat jew xort'oħra trasmess, sew mal-applikazzjoni sew b'mod awtonomu.

Pretensjoni għal prijorità minn applikazzjoni rilevanti oħra barranija.

**47.** (1) Il-Ministru jista' jagħmel regolamenti li bihom jikkonferixxi lil persuna li tkun debitament ippreżentat applikazzjoni għall-protezzjoni ta' *trademark* f'pajjiż jew territorju li għar-rigward tiegħu l-Gvern Malti jkun issieheb fi trattat, konvenzjoni, arrangament jew rabta għall-protezzjoni reċiproka ta' *trademarks*, dritt ta' prijorità, għall-iskop tar-registrazzjoni ta' dik it-*trademark* taht dan l-Att għal xi wieħed, jew kull wieħed mill-istess oġġetti jew servizzi, għal dak il-perjodu li jista' jiġi speċifikat fl-applikazzjoni mid-data tal-preżentata ta' dik l-applikazzjoni.

(2) Dawk ir-regolamenti jistgħu jipprovdu b'mod simili għal dak li hemm fl-artikolu 46 għar-rigward ta' applikazzjonijiet taht il-Konvenzjoni jew kull provvediment ieħor hekk kif ikun jidher li hu xieraq lill-Ministru.

Eżami ta' applikazzjoni.

**48.** (1) Il-Kontrollur għandu jeżamina jekk applikazzjoni għal registrazzjoni ta' *trademark* tkunx tissodisfa l-htigijiet ta' dan l-

Att:

Iżda l-Ministru jista' jagħmel regolamenti dwar jekk dak l-eżami jkunx jinkludi eżami *ex officio* dwar raġunijiet relattivi.

(2) Jekk il-Kontrollur ikun jidhirlu li ma jkunux ġew sodisfatti l-ħtiġijiet għar-registrazzjoni, huwa għandu jgħarraf b'dan lill-applikant u jagħtih opportunità li jagħmel il-kummenti tiegħu jew li jemenda l-applikazzjoni f'dak il-perjodu li l-Kontrollur jista' jispeçifika.

(3) Jekk l-applikant jonqos milli jaççerta lill-Kontrollur li dawk il-ħtiġijiet ikunu ġew sodisfatti, jew li jemenda l-applikazzjoni biex dawn jiġu sodisfatti, jew jonqos milli jirrispondi qabel tmiem il-perjodu speçifikat, il-Kontrollur għandu jirrifjuta l-applikazzjoni.

(4) Jekk il-Kontrollur ikun jidhirlu li l-ħtiġijiet għar-registrazzjoni jkunu ġew sodisfatti, huwa għandu jaççetta l-applikazzjoni bħala waħda eliġibbli għar-registrazzjoni.

**49.** (1) L-applikant jista' f'kull waqt jirtira l-applikazzjoni tiegħu jew jirrestringi l-oġġetti jew servizzi li l-applikazzjoni tkun saret dwarhom.

Irtirar,  
restrizzjoni jew  
emenda ta'  
applikazzjoni.

(2) Salv kif provdut fis-subartikolu (1), aplikazzjoni tista' tiġi emendata biss, fuq talba tal-applikant, billi jiġi kkorreġut -

(a) l-isem jew l-indirizz tal-applikant;

(b) żbalji fit-tifsir tal-kliem jew fl-ikkupjar; jew

(ç) żbalji ovvjji, u hekk biss meta l-korrezzjoni ma tkunx sostanzjalment tolqot l-identità tat-*trademark* jew testendi l-oġġetti jew is-servizzi koperti bl-applikazzjoni.

**50.** (1) Il-proprietarju ta' *trademark* preçedenti kif imsemmija fl-artikolu 6(2) u l-artikolu 6(3)(a), u l-persuna awtorizzata taħt il-liġi rilevanti li teżerçita d-drittijiet li jirrizultaw minn denominazzjoni ta' oriġini protetta jew minn indikazzjoni ġeografika kif imsemmija fl-artikolu 6(3)(ç) għandhom ikunu intitolati li jipprezentaw notifika ta' oppożizzjoni għar-registrazzjoni ta' *trademark* għand il-Kontrollur. In-notifika ta' oppożizzjoni tista' tiġi pprezentata abbażi ta' dritt preçedenti wieħed jew aktar, sakemm dawn ikunu kollha jappartjenu lill-istess propjetarju, u abbażi ta' parti jew tat-totalità tal-oġġetti jew servizzi li għalihom ikun ġie protett jew applikat dritt preçedenti, u tista' tiġi diretta kontra parti jew it-totalità tal-oġġetti jew is-servizzi li għalihom tkun saret aplikazzjoni għat-*trademark* kontestata.

Proçedura ta'  
oppożizzjoni.

(2) Il-partijiet għandhom jingħataw, fuq it-talba kongunta tagħhom, perjodu li jwassal sa 90 ġurnata tax-xogħol mid-data tan-notifika mill-Uffiċċju bl-oppożizzjoni lill-applikant sabiex ikun hemm il-possibbiltà ta' qbil amikevoli bejn il-parti li tkun qieghda topponi u l-applikant.

(3) Il-Ministru jista' jagħmel regolamenti fir-rigward ta' kull aspett rilevanti għall-proċedura ta' oppożizzjoni.

Nuqqas ta' użu bħala difiża fil-proċedimenti ta' oppożizzjoni.

**51.** (1) Fil-proċedimenti ta' oppożizzjoni b'konformità mal-artikolu 50, meta fid-data tal-applikazzjoni jew id-data ta' prijorità tat-*trademark* sussegwenti, il-perjodu ta' ħames snin li fih it-*trademark* preċedenti kellha tintuża b'mod ġenwin kif stipulat fl-artikolu 26 ikun skada, fuq it-talba tal-applikant, il-proprietarju tat-*trademark* preċedenti li ta n-notifika ta' oppożizzjoni għandu jagħti prova li t-*trademark* preċedenti tkun intużat b'mod ġenwin kif stipulat fl-artikolu 26 matul il-perjodu ta' ħames snin qabel id-data tal-applikazzjoni jew id-data ta' prijorità tat-*trademark* sussegwenti, jew li kien hemm raġunijiet xierqa għan-nuqqas ta' użu. Fin-nuqqas ta' provi ta' din ix-xorta, l-oppożizzjoni għandha tiġi rifjutata.

(2) Jekk it-*trademark* preċedenti tkun intużat b'rabta ma' parti biss mill-oġġetti jew is-servizzi li tkun giet reġistrata għalihom, din għandha titqies, għall-finijiet tal-eżami tal-oppożizzjoni kif provdut fis-subartikolu (1), li tkun reġistrata biss b'rabta ma' dawk l-oġġetti jew servizzi.

(3) Is-subartikoli (1) u (2) għandhom japplikaw ukoll meta t-*trademark* preċedenti tkun *trademark* tal-UE. F'dak il-każ, l-użu ġenwin tat-*trademark* tal-UE għandu jiġi deċiż b'konformità mal-Artikolu 18 tar-Regolament (UE) Nru 2017/1001.

Proċedura għal revoka jew dikjarazzjoni ta' invalidità.

**52.** (1) Mingħajr preġudizzju għad-dritt li għandhom il-partijiet li jirrikorru quddiem il-qrati, ir-revoka jew dikjarazzjoni ta' invalidità ta' *trademark* reġistrata għandha tiġi ppreżentata quddiem il-Kontrollur kif provdut f'dan l-Att jew permezz ta' rikors ġuramentat fil-Prim'Awla tal-Qorti Ċivili:

Iżda proċedimenti dwar l-invalidità u r-revoka jistgħu jinbdew quddiem il-Kontrollur biss sa mill-14 ta' Jannar, 2023 jew minn kull data li tiġi qabel hekk kif jista' jiġi preskritt mill-Ministru.

(2) Azzjoni għal revoka ta' *trademark* reġistrata għandha tiġi ppreżentata abbażi ta' xi waħda jew aktar mir-raġunijiet stipulati fl-artikoli 29 u 30.

(3) Azzjoni għal dikjarazzjoni ta' invalidità ta' *trademark* reġistrata għandha tiġi ppreżentata:

(a) abbażi ta' xi waħda jew aktar mir-raġunjjiet stipulati fl-artikolu 5; u, jew

(b) abbażi ta' xi waħda jew aktar mir-raġunjjiet stipulati fl-artikolu 6:

Iżda azzjoni għal dikjarazzjoni ta' invalidità ta' *trademark* reġistrata quddiem il-Kontrollur għandha tkun possibbli biss abbażi ta' xi waħda jew aktar mir-raġunjjiet tal-artikolu 5 u artikolu 6(1) sa (3).

(4) Azzjoni għal revoka jew dikjarazzjoni ta' invalidità ta' *trademark* reġistrata quddiem il-Kontrollur tista' ssir biss:

(a) fil-każ tas-subartikoli (2) u (3)(a), minn kull persuna fiżika jew ġuridika u kull grupp jew korp li ġie stabbilit bil-għan li jirrappreżenta l-interessi tal-manifatturi, produtturi, fornituri ta' servizzi, negozjanti jew konsumaturi, u li, kif hemm fil-liġi li tirregola dan, ikollu l-kapaċità li jharrek f'ismu proprju u jiġi mharrek;

(b) fil-każ tas-subartikolu (3)(b), mill-proprietarju ta' *trademark* preċedenti kif imsemmi fl-artikolu 6(2) u l-artikolu 6(3)(a), u l-persuna awtorizzata taħt il-liġi rilevanti li teżercita d-drittijiet li jirriżultaw minn denominazzjoni ta' oriġini protetta jew minn indikazzjoni ġeografika kif imsemmija fl-artikolu 6(3)(c).

(5) Azzjoni għal revoka jew għal dikjarazzjoni ta' invalidità tista' tiġi diretta kontra parti mill-oġġetti jew is-servizzi li fir-rigward tagħhom giet reġistrata l-marka kontestata, jew kontra t-totalità tagħhom.

(6) Azzjoni għal dikjarazzjoni ta' invalidità tista' tiġi ppreżentata abbażi ta' dritt preċedenti wieħed jew aktar, sakemm dawn kollha jkunu jappartjenu lill-istess propjetarju.

(7) Jekk azzjoni dwar l-invalidità jew ir-revoka tkun giet ippreżentata quddiem il-Kontrollur, ma jkunx aktar possibbli li tiġi ppreżentata kawża għall-istess raġuni quddiem il-Prim'Awla tal-Qorti Ċivili wara li l-proċedimenti quddiem il-Kontrollur ikunu ġew konkluzi:

Iżda, meta persuna ġġib azzjoni għal invalidità jew revoka quddiem il-Kontrollur, fi kwalunkwe stadju qabel il-proċeduri jiġu konkluzi, dik il-persuna tista' tressaq azzjoni għal invalidità jew revoka fuq l-istess raġunjjiet quddiem il-Prim'Awla tal-Qorti Ċivili bir-riżultat li jieqfu l-proċedimenti quddiem il-Kontrollur:

Iżda wkoll jekk kawża dwar l-invalidità jew ir-revoka tkun

giet ipprezentata quddiem il-Prim'Awla tal-Qorti Ċivili, ma jkunx aktar possibbli li tiġi pprezentata azzjoni għall-istess raġuni quddiem il-Kontrollur.

Meta n-nuqqas ta' użu jinġiebb bħala difiża fi proċedimenti għal dikjarazzjoni ta' invalidità.

**53.** (1) Fil-proċedimenti għal dikjarazzjoni ta' invalidità bażata fuq *trademark* reġistrata b'data tal-applikazzjoni jew data ta' prijorità preċedenti, jekk il-proprjetarju tat-*trademark* sussegwenti jitolb dan, il-proprjetarju tat-*trademark* preċedenti għandu jagħti prova li, matul il-perjodu ta' hames snin qabel id-data tal-azzjoni għal dikjarazzjoni ta' invalidità, it-*trademark* preċedenti kienet intużat b'mod ġenwin kif stipulat fl-artikolu 26, b'rabta mal-oġġetti jew servizzi li għalihom tkun giet reġistrata u li jkunu kwotati bħala ġustifikazzjoni għall-azzjoni, jew li hemm raġunijiet xierqa għan-nuqqas ta' użu, sakemm il-proċess tar-reġistrazzjoni tat-*trademark* preċedenti jkun tlesta, fid-data tal-azzjoni għad-dikjarazzjoni ta' invalidità, mill-inqas hames snin qabel.

(2) Meta, fid-data tal-applikazzjoni jew fid-data ta' prijorità tat-*trademark* sussegwenti, il-perjodu ta' hames snin li fih it-*trademark* preċedenti kellha tintuża b'mod ġenwin, kif stipulat fl-artikolu 26, ikun skada, il-proprjetarju tat-*trademark* preċedenti, minbarra l-prova meħtieġa taħt is-subartikolu (1), għandu jagħti prova tal-użu ġenwin tat-*trademark* matul il-perjodu ta' hames snin qabel id-data tad-domanda jew id-data ta' prijorità, jew li kien hemm raġunijiet xierqa għan-nuqqas ta' użu.

(3) Fin-nuqqas tal-provi msemmija fis-subartikoli (1) u (2), azzjoni għal dikjarazzjoni ta' invalidità abbażi ta' *trademark* preċedenti għandha tkun rifjutata.

(4) Jekk it-*trademark* preċedenti tkun intużat b'konformità mal-artikolu 26 għar-rigward ta' wħud biss mill-oġġetti jew is-servizzi li tkun giet reġistrata għalihom, din għandha titqies, għall-finijiet tal-eżami tal-azzjoni għal dikjarazzjoni ta' invalidità, bħala reġistrata fir-rigward ta' daww l-oġġetti jew is-servizzi biss.

(5) Is-subartikoli (1) sa (4) għandhom japplikaw ukoll meta t-*trademark* preċedenti tkun *trademark* tal-UE. F'każ bħal dan, użu ġenwin tat-*trademark* tal-UE għandu jkun determinat b'konformità mal-Artikolu 18 tar-Regolament (UE) Nru 2017/1001.

Konsegwenzi ta' revoka u ta' invalidità.

**54.** (1) *Trademark* reġistrata għandha titqies li, mid-data tal-azzjoni għal revoka, ma kellhiex l-effetti speċifikati f'dan l-Att, sal-punt li d-drittijiet tal-proprjetarju jkunu ġew revokati. Fuq it-talba ta' waħda mill-partijiet, fid-deċiżjoni dwar l-azzjoni għal revoka, tista' tiġi ffissata data aktar kmieni li fiha seħħet waħda mir-raġunijiet għar-revoka.

(2) *Trademark* registrata għandha titqies li, mill-bidu, ma kellhiex l-effetti speċifikati f'dan l-Att, sal-punt li *t-trademark* tkun giet dikjarata invalida.

55. Il-partijiet fil-proċedimenti jew, meta hekk jinhatru, ir-rappreżentanti tagħhom, għandhom jindikaw indirizz uffiċjali għal kull komunikazzjoni uffiċjali mal-Kontrollur, u għandu jkollhom indirizz uffiċjali li jkun jinsab fiż-Żona Ekonomika Ewropea.

Komunikazzjoni  
mal-Kontrollur.

56. (1) Meta applikazzjoni tkun giet aċċettata bħala eliġibbli għar-reġistrazzjoni, il-Kontrollur għandu jirreġistra *t-trademark*, kemm-il darba ma jkunx jidhirlu, wara li jqis dak kollu li jista' josserva wara li jkun aċċetta l-applikazzjoni, li din tkun giet aċċettata bi żball.

Reġistrazzjoni.

(2) *Trademark* m'għandhiex tiġi registrata u l-applikazzjoni għandha titqies li tkun giet irtirata kemm-il darba xi dritt preskritt dwar xi azzjoni li tkun ittiedet qabel ir-reġistrazzjoni ma jkunx tħallas fi żmien il-perjodu preskritt.

(3) Ir-reġistrazzjoni ta' *trademark* għandha ssir billi din tiġi registrata mid-data tal-preżentata tal-applikazzjoni għar-reġistrazzjoni, u dik id-data għandha titqies għall-għanijiet ta' dan l-Att li tkun id-data tar-reġistrazzjoni.

(4) Meta li tiġi registrata *trademark*, il-Kontrollur għandu jippubblika r-reġistrazzjoni bil-mod preskritt u joħroġ ċertifikat ta' reġistrazzjoni lill-applikant:

Iżda meta tkun waslet oppożizzjoni fiż-żmien preskritt il-Kontrollur għandu biss jippubblika dik ir-reġistrazzjoni f'każ li dik l-oppożizzjoni tkun giet rifjutata:

Iżda wkoll jekk ikunu waslu aktar minn oppożizzjoni waħda u xi oppożizzjoni waħda jew aktar ikunu ġew aċċettati, dik il-pubblikazzjoni m'għandhiex issir.

(5) Minkejja s-subartikolu (4) hawn aktar qabel il-Kontrollur għandu jippubblika r-reġistrazzjoni ta' *trademark* meta jkun intlaħaq ftehim wara oppożizzjoni li kellha ssir emenda fl-oġġetti jew is-servizzi li fir-rigward tagħhom għandha tiġi registrata *t-trademark* li tkun saret applikazzjoni għaliha:

Iżda dik ir-reġistrazzjoni għandha ssir biss meta tkun saret dik l-emenda mill-applikant.

57. (1) *Trademark* għandha tibqa' registrata għal perjodu ta' għaxar snin mid-data tal-applikazzjoni.

Żmien ta'  
reġistrazzjoni.

(2) Ir-registrazzjoni tista' tiġġedded kif hemm fl-artikolu 58 għal perjodi oħra ta' għaxar snin.

Tiġdid ta' registrazzjoni.

**58.** (1) Ir-registrazzjoni ta' *trademark* għandha tiġġedded fuq it-talba tal-proprjetarju tat-*trademark* jew ta' kull persuna li tkun awtorizzata biex tagħmel dan bil-liġi jew permezz ta' kuntratt, sakemm ikunu thallsu d-drittijiet preskritti għat-tiġdid mhux aktar kmieni minn sitt xhur qabel id-data meta tiskadi.

(2) Il-Kontrollur għandu jgħarraf lill-proprjetarju tat-*trademark* bl-iskadenza tar-registrazzjoni mill-inqas sitt xhur qabel dik l-iskadenza. Il-Kontrollur m'għandux jinżamm responsabbli jekk jonqos milli jagħti informazzjoni bhal dik.

(3) It-talba għat-tiġdid għandha tiġi pprezentata u d-drittijiet għat-tiġdid għandhom jithallsu matul perjodu ta' mhux aktar minn sitt xhur li jiġu minnufih qabel l-iskadenza tar-registrazzjoni jew tat-tiġdid sussegwenti tagħha. Fin-nuqqas, it-talba tista' tiġi pprezentata f'perjodu ulterjuri ta' sitt xhur minnufih wara l-iskadenza tar-registrazzjoni jew tat-tiġdid sussegwenti tagħha. Id-drittijiet għat-tiġdid u d-dritt addizzjonali għandhom jithallsu matul dak il-perjodu ulterjuri.

(4) It-tiġdid isir effettiv mill-jum wara d-data meta r-registrazzjoni eżistenti tiskadi. It-tiġdid għandu jiġi registrat fir-registru.

(5) Jekk ir-registrazzjoni ma tiġġeddidx kif hemm fid-dispożizzjonijiet ta' qabel, il-Kontrollur għandu jneħhi t-*trademark* mir-registru.

(6) Jista' jiġi pprovdut permezz ta' regoli dwar kif għandha tiġi restawrata r-registrazzjoni ta' *trademark* li tkun tneħhiet mir-registru, bla ħsara għal dawk il-kondizzjonijiet (jekk ikun hemm) li jistgħu jiġu preskritti.

(7) It-tiġdid jew ir-restawr tar-registrazzjoni ta' *trademark* għandu jiġi pubblikat bil-mod preskrit.

Bdil ta' *trademark* registrata.

**59.** (1) *Trademark* registrata m'għandhiex tinbidel fir-registru matul il-perjodu ta' registrazzjoni jew meta tiġġedded.

(2) Madankollu, il-Kontrollur jista', fuq talba tal-proprjetarju, jippermetti l-bdil ta' *trademark* registrata meta t-*trademark* tkun tinkludi isem il-proprjetarju jew l-indirizz tiegħu u l-bdil ikun limitat għall-bdil f'dak l-isem jew indirizz u ma jkunx sostanzjalment jolqot l-identità tat-*trademark*.

(3) Għandu jiġi pprovdut permezz ta' regoli dwar il-pubblikazzjoni ta' kull bdil bħal dak u l-għemil ta' oġġezzjonijiet minn kull persuna li tippretendi li tkun intlaqtet minnu.

**60.** (1) *Trademark* reġistrata tista' tiġi ċeduta mill-proprjetarju għar-rigward ta' xi wieħed jew ta' kull oġġett jew servizz li tkun reġistrata dwarhom. Ċessjoni ta' *trademark* reġistrata.

(2) Jista' jiġi pprovdut permezz ta' regoli -

(a) dwar il-mod u l-effett ta' ċessjoni; u

(b) għall-protezzjoni tal-interessi ta' persuni oħra li jkollhom dritt fit-*trademark* reġistrata.

**61.** Għall-għanijiet ta' dan l-Att, għandu jkun japplika dan it-tifsir li ġej:

Tifsir ta' marki ta' ċertifikazzjoni u marki kollettivi.

(a) "marka ta' ċertifikazzjoni" tfisser *trademark* deskritta bħala tali meta ssir applikazzjoni għal dik il-marka u li tkun tista' tiddistingwi bejn oġġetti jew servizzi li jkunu ċertifikati mill-proprjetarju tal-marka għar-rigward ta' materjal, mod ta' manifattura ta' oġġetti jew għoti ta' servizzi, kwalità, eżattezza jew karatteristiċi oħra, minn oġġetti u servizzi li ma jkunux ċertifikati b'dak il-mod;

(b) "marka kollettiva" tfisser *trademark* li tiġi deskritta b'dan il-mod meta ssir l-applikazzjoni għal dik il-marka u tkun tista' tiddistingwi bejn oġġetti jew servizzi ta' membri ta' assoċjazzjoni li tkun il-proprjetarja tal-marka minn oġġetti jew servizzi ta' impriži oħra.

**62.** Il-provvedimenti ta' dan l-Att japplikaw għal marki ta' ċertifikazzjoni bla ħsara għal dawn id-dispożizzjonijiet li ġejjin li jistgħu jiġu emendati mill-Ministru permezz ta' regolamenti. Dispożizzjoni ġenerali.

**63.** Għar-rigward ta' marka ta' ċertifikazzjoni, ir-riferenza fit-tifsira ta' "*trademark*" fl-artikolu 4(2)(a) fid-distinzjoni ta' oġġetti jew servizzi ta' impriża waħda minn dawk ta' impriži oħra, għandha tinftiehem bħala riferenza għad-distinzjoni ta' oġġetti jew servizzi li jkunu ċertifikati minn dawk li ma jkunux. Sinjali li minnhom tista' tkun tikkonsisti marka ta' ċertifikazzjoni.

**64.** (1) Kull persuna fiżika jew ġuridika, inklużi istituzzjonijiet, awtoritajiet u korpi regolati mil-liġi pubblika, tista' tapplika għal marki ta' ċertifikazzjoni sakemm dik il-persuna ma tmexxix kummerċ li jinvolvi l-forniment ta' oġġetti jew servizzi tat-tip ċertifikat. Marki ta' ċertifikazzjoni.

A 418

Indikazzjoni ta' oriġini ġeografika.

(2) Is-sinjali jew l-indikazzjonijiet li jistgħu jservu, fil-kummerċ, biex jindikaw l-oriġini ġeografika tal-oġġetti jew tas-servizzi jistgħu jikkostitwixxu marki ta' ċertifikazzjoni. Marka ta' ċertifikazzjoni bħal dik m'għandhiex tagħti d-dritt lill-proprjetarju li jipprojbixxi terza parti milli tuża fl-eżerċizzju tal-kummerċ dawn is-sinjali jew indikazzjonijiet, sakemm dik it-terza parti tużahom b'konformità mal-prattiki onesti f'kwistjonijiet industrijali jew kummerċjali. B'mod partikolari, marka bħal dik ma tistax tiġi invokata kontra terza parti li tkun intitolata tuża isem ġeografiku.

(3) Il-ħtiġijiet stabbiliti fl-artikolu 26 jiġu sodisfatti meta persuna, tkun min tkun, li jkollha l-awtorità li tuża marka ta' ċertifikazzjoni, tużaha b'mod ġenwin b'konformità mal-artikolu 26.

Xorta tal-kummerċ tal-proprjetarju.

**65.** Marka ta' ċertifikazzjoni m'għandhiex tiġi registrata jekk il-proprjetarju jkun imexxi kummerċ li jinvolvi l-provvista ta' oġġetti jew servizzi tax-xorta ċertifikata.

Marka m'għandhiex tkun tqarraq dwar ix-xorta jew sinifikat tagħha.

**66.** (1) Marka ta' ċertifikazzjoni m'għandhiex tiġi registrata jekk il-pubbliku x'aktarx li jiġi mqarraq dwar ix-xorta jew sinifikat tal-marka, b'mod partikolari jekk din x'aktarx li tinftiehem bħala xi haġa oħra li mhix marka ta' ċertifikazzjoni.

(2) Il-Kontrollur jista' għaldaqstant jeħtieġ li marka illi fir-rigward tagħha tkun saret applikazzjoni għar-registrazzjoni tkun tinkludi xi ftit indikazzjoni li din tkun marka ta' ċertifikazzjoni, u minkejja d-dispożizzjonijiet tal-artikolu 49(2), applikazzjoni tkun tista' tiġi emendata biex issir konformi ma' xi ħtieġa bħal dik.

Regolamenti li jirregolaw l-użu ta' marka ta' ċertifikazzjoni.

**67.** Applikant għar-registrazzjoni ta' marka ta' ċertifikazzjoni għandu jippreżenta quddiem il-Kontrollur regolamenti li jirregolaw l-użu tal-marka fejn jiġi speċifikat min ikun awtorizzat juża l-marka, il-karatteristiċi li għandhom jiġu ċertifikati bil-marka, kif l-entità li tiċċertifika għandha tifli daww il-karatteristiċi u tissorvelja l-użu tal-marka, id-drittijiet (jekk ikun il-każ) li għandhom jithallsu b'rabta mal-operazzjoni tal-marka u mal-proċeduri għar-risolviment ta' tilwimiet u kull ħtieġa oħra li r-regolamenti għandhom iħarsu kif jista' jiġi stabbilit b'kull regola li ssir mill-Ministru.

Approvazzjoni ta' regolamenti, eċċ.

**68.** (1) Marka ta' ċertifikazzjoni m'għandhiex tiġi registrata kemm-il darba –

(a) ir-regolamenti li jirregolaw l-użu tal-marka -

(i) ikunu konformi mal-artikolu 67 u kull ħtieġa oħra imposta bir-regoli; u

(ii) ma jkunux imorru kontra l-ordni pubbliku jew

prinċipji morali aċċettati; u

(b) l-applikant ikun kompetenti biex jiċċertifika l-oġġetti jew is-servizzi li għalihom tkun ser tiġi registrata l-marka.

(2) L-applikazzjoni għandha titqies li tkun giet irtirata jekk qabel it-tmiem ta' xi perjodu li jista' jiġi preskritt wara d-data tal-applikazzjoni għar-registrazzjoni ta' marka ta' ċertifikazzjoni, l-applikant jonqos milli jippreżenta r-regolamenti quddiem il-Kontrollur u jhallas id-dritt preskritt.

**69.** (1) Il-Kontrollur għandu jqis jekk il-ħtiġijiet imsemmija fl-artikolu 68(1) ikunux qegħdin jitharsu. Htiġijiet.

(2) Jekk il-Kontrollur ikun jidhirlu li dawk il-ħtiġijiet ma jkunux qegħdin jitharsu, huwa għandu jgħarraf lill-applikant u jagħtih opportunità, f'dak il-perjodu li l-Kontrollur jista' jispeċifika, jagħmel il-kummenti tiegħu jew jippreżenta regolamenti emendati.

(3) Jekk l-applikant jonqos milli jissodisfa lill-Kontrollur li dawk il-ħtiġijiet ikunu qegħdin jitharsu, jew milli jippreżenta regolamenti emendati biex iharishom, jew jonqos milli jwieġeb qabel tmiem iż-żmien speċifikat, il-Kontrollur għandu jirrifjuta l-applikazzjoni.

(4) Jekk il-Kontrollur ikun jidhirlu li dawk il-ħtiġijiet, u l-ħtiġijiet għar-registrazzjoni jkunu qegħdin jitharsu, huwa għandu jaċċetta l-applikazzjoni u għandu jmexxi kif hemm fl-artikolu 56.

**70.** Ir-regolamenti li jirregolaw l-użu ta' marka ta' ċertifikazzjoni registrata għandhom ikunu miftuħa għal spezzjoni pubblika bl-istess mod bħar-registru. Tista' ssir spezzjoni tar-regolamenti.

**71.** Emenda tar-regolamenti li jirregolaw l-użu ta' marka kollettiva registrata ma jkollha ebda effett kemm-il darba u sakemm ir-regolamenti emendati jiġu ppreżentati quddiem il-Kontrollur u jiġu aċċettati minnu. Emenda tar-regolamenti.

**72.** L-assenjament jew trasferiment ieħor ta' marka ta' ċertifikazzjoni registrata ma jkollhom ebda effett mingħajr il-kunsens tal-Kontrollur. Kunsens għall-assenjament ta' marka ta' ċertifikazzjoni registrata.

**73.** Id-dispożizzjonijiet tas-subartikolu (7) tal-artikolu 12 u tas-subartikolu (2) tal-artikolu 24 japplikaw għar-rigward ta' utent awtorizzat ta' marka ta' ċertifikazzjoni registrata bħal fir-rigward ta' detentur ta' liċenzja ta' *trademark*. Kontravvenzjoni: id-dritt ta' utenti awtorizzati.

**74.** Fi proċedimenti ta' kontravvenzjoni mibdijin mill- Proċedimenti ta' kontravvenzjoni.

proprjetarju ta' marka ta' ċertifikazzjoni reġistrata, kull telfien imġarrab jew li x'aktarx jiġi mġarrab minn utenti awtorizzati għandu jittiehed akkont tagħhom mill-Qorti li għandha tagħti dawk l-ordnijiet li jidhrilha li jkunu xierqa għar-rigward tad-disponiment u distribuzzjoni ta' kull somma mogħtija bhala rimedju għal xi kontravvenzjoni.

Raġunijiet għar-revoka ta' reġistrazzjoni – marka ta' ċertifikazzjoni.

**75.** Minbarra r-raġunijiet għal revoka kif hemm fl-artikolu 29, ir-reġistrazzjoni ta' marka ta' ċertifikazzjoni tista' tiġi revokata għal kwalunkwe minn dawn ir-raġunijiet li ġejjin:

(a) li l-proprjetarju jkun beda jmexxi dak il-kummerċ bi ksur tal-artikolu 65;

(b) li l-mod kif intużat il-marka mill-proprjetarju ġegħelha ssir tali li tqarraq bil-pubbliku bil-mod imsemmi fl-artikolu 66(1);

(ċ) li l-proprjetarju jkun naqas milli josserva, jew li jagħmel tajjeb għall-osservanza tar-regolamenti li jirregolaw l-użu tal-marka;

(d) li tkun saret emenda fir-regolamenti sabiex ir-regolamenti -

(i) ma jibqgħux aktar konformi mal-artikolu 67; jew

(ii) imorru kontra l-ordni pubbliku jew prinċipji morali aċċettati;

(e) li l-proprjetarju ma jibqax kompetenti biex jiċċertifika l-oġġetti jew is-servizzi li l-marka tkun ġiet reġistrata għalihom.

Raġunijiet għall-invalidità ta' reġistrazzjoni - marki ta' ċertifikazzjoni.

**76.** Minbarra r-raġunijiet ta' invalidità kif provdut fl-artikoli 5 u 6, ir-reġistrazzjoni ta' marka ta' ċertifikazzjoni jista' jiġi dikjarat invalidu għar-raġuni li l-marka kienet reġistrata bi ksur tad-dispożizzjonijiet tal-artikoli 65, 66(1) jew 68(1).

Dispożizzjonijiet ġenerali – marki kollettivi.

**77.** Id-dispożizzjonijiet ta' dan l-Att japplikaw għal marki kollettivi bla ħsara għal dawn id-dispożizzjonijiet li ġejjin li jistgħu jiġu emendati permezz ta' regolamenti mill-Ministru.

Sinjali li minnhom tista' tkun tikkonsisti marka kollettiva.

**78.** Għar-rigward ta' marka kollettiva, ir-referenza fit-tifsira ta' "*trademark*" fl-artikolu 4 (2)(a) fid-distinzjoni ta' oġġetti jew servizzi ta' impriża waħda minn dawk ta' impriži oħra għandha tinftiehem bhala riferenza għad-distinzjoni ta' oġġetti jew servizzi ta' membri tal-

assoċjazzjoni li tkun il-proprjetarja tal-marka minn dawk ta' impriżi oħra.

**79.** (1) Assoċjazzjonijiet ta' manifatturi, produttori, fornituri ta' servizzi jew negozjanti li, skont it-termini tal-liġi li tirregolahom, għandhom il-kapaċità li f'isimhom stess ikollhom drittijiet u obbligi, li jagħmlu kuntratti jew iwettqu atti ġuridiċi oħra, u li jharrku u jigu mħarrka, kif ukoll persuni ġuridiċi regolati mil-liġi pubblika, jistgħu japplikaw għal marki kollettivi.

Kapaċità ta' Assoċjazzjonijiet li jwettqu atti ġuridiċi – marki kollettivi.

(2) Is-sinjali jew l-indikazzjonijiet li jistgħu jservu, fil-kummerċ, biex jindikaw l-origini ġeografika tal-oġġetti jew is-servizzi jistgħu jikkostitwixxu marki kollettivi. Marka kollettiva bħal dik m'għandhiex tagħti d-dritt lill-proprjetarju li jipprojbixxi lil xi terza parti milli tuża fl-eżerċizzju tal-kummerċ dawn is-sinjali jew indikazzjonijiet, sakemm dik it-terza parti tużahom b'konformità mal-prattiki onesti fi kwistjonijiet industrijali jew kummerċjali. B'mod partikolari, marka bħal dik ma tistax tiġi invokata kontra terza parti li tkun intitolata tuża isem ġeografiku.

**80.** (1) Marka kollettiva m'għandhiex tiġi registrata jekk il-pubbliku x'aktarx li jiġi mqarraq dwar ix-xorta jew sinifikat tal-marka, b'mod partikolari jekk din x'aktarx li tinftiehem bħala xi haġa oħra li mhux marka kollettiva.

Marka kollettiva m'għandhiex tiżgwiċa dwar ix-xorta jew is-sinifikat tagħha.

(2) Il-Kontrollur jista' għaldaqstant jeħtieġ li marka illi fir-rigward tagħha tkun saret applikazzjoni għar-registrazzjoni, tkun tinkludi xi ftit indikazzjoni li din tkun marka kollettiva; u minkejja d-dispożizzjonijiet tal-artikolu 49(2), applikazzjoni tkun tista' tiġi emendata biex issir konformi ma' xi hteġa bħal dik.

**81.** (1) Applikant għal marka kollettiva għandu jippreżenta r-regolamenti li jirregolaw l-użu tagħha lill-Kontrollur.

Regolamenti li jirregolaw l-użu ta' marka kollettiva.

(2) Ir-regolamenti dwar l-użu għandhom tal-inqas jispeċifikaw il-persuni awtorizzati li jużaw il-marka, il-kondizzjonijiet għall-ishubija tal-assoċjazzjoni u l-kondizzjonijiet għall-użu tal-marka, inkluzi s-sanzjonijiet. Ir-regolamenti dwar l-użu ta' marka msemmija fl-artikolu 79(1) għandhom jawtorizzaw lil kull persuna li tkun, li l-oġġetti jew is-servizzi tagħha joriġinaw miż-żona ġeografika involuta, li ssir membru tal-assoċjazzjoni li tkun il-proprjetarja tal-marka, sakemm dik il-persuna tissodisfa l-kondizzjonijiet l-oħra kollha tar-regolamenti.

**82.** (1) Marka kollettiva m'għandhiex tiġi registrata hlief meta r-regolamenti li jirregolaw l-użu tal-marka -

Approvazzjoni tar-regolamenti mill-Kontrollur.

(a) ikunu konformi mal-artikolu 81(2) u kull hteġa oħra

imposta bir-regoli; u

(b) ma jkunux imorru kontra l-ordni pubbliku jew prinċipji morali aċċettati.

(2) L-applikazzjoni għandha titqies li tkun giet irtirata jekk qabel it-tmiem ta' xi perjodu li jista' jiġi preskritt wara d-data tal-applikazzjoni għar-registrazzjoni ta' marka kollettiva, l-applikant jonqos milli jippreżenta r-regolamenti quddiem il-Kontrollur u jhallas id-dritt preskritt.

Il-Kontrollur għandu jqis il-ħtiġijiet.

**83.** (1) Il-Kontrollur għandu jqis jekk il-ħtiġijiet imsemmija fl-artikolu 82(1) ikunux qegħdin jiġu mħarsa.

(2) Jekk il-Kontrollur ikun jidhirli li dawk il-ħtiġijiet ma jkunux qegħdin jitharsu, huwa għandu jgħarraf lill-applikant u jagħtih opportunità, f'dak il-perjodu li l-Kontrollur jista' jispeċifika, jagħmel il-kummenti tiegħu jew jippreżenta regolamenti emendati.

(3) Jekk l-applikant jonqos milli jissodisfa lill-Kontrollur li dawk il-ħtiġijiet ikunu qegħdin jitharsu, jew milli jippreżenta regolamenti emendati biex iħarishom, jew jonqos milli jwieġeb qabel tmiem iż-żmien speċifikat, il-Kontrollur għandu jirrifjuta l-applikazzjoni.

(4) Jekk il-Kontrollur ikun jidhirli li dawk il-ħtiġijiet, u l-ħtiġijiet l-oħra għar-registrazzjoni, ikunu qegħdin jitharsu, huwa għandu jaċċetta l-applikazzjoni u għandu jmexxi kif hemm fl-artikolu 56.

Ir-regolamenti għandhom ikunu miftuħin għal spezzjoni.

**84.** Ir-regolamenti li jirregolaw l-użu ta' marka kollettiva registrata għandhom ikunu miftuħin għal spezzjoni pubblika bl-istess mod bħar-registru.

Rifjut ta' applikazzjoni għal marka kollettiva.

**85.** (1) Minbarra r-raġunijiet għar-rifjut ta' applikazzjoni għal *trademark* stipulati fl-artikolu 5, meta jkun adatt bl-eċċezzjoni tal-artikolu 5(1)(ċ) dwar sinjali jew indikazzjonijiet li jistgħu jservu, fil-kummerċ, biex jindikaw l-origini ġeografika tal-oġġetti jew tas-servizzi, u l-artikolu 6, u mingħajr preġudizzju għad-dritt tal-Uffiċċju li ma jagħmilx eżami *ex officio* tar-raġunijiet relattivi, applikazzjoni għal marka kollettiva għandha tiġi rifjutata meta d-dispożizzjonijiet tal-artikolu 61(b), l-artikolu 79 jew l-artikolu 81 ma jiġux sodisfatti, jew meta r-regolamenti li jirregolaw l-użu ta' dik il-marka kollettiva jmorru kontra l-ordni pubbliku jew prinċipji morali aċċettati.

(2) Applikazzjoni għal marka kollettiva għandha tiġi wkoll rifjutata jekk il-pubbliku x'aktarx li jiġi mqarraq dwar ix-xorta jew is-sinifikat tal-marka, b'mod partikolari jekk din x'aktarx li tinftiehem

bħala xi ħaġa oħra li mhix marka kollettiva.

(3) L-applikazzjoni m'għandhiex tiġi rifjutata jekk l-applikant, bħala konsegwenza ta' emenda fir-regolamenti dwar l-użu tal-marka kollettiva, jissodisfa l-ħtiġijiet imsemmijin fis-subartikoli (1) u (2).

**86.** Il-ħtiġijiet tal-artikolu 26 jiġu sodisfatti meta jsir użu ġenwin ta' marka kollettiva b'konformità ma' dak l-artikolu minn kull persuna li tkun u li għandha l-awtorità li tużaha.

Użu ta' marki kollettivi.

**87.** (1) Il-proprjetarju ta' marka kollettiva għandu jippreżenta lill-Kontrollur kull regolament emendat li jirregola l-użu.

Emendi għar-regolamenti dwar l-użu tal-marka kollettiva.

(2) Emendi għar-regolamenti li jirregolaw l-użu għandhom jissemmew fir-reġistru ħlief jekk ir-regolamenti emendati ma jissodisfawx il-ħtiġijiet tal-artikolu 81 jew jinvolvu xi waħda mir-raġunijiet għar-rifjut imsemmi fl-artikolu 85.

(3) Għall-għanijiet ta' dan l-Att, l-emendi għar-regolamenti li jirregolaw l-użu għandhom isiru effettivi biss mid-data meta titniżżel ir-referenza għal dawk l-emendi fir-reġistru.

**88.** (1) L-artikolu 39(5) u (6) għandu japplika għal kull persuna li għandha l-awtorità li tuża marka kollettiva.

Persuni intitolati li jifitħu proċedimenti għal kontravvenzjoni.

(2) Il-proprjetarju ta' marka kollettiva jkun intitolat li jitlob kumpens f'isem il-persuni li għandhom l-awtorità li jużaw il-marka kollettiva meta dawk il-persuni jkunu sofrew danni b'riżultat ta' użu mhux awtorizzat tal-marka kollettiva.

**89.** Minbarra r-raġunijiet għar-revoka msemmija fl-artikoli 29 u 30, id-drittijiet tal-proprjetarju ta' marka kollettiva għandhom jiġu revokati għal kwalunkwe minn dawn ir-raġunijiet li ġejjin:

Raġunijiet addizzjonali għal revoka – marki kollettivi.

(a) il-proprjetarju ma jehux passi raġonevoli biex jipprevjeni li l-marka tintuża b'mod li jkun inkompatibbli mal-kondizzjonijiet tal-użu stipulati fir-regolamenti dwar l-użu, inkluża kull emenda li ssirilhom imsemmija fir-reġistru;

(b) il-mod kif il-persuni awtorizzati użaw il-marka wassal biex din tista' tqarraq bil-pubbliku bil-mod imsemmi fl-artikolu 85(2);

(ċ) tkun saret referenza fir-reġistru għal emenda għar-regolamenti dwar l-użu tal-marka bi ksur tal-artikolu 87(2), kemm-il darba l-proprjetarju tal-marka, ma jikkonformax ruħu mal-ħtiġijiet ta' dak l-artikolu permezz ta' emendi ulterjuri għar-regolamenti dwar l-użu.

A 424

Raġunijiet  
addizzjonali  
għal invalidità.

**90.** Minbarra r-raġunijiet għal invalidità li hemm provdut dwarhom fl-artikolu 5, fejn xieraq bl-eċċezzjoni tal-artikolu 5(1)(ċ) dwar sinjali jew indikazzjonijiet li jistgħu jservu, fil-kummerċ, biex jindikaw l-orijini ġeografika tal-oġġetti jew tas-servizzi, u l-artikolu 6, marka kollettiva li tkun registrata bi ksur tal-artikolu 85 għandha tiġi dikjarata bħala invalida kemm-il darba l-proprietarju tal-marka ma jikkonformax ruħu mal-htigijiet tal-artikolu 85 permezz ta' emenda tar-regolamenti li jirregolaw l-użu.

### TAQSIMA III - DISPOŻIZZJONIJIET AMMINISTRATTIVI U SUPPLIMENTARI OĦRA

Reġistru li  
għandu jinżamm  
u x'ikun fih.

**91.** (1) (a) Il-Kontrollur għandu jżomm reġistru tat-*trademarks*.

(b) Kull riferenza f'dan l-Att għal "ir-reġistru" hi għal dak ir-reġistru; u kull riferenza għal reġistrazzjoni, b'mod partikolari, fil-kliem "*trademark* registrata", hi, kemm-il darba r-rabta tal-kliem ma teħtieġx xort'oħra, għal reġistrazzjoni li ssir f'dak ir-reġistru.

(2) Għandhom jitniżżlu fir-reġistru b'konformità ma' dan l-Att:

(a) *trademarks* registrati;

(b) dawk id-dettalji li jistgħu jiġu preskritti dwar operazzjonijiet registrabbli li jolqtu *trademark* registrata; u

(ċ) dawk il-ħwejjeġ l-oħra li jirrigwardaw *trademarks* registrati kif jista' jiġi preskritti.

(3) Ir-reġistru għandu jinżamm b'dak il-mod hekk kif jista' jiġi preskritti, u għandu jiġi b'mod partikolari provdut dwar -

(a) spezzjoni pubblika tar-reġistru; u

(b) il-provvista ta' kopji, jew estratti, sew ċertifikati sew mhumiex, ta' notamenti fir-reġistru.

Rettifika jew  
korrezzjoni tar-  
reġistru.

**92.** (1) Kull min ikollu interess suffiċjenti jista' japplika għar-rettifika ta' xi żball jew ommissjoni fir-reġistru:

Iżda applikazzjoni għal rettifika ma tistax issir għar-rigward ta' xi haġa li tkun tolqot il-validità tar-reġistrazzjoni ta' *trademark*.

(2) Applikazzjoni għal rettifika tista' ssir sew lill-Kontrollur sew lill-Qorti:

Iżda jekk ikun hemm pendenti quddiem il-Qorti procedimenti li jirrigwardaw it-*trademarks* involuti -

(a) l-applikazzjoni jkollha ssir quddiem il-Qorti; u

(b) jekk l-applikazzjoni ssir lill-Kontrollur, huwa jista' f'kull stadju tal-procedimenti jirreferi l-applikazzjoni quddiem il-Qorti.

(3) Hlief meta l-Kontrollur jew il-Qorti jordnaw xort'oħra, l-effett tar-rettifika tar-registru jkun li l-iżball jew l-ommissjoni involuti jitqiesu bħallikieku qatt ma saru.

(4) Il-Kontrollur jista', fuq talba magħmula bil-mod preskritt mill-proprjetarju ta' *trademark* registrata, jew minn detentur ta' liċenzja, jagħmel kull tibdil fl-isem jew l-indirizz tiegħu kif ikun inniżżel fir-registru.

(5) Il-Kontrollur jista' jnehħi mir-registru kull tagħrif li skont hu ma jkunx għad għandha iktar effett.

(6) L-applikant jew proprjetarju jista' jaqsam applikazzjoni jew registrazzjoni nazzjonali għal *trademark* f'żewġ jew aktar applikazzjonijiet jew registrazzjonijiet separati billi jibgħat dikjarazzjoni lill-Uffiċċju u jindika għal kull applikazzjoni jew registrazzjoni separata l-oġġetti jew is-servizzi koperti bl-applikazzjoni jew registrazzjoni oriġinali li għandhom jiġu koperti bl-applikazzjonijiet jew registrazzjonijiet separati.

**93.** (1) Il-Ministru jista' permezz ta' regolamenti jagħmel regoli li jagħtu setgħa lill-Kontrollur li jagħmel dak kollu li jista' jkun meħtieġ biex jimplementa kull klassifika emendata jew sostitwita ta' oġġetti jew servizzi għall-għanijiet tar-registrazzjoni ta' *trademarks*, u mingħajr preġudizzju għall-ġeneralità ta' dak kollu hawn aktar qabel imsemmi, jista' b'mod partikolari jipprovdi biex jiġu emendati registrazzjonijiet eżistenti fir-registru sabiex dawn jingiebu jaqblu mal-klassifika ġdida.

Adattar ta' registrazzjonijiet għal klassifikar ġdid.

(2) Kull setgħa ta' emenda bħal dik m'għandhiex tiġi eżerċitata sabiex testendi d-drittijiet mogħtijin bir-registrazzjoni, hlief meta l-Kontrollur ikun jidhirlu li t-tħaris ta' din il-ħtieġa jkun jinvolvi komplikazzjoni mhux dovuta u li kull estensjoni ma tkunx sostanzjali u ma tkunx tolqot hażin il-jedd ta' xi persuna.

(3) Ir-regoli jistgħu iktar minn hekk jagħtu s-setgħa lill-Kontrollur -

(a) li jeħtieġ lill-proprjetarju ta' *trademark* registrata,

A 426

f'dak iż-żmien li jista' jiġi hekk preskritt, jipprezenta proposta għal emenda tar-reġistru; u

(b) li jhassar jew jirrifjuta milli jgedded ir-reġistrazzjoni tat-*trademark* fil-każ li l-proprjetarju jonqos milli jagħmel dan.

(4) Kull proposta bħal dik għandha tiġi reklamata, u din tista' tiġi opposta, b'dak il-mod li jista' jiġi preskritt.

Setgħa li jenħtieġ l-użu ta' formuli.

**94.** Il-Kontrollur jista' jeħtieġ l-użu ta' dawk il-formuli hekk kif huwa jista' jordna għal kull għan li jkollu x'jaqsam mar-reġistrazzjoni ta' *trademark* jew għal kull proċediment ieħor quddiemu taħt dan l-Att.

Tagħrif dwar applikazzjonijiet u *trademarks* reġistrati.

**95.** (1) Bla ħsara għal dawk ir-restrizzjonijiet li l-Ministru jista' b'regolamenti jimponi wara l-pubblikazzjoni tar-reġistrazzjoni ta' *trademark*, il-Kontrollur għandu, meta jiġi hekk mitlub, jipprovi lil persuna b'dak it-tagħrif u jippermettilu jispezzjona dawk id-dokumenti li jkollhom x'jaqsmu mat-*trademark* reġistrata, hekk kif jista' jiġi speċifikat fit-talba.

Kull talba bħal dik għandha ssir b'dak il-mod u tkun imsieħba b'dak id-dritt li jista' jiġi preskritt.

(2) Qabel il-pubblikazzjoni tar-reġistrazzjoni ta' *trademark*, dokumenti jew tagħrif li jkun jikkostitwixxi jew ikollu x'jaqsam mal-applikazzjoni m'għandux jiġi publikat mill-Kontrollur jew komunikat minnu lil xi persuna ħlief -

(a) f'dawk il-każijiet u daqstant kemm jista' jiġi preskritt; jew

(b) bil-kunsens tal-applikant.

Esklużjoni ta' responsabbiltà għar-rigward ta' attijiet uffiċjali.

**96.** (1) Il-Kontrollur m'għandux jiġi kunsidrat li jiggarrantixxi l-validità tar-reġistrazzjoni ta' *trademark* taħt dan l-Att jew taħt xi trattat, konvenzjoni, arrangament jew obligazzjoni li Malta tkun imsieħba fiha.

(2) Il-Kontrollur mhux sugġett għal ebda responsabbiltà minħabba jew f'dak li għandu x'jaqsam ma' xi eżami meħtieġ jew awtorizzat b'dan l-Att, jew kull trattat, konvenzjoni, arrangament jew obligazzjoni bħal dawk, jew kull rapport jew proċedimenti ohra konsegwenzjali għal dak l-eżami.

(3) M'għandha tittiehed ebda azzjoni kontra xi uffiċjal tal-Kontrollur għar-rigward ta' xi haġa li għaliha, bis-saħħa ta' dan l-artikolu, il-Kontrollur ma jkunx responsabbli.

**97.** Fil-proċedimenti legali kollha li jkollhom x'jaqsmu ma' *trademark* registrata (inklużi proċedimenti għar-rettifika tar-reġistru) ir-reġistrazzjoni ta' persuna bħala proprjetarju ta' *trademark* għandha tkun xhieda *prima facie* tal-validità tar-reġistrazzjoni originali u ta' kull assenjament jew trasferiment ieħor sussegwenti tagħha.

Ir-reġistrazzjoni tkun xhieda *prima facie* tal-validità.

**98.** (1) Jekk waqt il-proċedimenti quddiem il-Qorti tiġi kontestata l-validità tar-reġistrazzjoni ta' *trademark* u l-Qorti jirrizultalha li t-*trademark* tkun registrata validament, il-Qorti għandha tiddeċiedi f'dan is-sens.

Ċertifikazzjoni ta' validità ta' reġistrazzjoni kontestata.

(2) Meta l-Qorti tkun tat sentenza bħal dik u fi proċedimenti sussegwenti -

(a) il-validità tar-reġistrazzjoni terġa' titqajjem; u

(b) il-proprjetarju jikseb ordni finali jew sentenza favurih,

il-proprjetarju għandu jkollu jedd għall-ispejjeż tiegħu kemm-il darba l-Qorti ma tiddeċidix xort'oħra.

**99.** (1) Fi proċedimenti quddiem il-Qorti li jkunu jirrigwardaw talba -

Meta jidher il-Kontrollur fi proċedimenti li jinvolvu lir-reġistru.

(a) għar-revoka ta' reġistrazzjoni ta' *trademark*;

(b) għal dikjarazzjoni ta' invalidità tar-reġistrazzjoni ta' *trademark*; jew

(c) għar-rettifika tar-reġistru,

il-Kontrollur għandu jiġi avżat bil-proċedimenti u jkollu jedd jidher u jinstema' jekk jiġi hekk ordnat li jagħmel mill-Qorti.

(2) Kemm-il darba ma jiġix ordnat xort'oħra mill-Qorti, il-Kontrollur jista' minflok ma jidher, jippreżenta fl-atti tal-kawża dikjarazzjoni bil-miktub iffirmata minnu, fejn jingħataw dettalji dwar -

(a) proċedimenti quddiemu għar-rigward tal-kwistjoni involuta;

(b) ir-raġunijiet għal xi deċiżjoni minnu mogħtija li jolqtu l-kwistjoni;

(c) xi tkun il-konswetudni li l-Uffiċċju għall-Proprjeta Industrijali soltu jadotta f'każijiet simili; jew

(d) dawk l-affarijiet kollha rilevanti għall-kwistjoni u li

jkunu fl-ambitu tal-għarfien tiegħu bħala Kontrollur daqskemm iquis li jkun adatt,

u d-dikjarazzjoni għandha titqies li tkun tagħmel parti mix-xhieda fil-proċedimenti.

Appelli minn  
deċiżjoni tal-  
Kontrollur.  
Kap. 12.

**100.** (1) Deċiżjoni tal-Kontrollur taht dan l-Att tista' tiġi appellata quddiem il-Qorti tal-Appell magħmul bil-mod li hemm provdut fis-subartikolu (9) tal-artikolu 41 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili b'rikors fi żmien hmistax il-gurnata min-notifika tad-deċiżjoni tal-Kontrollur.

(2) Għall-għanijiet tas-subartikolu (1) "deċiżjoni" tfisser kull att, hlief għal dawk l-attijiet li jistgħu jiġu preskritti b'regolamenti, li jsiru mill-Kontrollur fit-tweqqiq ta' diskrezzjoni vestita fih b'dan jew taht dan l-Att.

(3) Il-Ministru jista' jagħmel regoli li jkunu jirregolaw l-appelli quddiem il-Qorti tal-Appell taht dan l-Att, u li jkunu juru skala ta' spejjeż dwar dawk l-appelli.

Setgħa tal-  
Ministru li  
jagħmel regoli.

**101.** (1) Il-Ministru responsabbli għall-protezzjoni tal-Proprjetà Industrijali jista' jagħmel regolamenti għall-aħjar amministrazzjoni ta' dan l-Att, billi jagħmel dawk ir-regoli li jkunu meħtieġa b'kull dispożizzjoni ta' dan l-Att, biex jippreskrivi kull haġa li hi awtorizzata jew meħtieġa b'xi dispożizzjoni ta' dan l-Att li tiġi preskritta, u ġeneralment biex tirregola l-prattika u l-proċedura taht dan l-Att, u b'mod partikolari jista' jiġi provdut dwar -

(a) il-mod kif jiġu preżentati l-applikazzjonijiet u dokumenti oħra;

(b) li jiġu sottomessi dokumenti u ssir il-preżentata u l-awtentikazzjoni ta' kull traduzzjoni;

(ċ) in-notifika ta' dokumenti;

(d) li tiġi awtorizzata r-rettifika ta' irregolaritajiet fil-proċedura;

(e) li jiġu preskritti termini għal kull haġa meħtieġa li ssir f'dak li għandu x'jaqsam ma' xi proċediment taht dan l-Att;

(f) biex jittawwal xi terminu hekk preskrit, jew speċifikat mill-Kontrollur, sew jekk dak it-terminu jkun diġà skada sew jekk ma jkunx;

(g) il-qsam ta' applikazzjoni jew regjistrazzjoni għal

*trademark* nazzjonali mill-applikant jew proprjetarju, f'żewġ jew aktar applikazzjonijiet jew registrazzjonijiet separati;

(h) biex jiġi provdut li jistgħu jsiru applikazzjonijiet u registrazzjonijiet taht diversi kategoriji;

(i) il-każ ta' registrazzjoni taht diversi kategoriji, għall-possibilità ta' tiġdid ta' registrazzjoni fir-rigward ta' dawk l-oġġetti u servizzi biss li tkun waslet talba għat-tiġdid tagħhom u li dwarhom ikunu thallsu d-drittijiet;

(j) il-liġijiet sabiex dawn isiru konformi wara l-emenda tad-Direttiva (UE) 2015/2436 tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Dicembru, 2015 biex jiġu approssimati l-liġijiet tal-Istati Membri f'dak li għandu x'jaqsam mat-*trademarks*.

**102.** (1) Għandhom jithallsu dwar applikazzjonijiet u hwejjeġ Drittijiet. oħra taht dan l-Att dawk id-drittijiet li jistgħu jiġu preskritti.

(2) Jistgħu jsiru regoli li jkunu jipprovdu dwar -

(a) il-ħlas ta' dritt wiehed biss għar-rigward ta' żewġ hwejjeġ jew iktar;

(b) iċ-ċirkostanzi, jekk ikun hemm, li fihom dritt jista' jerga' jithallas jew jingħata lura;

(ċ) li jiġi preskritt dritt addizzjonali għal kull klassi ta' oġġetti u servizzi li jmorru 'l hinn mill-ewwel klassi, għall-applikazzjoni u t-tiġdid ta' *trademark*;

(d) iċ-ċirkostanzi meta jistgħu jintalbu, jew ma jintalbu xejn, drittijiet differenti.

**103.** (1) Il-Kontrollur jista' jordna billi jispeċifika l-ħinijiet tax-xogħol tal-Uffiċċju għall-Proprjeta Industrijali meta l-pubbliku jkun jista' jmexxi xogħol taht dan l-Att, u l-jiem li jkunu granet tax-xogħol għal dak l-għan. ħinijiet tax-xogħol u jiem tax-xogħol.

(2) Xogħol li jsir f'xi ġurnata wara l-ħinijiet tax-xogħol speċifikati, jew f'xi ġurnata li ma tkunx jum tax-xogħol, għandu jitqies bhala li jkun sar fil-jum tax-xogħol ta' wara; u meta t-terminu biex issir xi haġa taht dan l-Att jiskadi f'xi jum li ma tkunx ġurnata tax-xogħol, dak it-terminu għandu jittawwal sal-ġurnata tax-xogħol li jkun imiss.

(3) Ordnijiet taht dan l-artikolu jistgħu jagħmlu provvedimenti

A 430

differenti għal klassijiet differenti ta' xogħol u dawn għandhom jiġu pubblikati bil-mod preskritt.

Għarfien ta' agenti ta' trademarks.

**104.** Hlief kif jista' jiġi xort'ohra preskritt, kull att meħtieġ jew awtorizzat b'dan l-Att li jintgħamel minn jew dwar xi persuna f'dak li għandu x'jaqsam mar-registrazzjoni ta' *trademark*, jew kull proċedura li jkollha x'taqsam ma' *trademark* registrata, tista' ssir minn jew fir-rigward ta' agent li jkun awtorizzat minn dik il-persuna bil-miktub.

Ir-registru ta' agenti/mandatarji ta' trademark.

**105.** (1) Il-Ministru jista' jagħmel regoli li jkunu jeħtieġu li jinżamm registru ta' persuni li jagħmluha ta' agent bil-għan li japplikaw għal jew li jiksbu r-registrazzjoni ta' *trademarks*; u f'dan l-Att "agent ta' *trademark* registrata" tfisser persuna li isimha jinkiteb fir-registru li jinżamm taħt dan l-artikolu.

(2) Il-Ministru jista' jagħmel regoli li jkunu jirregolaw ir-registrazzjoni ta' persuni bħala agenti ta' *trademark* registrata, u jista' b'mod partikolari -

(a) jeħtieġ li jsir il-ħlas ta' dawk id-drittijiet f'dak li għandu x'jaqsam ma' dik ir-registrazzjoni hekk kif jista' jiġi preskritt; u

(b) jawtorizza f'dawk il-każijiet bħalma jistgħu jiġu speċifikati t-tħassir mir-registru tal-isem ta' xi persuna li tkun registrata bħala agent ta' *trademark* registrata, jew is-suspensjoni ta' registrazzjoni bħal dik.

(3) Huma persuni registrati biss li jistgħu -

(a) imexxu kummerċ taħt xi isem jew deskrizzjoni oħra li jkun fiha l-kliem "agent ta' *trademark* registrata"; jew

(b) fil-kors tal-kummerċ tagħhom xort'ohra jiddeskrivu jew jipproġġettaw ruħhom, jew iħallu lilhom infushom jiġu deskritti jew jipproġġettaw lilhom infushom, bħala agenti registrati ta' *trademark*.

Privileġġ għal komunikazzjoni ma' agenti ta' trademarks registrati. Kap. 12.

**106.** Id-dispożizzjonijiet tal-artikolu 588 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom japplikaw għar-rigward ta' agenti ta' *trademark* registrata bħalma japplikaw għar-rigward ta' avukati u prokuraturi legali.

Setgħa tal-Kontrollur li jirrifjuta li jittratta ma' ċertu agenti.

**107.** Il-Kontrollur jista', kif ikun hemm f'dawk ir-regoli li jistgħu jiġu preskritti, jirrifjuta milli jirrikonoxxi bħala agent dwar xi kummerċ taħt dan l-Att -

(a) lil xi persuna li għalkemm ma tkunx agent ta'

*trademark* registrata, tkun agixxiet bħala tali b' mod qarrieqi;

(b) lil xi persuna li isimha jkun thassar mir-registru u ma jkunx reġa' ddaħħal fih, jew li tkun giet sospiża mir-registru ta' agenti ta' *trademarks* minħabba fl-imġiba hażina tagħha;

(c) lil xi soċjetà jew korp magħqud li jkollhom xi soċju jew direttur li jkunu persuni li l-Kontrollur jista' jirrifjuta li jirrikonoxxi taht il-paragrafu (a) jew (b) imsemmija hawn aktar qabel.

#### TAQSIMA IV - REATI KRIMINALI

**108.** (1) Persuna li bil-għan li tiehu vantaġġ għaliha nnifisha jew għal persuna oħra, jew bil-ħsieb li tikkaguna telf lil xi persuna oħra, u mingħajr il-kunsens tal-proprjetarju -

Użu mhux awtorizzat ta' *trademark*, eċċ., għar-rigward ta' oġġetti.

(a) tapplika fuq oġġetti jew fuq l-imballaġġ tagħhom sinjal identiku jew li x'aktarx jithawwad ma' *trademark* registrata; jew

(b) tbigh jew tikri, toffri jew tesponi għall-bejgħ jew kiri jew tqassam oġġetti li jkollhom fuqhom, jew li l-imballaġġ tagħhom ikollu fuqu, sinjal bħal dak; jew

(c) ikollha fil-pussess, kustodja jew kontroll tagħha fil-kors ta' kummerċ xi oġġetti bħal dawk bil-għan li hi jew persuna oħra tagħmel xi haġa li tkun reat taht il-paragrafu (b); jew

(d) tapplika sinjal identiku ma' *trademark* registrata, jew li x'aktarx jithawwad ma' *trademark* registrata, fuq xi materjal maħsub biex jintuża -

(i) għall-ittikkettjar jew l-imballaġġ ta' oġġetti;

(ii) bħala kartolerija kummerċjali għar-rigward ta' oġġetti; jew

(iii) għar-reklamar ta' oġġetti; jew

(e) tuża, fil-kors ta' xi kummerċ, materjal li jkun fih sinjal bħal dak għall-ittikkettjar jew l-imballaġġ ta' oġġetti, jew bħala kartolerija kummerċjali għar-rigward ta' oġġetti; jew

(f) ikollha fil-pussess, kustodja jew kontroll tagħha, fil-

kors ta' xi kummerċ, xi materjal bħal dak bil-għan li hi jew persuna oħra tagħmel xi haġa li tkun reat taht il-paragrafu (e); jew

(g) (i) tagħmel oġġett li jkun speċifikament disinjat jew adattat għall-għemil ta' kopji ta' xi sinjal ta' *trademark* reġistrata, jew għall-għemil ta' sinjal li x'aktarx jithawwad magħha; jew

(ii) ikollha xi oġġett bħal dak fil-pussess, kustodja jew kontroll tagħha fil-kors ta' xi kummerċ,

filwaqt li tkun taf jew ikollha għaliex taħseb li tkun intużat, jew li tkun se tintuża, biex tipproduci oġġetti, jew materjal għall-ittikkettjar jew l-imballaġġ ta' oġġetti, bħala kartolerija kummerċjali għar-rigward ta' oġġetti, jew għar-reklamar ta' oġġetti,

tkun hatja ta' reat kontra dan l-artikolu.

(2) Persuna ma tagħmilx reat kontra dan l-artikolu kemm-il darba -

(a) l-oġġetti li dwarhom isir ir-reat ikunu oġġetti li dwarhom tkun reġistrata *t-trademark*; jew

(b) *it-trademark* ikollha reputazzjoni f'Malta u l-użu tas sinjal jiehu jew kieku jiehu vantaġġ mhux ġust, jew ikun jew kieku jkun detrimental għax-xorta distintiva jew għar-reputazzjoni tat-*trademark*.

(3) Persuna li tiġi akkużata b'reat kontra dan l-artikolu tista' tgħid b'difiża li kienet taħseb fuq bażi raġonevoli li l-użu tas-sinjal bil-mod kif dan intuża, jew kellu jintuża, ma kienx ksur tat-*trademark* reġistrata.

(4) Persuna hatja ta' reat taht dan l-artikolu tista' meta tinsab hekk hatja tehel priġunerija għal żmien ta' mhux iżjed minn tliet snin jew multa ta' mhux iżjed minn tlieta u għoxrin elf u mitejn u ħamsa li disgħin euro (€23,295) jew għal dik il-multu u priġunerija flimkien.

Falsifikazzjoni  
tar-reġistru, eċċ.

**109.** (1) Persuna li, għalkemm tkun taf jew ikollha raġuni għaliex taħseb li jkun qarrieqi:-

(a) tagħmel, jew iġġiegħel li jsir, tniżżil falz fir-reġistru tat-*trademarks*; jew

(b) tagħmel, jew iġġiegħel li ssir, xi haġa falza li tintfieh bħallikieku hi kopja ta' xi tniżżil fir-reġistru; jew

(è) tipproduçi jew tagħti jew tikkaguna li tigi prodotta jew li tingħata b'xiehda xi haġa bħal dik,

tkun haġta ta' reat kontra dan l-artikolu.

(2) Min jinsab haġi ta' reat kontra dan l-artikolu jista', meta jinsab haġi, jeħel prigunerija għal żmien mhux iżjed minn sentejn jew multa ta' mhux iżjed minn ħdax-il elf u sitt mija u ħamsin euro (€11,650) jew għal dik il-multu u prigunerija flimkien.

**110.** (1) Persuna tagħmel reat kontra dan l-artikolu meta -

Rappreżentazzjoni ta' *trademark* kif registrata b'mod qarrieqi.

(a) b'mod qarrieqi tirrappreżenta *trademark* bħala *trademark* registrata, jew

(b) tagħmel rappreżentazzjoni falza fuq l-oġġetti jew is-servizzi li dwarhom *trademark* tkun registrata, meta tkun taf jew ikollha għaliex taħseb li dik ir-rappreżentazzjoni tkun waħda qarrieqa.

(2) Għall-għanijiet ta' dan l-artikolu, l-użu f'Malta fir-rigward ta' *trademark* -

(a) tal-kelma "registrata", jew

(b) ta' xi kelma oħra jew simbolu ieħor li jkunu jfissru riferenza, espressa jew impliċita, għal registrazzjoni, għandha titqies bħala rappreżentazzjoni dwar registrazzjoni taħt dan l-Att kemm-il darba ma jintweriex li r-riferenza tkun għal registrazzjoni band'oħra milli f'Malta u li t-*trademark* tkun fil-fatt hekk registrata għall-oġġetti jew għas-servizzi involuti.

(3) Min jinsab haġi ta' reat kontra dan l-artikolu jista' jeħel, meta jinsab haġi, multa ta' mhux iżjed minn ħdax-il elf u sitt mija u ħamsin euro (€11,650).

**111.** (1) Persuna ma għandhiex mingħajr l-awtorità tal-President tuża f'dak li għandu x'jaqsam ma' xi kummerç, xi mezz, emblema jew titolu hekk li jitqies li jwassal li xi hadd jaħseb li dik il-persuna tkun impjegata mill-President, jew li tfornih b'oġġetti jew servizzi.

Użu mhux awtorizzat ta' ċertu mezzi, emblemi, eċċ.

(2) Kull min jikser id-dispożizzjonijiet tas-subartikolu (1) ikun haġi ta' reat kontra dan l-artikolu u jista' jeħel, meta jinsab haġi, multa ta' mhux iżjed minn sitt elf u disa' mija u disgħin euro (€6,990).

**112.** Il-Qorti tista', iktar minn hekk, fil-każijiet imsemmija fl-artikolu 109, fuq talba tal-prosekuzzjoni, tordna li l-makkinarju jew

Ċessjoni ta' oġġetti kontravvenjenti, eċċ.

mezzi oħra jew apparat ieħor industrijali li jkun gie użat b'kontravvenzjoni tad-drittijiet tal-proprjetarji tat-*trademarks*, l-oġġetti kontravvenjenti, u l-apparat mahsub għall-produzzjoni tagħhom, jiġi konfiskat, kollu kemm hu jew parti minnu, u konsenjat lid-detentur tat-*trademark*, mingħajr preġudizzju għal kull dritt ieħor għal rimedju taħt dan l-Att.

Setgħa tal-Maġistrati.

**113.** Sakemm ikun għadhom għaddejjin xi proċedimenti dwar xi wieħed mir-reati msemmiya f'din it-Taqsima, kull Maġistrat, jekk ikun sodisfatt b'taġħrif li jingħata taħt gürament li jkun hemm kawża raġonevoli li jiġi suspettat li xi oġġetti jew hwejjeġ li permezz tagħhom, jew li dwarhom ikun sar ir-reat, ikunu jinsabu f'xi dar jew fond tal-akkuzat, jew ikunu fil-pussess tiegħu jew taħt il-kontroll tiegħu f'xi post ieħor, b'ordni maħruġ u ffirmat minnu, jista' jordna lil xi ufficjal tal-Pulizija li jissemma fl-ordni, li jidhol f'xi dar, fond jew post, li jissemmew ukoll fl-istess ordni, sabiex hemm ifittex, jaqbad, u jneħhi dawk l-oġġetti jew hwejjeġ.

Meta sid l-oġġetti ma jkunx magħruf.

**114.** Jekk sid l-oġġetti jew il-hwejjeġ illi, li kieku kellu jinsab hati ta' xi wieħed mir-reati msemmiya f'din it-Taqsima, kienu kieku jistgħu jiġu konfiskati, ma jkunx magħruf jew ma jkunx jista' jinsab, kull Maġistrat ikun jista' bl-istess mod u fiċ-ċirkostanzi meħtieġa fl-artikolu li jiġi minnufih qabel dan, joħroġ dik l-ordni.

Konfiska tal-oġġetti maqbudin.

**115.** L-oġġetti u l-hwejjeġ hekk maqbudin għandhom jingiebu quddiem il-Qorti tal-Maġistrati bhala qorti ta' ġudikatura kriminali, u dik il-Qorti għandha tistabbilixxi dwar il-konfiska taħt dan l-Att.

Proċedura meta s-sid ma jkunx magħruf.

**116.** (1) Fil-każ imsemmi fl-artikolu 114, il-Qorti għandha tordna l-hruġ ta' bandi li għandhom jiġu pubblikati għal darbtejn, b'intervall ta' mill-anqas tmint ijiem fil-Gazzetta, u jitwaħħlu fid-daħla tal-edifiċċju fejn ikun hemm il-Qorti, u f'kull post ieħor fejn il-qorti tqis li jkun xieraq, fejn jiġi ddikjarat li l-oġġetti jew il-hwejjeġ maqbudin għandhom jiġu konfiskati, kemm-il darba fil-ħin u l-post imsemmiya fil-bandi s-sid ta' dawk l-oġġetti jew hwejjeġ jew persuna oħra li jkollha interess f'dawk l-oġġetti jew hwejjeġ ma tattendix quddiem il-Qorti fil-ħin u l-lok indikati fil-bandi u tgħid għaliex dan m'għandux isir.

(2) Jekk is-sid jew xi hadd ieħor f'ismu, jew xi persuna oħra li jkollha interess f'dawk l-oġġetti jew hwejjeġ, tonqos milli tattendi fil-ħin u l-post imsemmiya fil-bandu biex tgħid għaliex dan m'għandux isir, il-Qorti tista' tordna li dawk l-oġġetti jew hwejjeġ jew xi wieħed jew waħda minnhom għandhom jiġu konfiskati.

Għoti ta' kumpens lil partijiet bonafidi.

**117.** Il-Qorti tista' tordna li l-oġġetti jew il-hwejjeġ hekk konfiskati għandhom jiġu meqruda jew imneħħija, wara li t-*trademarks* jew deskrizzjonijiet kummerċjali oħra jkunu tħassru

għalkollox minn fuqhom, u tista' tordna wkoll illi, mid-dhul nett li jista' jsir bit-tnehhija ta' dawk l-oġġetti jew hwejjeġ u sal-ammont li dawn iġibu, kull persuna, sakemm din tkun persuna bonafidi, li tkun giet aggravata bil-konfiska, għandha tingħata kumpens għal kull telf li tkun ġarrbet.

**118.** Azzjonijiet kriminali taht dan l-Att jaqgħu bi preskrizzjoni bl-għeluq ta' tliet snin mill-jum minn meta jkun sar l-att li jikkostitwixxi r-reat, jekk il-persuna li r-reat ikun twettaq bi preġudizzju għaliha, ma kenitx qabel taf bih; f'kull każ ieħor iż-żmien ta' preskrizzjoni jkun ta' sena mill-jum meta dik il-persuna tkun saret taf b'dak l-att.

Limitazzjonijiet tal-azzjonijiet kriminali.

**119.** Id-dispożizzjonijiet li jirrigwardaw l-użu ta' *trademarks* falsifikati ma għandhomx japplikaw għall-użu ta' xi *trademarks* ta' manifattura jew deskrizzjoni użata fil-kummerċ biex tindika xi oġġetti ta' klassi partikolari, jew il-manifattura tagħhom b'xi metodu partikolari, meta, fil-waqt tal-promulgazzjoni ta' dan l-Att, dik it-*trademark* ta' manifattura jew deskrizzjoni kienet legittimament u ġeneralment applikata għall-iskop hawn aktar qabel imsemmi:

Użu ta' *trademarks* falsifikati.

Iżda meta dik it-*trademark* ta' manifattura jew deskrizzjoni tkun tinkludi l-isem ta' xi post jew pajjiż u l-oġġetti ma jiġux prodotti fil-post jew fil-pajjiż indikat fit-*trademark* ta' manifattura jew deskrizzjoni hekk użata, id-dispożizzjonijiet ta' dan l-artikolu ma japplikawx, kemm-il-darba ma jiżdiedx mat-*trademark* ta' manifattura jew deskrizzjoni, minnufih qabel jew wara l-isem ta' dak il-post jew pajjiż, b'mod daqstant li jidher, il-post jew il-pajjiż li fihom l-oġġetti attwalment saru jew ġew prodotti, u kemm-il darba ma jissemmiex hawnhekk ukoll li l-oġġetti saru jew ġew prodotti f'dak il-post jew pajjiż.

**120.** Persuna li falsifikament tippretendi li tkun agent ta' *trademark* registrata meta ma tkunx hekk registrata kif hemm fl-artikolu 105, tkun haġja ta' reat kontra dan l-artikolu u tista' tehel, meta tinsab haġja, multa ta' mhux iżjed minn elf u mija u hamsa u sittin euro (€1,165).

Persuna li tippreżenta ruħha bħala agent ta' *trademark* registrata.

**121.** Id-dispożizzjonijiet ta' din it-Taqsima għandhom japplikaw mingħajr preġudizzju għad-dritt li kull persuna għandha li titlob id-danni b'konsegwenza għal kull att li jikkostitwixxi reat.

Id-dritt għad-danni ma jintlaqatx.

**122.** Ma jinbdew ebda proċedimenti kontra persuna fis-servizz ta' persuna oħra, jekk l-impjegat juri b'bonafidi li jkun aġixxa b'ubbidjenza għall-istruzzjonijiet tal-prinċipal tiegħu, u meta jiġi interrogat mill-Pulizija, jagħti kull tagħrif dwar il-prinċipal tiegħu u dwar il-fatti tal-każ kif ikun jafhom hu.

Prinċipal u impjegat.

**TAQSIMA V - MIXXELANJI DWAR PROĊEDIMENTI U  
AZZJONIJIET ĊIVILI**

Min għandu d-  
dmir iġib prova  
dwar l-użu ta'  
*trademark*.

**123.** Jekk fi proċedimenti ċivili taħt dan l-Att tqum xi kwistjoni dwar l-użu li *trademark* reġistrata seta' sar minnha, l-oneru tal-prova li jkun sar xi użu partikolari minnha jaqa' fuq il-proprjetarju.

Limitazzjonijiet  
ta' azzjonijiet  
ċivili.

**124.** Azzjonijiet ċivili taħt dan l-Att jaqgħu bi preskrizzjoni bl-għeluq ta' hames snin f'kull każ fejn ma jkunx xort'oħra stabbilit f'dan l-Att xi perjodu ieħor li fih jistgħu jinbdew dawk l-azzjonijiet.

**TAQSIMA VI - AFFARIJIET INTERNAZZJONALI**

**SEZZJONI 1**

**Il-Konvenzjoni ta' Pariġi**

Il-Konvenzjoni  
ta' Pariġi.

**125.** (1) F'din it-Taqsima –

(a) "il-Konvenzjoni ta' Pariġi" tfisser il-Konvenzjoni ta' Pariġi għall-Protezzjoni tal-Proprjetà Industrijali tal-20 ta' Marzu 1883, kif riveduta jew emendata minn żmien għal żmien; u

(b) "pajjiż fil-Konvenzjoni" tfisser pajjiż, minbarra Malta, li jkun parti f'dik il-Konvenzjoni.

(2) Il-Ministru jista' jagħmel regolamenti biex jipprovdi, kif jidhirlu xieraq b'konsegwenza ta' xi reviżjoni jew emenda tal-Konvenzjoni ta' Pariġi wara li jgħaddi dan l-Att sabiex Malta tkun tista' tħares kull provvediment ta' dik l-emenda, u dawk ir-regolamenti jistgħu b'mod partikolari jipprovdu li kull dispożizzjoni tat-Taqsima II ta' dan l-Att m'għandhiex tibqa' tapplika jew inkella għandha tapplika b'dawk l-emendi li jistgħu jkunu meħtieġa.

Protezzjoni ta'  
*trademarks*  
magħrufin:  
Artikolu 6bis.

**126.** (1) Riferenzi f'dan l-Att għal *trademark* li jkollha jedd għal protezzjoni taħt il-Konvenzjoni ta' Pariġi bħala *trademark* magħrufa huma għal *trademark* li tkun magħrufa f'Malta bħala *trademark* ta' persuna li tkun ċittadin ta' pajjiż fil-Konvenzjoni, jew li tkun domiciljata, jew ikollha stabbiliment industrijali jew kummerċjali reali u effettiv f'pajjiż fil-Konvenzjoni, sew jekk dik il-persuna tkunx

tiggestixxi negozju, jew ikollha xi avvjament, f'Malta, u riferenzi għall-proprjetarju ta' dik it-*trademark* għandhom jinftiehm u f'dak is-sens.

(2) Bla ħsara għad-dispożizzjonijiet tal-artikolu 11, il-proprjetarju ta' *trademark* li jkollha jedd għal protezzjoni taħt il-Konvenzjoni ta' Pariġi bħala *trademark* magħrufa, ikollu jedd iżomm b'inibizzjoni l-użu f'Malta ta' *trademark* li tkun, jew li jkollha l-parti essenzjali tagħha, identika jew tixxiebah mat-*trademark* tiegħu, għar-rigward ta' oġġetti jew servizzi identiċi jew li jixxiebhu, meta l-użu x'aktarx li jagħti lok għal konfużjoni.

(3) Ebda ħaġa fis-subartikolu (2) m'għandha tolqot it-tkomplija ta' xi użu bonafidi ta' *trademark* li jkun inbeda qabel id-dhul fis-seħħ tal-Att dwar it-*Trademarks*.

Kap.416.

**127.** (1) *Trademark* li tkun tikkonsisti fi, jew ikun fiha l-bandiera ta' xi pajjiż fil-Konvenzjoni m'għandhiex tiġi reġistrata mingħajr l-awtorizzazzjoni tal-awtoritajiet kompetenti ta' dak il-pajjiż, kemm-il darba l-Kontrollur ma jkunx jidhirlu li jkun permess l-użu tal-bandiera bil-mod propost mingħajr dik l-awtorizzazzjoni.

Emblemi nazzjonali, eċċ., ta' pajjiżi fil-Konvenzjoni: Artikolu 6ter.

(2) *Trademark* li tikkonsisti fi, jew ikun fiha l-armatura prinċipali jew xi emblema statali oħra ta' xi pajjiż fil-Konvenzjoni li jkun protett taħt il-Konvenzjoni ta' Pariġi m'għandhiex tkun reġistrata mingħajr l-awtorizzazzjoni tal-awtoritajiet kompetenti ta' dak il-pajjiż.

(3) *Trademark* li tikkonsisti fi, jew ikun fiha xi sinjal jew imbolla uffiċjali li jindikaw kontroll u garanzija adottati minn xi pajjiż fil-Konvenzjoni m'għandhiex, meta s-sinjal jew l-imbolla tkun protetta taħt il-Konvenzjoni ta' Pariġi, tkun reġistrata għar-rigward tal-oġġetti jew is-servizzi tal-istess xorta, jew ta' xorta simili, bħal dawk li għar-rigward tagħhom tkun tindika kontroll u garanzija, mingħajr l-awtorizzazzjoni tal-awtoritajiet kompetenti tal-pajjiż involut.

(4) Id-dispożizzjonijiet ta' dan l-artikolu relattivi għall-bnadar nazzjonali u emblemi statali oħra, u sinjali jew imbolla uffiċjali japplikaw indaqs għal kull ħaġa li minn angolu araldiku tkun timita lil dik il-bandiera jew emblema oħra, jew sinjal jew imbolla.

(5) Ebda ħaġa f'dan l-artikolu m'għandha tipprevjeni r-reġistrazzjoni ta' *trademark* meta ssir applikazzjoni minn xi ċittadin ta' pajjiż li jkun awtorizzat li jagħmel użu minn emblema statali jew xi sinjal jew imbolla uffiċjali, ta' dak il-pajjiż, minkejja x-xebh ma' dawk ta' xi pajjiż ieħor.

(6) Meta bis-saħħa ta' dan l-artikolu tkun meħtieġa jew x'aktarx li tkun meħtieġa l-awtorizzazzjoni tal-awtoritajiet kompetenti

ta' pajjiż fil-Konvenzjoni għar-reġistrazzjoni ta' *trademark*, dawk l-awtoritajiet ikollhom jedd li jżommu milli jsir kull użu tat-*trademark* f'Malta mingħajr l-awtorizzazzjoni tagħhom.

Emblemi, eċċ.,  
ta' ċertu  
organizzazzjonij  
-iet  
internazzjonali:  
Artikolu 6ter.

**128.** (1) Dan l-artikolu japplika għall-armatura prinċipali, bñadar jew emblemi oħra, u għall-ismijiet u l-abbrevjazzjonijiet, ta' organizzazzjonijiet intergovernamentali internazzjonali li tagħhom xi pajjiż wieħed jew iktar fil-Konvenzjoni jkunu membri.

(2) *Trademark* li tikkonsisti fi, jew li jkun fiha xi emblema, abbrevjazzjoni jew isem bħal dawk li jkunu protetti taħt il-Konvenzjoni ta' Pariġi m'għandhiex tiġi reġistrata mingħajr l-awtorizzazzjoni tal-organizzazzjoni internazzjonali involuta, kemm-il darba ma jkunx jidher lill-Kontrollur li l-użu tal-emblema, abbrevjazzjoni jew isem bil-mod propost -

(a) ma jkunx wieħed li jissuġġerixxi lill-pubbliku li jkun hemm rabta bejn l-organizzazzjoni u t-*trademark*; jew

(b) x'aktarx li mhux se jiżgwida lill-pubbliku dwar l-eżistenza ta' rabta bejn l-utent u l-organizzazzjoni.

(3) Id-dispożizzjonijiet ta' dan l-artikolu relattivi għall-emblemi ta' organizzazzjoni internazzjonali għandhom ikunu japplikaw indaqs għal kull haġa li minn angolu araldiku tkun tixbah xi emblema bħal dik.

(4) Meta bis-saħħa ta' dan l-artikolu l-awtorizzazzjoni ta' organizzazzjoni internazzjonali tkun jew x'aktarx tkun meħtieġa għar-reġistrazzjoni ta' xi *trademark*, dik l-organizzazzjoni jkollha jedd li jżomm kull użu tat-*trademark* f'Malta mingħajr l-awtorizzazzjoni tagħha.

(5) Ebda haġa f'dan l-artikolu ma tolqot il-jedd ta' xi persuna li l-użu b'bonafidi tat-*trademark* relattiv ikun beda qabel l-1 ta' Jannar, 2000.

Notifikazzjoni  
taħt l-Artikolu  
6ter tal-  
Konvenzjoni.

**129.** (1) Għall-għanijiet tal-artikolu 127 l-emblemi statali ta' pajjiż fil-Konvenzjoni (li ma jkunux il-bandiera nazzjonali), u sinjali jew imbollli ufficjali, għandhom jitqiesu bħala li huma protetti taħt il-Konvenzjoni ta' Pariġi biss jekk, jew sal-limitu illi -

(a) il-pajjiż involut ikun avża lil Malta kif hemm fl-Artikolu 6ter (3) tal-Konvenzjoni li jkun jixtieq li jiproteġi dik l-emblema jew imbolla jew dak is-sinjal,

(b) in-notifikazzjoni tibqa' fis-seħħ, u

(c) Malta ma tkunx oġġezzjonat għalihom kif hemm fl-Artikolu 6ter (4) jew xi oġġezzjoni bħal dik tkun ġiet irtirata.

(2) Għall-għanijiet tal-artikolu 128 l-emblemi, abbrevjazzjonijiet u ismijiet ta' organizzazzjoni internazzjonali għandhom jitqiesu bħala li huma protetti taht il-Konvenzjoni ta' Pariġi biss jekk, jew sal-limitu li -

(a) l-organizzazzjoni involuta tkun avżat lil Malta kif hemm fl-Artikolu 6ter (3) tal-Konvenzjoni li hija tkun tixtieq tiproteġi dik l-emblema jew abbrevjazzjoni jew dak l-isem;

(b) in-notifikazzjoni tibqa' fis-seħħ; u

(c) Malta ma tkunx oġġezzjonat għalihom kif hemm fl-Artikolu 6ter (4) jew kull oġġezzjoni bħal dik tkun ġiet irtirata.

(3) Notifikazzjoni taht l-Artikolu 6ter (3) tal-Konvenzjoni ta' Pariġi għandu jkollha effett biss għar-rigward ta' applikazzjonijiet għar-registrazzjoni li jsiru iktar minn xahrejn wara l-wasla tan-notifikazzjoni.

(4) Il-Kontrollur għandu jżomm u jagħmel disponibbli għall-ispezzjoni pubblika minn kull persuna, kif preskritt, lista tal-emblemi statali u s-sinjali jew imbollu uffiċjali, u l-emblemi, abbrevjazzjonijiet u l-ismijiet ta' organizzazzjonijiet internazzjonali, li f'dak il-waqt ikunu protetti taht il-Konvenzjoni ta' Pariġi bis-saħħa ta' notifikazzjoni li ssir taht l-Artikolu 6ter (3).

**130.** (1) Dawn id-dispożizzjonijiet li ġejjin japplikaw meta applikazzjoni għal registrazzjoni ta' *trademark* issir minn persuna li tkun aġent jew rappreżentant ta' persuna li tkun il-proprjetarju tat-*trademark* f'pajjiż fil-Konvenzjoni.

Atti ta' aġent  
jew ta'  
rappreżentant:  
Artikolu  
6septies.

(2) Il-proprjetarju jista' permezz ta' rikors ġuramentat quddiem il-Prim Awla tal-Qorti Ċivili -

(i) jitlob dikjarazzjoni ta' invalidità tar-registrazzjoni, jew

(ii) jitlob ir-rettifika tar-registru sabiex jissostitwixxi ismu bħala l-proprjetarju tat-*trademark* registrata.

(3) Il-proprjetarju jista' jżomm milli tintuża t-*trademark* f'Malta li ma tkunx awtorizzata minnu.

(4) Is-subartikoli (2) u (3) m'għandhomx japplikaw jekk, jew

sal-limitu li, l-aġent jew ir-rappreżentant juri li l-azzjonijiet tiegħu kienu awtorizzati mill-proprjetarju.

(5) Applikazzjoni taħt is-subartikolu (2) għandha ssir fi żmien tliet snin minn meta l-proprjetarju jinduna bir-reġistrazzjoni; u ebda inibizzjoni m'għandha tingħata taħt is-subartikolu (3) għar-rigward ta' xi użu li dwaru l-proprjetarju jkun siket għal perjodu kontinwu ta' tliet snin jew aktar.

## SEZZJONI 2

### Is-Sistema ta' Madrid għar-Reġistrazzjoni Internazzjonali ta' *Trademarks*

Il-Protokoll ta' Madrid.

#### 131. F'din it-Taqsima –

"applikazzjoni bażika" tfisser applikazzjoni għar-reġistrazzjoni ta' *trademark*, ippreżentata quddiem il-Kontrollur taħt dan l-Att, u li tintuża bħala bażi għall-preżentata ta' applikazzjoni internazzjonali taħt il-Protokoll ta' Madrid;

"applikazzjoni internazzjonali" tfisser applikazzjoni biex tinkiseb ir-reġistrazzjoni ta' *trademark* taħt il-Protokoll ta' Madrid;

"il-Bureau Internazzjonali" tfisser il-Bureau Internazzjonali tal-*World Intellectual Property Organisation* (Organizzazzjoni Dinjija dwar il-Proprjetà Intellettwali);

"il-Ftehim ta' Madrid" tfisser il-Ftehim ta' Madrid dwar ir-reġistrazzjoni internazzjonali ta' *Trademarks* tal-14 ta' April, 1891;

"il-Protokoll ta' Madrid" tfisser il-Protokoll li għandu x'jaqsam mal-Ftehim ta' Madrid li jirrigwarda r-Reġistrazzjoni Internazzjonali ta' Marki adottat f'Madrid fis-27 ta' Ġunju, 1989;

"reġistrazzjoni bażika" tfisser *trademark* reġistrata mill-Kontrollur taħt dan l-Att, u li tintuża bħala bażi għall-preżentata ta' applikazzjoni internazzjonali taħt il-Protokoll ta' Madrid;

"ir-Reġistru Internazzjonali" tfisser il-gabra uffiċjali ta' *data* li tirrigwarda reġistrazzjonijiet internazzjonali ta' *trademarks* li jinżammu mill-Bureau Internazzjonali;

"Regolamenti Komuni" tfisser ir-Regolamenti Komuni taħt il-Ftehim ta' Madrid u l-Protokoll ta' Madrid;

"*trademark* internazzjonali (Malta)" tfisser *trademark* li jkollha jedd għall-protezzjoni f'Malta taħt dak il-Protokoll.

**132.** (1) Il-Ministru jista' b'Ordni jagħmel dawk il-provvedimenti li jqis li jkunu meħtieġa sabiex jagħti seħħ f'Malta lid-dispożizzjonijiet tal-Protokoll ta' Madrid u lil kull sistema oħra ta' reġistrazzjoni ta' *trademarks* reġjonali jew internazzjonali u mingħajr preġudizzju għall-ġeneralità ta' dak imsemmi qabel.

Setgħa ta' għemil ta' provvediment biex jingħata seħħ lill-Protokoll ta' Madrid.

(2) L-Ordni jista', b'mod partikolari, isir dwar -

(a) l-għemil ta' applikazzjonijiet għal reġistrazzjonijiet internazzjonali permezz tal-Uffiċċju għall-Proprietà Industrijali bħala l-Uffiċċju tal-origini;

(b) il-proċeduri li jkollhom jiġu segwiti meta l-applikazzjoni jew ir-reġistrazzjoni bażika f'Malta tonqos jew ittemm milli tibqa' sseħħ;

(ċ) il-proċeduri li jkollhom jiġu segwiti meta l-Uffiċċju għall-Proprietà Industrijali jirċievi mingħand il-Bureau Internazzjonali talba għal estensjoni ta' protezzjoni għal Malta;

(d) l-effetti ta' talba b'suċċess għall-estensjoni ta' protezzjoni għal Malta;

(e) it-trasformazzjoni ta' applikazzjoni għal reġistrazzjoni internazzjonali, jew reġistrazzjoni internazzjonali, f'applikazzjoni nazzjonali għal reġistrazzjoni;

(f) il-komunikazzjoni ta' informazzjoni lill-Bureau Internazzjonali;

(g) il-ħlas tad-drittijiet u l-ammonti preskritti għar-rigward ta' applikazzjonijiet għal reġistrazzjonijiet, estensjonijiet ta' protezzjoni u tiġdid internazzjonali.

(3) Mingħajr preġudizzju għall-ġeneralità tas-subartikolu (1), jista' jiġi provdut permezz ta' regolamenti taħt dan l-artikolu li għar-rigward ta' "*trademark* internazzjonali (Malta)" jkunu japplikaw id-dispożizzjonijiet tal-artikolu 25 u tal-artikoli 108 sa 122.

Kontravvenzjonijiet; dispożizzjonijiet kriminali.

## TAQSIMA VII - DISPOŻIZZJONIJIET TRANSITORJI

**133.** (1) F'din it-Taqsima -

Tifsir.

"ir-reġistru l-ġdid" tfisser ir-reġistru li jinżamm taħt dan l-Att;

"ir-reġistru ta' qabel" tfisser ir-reġistru li kien jinżamm taħt l-Att dwar it-*Trademarks*;

Kap. 416.

"*trademark* reġistrata eżistenti," tfisser *trademark*, reġistrata taħt

Kap. 416.

l-Ordinanza u taht l-Att dwar it-*Trademarks* kif kien minnufih qabel id-dhul fis-seħh ta' dan l-Att.

(2) Għall-għanijiet ta' din it-Taqsima –

(a) applikazzjoni għandha titqies li tkun pendenti mal-bidu fis-seħh ta' dan l-Att jekk din tkun saret iżda ma tkunx giet finalment deċiża qabel il-bidu fis-seħh; u

Kap. 416.

(b) id-data meta din tkun saret għandha tinftiehem bhala d-data tal-prezentata taht l-Att dwar it-*Trademarks*.

Marki registrati eżistenti.

**134.** (1) Il-marki registrati eżistenti għandhom, mal-bidu fis-seħh ta' dan l-Att, jiġu trasferiti għar-registru l-ġdid, u bla ħsara għad-dispożizzjonijiet ta' din it-Taqsima, ikollhom seħh bhallikieku ġew registrati taht dan l-Att.

(2) Marki registrati eżistenti li jkunu registrati bhala serje taht l-artikolu 91(2) u (3) tal-Ordinanza u li jkunu għadhom validi qabel il-bidu fis-seħh ta' dan l-Att, għandhom jiġu registrati bl-istess mod fir-registru l-ġdid.

Proċedimenti taht il-liġi l-qadima.

**135.** (1) Proċedimenti li jkunu għadhom pendenti mal-bidu fis-seħh ta' dan l-Att għandhom jiġu trattati taht il-liġi li kienu ġew istitwiti taħtha u għandha ssir kull tibdila meħtieġa in segwitu għal dawk il-proċedimenti fir-registru l-ġdid.

(2) Ċaħda ta' dritt jew limitazzjoni li titniżżel fir-registru ta' qabel għar-rigward ta' *trademark* registrata eżistenti minnufih qabel il-bidu fis-seħh ta' dan l-Att għandhom jiġu trasferiti għar-registru l-ġdid u jkollhom seħh bhallikieku dawn tniżżlu fuq ir-registru b'mod konformi mal-artikolu 18.

Effetti ta' kontravvenzjoni dwar ir-registrazzjoni.

**136.** (1) Mal-bidu fis-seħh ta' dan l-Att, l-artikoli 12 sa 17 għandhom japplikaw għar-rigward ta' *trademark* registrata eżistenti u bla ħsara għas-subartikolu (2) ta' dan l-artikolu, l-artikolu 19 għandu japplika għar-rigward ta' kull kontravvenzjoni ta' *trademark* registrata eżistenti, li ssir wara l-bidu fis-seħh ta' dan l-Att.

Kap. 416.

(2) Wara l-bidu fis-seħh ta' dan l-Att ma tkunx kontravvenzjoni ta' *trademark* registrata eżistenti, li jitkompli jsir xi użu li ma jkunx jammonta għal kontravvenzjoni tat-*trademark* registrata eżistenti taht l-Ordinanza u taht l-Att dwar it-*Trademarks*.

Ogġetti, materjal jew artikli kontravvenjenti.

**137.** L-artikolu 21 għandu japplika għal ogġetti, materjal jew artikli kontravvenjenti sew jekk dawn ikunu saru qabel jew wara l-bidu fis-seħh ta' dan l-Att.

- 138.** L-artikolu 41 għandu japplika wkoll għal liċenzji mogħtija u għal kontravvenzjonijiet li jkunu saru qabel il-bidu fis-seħħ ta' dan l-Att. Drittijiet u rimedji ta' detentur ta' liċenzja jew utent awtorizzat.
- 139.** L-obbligi taħt l-artikolu 34 għandhom japplikaw għal operazzjonijiet u avvenimenti li għraw wara l-bidu fis-seħħ tal-Att dwar it-*Trademarks*, għar-rigward ta' *trademark* reġistrata eżistenti u l-Ordinanza għandha tibqa' tapplika fir-rigward ta' operazzjonijiet u avvenimenti li għraw qabel il-bidu fis-seħħ ta' dak l-Att. Kif japplika l-artikolu 34 dwar l-assenjament. Kap. 416.
- 140.** L-artikoli 39 u 40(2) għandhom japplikaw biss għar-rigward ta' liċenzji mogħtija wara wara l-bidu fis-seħħ tal-Att dwar it-*Trademarks*. Kif japplikaw l-artikoli 39 u 40 (2) dwar l-ghoti ta' liċenzi. Kap. 416.
- 141.** (1) Applikazzjoni għar-reġistrazzjoni ta' *trademark* taħt l-Att dwar it-*Trademarks*, li tkun għadha pendenti mal-bidu fis-seħħ ta' dan l-Att għandha tiġi trattata taħt l-Att dwar it-*Trademarks*, bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, u, meta tiġi reġistrata, it-*trademark* għandha tiġi trattata għall-għanijiet ta' din it-Taqsima bħala *trademark* reġistrata eżistenti. Applikazzjonijiet għar-reġistrazzjonijiet li għadhom pendenti. Kap. 416
- (2) Is-setgħa li għandu l-Ministru taħt l-artikolu 101 li jagħmel regoli li jkunu jirregolaw il-prattika u l-proċedura, u għar-rigward tal-ħwejjeg imsemmija fis-subartikolu (2) ta' dak l-artikolu, hija eżerċitabbli għar-rigward ta' dik l-applikazzjoni; u jista' jsir minn dawk l-applikazzjonijiet b'mod differenti minn dak li jsir għal applikazzjonijiet oħra.
- 142.** (1) Fil-każ ta' applikazzjoni għar-reġistrazzjoni pendenti li dwarha l-applikant jew ir-rappreżentant tiegħu ma jkun irċieva ebda komunikazzjoni mill-Uffiċċju dwar ir-reġistrabilità tal-applikazzjoni qabel il-bidu fis-seħħ ta' dan l-Att, l-applikant jista' jagħti avviż lill-Kontrollur li fih jitlob li r-reġistrabilità tat-*trademark* tiġi stabbilita kif hemm fid-dispożizzjonijiet ta' dan l-Att. Konverżjoni ta' applikazzjoni pendenti.
- (2) L-avviż għandu jkun fil-forma preskritta, ikollu miegħu d-dritt li għandu jithallas u jingħata mhux iżjed tard minn sitt xhur wara l-bidu fis-seħħ ta' dan l-Att.
- (3) Kull avviż li jingħata kif dovut għandu jkun irrevokabbli u għandu jkollu l-effett li l-applikazzjoni għandha tiġi trattata bħallikieku tkun saret minnufih wara l-bidu fis-seħħ ta' dan l-Att.
- 143.** (1) L-Att dwar it-*Trademarks*, hawn iżjed 'il quddiem imsejjaħ "l-Att imħassar", hu b'dan imħassar, u kull referenza f'xi liġi għall-Att imħassar għandha tintfieh bħala referenza għal dan l-Att. Thassir u Riżervi. Kap. 416
- (2) Minkejja d-dispożizzjonijiet tas-subartikolu (1):

A 444

(a) l-Att imħassar għandu jibqa' fis-seħħ għall-finijiet ta' kull att, deċiżjoni, azzjoni jew proċeduri meħuda fir-rigward ta' xi ksur tal-Att imħassar li graw jew inbdew qabel il-bidu fis-seħħ ta' dan l-Att; u

(b) kull leġislazzjoni sussidjarja magħmula taħt id-dispożizzjonijiet tal-Att imħassar għandha, sakemm ma jsirux dispożizzjonijiet oħra taħt jew bis-saħħa ta' dan l-Att, tibqa' fis-seħħ u jkollha effett daqslikieku kienet saret taħt dan l-Att.

---

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 215 tat-3 ta' April, 2019.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Skrivan tal-Kamra tad-Deputati*

I assent.

(L.S.)

**GEORGE VELLA**  
**President**

9th April, 2019

**ACT No. XII of 2019**

*AN ACT to repeal and replace the Trademarks Act, Cap. 416.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The short title of this Act is the Trademarks Act, 2019. Short title and commencement.
- (2) This Act shall come into force on such date as the Minister responsible for Intellectual Property may by notice in the Gazette

establish, and different dates may be so established for different purposes and for different provisions of this Act.

**PART I – GENERAL PROVISIONS**

Scope, purpose  
and data  
protection.

**2.** (1) This Act applies to every trademark in respect of goods or services which is the subject of registration or of an application for registration in Malta as an individual trademark, a certification mark or a collective mark or of an international registration having effect in Malta.

(2) This Act transposes the provisions of Directive (EU) 2015/2436 of 16 December 2015 to approximate the laws of the Member States relating to trademarks (Recast).

Cap. 586.

(3) The processing of any personal data carried out in Malta in the framework of this Act shall be subject to Regulation 2016/679 (EU) and the Data Protection Act.

Definitions.

**3.** (1) For the purpose of this Act, the following definitions apply:

Cap. 417.

"Comptroller" means the Comptroller of Industrial Property as established under article 3 of the Patents and Designs Act and includes any other person appointed to exercise all or any of the powers and perform all or any of the duties of the Comptroller;

"European Union" or "Union" means the European Union referred to in the Treaty;

"infringement proceedings" in relation to a registered trademark, includes proceedings under article 21;

"Member State" means a state which is a member of the European Union;

"the Minister" means the Minister responsible for the protection of Industrial Property;

"the Office" means the national Maltese entity officially designated with the responsibility to register trademarks in Malta;

Cap. 29.

"the Ordinance" shall mean the Industrial Property (Protection) Ordinance;

"Paris Convention" means the convention referred to in article 125;

"prescribed" means prescribed by this Act or by any regulations made thereunder;

"publish" means make available to the public, and references to publication in relation to registration, are to publication under article 56(4);

"register" means the register of trademarks kept by the Office;

"trade" includes any business or profession;

"the Treaty" has the same meaning assigned to it by article 2 of the European Union Act.

Cap. 460.

(2) References in this Act to a trademark include, unless the context otherwise requires, reference to a certification mark or collective mark referred to respectively in article 61(a) and (b).

References to trademark.

## PART II - REGISTERED TRADEMARKS

4. (1) A registered trademark is a property right obtained by the registration of the trademark under this Act. The proprietor of a registered trademark has the rights and remedies provided by this Act.

Property right.

(2) A trademark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

Signs of which a trademark may consist.

(a) distinguishing the goods or services of one undertaking from those of other undertakings; and

(b) being represented on the register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

5. (1) The following shall not be registered as trademarks or, if registered, shall be liable to be declared invalid:

Absolute grounds for refusal or invalidity.

(a) signs which cannot constitute a trademark;

(b) trademarks which are devoid of any distinctive character;

(c) trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, intended purpose, value, geographical origin, the time of

production of goods or of rendering of the service, or other characteristics of the goods or services;

(d) trademarks which consist exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade;

(e) signs which consist exclusively of -

(i) the shape, or another characteristic, which results from the nature of the goods themselves;

(ii) the shape, or another characteristic, of goods which is necessary to obtain a technical result;

(iii) the shape, or another characteristic, which gives substantial value to the goods;

(f) trademarks which are contrary to public policy or to accepted principles of morality;

(g) trademarks which are of such a nature as to deceive the public or likely to deceive the public, for instance, as to the nature, quality or geographical origin of the goods or services;

(h) trademarks which have not been authorised by the competent authorities and are to be refused or invalidated pursuant to Article 6<sup>ter</sup> of the Paris Convention;

(i) trademarks which are excluded from registration pursuant to Union legislation or the laws of Malta, or to international agreements to which the Union or Malta is party, providing for protection of designations of origin and geographical indications;

(j) trademarks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional terms for wine;

(k) trademarks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional specialities guaranteed;

(l) trademarks which consist of, or reproduce in their essential elements, an earlier plant variety denomination

registered in accordance with Union legislation or the laws of Malta, or international agreements to which the Union or Malta is party, providing protection for plant variety rights, and which are in respect of plant varieties of the same or closely related species.

(2) A trademark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant.

(3) A trademark shall not be registered or, if registered, is liable to be declared invalid where and to the extent that:

(a) the use of that trademark may be prohibited pursuant to provisions of law other than trademark law of Malta or of the Union;

(b) the trademark includes a sign of high symbolic value, in particular a religious symbol;

(c) the trademark includes badges, emblems and escutcheons other than those covered by Article 6*ter* of the Paris Convention and which are of public interest, unless the consent of the competent authority to their registration has been given in conformity with the laws of Malta.

(4) A trademark which consists of or contains -

(a) the arms, or any of the principal armorial bearings of the arms appertaining to the President or the Roman Catholic Archbishop of Malta, or any insignia or device so nearly resembling such arms or any such armorial bearing as to be likely to be mistaken for them or it;

(b) a representation of the Presidential or Episcopal flags;

(c) a representation of the President or the Archbishop, or any colourable imitation thereof; or

(d) words, letters or devices likely to lead persons to think that the applicant either has or recently has had Presidential or Episcopal patronage or authorization,

shall not be registered unless it appears to the Comptroller that consent has been given by or on behalf of the President or the Archbishop:

Provided that the Minister may by regulations extend the

applicability of the provisions of this sub-article to apply *mutatis mutandis* in respect of religions other than the Roman Catholic Apostolic Religion.

(5) A trademark which consists of a representation of the national flag of Malta shall not be registered.

(6) A trademark which contains a representation of the national flag of Malta shall not be registered if it appears to the Comptroller that the use of the trademark would be misleading or grossly offensive.

(7) A trademark shall not be registered in the cases specified in article 127 or article 128 except as provided in said articles.

(8) A trademark shall not be refused registration in accordance with sub-article (1)(b), (c) or (d) if, before the date of application for registration, it has acquired a distinctive character as a result of the use made of it in Malta. A trademark shall not be declared invalid for the same reasons if, before the date of action for a declaration of invalidity, following the use which has been made of it, it has acquired a distinctive character as a result of the use made of it in Malta.

Relative grounds for refusal or invalidity.

**6.** (1) A trademark shall not be registered or, if registered, shall be liable to be declared invalid where:

(a) it is identical with an earlier trademark, and the goods or services for which the trademark is applied for or is registered are identical with the goods or services for which the earlier trademark is protected;

(b) because of its identity with, or similarity to, an earlier trademark and the identity or similarity of the goods or services covered by the trademarks, there exists a likelihood of confusion on the part of the public, including the likelihood of association by the public with the earlier trademark.

(2) "Earlier trademarks" within the meaning of sub-article (1) means:

(a) trademarks of the following kinds with a date of application for registration which is earlier than the date of application for registration of the trademark, taking account, where appropriate, of the priorities claimed in respect of those trademarks:

(i) EU trademarks;

(ii) trademarks registered in Malta;

(iii) trademarks registered under international arrangements which have effect in Malta;

(b) EU trademarks which validly claim seniority, in accordance with Regulation (EU) 2017/1001, of a trademark referred to in sub-article (2)(a)(ii) and (iii), even when the latter trademark has been surrendered or allowed to lapse;

(c) applications for the trademarks referred to in sub-article (2)(a) and (b), subject to their registration;

(d) trademarks which, on the date of application for registration of the trademark or, where appropriate, of the priority claimed in respect of the application for registration of the trademark, are well known in Malta, in the sense in which the words "well-known" are used in Article 6*bis* of the Paris Convention.

(3) Furthermore, a trademark shall not be registered or, if registered, shall be liable to be declared invalid where:

(a) it is identical with, or similar to, an earlier trademark irrespective of whether the goods or services for which the trademark is applied or registered are identical with, similar to or not similar to those for which the earlier trademark is protected, where the earlier trademark has a reputation in Malta or, in the case of an EU trademark, has a reputation in the Union and the use of the later trademark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trademark;

(b) an agent or representative of the proprietor of the trademark applies for registration thereof in his own name without the proprietor's authorisation, unless the agent or representative justifies his action;

(c) to the extent that, pursuant to Union legislation or the laws of Malta providing for protection of designations of origin and geographical indications:

(i) an application for a designation of origin or a geographical indication had already been submitted in accordance with Union legislation or the laws of Malta prior to the date of application for registration of the trademark or the date of the priority claimed for the application, subject to its subsequent registration;

(ii) that designation of origin or geographical indication confers on the person authorised under the relevant law to exercise the rights arising therefrom, the right to prohibit the use of a subsequent trademark.

(4) A trademark is not to be registered or, if registered, is liable to be declared invalid where, and to the extent that:

(a) rights to a non-registered trademark or to another sign used in the course of trade, were acquired prior to the date of application for registration of the subsequent trademark, or the date of the priority claimed for the application for registration of the subsequent trademark, and that non-registered trademark or other sign confers on its proprietor the right to prohibit the use of the subsequent trademark;

(b) the use of the trademark may be prohibited by virtue of an earlier right, other than the rights referred to in sub-articles (2) and (4)(a), and protected by means of:

(i) copyright;

(ii) registered designs;

(iii) other rights which the Minister may prescribe by regulation.

(5) A trademark shall not be refused registration or declared invalid where the proprietor of the earlier trademark or other earlier right consents to the registration of the later trademark.

Derogation in respect of trademarks regulated by the Ordinance.

7. The grounds for refusal of registration or invalidity in force in Malta prior to the date of the entry into force of the Trademarks Act, are to continue to apply in relation to trademarks for which an application was made prior to such entry into force and which remained regulated thereby.

Establishment *a posteriori* of invalidity or revocation of a trademark.

8. Where the seniority of a national trademark or of a trademark registered under international arrangements having effect in Malta, which has been surrendered or allowed to lapse, is claimed for an EU trademark, the invalidity or revocation of the trademark providing the basis for the seniority claim may be established *a posteriori*, provided that the invalidity or revocation could have been declared at the time the mark was surrendered or allowed to lapse. In such a case, the seniority shall cease to produce its effects.

**9.** Where grounds for refusal of registration or for invalidity of a trademark exist in respect of only some of the goods or services for which that trademark has been applied or registered, refusal of registration or invalidity shall cover those goods or services only.

Grounds for refusal or invalidity relating to only some of the goods or services.

**10.** An action for a declaration of invalidity on the basis of an earlier trademark shall not succeed at the date of the action for invalidation if it would not have been successful at the filing date or the priority date of the later trademark for any of the following reasons:

Lack of distinctive character or of reputation of an earlier trademark precluding a declaration of invalidity of a registered trademark.

(a) the earlier trademark liable to be declared invalid pursuant to article 5(1)(b), (c) or (d) had not yet acquired a distinctive character as referred to in article 5(8);

(b) the application for a declaration of invalidity is based on article 6(1)(b) and the earlier trademark had not yet become sufficiently distinctive to support a finding of likelihood of confusion within the meaning of article 6(1)(b);

(c) the application for a declaration of invalidity is based on article 6(3)(a) and the earlier trademark had not yet acquired a reputation within the meaning of article 6(3)(a).

**11.** (1) Where, in Malta, the proprietor of an earlier trademark, as referred to in article 6(2) or article 6(3)(a) has acquiesced for a period of five successive years, in the use of a later trademark registered in Malta, he shall no longer be entitled on the basis of the earlier trademark to apply for a declaration that the later trademark is invalid in respect of the goods or services for which the later trademark has been used, unless registration of the later trademark was applied for in bad faith.

Preclusion of a declaration of invalidity due to acquiescence.

(2) Sub-article (1) is to apply to the proprietor of any other earlier right referred to in article 6(4)(a) or (b).

(3) In the cases referred to in sub-articles (1) and (2), the proprietor of the later registered trademark shall not be entitled to oppose the use of the earlier right, even though that right may no longer be invoked against the later trademark.

### **Rights conferred and limitations**

**12.** (1) The registration of a trademark shall confer on the proprietor exclusive rights therein.

Rights conferred by a trademark.

(2) Any reference in this Act to the infringement of a registered trademark shall be deemed to be a reference to any such infringement

of the rights of the proprietor.

(3) The rights of the proprietor have effect from the date of registration reckoned in accordance with article 56(3):

Provided that -

(a) no infringement proceedings may be begun before the date on which the trademark is in fact registered; and

(b) no offence under article 109 shall be committed by anything done before the date of publication of the registration.

(4) Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the registered trademark, the proprietor of that registered trademark shall be entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where:

(a) the sign is identical with the trademark and is used in relation to goods or services which are identical with those for which it is registered;

(b) the sign is identical with, or similar to, the trademark and is used in relation to goods or services which are identical with, or similar to, the goods or services for which the trademark is registered:

Provided that there exists a likelihood of confusion on the part of the public:

Provided further that the likelihood of confusion includes the likelihood of association between the sign and the trademark;

(c) the sign is identical with, or similar to, the trademark irrespective of whether it is used in relation to goods or services which are identical with, similar to, or not similar to, those for which the trademark is registered, where the latter has a reputation in Malta and where use of that sign, without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark.

(5) The following, in particular, may be prohibited under sub-article (4):

(a) affixing the sign to the goods or the packaging thereof;

(b) offering the goods or putting them on the market, or stocking them for those purposes, under the sign, or offering or supplying services thereunder;

(c) importing or exporting the goods under the sign;

(d) using the sign as a trade or company name or part of a trade or company name;

(e) using the sign on business papers or in advertising;

(f) using the sign in comparative advertising in a manner that is contrary to Directive 2006/114/EC.

(6) A person who applies a registered trademark to material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, shall be treated as a party to any use of the material which infringes the registered trademark if when he applied the mark he knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

(7) Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the registered trademark, the proprietor of that registered trademark shall also be entitled to prevent all third parties from bringing goods, in the course of trade, into Malta, without being released for free circulation there, where such goods, including the packaging thereof, come from third countries and bear without authorisation a trademark which is identical with the trademark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trademark.

The entitlement of the trademark proprietor pursuant to the first sub-paragraph shall lapse if, during the proceedings to determine whether the registered trademark has been infringed, initiated in accordance with Regulation (EU) No. 608/2013, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

(8) Where the use of a sign under the conditions referred to in paragraphs (b) and (c) of sub-article (4) could not be prohibited before the coming into force of the Trademarks Act, the rights conferred by the trademark cannot be relied on to prevent the continued use of the sign if such use had started prior to the said Act coming into force.

Cap. 416.  
Cap. 29.

(9) Sub-articles (1), (4), (5) and (8) shall not affect provisions applicable under any law relating to the protection against the use of a

A 456

sign other than use for the purposes of distinguishing goods or services, where use of that sign without due cause takes unfair advantage of or is detrimental to, the distinctive character or the repute of the trademark.

The right to prohibit preparatory acts in relation to the use of packaging or other means.

**13.** Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trademark is affixed, could be used in relation to goods or services and that use would constitute an infringement of the rights of the proprietor of a trademark under article 12(4) and (5), the proprietor of that trademark shall have the right to prohibit the following acts if carried out in the course of trade:

(a) affixing a sign identical with, or similar to, the trademark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed;

(b) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

Reproduction of trademarks in dictionaries.

**14.** If the reproduction of a trademark in a dictionary, encyclopaedia or similar reference work, in print or electronic form, gives the impression that it constitutes the generic name of the goods or services for which the trademark is registered, the publisher of the work shall, at the request of the proprietor of the trademark, ensure that the reproduction of the trademark is, without delay, and in the case of the work in printed form at the latest in the next edition of the publication, accompanied by an indication that it is a registered trademark.

Prohibition of the use of a trademark registered in the name of an agent or representative.

**15. (1)** Where a trademark is registered in the name of the agent or representative of a person who is the proprietor of that trademark, without the proprietor's consent, the latter shall be entitled to do either or both of the following:

(a) oppose the use of the trademark by his agent or representative;

(b) demand the assignment of the trademark in his favour.

(2) Sub-article (1) shall not apply where the agent or representative justifies his action.

**16.** (1) A trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

Limits on effects of a registered trademark.

(a) the name or address of the third party, where that third party is a natural person;

(b) signs or indications which are not distinctive or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the services, or other characteristics of goods or services;

(c) the trademark for the purpose of identifying or referring to goods or services as those of the proprietor of that trademark in particular where the use of the trademark is necessary to indicate the intended purpose of a product or service in particular as accessories or spare parts.

(2) Sub-article (1) shall only apply where the use made by the third party is in accordance with honest practices in industrial or commercial matters.

(3) (a) A trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade in Malta, an earlier right, if the right is recognised by law and if, or to the extent that, its use is protected by virtue of any rule of law.

(b) For the purposes of this sub-article an "earlier right" means an unregistered trademark or other sign continuously used in relation to goods or services by a person or his predecessor in title from a date prior to whichever is the earlier of -

(i) the use of the first-mentioned trademark in relation to those goods or services by the proprietor or his predecessor in title; or

(ii) the registration of the first-mentioned trademark in respect of those goods or services in the name of the proprietor or his predecessor in title.

**17.** (1) A trademark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the Union under that trademark by the proprietor or with the proprietor's consent.

Exhaustion of the rights conferred by a trademark.

(2) Sub-article (1) shall not apply where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods, particularly where the condition of the goods is changed or

A 458

impaired after they have been put on the market.

Registration  
subject to  
disclaimer or  
limitation.

**18.** (1) An applicant for registration of a trademark, or the proprietor of a registered trademark, may -

(a) disclaim any right to the exclusive use of any specified element of the trademark; or

(b) agree that the rights conferred by the registration shall be subject to a specified territorial or other limitation.

(2) The Comptroller may disclaim any right to the exclusive use of any specified element of the trademark.

(3) The Minister may make rules providing for the publication and entry in the register of a disclaimer or limitation.

(4) Where the registration of a trademark is subject to a disclaimer or limitation, the rights conferred by article 12 shall be restricted accordingly.

Action for  
infringement.

**19.** (1) Subject to the provisions of articles 41 and 42, an infringement of a registered trademark is actionable by the proprietor of the trademark by sworn application to be filed in the First Hall of the Civil Court.

(2) In an action for infringement all such relief as is available in respect of the infringement of any other property right shall be available to the plaintiff.

Order for  
erasure, etc., of  
offending sign.

**20.** (1) Where a person is found to have infringed a registered trademark, the Court may make an order requiring him -

(a) to cause the offending sign to be erased, removed or obliterated from any infringing goods, material or articles in his possession, custody or control; or

(b) if it is not reasonably practicable for the offending sign to be erased, removed or obliterated, to secure the destruction of the infringing goods, material or articles in question.

(2) If an order under sub-article (1) is not complied with, or it appears likely to the Court that such an order would not be complied with, the Court may order that the infringing goods, material or articles be delivered to such person as the Court may direct for erasure, removal or obliteration of the sign, or for destruction, as the case may be.

21. (1) The proprietor of a registered trademark may, by application, ask the First Hall of Civil Court for an order for the delivery up to him, or such other person as the Court may direct, of any infringing goods, material or articles which a person has in his possession, custody or control in the course of a business.

Order for delivery up of infringing goods, material or articles.

(2) An application shall not be made after the end of the period specified in article 23; and no order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under article 24.

(3) A person to whom any infringing goods, material or articles are delivered up in pursuance of an order under this article shall retain them pending the decision of the Court under article 24.

(4) Nothing in this article affects any other power of the Court.

22. (1) In this Act the expressions "infringing goods", "infringing material" and "infringing articles" shall be construed in accordance with the following sub-articles of this article.

Meaning of "infringing goods, material or articles".

(2) Goods are "infringing goods", in relation to a registered trademark, if they or their packaging bear a sign identical or similar to that mark and -

(a) the application of the sign to the goods or their packaging is an infringement of the registered trademark; or

(b) the goods are proposed to be imported into Malta and the application in Malta, of the sign, to them or their packaging would be an infringement of the registered trademark; or

(c) the sign has otherwise been used in relation to the goods in such a way as to infringe the registered trademark.

(3) Material is "infringing material", in relation to a registered trademark, if it bears a sign identical or similar to that mark and -

(a) it is used for labelling or packaging goods, as a business paper, or for advertising goods or services, in such a way as to infringe the registered trademark; or

(b) it is intended to be so used and such use would infringe the registered trademark.

(4) "Infringing articles", in relation to a registered trademark, means articles -

A 460

(a) which are specifically designed or adapted for making copies of a sign identical or similar to that trademark; and

(b) which a person has in his possession, custody or control, knowing or having reason to believe that they have been used or are to be used to produce infringing goods or material.

Period after which remedy of delivery up not available.

**23.** (1) An application for an order under article 24 may not be made after the end of the period of six years from -

(a) in the case of infringing goods, the date on which the trademark was applied to the goods or their packaging;

(b) in the case of infringing material, the date on which the trademark was applied to the material; or

(c) in the case of infringing articles, the date on which they were made,

except as provided in the following sub-article.

(2) If during the whole or part of that period the proprietor of the registered trademark is prevented by fraud or concealment from discovering the facts entitling him to apply for an order, an application may be made at any time before the end of the period of six years from the date on which he could with reasonable diligence have discovered those facts.

Order as to disposal of infringing goods, material or articles.

**24.** (1) Where infringing goods, material or articles have been delivered up in pursuance of an order under article 21, an action by sworn application may be brought before the Court by any party interested -

(a) for an order that they be destroyed or forfeited in favour of such person as the Court may think fit; or

(b) for a decision that no such order should be made.

(2) In considering its decision, the Court shall consider whether other remedies available in an action for infringement of the registered trademark would be adequate to compensate the proprietor and any licensee to protect their interests.

(3) The Court shall order the service of the sworn application on persons having an interest in the goods, material or articles, and any person having an interest shall be entitled -

(a) to appear in proceedings for an order under this article, whether or not he was served with a notice; and

(b) to appeal against any order made, whether or not he appeared at first instance, and any such order shall not take effect until the end of the period within which an appeal may be filed or, if before the end of that period an appeal is so filed, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in the goods, material or articles, the Court shall make such order as it thinks fit.

(5) If the Court decides that no order should have been made under article 21, the person in whose possession, custody or control the goods, material or articles were before being delivered up, is obliged towards their return.

**25.** (1) Where a person threatens another with proceedings for infringement of a registered trademark other than-

Remedy for groundless threats of infringement proceedings.

(a) use of the mark on goods or their packaging;

(b) the importation of goods to which, or to the packaging of which, the mark has been applied; or

(c) the supply of services under the mark,

any person aggrieved may bring proceedings for relief under this article by sworn application before the Civil Court, First Hall.

(2) The relief which may be applied for is any of the following -

(a) a declaration that the threats are unjustified;

(b) an injunction against the continuance of the threats;

(c) damages in respect of any loss he may have sustained by the threats, and the plaintiff is entitled to such relief unless the defendant shows that the acts in respect of which proceedings were threatened constitute, or if done would constitute, an infringement of the registered trademark concerned.

(3) Where the defendant shows that the acts in respect of which proceedings were threatened constitute or would constitute an infringement of the registered trademark, the plaintiff shall nevertheless be entitled to relief if he shows that the registration of the trademark is invalid or liable to be revoked.

(4) The mere notification that a trademark is registered, or that an application for registration has been made, does not constitute a threat of proceedings for the purposes of this article.

Use of  
trademarks.

**26.** (1) If, within a period of five years following the date of the completion of the registration procedure, the proprietor has not put the trademark to genuine use in Malta in connection with the goods or services in respect of which it is registered, or if such use has been suspended during a continuous five-year period, the trademark shall be subject to the limits and sanctions provided for in article 27, article 29(1), article 51(1) and (2), and article 53(3) and (4), unless there are proper reasons for non-use.

(2) Subject to Malta becoming member to the Protocol relating to the Madrid Agreement concerning the International Registration of Marks adopted at Madrid on 27 June, 1989, the five-year period referred to in sub-article (1), for a trademark registered under international arrangements and having effect in Malta, shall be calculated from the date when the trademark can no longer be rejected or opposed. Where an opposition has been lodged the period shall be calculated from the date when a decision terminating the opposition proceedings became final or the opposition was withdrawn.

(3) The date of commencement of the five-year period, as referred to in sub-article (1) shall be entered in the register.

(4) The following shall also constitute use within the meaning of sub-article (1):

(a) use of the trademark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, regardless of whether or not the trademark in the form as used is also registered in the name of the proprietor;

(b) affixing of the trademark to goods or to the packaging thereof in Malta solely for export purposes.

(5) Use of the trademark with the consent of the proprietor shall be deemed to constitute use by the proprietor.

Non-use as  
defence in  
infringement  
proceedings.

**27.** The proprietor of a trademark shall be entitled to prohibit the use of a sign only to the extent that the proprietor's rights are not liable to be revoked pursuant to article 29 at the time the infringement action is brought. If the defendant so requests, the proprietor of the trademark shall furnish proof that, during the five-year period preceding the date of bringing the action, the trademark has been put to genuine use as provided in article 26 in connection with the goods or services in

respect of which it is registered and which are cited as justification for the action, or that there are proper reasons for non-use, provided that the registration procedure of the trademark has at the date of bringing the action been completed for not less than five years.

**28.** (1) In infringement proceedings, the proprietor of a trademark shall not be entitled to prohibit the use of a later registered mark where that later trademark would not be declared invalid pursuant to article 10, article 11(1) or (2) or article 53(3). Intervening right as defence in infringement proceedings.

(2) In infringement proceedings, the proprietor of a trademark shall not be entitled to prohibit the use of a later registered EU trademark where that later trademark would not be declared invalid pursuant to Article 60(1), (3) or (4), 61(1) or (2) or 64(2) of Regulation (EU) No. 2017/1001.

(3) Where the proprietor of a trademark is not entitled to prohibit the use of a later registered trademark pursuant to sub-article (1) or (2), the proprietor of that later registered trademark shall not be entitled to prohibit the use of the earlier trademark in infringement proceedings, even though that earlier right may no longer be invoked against the later trademark.

### **Revocation of registered trademark rights**

**29.** (1) A trademark shall be liable to revocation if, within a continuous five-year period, it has not been put to genuine use in Malta, in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use. Absence of genuine use as grounds for revocation.

(2) The registration of a trademark shall not be revoked on the grounds mentioned in sub-article (1) if such use as is referred to in that sub-article is commenced or resumed after the expiry of the five-year period and before the action for revocation is made:

Provided that, the commencement or resumption of use within the three-month period preceding the filing of the action shall be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the action may be filed.

**30.** A trademark shall be liable to revocation if, after the date on which it was registered: Trademark having become generic or is a misleading indication as grounds for revocation.

(a) as a result of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered;

A 464

(b) as a result of the use made of it by the proprietor of the trademark or with the proprietor's consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

Revocation relating to only some of the goods or services.

**31.** Where grounds for revocation of a trademark exist in respect of only some of the goods or services for which that trademark has been registered, revocation shall cover those goods or services only.

### **Registered Trademarks as objects of property**

Nature of a registered trademark.

**32.** A registered trademark is the personal property of its owner.

Co-ownership of a registered trademark.

**33.** (1) Where a registered trademark is granted to two or more persons jointly, each of them is entitled, subject to any agreement to the contrary, to an equal undivided share in the registered trademark.

(2) The following provisions apply where two or more persons are co-proprietors of a registered trademark, by virtue of sub-article (1) or otherwise.

(3) Subject to any agreement to the contrary, each co-proprietor is entitled, personally or through his agents, to do for his own benefit and without the consent of or the need to account to any other co-proprietor, any act which would otherwise amount to an infringement of the registered trademark.

(4) Notwithstanding the provisions of sub-article (3) a co-proprietor may not without the consent of the other or others -

(a) grant a licence to use the registered trademark; or

(b) assign or cede control of his share in the registered trademark.

(5) Infringement proceedings may be brought by any co-proprietor, but a co-proprietor may not, without the leave of the Court, proceed with the action unless the other, or each of the other co-proprietors, is joined in the suit.

A co-proprietor who is thus joined in the suit shall not be liable for any costs in the action.

Nothing in this sub-article affects the making of any precautionary warrant on the application of a single co-proprietor.

(6) Nothing in this article affects the rights and obligations of trustees or personal representatives, or their rights and obligations as such.

**34.** (1) A registered trademark is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or moveable property. Transmission of a registered trademark.

(2) A registered trademark may be transferred, separately from any transfer of the undertaking, in respect of some or all of the goods or services for which it is registered. Transfer of a registered trademark.

(3) A transfer of the whole of the undertaking shall include the transfer of the trademark except where there is agreement to the contrary or circumstances clearly dictate otherwise. This provision shall apply to the contractual obligation to transfer the undertaking.

(4) An assignment of a registered trademark is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, by a personal representative.

(5) Nothing in this Act shall be construed as affecting the assignment or other transmission of an unregistered trademark as part of the goodwill of a business.

(6) The Minister may make regulations for the recordal of transfers in the register.

**35.** (1) On application being made to the Comptroller by – Registration of transactions affecting a registered trademark.

(a) a person claiming to be entitled to an interest in or under a registered trademark by virtue of a registrable transaction; or

(b) any other person claiming to be affected by such a transaction,

the prescribed particulars of the transaction shall be entered in the register.

(2) The following are registrable transactions -

- (a) an assignment of a registered trademark or any right in it;
- (b) the grant of a licence under a registered trademark;
- (c) the transfer of a registered trademark by testamentary disposition;

(d) an order of a Court or other competent authority transferring a registered trademark or any right in or under it.

(3) Until an application has been made for registration of the prescribed particulars of a registrable transaction -

(a) the transaction is ineffective as against a person acquiring in good faith a conflicting interest in the registered trademark, and

(b) a person claiming to be a licensee by virtue of the transaction shall not have the protection of article 41 or 42.

(4) Where a person becomes the proprietor or a licensee of a registered trademark by virtue of a registrable transaction, he shall not be entitled to damages or an account of profits in respect of any infringement of the registered trademark occurring after the date of the registrable transaction and before the prescribed particulars of the transaction are registered, unless:

(a) an application for registration of the prescribed particulars of the transaction is made before the end of the period of six months beginning with the date of the transaction; or

(b) the Court is satisfied that it was not practicable for such an application to be made before the end of that period and that an application was made as soon as practicable thereafter.

(5) The Minister may make regulations prescribing rules as to -

(a) amendment of registered particulars relating to a licence so as to reflect any alteration of the terms of the licence; and

(b) the removal of such particulars from the register -

(i) where it appears from the registered particulars that the licence was granted for a fixed period and that period has expired;

(ii) where no such period is indicated and, after such period as may be prescribed, and after the Comptroller has notified the parties of his intention to remove the particulars from the register and the parties have not indicated their agreement that such particulars should not be removed for such period as the parties shall have agreed and indicated to the Comptroller;

(c) the amendment or removal from the register of particulars relating to a security interest on the application of, or with the consent of, the person entitled to the benefit of that interest.

**36.** The provisions of article 32 to 35 apply *mutatis mutandis* in relation to an application for the registration of a trademark in the same manner in relation to a registered trademark. Application for registration of a trademark as an object of property.

**37.** (1) A trademark may, independently of the undertaking, be given as security or be the subject of rights *in rem*. Rights *in rem*.

(2) The Minister may make regulations for the recordal of a security or of rights *in rem* in the register.

**38.** (1) A trademark may be levied in execution. Levy of execution.

(2) The Minister may make regulations for the recordal of levy of execution in the register.

**39.** (1) A trademark may be licensed for some or all of the goods or services for which it is registered, and for the whole or part of Malta. A licence may be exclusive or non-exclusive. Licensing.

(2) Unless the licence provides otherwise, it is binding on a successor in title to the grantor's interest, and references in this Act to doing anything with, or without, the consent of the proprietor of a registered trademark shall be construed accordingly.

(3) Where the licence so provides, a sub-licence may be granted by the licensee; and references in this Act to a licence or licensee include a sub-licence or sub-licensee.

(4) The proprietor of a trademark may invoke the rights conferred by that trademark against a licensee who contravenes any provision in his licensing contract with regard to:

(a) its duration;

(b) the form covered by the registration in which the trademark may be used;

(c) the scope of the goods or services for which the licence is granted;

(d) the territory in which the trademark may be affixed;  
or

(e) the quality of the goods manufactured or of the

services provided by the licensee.

(5) Without prejudice to the provisions of the licensing contract, the licensee may bring proceedings for infringement of a trademark only if its proprietor consents thereto. However, the holder of an exclusive licence may bring such proceedings if the proprietor of the trademark, after formal notice, does not himself bring infringement proceedings within an appropriate period.

(6) A licensee shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in infringement proceedings brought by the proprietor of the trademark.

(7) The Minister may make regulations for the recordal of licences in the register.

Exclusive licences.

**40.** (1) In this Act an "exclusive licence" means a licence (whether general or limited) authorising the licensee to the exclusion of all other persons, including the person granting the licence, to use a registered trademark in the manner authorised by the licence.

(2) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

General provisions as to the rights of licensees in case of infringement.

**41.** (1) The provisions of this article shall apply with respect to the rights of a licensee in relation to infringement of a registered trademark:

Provided that they shall not apply where or to the extent that, in accordance with article 42(1) an exclusive licensee has a right to bring proceedings in his own name.

(2) A licensee is entitled, unless his licence provides otherwise, to call on the proprietor of the registered trademark to take infringement proceedings in respect of any matter which affects his interests.

(3) If the proprietor -

(a) refuses to do so; or

(b) fails to do so within two months after being called upon,

the licensee may bring the proceedings in his own name as if he were the proprietor.

(4) Where infringement proceedings are brought by a licensee by

virtue of this article, the proprietor shall be joined in the suit.

(5) In infringement proceedings brought by the proprietor of a registered trademark any loss suffered or likely to be suffered by licensees shall be taken into account by the Court which shall give such directions as it thinks fit with regard to the disposal and distribution of any sum awarded as a remedy for the infringement.

42. (1) An exclusive licence may provide that the licensee shall have, to such extent as may be provided by the licence, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

Exclusive  
licensee having  
right and  
remedies of  
assignee.

Where or to the extent that such provision is made, the licensee shall be entitled, subject to the provisions of the licence and to the following provisions of this article, to bring infringement proceedings in his own name against any person other than the proprietor.

(2) The rights and remedies of an exclusive licensee are concurrent with those of the proprietor of the registered trademark; and references in this Act to the proprietor of a registered trademark relating to infringement shall be construed accordingly.

(3) In an action brought by an exclusive licensee under this article a defendant may avail himself of any defence which would have been available to him if the action had been brought by the proprietor of the registered trademark.

(4) Where proceedings for infringement of a registered trademark are brought by the proprietor or by the exclusive licensee relating to an infringement in respect of which they have concurrent right of action, the proprietor or, as the case may be, the exclusive licensee who is not the plaintiff shall be joined in the suit.

(5) (a) Where an action for infringement of a registered trademark relating to an infringement in respect of which the proprietor and an exclusive licensee have concurrent right of action is brought -

(i) the Court shall in assessing damages take into account -

(1) the terms of the licence; and

(2) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

A 470

(ii) no account of profits shall be ordered to be made if an award of damages has been made, or an account of profits has been ordered, in favour of either of them in respect of the infringement; and

(iii) the Court shall, if an account of profits has been ordered, apportion subject to any agreement between them, the profits between them as the Court considers just.

(b) The provisions of this sub-article apply whether action is brought by the proprietor alone, or it is brought by the proprietor and the exclusive licensee; and if they are not both parties the Court may give such directions as it deems fit with regard to the disposal and distribution of any sum awarded as remedy for the infringement.

(6) The proprietor of a registered trademark shall notify any exclusive licensee who has a concurrent right of action before applying for an order under article 21; and the Court may on the application of the licensee make such order under that article as it thinks fit having regard to the terms of the licensee.

(7) The provisions of sub-articles (4) to (6) shall be without prejudice to any agreement to the contrary between the exclusive licensee and the proprietor.

### **Applications for the registration of a trademark**

Application requirements.

**43.** (1) An application for registration of a trademark shall contain at least all of the following:

- (a) a request for registration;
- (b) information identifying the applicant;
- (c) a list of the goods or services in respect of which the registration is requested;
- (d) a representation of the trademark, which satisfies the requirements set out in sub-article (2)(b) of article 4.

(2) The application for a trademark shall be subject to the payment of the prescribed fee.

Date of filing.

**44.** (1) The date of filing of a trademark application shall be the date on which the documents containing the information specified in article 43(1) are filed with the Office by the applicant.

(2) The accordance of the date of filing is to be subject to the

payment of a fee as referred to in article 43(2):

Provided that where the elements are furnished on different days, the date of filing shall be the date on which the last element is so furnished.

(3) References in this Act to the date of application for registration shall be construed as a reference to the date of filing of the application.

**45.** (1) The goods and services in respect of which trademark registration is applied for shall be classified in conformity with the system of classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957 ("the Nice Classification").

Designation and classification of goods and services.

(2) The goods and services for which protection is sought shall be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on that sole basis, to determine the extent of the protection sought.

(3) For the purposes of sub-article (2), the general indications included in the class headings of the Nice Classification or other general terms may be used, provided that they comply with the requisite standards of clarity and precision set out in this article.

(4) The Office shall reject an application in respect of indications or terms which are unclear or imprecise, where the applicant does not suggest an acceptable wording within a period set by the Office to that effect.

(5) The use of general terms, including the general indications of the class headings of the Nice Classification, shall be interpreted as including all the goods or services clearly covered by the literal meaning of the indication or term. The use of such terms or indications shall not be interpreted as comprising a claim to goods or services which cannot be so understood.

(6) Where the applicant requests registration for more than one class, the applicant shall group the goods and services according to the classes of the Nice Classification, each group being preceded by the number of the class to which that group of goods or services belongs, and shall present them in the order of the classes.

(7) Goods and services shall not be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification. Goods and services shall not be regarded as being

dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(8) Any question arising as to the class within which any goods or services fall shall be determined by the Comptroller, whose decision shall be final.

Claim to  
priority of  
Convention  
application.

**46.** (1) A person who has duly filed an application for protection of a trademark in a country which is a member of the World Trade Organisation or a party to the Paris Convention, hereinafter in this Act referred to as a "Convention application", or his successor in title, has a right to priority, for the purposes of registering the same trademark under this Act for any or all of the same goods or services for which such an application has been filed, for a period of six months from the date of filing of the first such application.

(2) If the application for registration under this Act is made within such six-month period -

(a) the relevant date for the purposes of establishing which rights take precedence shall be the date of filing of the first Convention application; and

(b) the registrability of the trademark shall not be affected by any use of the mark in Malta in the period between that date and the date of the application under this Act.

(3) (a) Any filing which in a country which is a member of the World Trade Organisation or is a party to the Paris Convention is made under its legislation or any international agreement to which such country is a party, treated as if it were a regular national filing, shall be treated as giving rise to the right of priority.

(b) For the purposes of this sub-article "regular national filing" means a filing which is adequate to establish the date on which the application was filed in that country, whatever may be the subsequent application.

(4) A subsequent application concerning the same goods or services as the first Convention application, filed in the same Convention country, shall be considered the first Convention application (the filing date of which is the starting date of the period of priority), if at the time of the subsequent application -

(a) the previous application has been withdrawn, abandoned or refused, without having been laid open to public inspection and without leaving any rights outstanding; and

(b) it has not yet served as a basis for claiming a right of priority, and the previous application may not thereafter serve as a basis for claiming a right of priority.

(5) Provision may be made by rules as to the manner of claiming a right to priority on the basis of a Convention application.

(6) A right to priority arising as a result of a Convention application may be assigned or otherwise transmitted, either with the application or independently.

47. (1) The Minister may make regulations conferring on a person who has duly filed an application for protection of a trademark in a country or territory in relation to which the Maltese Government is a party to a treaty, convention, arrangement or engagement for the reciprocal protection of trademarks, a right to priority, for the purpose of registering the same trademark under this Act for any or all of the same goods or services, for such a period as may be specified in the application from the date of filing of that application.

Claim to priority from other relevant overseas application.

(2) Such regulations may make provisions similar to those contained in article 46 in relation to Convention applications or such other provision as appears to the Minister to be appropriate.

48. (1) The Comptroller shall examine whether an application for registration of a trademark satisfies the requirements of this Act:

Examination of application.

Provided that the Minister may prescribe regulations as to whether such examination shall include *ex officio* relative grounds examination.

(2) If it appears to the Comptroller that the requirements for registration are not met, he shall inform the applicant and give him an opportunity to make representations or to amend the application within such period as the Comptroller may specify.

(3) If the applicant fails to satisfy the Comptroller that those requirements are met, or to amend the application so as to meet them, or fails to respond before the end of the specified period, the Comptroller shall refuse the application.

(4) If it appears to the Comptroller that the requirements for registration are met, he shall accept the application as eligible for registration.

49. (1) The applicant may at any time withdraw his application or restrict the goods or services covered by the application.

Withdrawal, restriction or amendment of application.

A 474

(2) Save as provided in sub-article (1), an application may be amended, at the request of the applicant, only by correcting -

(a) the name or address of the applicant;

(b) errors of wording or of copying; or

(c) obvious mistakes, and then only where the correction does not substantially affect the identity of the trademark or extend the goods or services covered by the application.

Opposition procedure.

**50.** (1) The proprietor of an earlier trademark as referred to in article 6(2) and article 6(3)(a), and the person authorised under the relevant law to exercise the rights arising from a protected designation of origin or geographical indication as referred to in article 6(3)(c) shall be entitled to file a notice of opposition to the registration of a trademark before the Comptroller. A notice of opposition may be filed on the basis of one or more earlier rights, provided that they all belong to the same proprietor, and on the basis of part or the totality of the goods or services in respect of which the earlier right is protected or applied for, and may be directed against part or the totality of the goods or services in respect of which the contested mark is applied for.

(2) The parties shall be granted, at their joint request, a period of up to 90 working days from the date of the notification by the Office of the opposition to the applicant in order to allow for the possibility of a friendly settlement between the opposing party and the applicant.

(3) The Minister may make regulations in respect of all aspects relevant to the opposition procedure.

Non-use as defence in opposition proceedings.

**51.** (1) In opposition proceedings pursuant to article 50, where at the filing date or date of priority of the later trademark, the five-year period within which the earlier trademark must have been put to genuine use as provided for in article 26 had expired, at the request of the applicant, the proprietor of the earlier trademark who has given notice of opposition shall furnish proof that the earlier trademark has been put to genuine use as provided for in article 26 during the five-year period preceding the filing date or date of priority of the later trademark, or that proper reasons for non-use existed. In the absence of proof to this effect, the opposition shall be rejected.

(2) If the earlier trademark has been used in relation to only part of the goods or services for which it is registered, it shall, for the purpose of the examination of the opposition as provided for in sub-article (1), be deemed to be registered in respect of that part of the goods or services only.

(3) Sub-articles (1) and (2) shall also apply where the earlier trademark is an EU trademark. In such a case, the genuine use of the EU trademark shall be determined in accordance with Article 18 of Regulation (EU) No. 2017/1001.

**52.** (1) Without prejudice to the right of the parties to seek recourse to the courts, the revocation or declaration of invalidity of a registered trademark may be brought before the Comptroller as provided for under this Act or by sworn application to be filed in the First Hall of the Civil Court:

Procedure for revocation or declaration of invalidity.

Provided that invalidity and revocation proceedings may only be initiated before the Comptroller as from 14th January 2023 or any date before as may be prescribed by the Minister.

(2) An action for revocation of a registered trademark shall be brought on any one or more of the grounds provided for in articles 29 and 30.

(3) An action for declaration of invalidity of a registered trademark shall be brought on:

- (a) any one or more of the grounds provided for in article 5; and, or
- (b) any one or more of the grounds provided for in article 6:

Provided that it shall only be possible to bring an action for declaration of invalidity of a registered trademark before the Comptroller on any one or more of the grounds of article 5 and article 6(1) to (3).

(4) An action for revocation or for a declaration of invalidity of a registered trademark before the Comptroller may only be filed:

- (a) in the case of sub-articles (2) and (3)(a), by any natural or legal person and any group or body set up for the purpose of representing the interests of manufacturers, producers, suppliers of services, traders or consumers, and which, under the terms of the law governing it, has the capacity to sue in its own name and to be sued;
- (b) in the case of sub-article (3)(b), by the proprietor of an earlier trademark as referred to in article 6(2) and article 6(3)(a), and the person authorised under the relevant law to exercise the rights arising from a protected designation of origin or geographical indication as referred to in article 6(3)(c).

(5) An action for revocation or for a declaration of invalidity may be directed against a part or the totality of the goods or services in respect of which the contested mark is registered.

(6) An action for a declaration of invalidity may be filed on the basis of one or more earlier rights, provided they all belong to the same proprietor.

(7) If an action for invalidity or revocation has been brought before the Comptroller, it shall not be possible to file for an action on the same grounds before the First Hall of the Civil Court after the proceedings before the Comptroller have been concluded:

Provided that, when a person brings an action for invalidity or revocation before the Comptroller, at any stage before the proceedings are concluded, that person may bring an action for invalidity or revocation on the same grounds before the First Hall of the Civil Court as a result of which the proceedings before the Comptroller will discontinue:

Provided further that if an action for invalidity or revocation has been brought before the First Hall of the Civil Court, it shall not be possible to file for an action on the same grounds before the Comptroller.

Non-use as a defence in proceedings seeking a declaration of invalidity.

**53.** (1) In proceedings for a declaration of invalidity based on a registered trademark with an earlier filing date or priority date, if the proprietor of the later trademark so requests, the proprietor of the earlier trademark shall furnish proof that, during the five-year period preceding the date of the action for a declaration of invalidity, the earlier trademark has been put to genuine use, as provided for in article 26, in connection with the goods or services in respect of which it is registered and which are cited as justification for the action, or that there are proper reasons for non-use, provided that the registration process of the earlier trademark has at the date of the action for a declaration of invalidity been completed for not less than five years.

(2) Where, at the filing date or date of priority of the later trademark, the five-year period within which the earlier trademark was to have been put to genuine use, as provided for in article 26, had expired, the proprietor of the earlier trademark shall, in addition to the proof required under sub-article (1), furnish proof that the trademark was put to genuine use during the five-year period preceding the filing date or date of priority, or that proper reasons for non-use existed.

(3) In the absence of the proof referred to in sub-articles (1) and (2), an action for a declaration of invalidity on the basis of an earlier

trademark shall be rejected.

(4) If the earlier trademark has been used in accordance with article 26 in relation to only part of the goods or services for which it is registered, it shall, for the purpose of the examination of the action for a declaration of invalidity, be deemed to be registered in respect of that part of the goods or services only.

(5) Sub-articles (1) to (4) shall also apply where the earlier trademark is an EU trademark. In such a case, genuine use of the EU trademark shall be determined in accordance with Article 18 of Regulation (EU) No. 2017/1001.

**54.** (1) A registered trademark shall be deemed not to have had, as from the date of the action for revocation, the effects specified in this Act, to the extent that the rights of the proprietor have been revoked. An earlier date, on which one of the grounds for revocation occurred, may be fixed in the decision on the action for revocation, at the request of one of the parties.

Consequences  
of revocation  
and invalidity.

(2) A registered trademark shall be deemed not to have had, as from the outset, the effects specified in this Act, to the extent that the trademark has been declared invalid.

**55.** Parties to the proceedings or, where appointed, their representatives, shall designate an official address for all official communications with the Comptroller and shall have an official address to be situated in the European Economic Area.

Communications  
with the  
Comptroller.

**56.** (1) Where an application has been accepted as eligible for registration, the Comptroller shall register the trademark, unless it appears to him, having regard to matters coming to his notice after he accepted the application, that it was accepted in error.

Registration.

(2) A trademark shall not be registered and the application shall be deemed to be withdrawn unless any fee prescribed in respect of any action taken before the registration is paid within the prescribed period.

(3) A trademark when registered shall be registered as of the date of filing of the application for registration, and that date shall be deemed for the purposes of this Act to be the date of registration.

(4) On the registration of a trademark the Comptroller shall publish the registration in the prescribed manner and issue to the applicant a certificate of registration:

Provided that when an opposition has been received within

A 478

the prescribed time the Comptroller shall only publish such registration in the event the said opposition has been rejected:

Provided further that if more than one opposition has been received and one or more oppositions have been accepted, such publication shall not take place.

(5) Notwithstanding sub-article (4) above the Comptroller shall publish the registration of a trademark where an agreement has been reached following an opposition that there shall be an amendment to the goods or services in respect of which the trademark applied for is to be registered:

Provided that such registration shall take place only when such amendment has been effected by the applicant.

Duration of registration.

**57.** (1) A trademark shall be registered for a period of 10 years from the date of filing of the application.

(2) Registration may be renewed in accordance with article 58 for further 10-year periods.

Renewal.

**58.** (1) Registration of a trademark shall be renewed at the request of the proprietor of the trademark or of any person authorised to do so by law or by contract, provided that the renewal fees have been paid not earlier than six months before the date of expiry.

(2) The Comptroller shall inform the proprietor of the trademark of the expiry of the registration at least six months before the said expiry. The Comptroller shall not be held liable for failure to give such information.

(3) The request for renewal shall be submitted and the renewal fees shall be paid within a period of not more than six months immediately preceding the expiry of the registration or of the subsequent renewal thereof. Failing that, the request may be submitted within a further period of six months immediately following the expiry of the registration or of the subsequent renewal thereof. The renewal fees and an additional fee shall be paid within that further period.

(4) Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be recorded in the register.

(5) If the registration is not renewed in accordance with the above provisions, the Comptroller shall remove the trademark from the register.

(6) Provision may be made by rules for the restoration of the registration of a trademark which has been removed from the register, subject to such conditions (if any) as may be prescribed.

(7) The renewal or restoration of the registration of a trademark shall be published in the prescribed manner.

**59.** (1) A registered trademark shall not be altered in the register, during the period of registration or on renewal. Alteration of a registered trademark.

(2) Nevertheless, the Comptroller may, at the request of the proprietor, allow the alteration of a registered trademark where the mark includes the proprietor's name or address and the alteration is limited to the alteration of that name or address and does not substantially affect the identity of the mark.

(3) Provision shall be made by rules for the publication of any such alteration and the making of objections by any person claiming to be affected by it.

**60.** (1) A registered trademark may be surrendered by the proprietor in respect of any or all of the goods or services for which it is registered. Surrender of a registered trademark.

(2) Provision may be made by rules -

(a) as to the manner and effect of a surrender; and

(b) for protecting the interests of other persons having a right in the registered trademark.

**61.** For the purposes of this Act, the following definitions apply: Definitions of certification marks and collective marks.

(a) "certification mark" means a trademark which is described as such when the mark is applied for and is capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, from goods and services which are not so certified;

(b) "collective mark" means a trademark which is described as such when the mark is applied for and is capable of distinguishing the goods or services of members of an association which is the proprietor of the mark from the goods or services of other undertakings.

**62.** The provisions of this Act apply to certification marks subject to the following provisions which may, by regulations, be amended by General disposition.

A 480

the Minister.

Signs of which a certification mark may consist.

**63.** In relation to a certification mark the reference in the definition of "trademark" in article 4 (2)(a) to distinguishing goods or services of one undertaking from those of other undertakings shall be construed as a reference to distinguishing goods or services which are certified from those which are not.

Certification marks.

**64.** (1) Any natural or legal person, including institutions, authorities and bodies governed by public law, may apply for certification marks provided that such person does not carry on a business involving the supply of goods or services of the kind certified.

Indication of geographical origin.

(2) Signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute certification marks. Such a certification mark shall not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided that third party uses them in accordance with honest practices in industrial or commercial matters. In particular, such a mark may not be invoked against a third party who is entitled to use a geographical name.

(3) The requirements laid down in article 26 shall be satisfied where genuine use of a certification mark in accordance with article 26 is made by any person who has the authority to use it.

Nature of proprietor's business.

**65.** A certification mark shall not be registered if the proprietor carries on a business involving the supply of goods or services of the kind certified.

Mark not to be misleading as to character or significance.

**66.** (1) A certification mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular if it is likely to be taken to be something other than a certification mark.

(2) The Comptroller may accordingly require that a mark in respect of which application is made for registration includes some indication that it is a certification mark, and notwithstanding the provisions of article 49(2), an application may be amended so as to comply with any such requirement.

Regulations governing use of certification mark.

**67.** An applicant for registration of a certification mark must file with the Comptroller regulations governing the use of the mark specifying the person authorised to use the mark, the characteristics to be certified by the mark, how the certifying body is to test those characteristics and to supervise the use of the mark, the fees (if any) to be paid in connection with the operation of the mark and the

procedures for resolving disputes and any further requirements with which the regulations have to comply as may be established by any rule made by the Minister.

**68.** (1) A certification mark shall not be registered unless -

Approval of regulations, etc.

(a) the regulations governing the use of the mark -

(i) comply with article 67 and any further requirements imposed by rules; and

(ii) are not contrary to public policy or to accepted principles of morality; and

(b) the applicant is competent to certify the goods or services for which the mark is to be registered.

(2) The application shall be deemed to be withdrawn if before the end of any period as may be prescribed after the date of the application for registration of a certification mark, the applicant fails to file the regulations with the Comptroller and pay the prescribed fee.

**69.** (1) The Comptroller shall consider whether the requirements mentioned in article 68(1) are met.

Requirements.

(2) If it appears to the Comptroller that those requirements are not met, he shall inform the applicant and give him an opportunity, within such period as the Comptroller may specify, to make representations or to file amended regulations.

(3) If the applicant fails to satisfy the Comptroller that those requirements are met, or to file regulations amended so as to meet them, or fails to respond before the end of the specified period, the Comptroller shall refuse the application.

(4) If it appears to the Comptroller that those requirements, and the requirements for registration are met, he shall accept the application and shall proceed in accordance with article 56.

**70.** The regulations governing the use of a registered certification mark shall be open to public inspection in the same way as the register.

Regulations to be open to inspection.

**71.** An amendment of the regulations governing the use of a registered collective mark is not effective unless and until the amended regulations are filed with the Comptroller and accepted by him.

Amendment of regulations.

A 482

Consent to assignment of registered certification mark.

**72.** The assignment or other transmission of a registered certification mark is not effective without the consent of the Comptroller.

Infringement: right of authorised users

**73.** The provisions of sub-article (7) of article 12 and of sub-article (2) of article 24 apply in relation to an authorized user of a registered certificate mark as in relation to a licensee of a trademark.

Infringement proceedings.

**74.** In infringement proceedings brought by the proprietor of a registered certification mark, any loss suffered or likely to be suffered by authorised users shall be taken into account by the Court which shall give such directions as it thinks fit with regard to the disposal and distribution of any sum awarded as a remedy for infringement.

Grounds for revocation of registration – certification mark.

**75.** Apart from the grounds of revocation provided for in article 29, the registration of a certification mark may be revoked on any of the following grounds:

(a) that the proprietor has begun to carry out such a business in contravention of article 65;

(b) that the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in article 66(1);

(c) that the proprietor has failed to observe, or to secure the observance of the regulations governing the use of the mark;

(d) that an amendment of the regulations has been made so that the regulations -

(i) no longer comply with article 67; or

(ii) are contrary to public policy or to accepted principles of morality;

(e) that the proprietor is no longer competent to certify the goods or services for which the mark is registered.

Grounds for invalidity of registration - certification marks.

**76.** Apart from the grounds of invalidity provided for in articles 5 and 6, the registration of a certification mark may be declared invalid on the grounds that the mark was registered in breach of the provisions of articles 65, 66(1) or 68(1).

General dispositions – collective marks.

**77.** The provisions of this Act apply to collective marks subject to the following provisions, which may, by regulations, be amended by the Minister.

**78.** In relation to a collective mark the reference in the definition of "trademark" in article 4(2)(a) to distinguishing goods or services of one undertaking from those of other undertakings shall be construed as a reference to distinguishing goods or services of members of the association which is the proprietor of the mark from those of other undertakings.

Signs of which a collective mark may consist.

**79.** (1) Associations of manufacturers, producers, suppliers of services or traders, which, under the terms of the law governing them, have the capacity in their own name to have rights and obligations, to make contracts or accomplish other legal acts, and to sue and be sued, as well as legal persons governed by public law, may apply for collective marks.

Capacity of Associations to accomplish legal acts – Collective Marks.

(2) Signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute collective marks. Such a collective mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, such signs or indications, provided that third party uses them in accordance with honest practices in industrial or commercial matters. In particular, such a mark may not be invoked against a third party who is entitled to use a geographical name.

**80.** (1) A collective mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular if it is likely to be construed as something other than a collective mark.

Collective mark not to be misleading as to character or significance.

(2) The Comptroller may accordingly require that a mark in respect of which application is made for registration includes some indication that it is a collective mark; and notwithstanding the provisions of article 49(2), an application may be amended so as to comply with any such requirement.

**81.** (1) An applicant for a collective mark shall submit the regulations governing its use to the Comptroller.

Regulations governing use of a collective mark.

(2) The regulations governing use shall specify at least the persons authorised to use the mark, the conditions of membership of the association and the conditions of use of the mark, including sanctions. The regulations governing use of a mark referred to in article 79(1) shall authorise any person whose goods or services originate in the geographical area concerned to become a member of the association which is the proprietor of the mark, provided that the person fulfils all the other conditions of the regulations.

**82.** (1) A collective mark shall not be registered unless the regulations governing the use of the mark -

Approval of regulations by Comptroller.

A 484

(a) comply with article 81(2) and any further requirements imposed by rules; and

(b) are not contrary to public policy or to accepted principles of morality.

(2) The application shall be deemed to be withdrawn if before the end of any period as may be prescribed after the date of the application for registration of a collective mark, the applicant fails to file the regulations with the Comptroller and pay the prescribed fee.

Comptroller to consider requirements.

**83.** (1) The Comptroller shall consider whether the requirements mentioned in article 82(1) are met.

(2) If it appears to the Comptroller that those requirements are not met, he shall inform the applicant and give him an opportunity, within such period as the Comptroller may specify, to make representations or to file amended regulations.

(3) If the applicant fails to satisfy the Comptroller that those requirements are met, or to file regulations amended so as to meet them, or fails to respond before the end of the specified period, the Comptroller shall refuse the application.

(4) If it appears to the Comptroller that those requirements, and the other requirements for registration, are met, he shall accept the application and shall proceed in accordance with article 56.

Regulations to be open to inspection.

**84.** The regulations governing the use of a registered collective mark shall be open to public inspection in the same way as the register.

Refusal of an application for a collective mark.

**85.** (1) In addition to the grounds for refusal of a trademark application provided for in article 5, where appropriate with the exception of article 5(1)(c) concerning signs or indications which may serve, in trade, to designate the geographical origin of the goods or services, and article 6, and without prejudice to the right of the Office not to undertake examination *ex officio* of relative grounds, an application for a collective mark shall be refused where the provisions of article 61(b), article 79 or article 81 are not satisfied, or where the regulations governing use of that collective mark are contrary to public policy or to accepted principles of morality.

(2) An application for a collective mark shall also be refused if the public is liable to be misled as regards the character or the significance of the mark, in particular if it is likely to be taken to be something other than a collective mark.

(3) An application shall not be refused if the applicant, as a result

of amendment of the regulations governing use of the collective mark, meets the requirements referred to in sub-articles (1) and (2).

**86.** The requirements of article 26 shall be satisfied where genuine use of a collective mark in accordance with that article is made by any person who has authority to use it.

Use of collective marks.

**87.** (1) The proprietor of a collective mark shall submit to the Comptroller any amended regulations governing use.

Amendments to the regulations governing use of a collective mark.

(2) Amendments to the regulations governing use shall be mentioned in the register unless the amended regulations do not satisfy the requirements of article 81 or involve one of the grounds for refusal referred to in article 85.

(3) For the purposes of this Act, amendments to the regulations governing use shall take effect only from the date of entry of the mention of those amendments in the register.

**88.** (1) Article 39(5) and (6) shall apply to every person who has the authority to use a collective mark.

Persons entitled to bring an action for infringement.

(2) The proprietor of a collective mark shall be entitled to claim compensation on behalf of persons who have authority to use the collective mark where those persons have sustained damage as a result of unauthorised use of the collective mark.

**89.** In addition to the grounds for the revocation provided for in articles 29 and 30, the rights of the proprietor of a collective mark shall be revoked on any of the following grounds:

Additional grounds for revocation – collective marks.

(a) the proprietor does not take reasonable steps to prevent the mark being used in a manner that is incompatible with the conditions of use laid down in the regulations governing use, including any amendments thereto mentioned in the register;

(b) the manner in which the mark has been used by authorised persons has caused it to become liable to mislead the public in the manner referred to in article 85(2);

(c) an amendment to the regulations governing use of the mark has been mentioned in the register in breach of article 87(2), unless the proprietor of the mark, by further amending the regulations governing use, complies with the requirements of that article.

A 486

Additional grounds for invalidity.

**90.** In addition to the grounds for invalidity provided for in article 5, where appropriate with the exception of article 5(1)(c) concerning signs or indications which may serve, in trade, to designate the geographical origin of the goods or services, and article 6, a collective mark which is registered in breach of article 85 shall be declared invalid unless the proprietor of the mark, by amending the regulations governing use, complies with the requirements of article 85.

### **PART III - ADMINISTRATIVE AND OTHER SUPPLEMENTARY PROVISIONS**

Maintenance and content of register.

**91.** (1) (a) The Comptroller shall maintain a register of trademarks.

(b) References in this Act to "the register" are to that register; and references to registration, in particular, in the expression "registered trademark", are, unless the context otherwise requires, to registration in that register.

(2) There shall be entered in the register in accordance with this Act -

(a) registered trademarks;

(b) such particulars as may be prescribed of registrable transactions affecting a registered trademark; and

(c) such other matters relating to registered trademarks as may be prescribed.

(3) The register shall be kept in such manner as may be prescribed, and provision shall in particular be made for -

(a) public inspection of the register; and

(b) the supply of certified or uncertified copies, or extracts, of entries in the register.

Rectification or correction of the register.

**92.** (1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register:

Provided that an application for rectification may not be made in respect of a matter affecting the validity of the registration of a trademark.

(2) An application for rectification may be made either to the Comptroller or to the Court:

Provided that if proceedings concerning the trademarks in question are pending before the Court -

(a) the application must be made to the Court; and

(b) if the application is made to the Comptroller, he may at any stage of the proceedings refer the application to the Court.

(3) Except where the Comptroller or the Court directs otherwise the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.

(4) The Comptroller may, on request made in the prescribed manner by the proprietor of a registered trademark, or a licensee, enter any change in his name or address as recorded in the register.

(5) The Comptroller may remove from the register any matter appearing to him to have ceased to have effect.

(6) The applicant or proprietor may divide a national trademark application or registration into two or more separate applications or registrations by sending a declaration to the Office and indicating for each divisional application or registration the goods or services covered by the original application or registration which are to be covered by the divisional applications or registrations.

**93.** (1) The Minister may by regulations make rules empowering the Comptroller to do such things as may be necessary to implement any amended or substituted classification of goods or services for the purposes of the registration of trademarks, and without prejudice to the generality of the aforesaid provision may in particular be made for the amendment of existing entries on the register so as to accord with the new classification.

Adaptation of entries to new classification.

(2) Any such power of amendment shall not be exercised so as to extend the rights conferred by the registration, except where it appears to the Comptroller that compliance with this requirement would involve undue complexity and that any extension would not be substantial and would not adversely affect the right of any person.

(3) The rules may moreover empower the Comptroller -

(a) to require the proprietor of a registered trademark, within such time as may be prescribed, to file a proposal for amendment of the register; and

(b) to cancel or refuse to renew the registration of the trademark in the event of his failing to do so.

A 488

(4) Any such proposal shall be advertised, and may be opposed, in such manner as may be prescribed.

Power to require use forms.

**94.** The Comptroller may require the use of such forms as he may direct for any purpose relating to the registration of a trademark or any other proceeding before him under this Act.

Information about applications and registered trademarks.

**95.** (1) Subject to such restrictions as the Minister may by regulations impose after publication of the registration of a trademark, the Comptroller shall on request provide a person with such information and permit him to inspect such documents relating to the registered trademark, as may be specified in the request.

Any such request must be made in such manner and be accompanied by such fee as may be prescribed.

(2) Before publication of registration of a trademark, documents or information constituting or relating to the application shall not be published by the Comptroller or communicated by him to any person except -

(a) in such cases and to such extent as may be prescribed; or

(b) with the consent of the applicant.

Exclusion of liability in respect of official acts.

**96.** (1) The Comptroller shall not be taken to warrant the validity of the registration of a trademark under this Act or under any treaty, convention, arrangement or engagement to which Malta is a party.

(2) The Comptroller is not subject to any liability by reason of, or in connection with, any examination required or authorised by this Act, or any such treaty, convention, arrangement or engagement, or any report or other proceedings consequent on such examination.

(3) No action shall lie against an Officer of the Comptroller in respect of any matter for which, by virtue of this article, the Comptroller is not liable.

Registration to be *prima facie* evidence of validity.

**97.** In all legal proceedings relating to a registered trademark (including proceedings for rectification of the register) the registration of a person as proprietor of a trademark shall be *prima facie* evidence of the validity of the original registration and of any subsequent assignment or other transmission of it.

Certification of validity of contested registration.

**98.** (1) If in proceedings before the Court the validity of the registration of a trademark is contested and it is found by the Court that the trademark is validly registered, the Court shall give judgement

accordingly.

(2) Where the Court has given such a judgement and in subsequent proceedings –

- (a) the validity of the registration is again questioned;  
and
- (b) the proprietor obtains a final order or judgement in his favour,

the proprietor shall be entitled to his costs unless the Court directs otherwise.

**99.** (1) In proceedings before the Court involving a demand for-

Comptroller's appearance in proceedings involving the register.

- (a) the revocation of the registration of a trademark;
- (b) a declaration of the invalidity of the registration of a trademark; or
- (c) the rectification of the register,

the Comptroller shall be notified with the proceedings and shall be entitled to appear and to be heard if so directed by the Court.

(2) Unless otherwise directed by the Court, the Comptroller may, instead of appearing, file in the record of the case a statement in writing signed by him, giving particulars of -

- (a) any proceedings before him in relation to the matter in issue;
- (b) the grounds of any decision given by him affecting it;
- (c) the practice of the Office in like cases; or
- (d) such matters relevant to the issues and within his knowledge as Comptroller as he thinks fit,

and the statement shall be deemed to form part of the evidence in the proceedings.

**100.** (1) Any decision of the Comptroller under this Act, may be appealed from, before the Court of Appeal composed in the manner provided in sub-article (9) of article 41 of the Code of Organization and Civil Procedure by application within fifteen days of service of the Comptroller's decision.

Appeals from the Comptroller's decision. Cap. 12.

(2) For the purposes of sub-article (1) "decision" means any act, other than such acts as may by regulations be prescribed, done by the Comptroller in exercise of a discretion vested in him by or under this Act.

(3) The Minister may make rules governing appeals to the Court of Appeal under this Act, and presenting a scale of costs and fees in relation to such appeals.

Power of  
Minister to  
make rules.

**101.** (1) The Minister responsible for the protection of industrial property may make regulations for the better administration of this Act, making such rules as are required by any provisions of this Act, prescribing anything authorised or required by any provision of this Act to be prescribed, and generally for regulating practice and procedure under this Act, and in particular provision may be made -

(a) with regard to the manner of filing of applications and other documents;

(b) for the submission of documents and the filing and authentication of any translation;

(c) with regard to the service of documents;

(d) authorising the rectification of irregularities of procedure;

(e) prescribing time limits for anything required to be done in connection with any proceeding under this Act;

(f) for the extension of any time limit so prescribed, or specified by the Comptroller whether or not such time limit has already expired;

(g) for the division of a national trademark application or registration by the applicant or proprietor, into two or more separate applications or registrations;

(h) providing for the possibility of multi-class applications and registrations;

(i) in the case of multi class registration, for the possibility of a renewal of registration in respect of only those goods and services for which a submission of a request for renewal has been received and for which a payment of fees has been effected;

(j) to align legislation following amendment to the

Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trademarks.

**102.** (1) There shall be paid in respect of applications and other matters under this Act such fees as may be prescribed. Fees.

(2) Provision may be made by rules as to -

(a) the payment of a single fee in respect of two or more matters;

(b) the circumstances, if any, in which a fee may be repaid or remitted;

(c) prescribing an additional fee for each class of goods and services beyond the first class, for the application and renewal of a trademark;

(d) circumstances where different fees may be charged or may not be charged at all.

**103.** (1) The Comptroller may give directions specifying the hours of business of the Industrial Property Office for the purpose of the transaction by the public of business under this Act, and the days which are business days for that purpose. Hours of business and business days.

(2) Business done on any day after the specified hours of business, or on a day which is not a business day, shall be deemed to have been done on the next business day; and where the time for doing anything under this Act expires on a day which is not a business day, that time shall be extended to the next business day.

(3) Directions under this article may make different provisions for different classes of business and shall be published in the prescribed manner.

**104.** Except as may otherwise be prescribed, any act required or authorised by this Act to be done by or in respect of a person in connection with the registration of a trademark, or any procedure relating to a registered trademark, may be done by or in respect of an agent authorised by that person in writing. Recognition of trademark agents.

**105.** (1) The Minister may make rules requiring the keeping of a register of persons who act as agent for the purpose of applying for or obtaining the registration of trademarks; and in this Act a "registered trademark agent" means a person whose name is entered in the register kept under this article. The register of trademark agents/attorneys.

A 492

(2) The Minister may make rules regulating the registration of persons as registered trademark agents, and may in particular -

(a) require the payment of such fees in connection with such registration as may be prescribed; and

(b) authorise in such cases as shall be specified the erasure from the register of the name of any person registered as a registered trademark agent or the suspension of such a registration.

(3) Only registered persons may -

(a) carry on a business under any name or other description which contains the words "registered trademark agent"; or

(b) in the course of a business otherwise describe or hold himself out, or permit themselves to be described or held out, as registered trademark agents.

Privilege for communication with registered trademark agents. Cap. 12.

**106.** The provisions of article 588 of the Code of Organization and Civil Procedure shall apply with regard to registered trademark agents as they apply with respect to advocates and legal procurators.

Power to Comptroller to refuse to deal with certain agents.

**107.** The Comptroller may, in accordance with such rules as may be prescribed, refuse to recognize as agent in respect of any business under this Act -

(a) a person who not being a registered trademark agent shall have falsely posed as such;

(b) a person whose name has been erased from and not restored to, or who is suspended from, the register of trademark agents on the grounds of misconduct;

(c) a partnership or body corporate of which one of the partners or directors is a person whom the Comptroller could refuse to recognize under paragraph (a) or (b) above.

#### PART IV - CRIMINAL OFFENCES

**108.** (1) Any person who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor -

Unauthorised use of trademark, etc., in relation to goods.

(a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trademark; or

(b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign; or

(c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b); or

(d) applies a sign identical to, or likely to be mistaken for, a registered trademark to material intended to be used -

(i) for labelling or packaging goods;

(ii) as a business paper in relation to goods; or

(iii) for advertising goods; or

(e) uses, in the course of a business material bearing such a sign for labelling or packaging goods, or as a business paper in relation to goods, or for advertising goods; or

(f) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under paragraph (e); or

(g) (i) makes an article specifically designed or adapted for making copies of a sign of or to make a sign likely to be mistaken for, a registered trademark; or

(ii) has such an article in his possession, custody or control in the course of a business,

knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods,

shall be guilty of an offence against this article.

(2) A person does not commit an offence against this article

A 494

unless -

(a) the goods to which the offence refers are goods in respect of which the trademark is registered; or

(b) the trademark has a reputation in Malta and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trademark.

(3) It is a defence for a person charged with an offence against this article to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trademark.

(4) A person guilty of an offence under this article shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine (*multa*) of not more than twenty-three thousand and two hundred and ninety-five euro (€23,295) or to both such fine and imprisonment.

Falsification of register, etc.

**109.** (1) Any person who knowing or having reason to believe that it is false:-

(a) makes, or causes to be made, a false entry in the register of trademarks; or

(b) makes, or causes to be made, anything falsely purporting to be a copy of an entry in the register; or

(c) produces or tenders or causes to be produced or tendered in evidence any such thing,

shall be guilty of an offence against this article.

(2) A person guilty of an offence against this article shall be liable on conviction to imprisonment for a term not exceeding two years or a fine (*multa*) of not more than eleven thousand and six hundred and fifty euro (€11,650) or to both such fine and imprisonment.

Falsely representing trademark as registered.

**110.** (1) It shall be an offence against this article for a person -

(a) to falsely represent a trademark as a registered trademark; or

(b) to make a false representation as to the goods or services for which a trademark is registered, knowing or having

reason to believe that the representation is false.

(2) For the purposes of this article, the use in Malta in relation to a trademark -

(a) of the word "registered"; or

(b) of any other word or symbol importing a reference, express or implied, to registration, shall be deemed to be a representation as to registration under this Act unless it is shown that the reference is to registration elsewhere than in Malta and that the trademark is in fact so registered for the goods or services in question.

(3) A person guilty of an offence against this article shall be liable on conviction to a fine (*multa*) of not more than eleven thousand and six hundred and fifty euro (€11,650).

**111.** (1) A person shall not without the authority of the President use in connection with any business any device, emblem or title in such a manner as to be calculated to lead to the belief that he is employed by, or supplies goods or services to, the President.

Unauthorised use of certain devices, emblems, etc.

(2) Any person who contravenes the provisions of sub-article (1) shall be guilty of an offence against this article and shall on conviction be liable to a fine (*multa*) of not more than six thousand and nine hundred and ninety euro (€6,990).

**112.** The Court may, moreover, in the cases referred to in article 109, on the demand of the prosecution, order that the machinery or other industrial means or contrivances used in contravention of the rights of the proprietors of the trademarks, the infringing articles, and the apparatus destined for their production, be forfeited, wholly or in part, and delivered to the holder of the trademark, without prejudice to any other right to relief under this Act.

Delivery up of infringing articles, etc.

**113.** Pending any proceedings for any one of the offences referred to in this Part, any Magistrate, if he is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of, or in relation to which the offence has been committed, are in any house or premises of the accused, or are in his possession or under his control in any other place, may, by a warrant under his hand, direct any Officer of the Police to be named in the warrant, to enter any house, premises or place, also to be named therein, and there to search for, seize, and remove such goods or things.

Powers of Magistrates.

**114.** If the owner of any goods or things, which, if he were convicted of any of the offences referred to in this Part, would be liable

Where owner of goods is unknown.

A 496

to forfeiture, is unknown or cannot be found, any Magistrate may in the like manner and in the circumstances required in the last preceding article, issue the said warrant.

Forfeiture of things seized.

**115.** The goods and things so seized shall be produced before the Court of Magistrates sitting as a court of criminal judicature, and such Court shall determine whether they are liable to forfeiture under this Act.

Procedure where owner is unknown.

**116.** (1) In the case referred to in article 114, the Court shall order the issue of banns which shall be published twice, with an interval of at least eight days, in the Gazette, and posted up at the entrance of the building wherein the Court sits, and in any other place which the court may deem fit, stating that the goods or things seized shall be forfeited, unless at the time and place named in the banns the owner of such goods or things or other person interested in such goods or things attends before the Court at the time and place indicated in the banns and shows cause to the contrary.

(2) If the owner or any person on his behalf, or other person interested in the said goods or things, fails to attend at the time and place named in the banns to show cause to the contrary, it shall be lawful for the Court to direct that such goods or things or any of them be forfeited.

Award of compensation to parties in good faith.

**117.** The Court may direct that the goods or things so forfeited be destroyed or disposed of, after the trademarks or other trade descriptions have been obliterated from them, and may also direct that, out of the net proceeds which may be realized by the disposal of such goods or things and up to the amount thereof, any persons who, being in good faith, were injured by the forfeiture, be awarded compensation for any loss caused to them.

Limitation of criminal actions.

**118.** Criminal actions under this Act shall be barred by the lapse of three years from the day on which the act constituting the offence was committed, if the person to whose prejudice the act was committed, had no previous knowledge thereof; in all other cases the period of limitation shall be one year from the day on which such person became aware of that act.

Use of forged marks.

**119.** The provisions relating to the use of forged marks shall not apply to the use of any mark of manufacture or description used in trade to indicate goods of a particular class, or the manufacture thereof by any particular method, where, at the time of the promulgation of this Act, such mark of manufacture or description was lawfully and generally applied for the above-mentioned purpose:

Provided that where such mark of manufacture or description

includes the name of a place or country and the goods are not produced in the place or country indicated in the mark of manufacture or description so used, the provisions of this article shall not apply, unless there is added to the mark of manufacture or description, immediately before or after the name of the said place or country, in an equally conspicuous manner, the name of the place or country in which the goods were actually made or produced, and unless there is also stated that the goods were made or produced in that place or country.

**120.** Any person who falsely claims to be a registered trademark agent when he is not so registered in accordance with article 105, shall be guilty of an offence against this article and shall on conviction be liable to a fine (*multa*) of not more than one thousand and one hundred and sixty-five euro (€1,165).

Person falsely representing himself as a registered trademark agent.

**121.** The provisions of this Part shall apply without prejudice to the right of any person to claim damages in consequence of any Act constituting an offence.

Right to damages not affected.

**122.** No proceedings shall be instituted against any person in the service of another person, if, he shows that in good faith, he acted in obedience to the instructions of his employer, and, on being questioned by the Police, gives full information relating to his employer and of the facts of the case as known to him.

Employer and employee.

## **PART V - MISCELLANEOUS ON CIVIL PROCEEDINGS AND ACTIONS**

**123.** In any civil proceedings under this Act if a question arises as to the use to which a registered trademark has been put, the burden of proof that a particular use has been made shall lie on the proprietor.

Burden of proving use of trademark.

**124.** Civil actions under this Act shall be barred by the lapse of five years in all cases in which no other period within which such actions may be brought is fixed in this Act.

Limitations of civil actions.

## **PART VI - INTERNATIONAL MATTERS**

### **SECTION 1**

#### **The Paris Convention**

**125.** (1) In this Part –

The Paris Convention.

(a) "Convention country" means a country, other than Malta, which is a party to that Convention; and

(b) "the Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as

revised or amended from time to time.

(2) The Minister may make regulations to make provision, as appear to him appropriate in consequence of any revision or amendment of the Paris Convention after the passing of this Act to enable Malta to comply with any provisions of such amendment, and such regulations may in particular provide that any of the provisions of Part II of this Act shall no longer apply or shall apply with such amendments as may be required.

Protection of  
well-known  
trademarks:  
Article 6bis.

**126.** (1) References in this Act to a trademark which is entitled to protection under the Paris Convention as a well-known trademark are to a mark which is well-known in Malta as being the mark of a person who is a national of a Convention country, or is domiciled in, or has a real and effective industrial or commercial establishment in a Convention country, whether or not that person carries on business, or has any goodwill, in Malta, and reference to the proprietor of such a mark shall be construed accordingly.

(2) Subject to the provisions of article 11, the proprietor of a trademark which is entitled to protection under the Paris Convention as a well-known trademark is entitled to restrain by injunction the use in Malta of a trademark which, or the essential part of which, is identical or similar to his mark, in relation to identical or similar goods or services, where the use is likely to cause confusion.

Cap. 416.

(3) Nothing in sub-article (2) shall affect the continuation of any *bona fide* use of a trademark begun before the coming into force of the Trademarks Act.

National  
emblems, etc.,  
of Convention  
countries:  
Article 6ter.

**127.** (1) A trademark which consists of or contains the flag of a Convention country shall not be registered without the authorisation of the competent authorities of that country, unless it appears to the Comptroller that use of the flag in the manner proposed is permitted without such authorisation.

(2) A trademark which consists of or contains the armorial bearing or any other State emblem of a Convention country which is protected under the Paris Convention shall not be registered without the authorisation of the competent authorities of that country.

(3) A trademark which consists of or contains an official sign or hallmark indicating control and warranty adopted by a Convention country shall not, where the sign or hall mark is protected under the Paris Convention, be registered in relation to goods or services of the same, or a similar kind, as those in relation to which it indicates control and warranty, without the authorisation of the competent authorities of the country concerned.

(4) The provisions of this article relative to national flags and other State emblems, and official signs or hallmarks apply equally to anything which from a heraldic point of view imitates any such flag or other emblem, or sign or hallmark.

(5) Nothing in this article prevents the registration of a trademark on the application of a national of a country who is authorised to make use of a State emblem or official sign or hallmark, of that country, notwithstanding that it is similar to that of another country.

(6) Where by virtue of this article the authorisation of the competent authorities of a Convention country is or would be required for the registration of a trademark, those authorities are entitled to restrain any use of the mark in Malta without their authorisation.

**128.** (1) This article applies to the armorial bearing, flags or other emblems, and the names and their abbreviations, of international intergovernmental organisations of which one or more Convention countries are members.

Emblems, etc., of certain international organisations: Article 6ter.

(2) A trademark which consists of or contains any such emblem, abbreviation or name which is protected under the Paris Convention shall not be registered without the authorisation of the international organisation concerned, unless it appears to the Comptroller that the use of the emblem, abbreviation or name in the manner proposed -

(a) is not such as suggests to the public that a connection exists between the organisation and the trademark; or

(b) is not likely to mislead the public as to the existence of a connection between the user and the organisation.

(3) The provisions of this article relative to emblems of an international organisation apply equally to anything which from a heraldic point of view imitates any such emblem.

(4) Where by virtue of this article the authorisation of an international organisation is or would be required for the registration of a trademark, that organisation is entitled to restrain any use of the mark in Malta without its authorisation.

(5) Nothing in this article affects the right of a person whose *bona fide* use of the trademark in question began before 1st January 2000.

**129.** (1) For the purposes of article 127 State emblems of a Convention country (other than the national flag), and official signs or hallmarks, shall be regarded as protected under the Paris Convention only if, or to the extent that –

Notification under Article 6ter of the Convention.

(a) the country in question has notified Malta in accordance with Article *6ter* (3) of the Convention that it desires to protect that emblem, sign or hallmark;

(b) the notification remains in force; and

(c) Malta has not objected to it in accordance with Article *6ter* (4) or any such objection has been withdrawn.

(2) For the purposes of article 128 the emblems, abbreviations and names of an international organisation shall be regarded as protected under the Paris Convention only if, or to the extent that -

(a) the organisation in question has notified Malta in accordance with Article *6ter* (3) of the Convention that it desires to protect that emblem, abbreviation or name;

(b) the notification remains in force; and

(c) Malta has not objected to it in accordance with Article *6ter* (4) or any such objection has been withdrawn.

(3) Notification under Article *6ter* (3) of the Paris Convention shall have effect only in relation to applications for registration made more than two months after the receipt of the notification.

(4) The Comptroller shall keep and make available for public inspection by any person, as prescribed in the regulations, a list of the state emblems and official signs or hallmarks, and the emblems, abbreviations and names of international organisations, which are for the time being protected under the Paris Convention by virtue of notification under Article *6ter* (3).

Acts of agent or  
representative:  
Article *6septies*.

**130.** (1) The following provisions apply where an application for registration of a trademark is made by a person who is an agent or representative of a person who is the proprietor of the mark in a Convention country.

(2) The proprietor may by sworn application before the First Hall of the Civil Court -

(i) demand a declaration of invalidity of the registration; or

(ii) demand the rectification of the register so as to substitute his name as the proprietor of the registered trademark.

(3) The proprietor may restrain any use of the trademark in Malta which is not authorised by him.

(4) Sub-articles (2) and (3) shall not apply if, or to the extent that, the agent or representative shows that his actions were authorised by the proprietor.

(5) An application under sub-article (2) must be made within three years of the proprietor becoming aware of the registration; and no injunction shall be granted under sub-article (3) in respect of a use in which the proprietor has acquiesced for a continuous period of three years or more.

## SECTION 2

### The Madrid System for the International Registration of Trademarks

131. In this Part –

The Madrid  
Protocol.

"basic application" means an application for registration of a mark, filed with the Comptroller under this Act, and which is used as a basis for the filing of an international application under the Madrid Protocol;

"basic registration" means a mark registered by the Comptroller under this Act, and which is used as the basis for the filing of an international application under the Madrid Protocol;

"Common Regulations" means the Common Regulations under the Madrid Agreement and Madrid Protocol;

"international application" means an application to obtain registration of a mark under the Madrid Protocol;

"the International Bureau" means the International Bureau of the World Intellectual Property Organisation;

"international trademark (Malta)" means a trademark which is entitled to protection in Malta under that Protocol;

"International Register" means the official collection of data concerning international registrations of marks maintained by the International Bureau;

"Madrid agreement" means the Madrid Agreement concerning the international Registration of Marks of April 14, 1891;

"the Madrid Protocol" means the Protocol relating to the Madrid

A 502

Agreement concerning the International Registration of Marks adopted at Madrid on 27 June, 1989.

Power to make provision giving effect to Madrid Protocol.

**132.** (1) The Minister may by Order make such provisions as may be necessary for giving effect in Malta to the provisions of the Madrid Protocol or any other regional or international registration systems concerning trademarks and without prejudice to the generality of the foregoing.

(2) The Order may, in particular, be made with respect to -

(a) the making of applications for international registrations by way of the Industrial Property Office as the Office of origin;

(b) the procedures to be followed where the basic Malta application or registration fails or ceases to be in force;

(c) the procedures to be followed where the Industrial Property Office receives from the International Bureau a request for extension of protection to Malta;

(d) the effects of a successful request for extension of protection to Malta;

(e) the transformation of an application for an international registration or an international registration into a national application for registration;

(f) the communication of information to the International Bureau;

(g) the payment of fees and amounts prescribed in respect of applications for international registrations, extensions of protection and renewals.

Infringements; criminal provisions

(3) Without prejudice to the generality of sub-article (1), provision may be made by regulations under this article applying in relation to "an international trademark (Malta)" the provisions of article 25 and of articles 108 to 122.

## PART VIII - TRANSITORY PROVISIONS

Interpretation.

**133.** (1) In this Part -

"existing registered mark" means a trademark, registered under the Ordinance and under the Trademarks Act immediately before the commencement of this Act; Cap. 416.

"former register" means the register kept under the Trademarks Act; Cap. 416.

"new register" means the register kept under this Act.

(2) For the purposes of this Part -

(a) an application shall be treated as pending on the commencement of this Act if it was made but not finally determined before commencement; and

(b) the date on which it was made shall be taken to be the date of filing under the Trademarks Act.

Cap. 416.

**134.** (1) Existing registered marks shall, on the commencement of this Act, be transferred to the new register and subject to the provisions of this Part, shall have effect as if they were registered under this Act. Existing registered marks.

(2) Existing registered marks registered as a series under article 91(2) and (3) of the Ordinance and which are still valid before the coming into force of this Act, shall be similarly registered in the new register.

**135.** (1) Proceedings which are pending on the commencement of this Act shall be dealt with under the legislation under which they were instituted and any necessary alteration pursuant to such proceedings shall be made to the new register. Proceedings under the old law.

(2) A disclaimer or limitation entered on the former register in relation to an existing registered mark immediately before the commencement of this Act shall be transferred to the new register and have effect as if entered on the register in pursuance of article 18.

**136.** (1) Upon the coming into force of this Act, articles 12 to 17 shall apply in relation to an existing registered mark and subject to sub-article (2) hereof, article 19 shall apply in relation to any infringement of an existing registered mark committed after the commencement of this Act. Effects of registration infringement.

(2) After the coming into force of this Act, it shall not be an infringement of an existing registered mark to continue with any use which did not amount to infringement of the existing registered trademark under the Ordinance and under the Trademarks Act. Cap. 416.

A 504

Infringing goods, material or articles.

**137.** Article 21 shall apply to infringing goods, material or articles whether made before or after the commencement of this Act.

Rights and remedies of licensee or authorised user.

**138.** Article 41 shall also apply to licences granted and to infringements committed before the commencement of this Act.

Applicability of article 34 regarding assignment. Cap. 416.

**139.** The obligations under article 34 shall apply to transactions and events occurring after the commencement of the Trademarks Act in relation to an existing registered trademark and the Ordinance shall continue to apply in relation to transactions and events which occurred before the commencement of said Act.

Applicability of articles 39 and 40 (2) regarding licensing. Cap. 416

**140.** Articles 39 and 40(2) shall apply only in relation to licences granted after the commencement of the Trademarks Act.

Pending applications for registration. Cap. 416

**141.** (1) An application for registration of a mark under the Trademarks Act which is pending on the commencement of this Act shall be dealt with under the Trademarks Act subject to the other provisions of this article, and, when registered, the mark shall be treated for the purposes of this Part as an existing registered mark.

(2) The power of the Minister under article 101 to make rules regulating practice and procedure, and in relation to the matters mentioned in sub-article (2) of that article, is exercisable in relation to such an application; and different provision may be made for such applications from that made for other applications.

Conversion of pending application.

**142.** (1) In the case of a pending application for registration for which the applicant or his representative has not received any communication from the Office relating to the registrability of the application before the commencement of this Act, the applicant may give notice to the Comptroller claiming to have the registrability of the mark determined in accordance with the provisions of this Act.

(2) The notice must be in the prescribed form, be accompanied by the appropriate fee and be given no later than six months after the commencement of this Act.

(3) Notice duly given shall be irrevocable and shall have the effect that the application shall be treated as if made immediately after the commencement of this Act.

Repeal and Savings. Cap. 416.

**143.** (1) The Trademarks Act, hereinafter referred to as "the repealed Act", is hereby repealed, and any references in any law to the repealed Act shall be construed as references to this Act.

(2) Notwithstanding the provisions of sub-article (1):

(a) the repealed Act shall remain in force for the purpose of any act, decision, action or proceedings taken in respect of any breach of the repealed Act that occurred or were instituted prior to the coming into force of this Act; and

(b) any subsidiary legislation made under the provisions of the repealed Act shall, until other provision is made under or by virtue of this Act, continue in force and have effect as if it was made under this Act.

---

Passed by the House of Representatives at Sitting No. 215 of the 3rd April, 2019.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*

