

Reference Material in Legislation

In the Bills Committee meeting held on 16th September 2009, the Committee requested the Administration to provide examples of existing legislation that contain material which is intended for ease of reference only.

2. The reference material referred to in the following extracts of provisions can be found in the *Annex* to this paper.

<p>Industrial Training (Clothing Industry) Ordinance (Cap. 318), section 1(b) of Schedule 1</p>	<p>“1. In this Schedule— ... (b) the descriptions of items of apparel set out in column 3 of the Table below are <i>for ease of reference only</i>.”</p>
<p>Technical Memorandum Standards for Effluents Discharged into Drainage and Sewerage Systems, Inland and Coastal Waters (Cap. 358 sub. leg. AK), Part I, paragraph 2.8</p>	<p>“2.8 At present, the Government Chemist is the only analyst designated by the Ordinance. He alone certifies the quality of an effluent sample in a prosecution. The effluent standards refer to his analytical methods, which appear <i>for reference only</i> in Annex I.”</p>
<p>Trade Marks Ordinance (Cap. 559), section 1(5) of Schedule 5</p>	<p>“(5) <i>For ease of reference</i>, provisions of the repealed Ordinance referred to in this Schedule, and other relevant provisions of the repealed Ordinance, are set out in the Annex to this Schedule.”</p>

Department of Justice
October, 2009

Annex

Chapter:	318	Title:	INDUSTRIAL TRAINING (CLOTHING INDUSTRY) ORDINANCE	Gazette Number:	L.N. 118 of 2009
Schedule:	1	Heading:	CLOTHING ITEMS	Version Date:	09/07/2009

[sections 2 & 36(1)]

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TABLE

Category no.	Chapter/heading/ subheading/item no.	Description
1.	Subheading 3926 20	Articles of apparel and clothing accessories (including gloves, mittens and mitts) of plastics and of other materials of headings 3901 to 3914
2.	Subheading 4015 90	Articles of apparel and clothing accessories (excluding gloves, mittens and mitts) of vulcanised rubber other than hard rubber
3.	Heading 4203	Articles of apparel and clothing accessories of leather or of composition leather
4.	Heading 4303	Articles of apparel, clothing accessories and other articles of furskin
5.	Heading 4304	Artificial fur and articles of artificial fur
6.	Chapter 61	Articles of apparel and clothing accessories, knitted or crocheted
7.	Chapter 62	Articles of apparel and clothing accessories, not knitted or crocheted
8.	Chapter 64 <i>except</i> items 6406 1000 and 6406 2000	Footwear, gaiters and the like; parts of such articles, <i>except</i> uppers and parts of uppers, other than stiffeners and outer soles and heels, of rubber or plastics

- | | | |
|-----|--|--|
| 9. | Heading 6504 | Hats and other headgear, plaited or made by assembling strips of any material, whether or not lined or trimmed |
| 10. | Heading 6505 | Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed |
| 11. | Heading 6506 <i>except</i>
subheading 6506 10 | Other headgear, whether or not lined or trimmed, <i>except</i>
safety headgear |
| 12. | Heading 6507 | Head-bands, linings, covers, hat foundations, hat frames, peaks and chinstraps, for headgear |
| 13. | Item 9113 9020 | Watch straps, watch bands and watch bracelets, and parts of them, of textile materials

(Replaced L.N. 118 of 2009) |

Chapter:	358AK	Title:	TECHNICAL MEMORANDUM STANDARDS FOR EFFLUENTS DISCHARGED INTO DRAINAGE AND SEWERAGE SYSTEMS, INLAND AND COASTAL WATERS	Gazette Number:	32 of 2000
Annex:	1	Heading:	REFERENCE TO ANALYTICAL METHODS	Version Date:	09/06/2000

Annex 1

This table lists the methods used by the Government Chemist.

Parameter	Reference
pH	APHA 17ed 4500-H+B
Temperature	Note (a)
Colour	Lovibond Tintometer, 25mm cell
Conductivity	BS 2690: Part 9: 1970: Method 6
Total Suspended Solids	APHA 17ed 2540 D
Settleable Solid	APHA 17ed 2540 F
Dissolved Oxygen	APHA 17ed 4500-O G
Biochemical Oxygen Demand (BOD)	BS 6068: Section 2.14: 1984
Chemical Oxygen Demand (COD)	ASTM D 1252-88 Test Method B or APHA 17ed 5220 C & D
Oil & Grease	APHA 17ed 5520 C
Metals	
Pretreatment for total metals	Sample Digestion APHA 17ed 3030 A and 3030 F.3b

Antimony	}	
Beryllium	}	
Barium	}	
Cadmium	}	
Chromium	}	
Copper	}	
Iron	}	APHA 17ed 3111, 3113 and 3120 as
Lead	}	appropriate
Manganese	}	
Nickel	}	
Silver	}	
Thallium	}	
Vanadium	}	
Zinc	}	
Arsenic	}	APHA 17ed 3113 and 3114
Selenium	}	as appropriate
Mercury	}	APHA 17ed 3112
Boron	}	APHA 17ed 3120
Cyanide	}	ASTM D 2036-89 or
Sulphide	}	APHA 17ed 4500-CN
total	}	
free	}	APHA 17ed 4500-S ²⁻
H ₂ S	}	
Phenols	}	APHA 17ed 5530
Surfactants (total)	}	
(total means anionic and non-ionic)	}	
Anionic	}	BS 6068: Section 2.23: 1986 or
Non-ionic	}	APHA 17ed 5540 C
Total residual chlorine	}	BS 6068: Section 2.24: 1986
Total Phosphorus (TP)	}	APHA 17ed 4500-Cl G
Total Reactive Phosphorus	}	ASTM D 515-88
Sulphate	}	APHA 17ed 4500-P
Chloride	}	APHA 17ed 4500-SO ₄ ²⁻
Fluoride	}	APHA 17ed 4500-Cl ⁻
Nitrogen-Ammonia	}	APHA 17ed 4500-(F) ⁻ -C
Nitrogen-Nitrate	}	APHA 17ed 4500-NH ₃
Nitrogen-Nitrite	}	APHA 17ed 4500-NO ₃ ⁻
Total Kjeldahl Nitrogen (TKN)	}	APHA 17ed 4500-NO ₂ ⁻
E. coli	}	ASTM D 3590-89
	}	Notes (b), (c)

Reference Notes:

ASTM -Annual Book of American Society for Testing and Materials Standards, Vol 11.01 & 11.02.

BS -British Standards Institution.

APHA 17ed -American Public Health Association. Standard Methods 17th Edition (1989).

- (a) Temperature sensor should be calibrated against a mercury thermometer of 0.1 °C scale.
- (b) DoE(1983): The Bacteriological Examination of Drinking Water Supplies 1982, Sec. 7.8 & 7.9.
- (c) Membrane lauryl sulphate method with in situ urease test for E. coli: Reports on Public Health and Medical Subjects No. 71. Methods for the Examination of Waters and Associated Materials. London: Her Majesty's Stationery Office 1983.

(Enacted 1990)

Chapter:	559	Title:	TRADE MARKS ORDINANCE	Gazette Number:	L.N. 31 of 2003
Schedule:	5	Heading:	TRANSITIONAL MATTERS	Version Date:	04/04/2003

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ANNEX

[section 1(5) of Schedule 5]

PROVISIONS OF THE REPEALED TRADE MARKS ORDINANCE (CAP 43)
REFERRED TO IN SCHEDULE 5 (TRANSITIONAL MATTERS) AND
OTHER RELEVANT PROVISIONS OF THE REPEALED ORDINANCE
(AS IN OPERATION IMMEDIATELY BEFORE ITS REPEAL
BY SECTION 99 OF THIS ORDINANCE)

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires-

...

"mark" (標記) means any sign that is visually perceptible and capable of being represented graphically and may, in particular, consist of words, personal names, letters, numerals, figurative elements or combination of colours, and includes any combination of such signs;

...

"trade mark" (商標) means (except in the expressions "trade mark relating to goods", "trade mark relating to services", "defensive trade mark" and "certification trade mark") a trade mark relating to goods or a trade mark relating to services;

"trade mark relating to goods" (貨品商標) means a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person;

"trade mark relating to services" (服務商標) means a mark used or proposed to be used in relation to services for the purpose of indicating, or so as to indicate, that a particular person is connected, in the course of business, with the provision of those services, whether with or without any indication of the identity of that person;

...

(2) References in this Ordinance to-

- (a) the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark;
- (b) the use of a mark in relation to goods shall be construed as references to the use of the mark upon, or in physical or other relation to, goods; and
- (c) the use of a mark in relation to services shall be construed as references to the use of the mark as or as part of any statement about the availability or performance of services or otherwise in relation to services.

(3) For the purposes of this Ordinance, goods and services are associated with each other if it is likely that those goods might be sold or otherwise traded in and those services might be provided by the same business, and a description of goods and a description of services are associated with each other if it is likely that the description of goods might be sold or otherwise traded in and the description of services might be provided by the same

business.

(4) References in this Ordinance to a near resemblance of marks are references to a resemblance so near as to be likely to deceive or cause confusion.

(5) For the purposes of this Ordinance, a person who provides services that are ancillary to a trade or business of that person may be regarded as being connected, in the course of business, with the provision of those services.

9. Trade marks registrable in Part A

(1) A trade mark (other than a certification trade mark) to be registrable in Part A of the register shall contain or consist of at least one of the following essential particulars-

- (a) the name of a company, individual, or firm, represented in a special or particular manner;
- (b) the signature (in other than Chinese characters) of the applicant for registration or of some predecessor in his business;
- (c) an invented word or invented words;
- (d) a word or words having no direct reference to the character or quality of the goods or services, as the case may be, and not being according to its ordinary signification a geographical name or a surname;
- (e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in paragraphs (a), (b), (c) and (d), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness.

(2) For the purposes of this section, "distinctive" (顯著) means-

- (a) in the case of a trade mark relating to goods, adapted in relation to the goods in respect of which the trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected, in the course of trade, from goods in the case of which no such connection subsists; or
- (b) in the case of a trade mark relating to services, adapted in relation to the services in respect of which the trade mark is registered or proposed to be registered, to distinguish services with the provision of which the proprietor is or may be connected, in the course of business, from services with the provision of which he is not so connected,

either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid the tribunal may have regard to the extent to which-

- (a) the trade mark is inherently adapted to distinguish as aforesaid; and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish as aforesaid.

10. Trade marks registrable in Part B

(1) A trade mark relating to goods to be registrable in Part B of the register must be capable, in relation to the goods in respect of which it is registered or proposed to be registered, of distinguishing goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connexion subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to the use within the extent of the registration.

(1A) A trade mark relating to services to be registrable in Part B of the register must be capable, in relation to the services in respect of which it is registered or proposed to be registered, of distinguishing services with the provision of which the proprietor of the mark is or may be connected in the course of business from services with the provision of which he is

not so connected either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(2) In determining whether a trade mark is capable of distinguishing as aforesaid the tribunal may have regard to the extent to which-

- (a) the trade mark is inherently capable of distinguishing as aforesaid; and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact capable of distinguishing as aforesaid.

(3) A trade mark may be registered in Part B notwithstanding any registration in Part A in the name of the same proprietor of the same trade mark or any part or parts thereof.

14. Advertisement of application

When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall require the applicant to advertise it, as accepted, in the prescribed manner. The advertisement shall set forth all conditions and limitations subject to which the application has been accepted:

Provided that the Registrar may require an application for registration of a trade mark to be advertised by the applicant before acceptance-

- (a) if it be made under section 9(1)(e); or
- (b) in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do,

and where an application has been so advertised the Registrar may, if he thinks fit, require the applicant to advertise it again when it has been accepted but shall not be bound so to do.

15. Opposition to registration

(1) Any person may, within the prescribed time from the date of the advertisement of an application, give notice to the Registrar of opposition to the registration.

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

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

(4) If the applicant sends such a counter-statement, the Registrar shall furnish a copy thereof to the person giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court.

(6) An appeal under this section shall be made in the prescribed manner, and on the appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(7) On the hearing of an appeal under this section any party may, either in the prescribed manner or by special leave of the Court, bring forward further material for the consideration of the Court.

(8) On an appeal under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinbefore provided, except by leave of the Court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) On an appeal under this section the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity thereof, but in any such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of the notice, or an appellant, neither resides nor carries on business in Hong Kong, the tribunal may require him to give security for costs of the proceedings before it relative to the opposition or to the appeal, as the case may be, and in default of such security being duly given may treat the opposition or application, or the appeal, as the case may be, as abandoned.

16. Registration subject to disclaimer

(1) If a trade mark contains any part not separately registered by the proprietor as a trade mark or if-

- (a) in the case of a trade mark relating to goods it contains matter common to the trade or otherwise of a non-distinctive character; or
- (b) in the case of a trade mark relating to services it contains matter common to the provision of services of that description or otherwise of a non-distinctive character,

the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain on the register, may require, as a condition of its being on the register-

- (i) that the proprietor shall disclaim any right to the exclusive use of any part of the trade mark, or of all or any portion of any such matter, to the exclusive use of which the tribunal holds him not to be entitled; or
- (ii) that he shall make such other disclaimer as the tribunal may consider necessary for the purpose of defining his rights under such registration.

(2) No disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

19. Jointly owned trade marks relating to goods

Where the relations between 2 or more persons interested in a trade mark relating to goods are such that no one of them is entitled as between himself and the other or others of them to use it except-

- (a) on behalf of both or all of them; or
- (b) in relation to an article with which both or all of them are connected in the course of trade,

those persons may be registered as joint proprietors of the trade mark, and this Ordinance shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

19A. Jointly owned trade marks relating to services

Where the relations between 2 or more persons interested in a trade mark relating to services are such that no one of them is entitled as between himself and the other or others of them to use it except-

- (a) on behalf of both or all of them; or
- (b) in relation to services with the provision of which both or all of them are connected in the course of business,

those persons may be registered as joint proprietors of the trade mark, and this Ordinance shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

22. Concurrent use

In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or of the Registrar make it proper to do so, the Court or the Registrar may permit

the registration by more than one proprietor, in respect of-

- (a) the same goods or services;
- (b) the same description of goods or services; or
- (c) goods and services or descriptions of goods and services which are associated with each other,

of trade marks that are identical or nearly resemble each other, subject to such conditions and limitations, if any, as the Court or the Registrar, as the case may be, may think it right to impose.

24. Associated trade marks

(1) Where a trade mark relating to goods that is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark that is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of-

- (a) the same goods or description of goods; or
- (b) services that are associated with those goods or goods of that description,

or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

(1A) Where a trade mark relating to services that is registered, or is the subject of an application for registration, in respect of any services is identical with another trade mark that is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of-

- (a) the same services or description of services; or
- (b) goods that are associated with those services or services of that description,

or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

(2) On application made in the prescribed manner by the registered proprietor of 2 or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by another person in relation to any of the goods or services in respect of which it is registered, and he may amend the register accordingly.

(3) Any decision of the Registrar under the provisions of subsections (1), (1A) and (2) shall be subject to appeal to the Court.

25. Combined trade marks

(1) If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately, he may apply to register the whole and any such part as separate trade marks. Each such separate trade mark must satisfy all the conditions of an independent trade mark and shall, subject to the provisions of subsection (2) hereof and section 38(2), have all the incidents of an independent trade mark.

(2) Where a trade mark and any part or parts thereof are thus registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

26. Series of trade marks

(1) Where a person claiming to be the proprietor of several trade marks, in respect of the same goods or services or the same description of goods or services, seeks to register those trade marks and the trade marks, while resembling each other in the material particulars thereof, differ in respect of-

- (a) statements of the goods or services in relation to which they are respectively used or proposed to be used; or
- (b) statements of number, price, quality or names of places; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
- (d) colour,

the trade marks may be registered as a series in one registration.

(2) All trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

37. Removal from register and imposition of limitations on ground of non-use

(1) Subject to the provisions of sections 55(1), 55A(1) and 57(1), a registered trade mark may be taken off the register in respect of any of the goods or services in respect of which it is registered on application by any person aggrieved to the Court, or, at the option of the applicant and subject to the provisions of section 80, to the Registrar, on the ground either-

- (a) that the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods or services by him or, if it was registered under section 18(1), by the corporation or registered user concerned, and that there has in fact been no bona fide use of the trade mark in relation to those goods or services by any proprietor thereof for the time being up to the date one month before the date of the application; or
- (b) that up to the date one month before the date of the application a continuous period of 5 years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods or services by any proprietor thereof for the time being.

(1A) Subject to subsection (1C), the tribunal may refuse an application made under subsection (1)(a) or (b) in relation to any goods if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, bona fide use of the trade mark by the proprietor thereof for the time being in relation to-

- (a) goods of the same description; or
- (b) services associated with those goods or goods of that description,

being goods or, as the case may be, services in respect of which the trade mark is registered.

(1B) Subject to subsection (1C), the tribunal may refuse an application made under subsection (1)(a) or (b) in relation to any services if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, bona fide use of the trade mark by the proprietor thereof for the time being in relation to-

- (a) services of the same description; or
- (b) goods associated with those services or services of that description,

being services or, as the case may be, goods in respect of which the trade mark is registered.

(1C) Subsections (1A) and (1B) do not apply where the applicant has been permitted under section 22 to register an identical or nearly resembling trade mark in respect of the goods or services in question or where the tribunal is of the opinion that he might properly be permitted so to register such a trade mark.

(2) Where in relation to any goods in respect of which a trade mark is registered-

- (a) the matters referred to in subsection (1)(b) are shown so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in Hong Kong (otherwise than for export from Hong Kong), or in relation to goods to be exported to a particular market outside Hong Kong; and
- (b) a person has been permitted under section 22 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be sold, or otherwise traded in, in Hong Kong

(otherwise than for export from Hong Kong), or in relation to goods to be exported to that market, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark,
on application by that person to the Court or, at the option of the applicant and subject to the provisions of section 80, to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as the tribunal thinks proper for securing that that registration shall cease to extend to such use as last aforesaid.

(2A) Where in relation to any services in respect of which a trade mark is registered-

- (a) the matters referred to in subsection (1)(b) are shown so far as regards non-use of the trade mark in relation to services for use or available for acceptance in Hong Kong, or for use in a country, territory or place outside Hong Kong; and
- (b) a person has been permitted under section 22 to register an identical or nearly resembling trade mark in respect of those services under a registration extending to use in relation to services for use or available for acceptance in Hong Kong or for use in that country, territory or place, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark,

on application by that person to the Court or, at the option of the applicant and subject to section 80, to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as the tribunal thinks proper for securing that the registration shall cease to extend to such use as last aforesaid.

(3) An applicant shall not be entitled to rely for the purposes of subsection (1)(b), (2) or (2A) on any non-use of a trade mark-

- (a) in relation to particular goods that is shown to have been due to special circumstances in the trade; or
- (b) in relation to particular services that is shown to have been due to special circumstances affecting the provision of those services,

and not to any intention not to use or to abandon the trade mark in relation to the goods or services to which the application relates.

43. Registration of assignments and transmissions

(1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods or services in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

(2) Any decision of the Registrar under this section shall be subject to appeal to the Court.

(3) Except for the purposes of an appeal under this section or of an application under section 48, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of subsection (1) shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs.

48. General power to rectify entries in register

(1) Subject to the provisions of this Ordinance-

- (a) any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Court or, at the option of the applicant and subject to the provisions of section 80, to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as the tribunal may think fit;
- (b) the tribunal may in any proceeding under this section decide any question that

it may be necessary or expedient to decide in connexion with the rectification of the register;

(c) in case of fraud in the registration, assignment or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section;

(d) any order of the Court rectifying the register shall direct that notice of the rectification shall be served in the prescribed manner on the Registrar, and the Registrar shall on receipt of the notice rectify the register accordingly.

(2) The power to rectify the register conferred by this section shall include power to remove a registration in Part A of the register to Part B.

49. Power to expunge or vary registration for breach of condition

On application by any person aggrieved to the Court, or, at the option of the applicant and subject to the provisions of section 80, to the Registrar, or on application by the Registrar to the Court, the tribunal may make such order as the tribunal may think fit for expunging or varying the registration of a trade mark on the ground of any contravention of, or failure to observe, a condition entered on the register in relation thereto.

50. Correction of register

(1) The Registrar may, on request made in the prescribed manner by the registered proprietor-

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

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

(c) cancel the entry of a trade mark on the register; or

(d) strike out any goods or services or classes of goods or services from those in respect of which a trade mark is registered; or

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

(2) The Registrar may, on request made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change, in the name and address of the registered user.

(3) Any decision of the Registrar under this section shall be subject to appeal to the Court.

51. Alteration of registered trade mark

(1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse such leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Any decision of the Registrar under this section shall be subject to appeal to the Court.

(4) Where leave as aforesaid is granted, the trade mark as altered shall be advertised in the prescribed manner, unless it has already been advertised, in the form to which it has been altered, in an advertisement under subsection (2).

56. Defensive trade marks to be registered as associated trade marks

A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods or services, be deemed to be, and shall be registered as, associated trade marks.

**58. Registration as a registered user.
Meaning of "permitted use"**

- (1) (a) Subject to the provisions of this section and sections 59 to 63, a person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods or services in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.
- (b) The use of a trade mark by a registered user of the trade mark in relation to-
 - (i) goods with which he is connected in the course of trade; or
 - (ii) services with the provision of which he is connected in the course of business,and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject, is in this Ordinance referred to as the "permitted use" of the trade mark.
- (2) (a) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for the purposes of section 37 and for any other purpose for which such use is material under this Ordinance or at common law.
- (b) Where a person is registered as a registered user of a trade mark relating to goods on an application made within one year from the commencement of this Ordinance, this subsection shall have effect in relation to any previous use (whether before or after the commencement of this Ordinance) of the trade mark by that person, being use in relation to the goods in respect of which he is registered and, where he is registered subject to conditions or restrictions, being use such as to comply substantially therewith, as if such previous use had been permitted use.
- (3) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner, and must furnish him with a statutory declaration made by the proprietor, or by some person authorized to act on his behalf and approved by the Registrar-
 - (a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;
 - (b) stating the goods or services in respect of which registration is proposed;
 - (c) stating any conditions or restrictions proposed with respect to the characteristics of the goods or services, to the mode or place of permitted use, or to any other matter; and
 - (d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof,

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

(4) When the requirements of subsection (3) have been complied with, if the Registrar, after considering the information furnished to him under that subsection, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or services or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar thinks proper would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods or services as to which he is so satisfied subject as aforesaid.

(5) The Registrar shall refuse an application under the provisions of subsections (1) to (3) if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(6) The Registrar shall, if so required by an applicant, take steps for securing that information given for the purposes of an application under the provisions of subsections (1) to (3) (other than matter entered in the register) is not disclosed-

- (a) in the case of an application for registration in respect of goods, to rivals in the trade; or
- (b) in the case of an application for registration in respect of services, to rivals in the business.

59. Proceedings for infringement

(1) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and, if the proprietor refuses or neglects to do so within 2 months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

(2) A proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

60. Variation or cancellation of registration as a registered user

(1) Without prejudice to the provisions of section 48, the registration of a person as a registered user-

- (a) may be varied by the Registrar as regards the goods or services in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;
- (b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark; or
- (c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say-
 - (i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion;
 - (ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration; or
 - (iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(2) The Registrar may at any time cancel the registration of a person as a registered user of a trade mark in respect of any goods or services in respect of which the trade mark is no longer registered.

62. Registrar's decision subject to appeal to Court

Any decision of the Registrar under sections 58 and 60 shall be subject to appeal to the Court.

63. Right to use not assignable or transmissible

Nothing in sections 58, 59 and 60 shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

64. Marks registrable as certification trade marks

(1) A mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified shall be registrable as a certification trade mark in Part A of the register in respect of those goods in the name, as proprietor thereof, of that person:

Provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified.

(1A) A mark adapted in relation to any services to distinguish in the course of business services certified by any person in respect of quality, accuracy or other characteristic, from services not so certified, shall be registrable as a certification trade mark in Part A of the register in respect of those services in the name, as proprietor of the certification trade mark, of that person:

Provided that a mark shall not be so registrable in the name of a person who is connected in the course of business with the provision of services of the kind certified.

(2) In determining whether a mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which-

- (a) the mark is inherently adapted to distinguish as aforesaid in relation to the goods or services in question; and
- (b) by reason of the use of the mark or of any other circumstances, the mark is in fact adapted to distinguish as aforesaid in relation to the goods or services in question.

(3) The fact that a mark consists of signs or indications which may serve, in trade, to designate the geographical origin of goods or services shall not preclude it from being registered as a certification trade mark in Part A of the register in respect of those goods or services.

(4) Nothing in this Ordinance shall entitle the proprietor of a certification trade mark that consists of signs or indications described in subsection (3) to interfere with or restrain the use by any person of any signs or indications the use of which is in accordance with honest practices in industrial or commercial matters (in particular, by a person who is entitled to use a geographical name).

65. Application for registration as certification trade mark

(1) An application for the registration of a mark under section 64 shall be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof.

(2) The provisions of section 13(2) and of section 13(4) to (7) shall have effect in relation to an application under this section as they have effect in relation to an application

under section 13(1).

(3) In dealing under the said provisions with an application under this section the tribunal shall have regard to the like considerations, so far as relevant, as if the application were an application under section 13 and to any other considerations relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is such a trade mark.

(4) An applicant for the registration of a mark under this section shall transmit to the Registrar draft regulations for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods or services and to authorize the use of the trade mark, and may contain any other provisions that the Registrar may require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or services or to authorize the use of the trade mark in accordance with the regulations). The regulations, if approved, shall be deposited with the Registrar and shall be open to inspection in like manner as the register.

(5) The Registrar shall consider the application with regard to the following matters-

- (a) whether the applicant is competent to certify the goods or services in respect of which the mark is to be registered;
- (b) whether the draft regulations are satisfactory; and
- (c) whether in all the circumstances the registration applied for would be to the public advantage;

and may either-

- (i) refuse to accept the application; or
- (ii) accept the application, and approve the regulations, either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modifications of the application or of the regulations, which he may think requisite having regard to any of the matters aforesaid;

but, except in the case of acceptance and approval without modification and unconditionally, the Registrar shall not decide the matter without giving to the applicant an opportunity of being heard:

Provided that the Registrar may, at the request of the applicant, consider the application with regard to any of the matters aforesaid before the application has been accepted, so however that the Registrar shall be at liberty to reconsider any matter on which he has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft regulations.

(6) Any decision of the Registrar under this section shall be subject to appeal to the Court.

75. Certificate of validity

In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of the trade mark, the Court may certify to that effect, and if it so certifies then in any subsequent legal proceeding in which the validity of the registration comes into question the proprietor of the trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses as between solicitor and client, unless in the subsequent proceeding the Court certifies that he ought not to have them.

76. Trade usage, etc., to be considered

(1) In any action or proceeding relating to a trade mark relating to goods or trade name the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark relating to goods or trade name or get-up legitimately used by other persons.

(2) In any action relating to a trade mark relating to services or business name, the tribunal shall admit evidence of business usages in the provision of services in question and of any relevant trade mark relating to services or business name or get-up legitimately used by

other persons.

92. Transitional provisions relating to the Intellectual Property (World Trade Organization Amendments) Ordinance 1996

(1) In this section-

"existing registered trade mark" (現行註冊商標) means a trade mark, certification trade mark or defensive trade mark that is registered under this Ordinance before the commencement of the new law;

"new law" (新法律) means sections 18 to 25 of the Intellectual Property (World Trade Organization Amendments) Ordinance 1996 (11 of 1996);

"old law" (舊法律) means this Ordinance and any other enactment or rule of law applying to existing registered trade marks immediately before the commencement of the new law.

(2) An application for the registration of a trade mark (including certification trade marks and defensive trade marks), as defined in this Ordinance before the commencement of the new law, shall be treated as pending on the commencement of the new law if the application had been made but had not been finally determined before that commencement.

(3) Sections 27(1), 27A(1), 67(1) and 67A(1), as amended by the new law, shall apply in relation to an existing registered trade mark as from the commencement of the new law but only in so far as those sections relate to an infringement of an existing registered trade mark that is committed on or after the commencement of the new law; and the old law shall continue to apply in relation to an infringement that is committed before the commencement of the new law.

(4) Despite subsection (3), it is not an infringement of-

- (a) an existing registered trade mark; or
- (b) a registered trade mark of which the distinctive elements are the same or substantially the same as those of an existing registered trade mark and which is registered for the same goods or services,

to continue on or after the commencement of the new law any use that did not, under the old law, constitute an infringement of the existing registered trade mark.

(5) Subject to subsection (6), an application for the registration of a trade mark that is pending on the commencement of the new law shall be dealt with under the old law but, if the trade mark is registered, it shall be treated for the purposes of subsections (1) to (4) as an existing registered trade mark.

(6) If an application for the registration of a trade mark that is pending on the commencement of the new law has not been advertised under section 14 before its commencement, the applicant may give notice to the Registrar electing to have the registrability of the mark determined in accordance with this Ordinance, as amended by the new law.

(7) A notice under subsection (6) must be in the prescribed form, be accompanied by the appropriate fee and be given to the Registrar not later than 6 months after the commencement of the new law.

(8) A notice given under subsection (6) is irrevocable and has the effect that the application shall be treated as if it had been made after the commencement of the new law.

(9) An application made under section 48 that is pending on the commencement of the new law shall be dealt with in accordance with the old law.