

《商標條例》
(第 559 章)

目錄

條次		頁次
	第 I 部	
	導言	
1.	簡稱	1-1
2.	釋義	1-1
3.	“商標”的涵義	1-11
4.	“馳名商標”的涵義	1-11
5.	“在先商標”的涵義	1-13
6.	對商標或標誌的使用的提述	1-15
7.	對相當可能會產生混淆的使用的提述	1-15
8.	“註冊紀錄冊”及“註冊”的涵義	1-15
9.	條例對政府具約束力	1-17
	第 II 部	
	註冊商標	
10.	註冊商標屬財產權利	2-1
11.	拒絕註冊的絕對理由	2-1
12.	拒絕註冊的相對理由	2-5
13.	誠實的同時使用的情況等	2-9

TRADE MARKS ORDINANCE
(Cap. 559)

Contents

Section		Page
	PART I	
	PRELIMINARY	
1.	Short title	1-2
2.	Interpretation	1-2
3.	Meaning of “trade mark”	1-12
4.	Meaning of “well-known trade mark”	1-12
5.	Meaning of “earlier trade mark”	1-14
6.	References to use of trade mark or sign	1-16
7.	References to use likely to cause confusion	1-16
8.	Meaning of “the register” and “registration”	1-16
9.	Ordinance binds Government	1-18
	PART II	
	REGISTERED TRADE MARKS	
10.	Registered trade mark a property right	2-2
11.	Absolute grounds for refusal of registration	2-2
12.	Relative grounds for refusal of registration	2-6
13.	Honest concurrent use, etc.	2-10

條次	頁次	Section	Page		
14.	註冊商標所賦予的權利	14.	Rights conferred by registered trade mark	2-11	2-12
15.	卸棄、限制及條件	15.	Disclaimers, limitations and conditions	2-11	2-12
第 III 部 註冊商標的侵犯		PART III INFRINGEMENT OF REGISTERED TRADE MARKS			
16.	對侵犯的提述	16.	References to infringement	3-1	3-2
17.	對侵犯性貨品、侵犯性物料或侵犯性物品的提述	17.	References to infringing goods, material or articles	3-1	3-2
18.	註冊商標的侵犯	18.	Infringement of registered trade mark	3-3	3-4
19.	不屬侵犯註冊商標的例外情況	19.	Exceptions to infringement	3-7	3-8
20.	用盡註冊商標所賦予的權利	20.	Exhaustion of rights conferred by registered trade mark	3-9	3-10
21.	在廣告宣傳中使用等	21.	Use in advertising, etc.	3-11	3-12
22.	就侵犯註冊商標而進行訴訟	22.	Action for infringement	3-11	3-12
23.	交付令	23.	Order for delivery up	3-13	3-14
24.	申請作出交付令的時限	24.	Limitation on order for delivery up	3-13	3-14
25.	處置令	25.	Order for disposal	3-15	3-16
26.	就無理威脅提起反侵犯法律程序要求濟助的法律程序	26.	Proceedings for relief from groundless threats of infringement proceedings	3-19	3-20
第 IV 部 作為財產客體的註冊商標		PART IV REGISTERED TRADE MARKS AS OBJECTS OF PROPERTY			
27.	註冊商標的性質	27.	Nature of registered trade mark	4-1	4-2
28.	註冊商標的共同擁有權	28.	Co-ownership of registered trade mark	4-3	4-4

條次		頁次	Section	Page	
29.	影響註冊商標的交易的註冊	4-5	29.	Registration of transactions affecting registered trade mark	4-6
30.	信託與衡平法上的權益	4-9	30.	Trust and equities	4-10
31.	申請將商標註冊為一項財產客體	4-9	31.	Application for registration of a trade mark as an object of property	4-10
第 V 部			PART V		
註冊商標特許的授予事宜			LICENSING OF REGISTERED TRADE MARKS		
32.	釋義	5-1	32.	Interpretation	5-2
33.	一般性或有限特許	5-1	33.	Licences may be general or limited	5-2
34.	專用特許可規定具有與轉讓相同的權利等	5-3	34.	Exclusive licence may provide same rights as assignment, etc.	5-4
35.	特許持有人一般的權利	5-3	35.	Rights of licensees generally	5-4
36.	某些專用特許持有人的權利	5-7	36.	Rights of certain exclusive licensees	5-8
37.	在某些專用特許下的再授特許持有人的權利	5-11	37.	Rights of sub-licensees under certain exclusive licences	5-12
第 VI 部			PART VI		
申請及註冊程序			APPLICATION AND REGISTRATION PROCEDURES		
38.	註冊申請	6-1	38.	Application for registration	6-2
39.	提交日期	6-3	39.	Filing date	6-4
40.	貨品及服務的分類	6-3	40.	Classification of goods and services	6-4
41.	聲稱具有優先權	6-5	41.	Claim to priority	6-6
42.	申請的審查	6-9	42.	Examination of application	6-10

條次	頁次	Section	Page		
43.	公布申請的詳情	43.	Publication of particulars of application	6-11	6-12
44.	反對註冊的法律程序	44.	Opposition proceedings	6-11	6-12
45.	申請的撤回	45.	Withdrawal of application	6-11	6-12
46.	申請的修訂	46.	Amendment of application	6-13	6-14
47.	註冊	47.	Registration	6-17	6-18
48.	註冊日期	48.	Date of registration	6-17	6-18
49.	註冊的有效期	49.	Duration of registration	6-17	6-18
50.	註冊的續期	50.	Renewal of registration	6-19	6-20
51.	分開、合併註冊申請及將一系列的商標註冊	51.	Division, merger and registration of series	6-19	6-20
第 VII 部		PART VII			
影響註冊的法律程序		PROCEEDINGS AFFECTING REGISTRATION			
52.	註冊的撤銷	52.	Revocation of registration	7-1	7-2
53.	註冊無效的宣布	53.	Declaration of invalidity of registration	7-5	7-6
54.	註冊的更改	54.	Variation of registration	7-7	7-8
55.	註冊商標的改動	55.	Alteration of registered trade mark	7-9	7-10
56.	註冊商標的放棄	56.	Surrender of registered trade mark	7-9	7-10
57.	更正或改正等	57.	Rectification or correction etc.	7-9	7-10
58.	修訂註冊紀錄冊的記項以配合新的分類等	58.	Amendment of entries to accord with new classification, etc.	7-13	7-14
59.	默許的效力	59.	Effect of acquiescence	7-15	7-16

條次		頁次	Section		Page
	第 VIII 部 防禦商標、集體商標及證明商標			PART VIII DEFENSIVE TRADE MARKS, COLLECTIVE MARKS AND CERTIFICATION MARKS	
60.	防禦商標	8-1	60.	Defensive trade marks	8-2
61.	集體商標	8-3	61.	Collective marks	8-4
62.	證明商標	8-3	62.	Certification marks	8-4
	第 IX 部 《巴黎公約》及《世貿協議》：補充條文			PART IX PARIS CONVENTION AND WORLD TRADE ORGANIZATION AGREEMENT: SUPPLEMENTARY PROVISIONS	
63.	馳名商標：《巴黎公約》第 6 條之二	9-1	63.	Well-known trade marks: Article 6bis of Paris Convention	9-2
64.	國徽等：《巴黎公約》第 6 條之三	9-1	64.	National emblems, etc.: Article 6ter of Paris Convention	9-2
65.	某些國際組織的徽章等：《巴黎公約》第 6 條之三	9-3	65.	Emblems, etc., of certain international organizations: Article 6ter of Paris Convention	9-4
66.	《巴黎公約》第 6 條之三所指的通知	9-7	66.	Notification under Article 6ter of Paris Convention	9-8
	第 X 部 行政方面及其他補充條文			PART X ADMINISTRATIVE AND OTHER SUPPLEMENTARY PROVISIONS	
67.	須備存註冊紀錄冊	10-1	67.	Register to be kept	10-2
68.	查閱註冊紀錄冊的權利	10-1	68.	Right to inspect the register	10-2
69.	取得記項副本的權利	10-1	69.	Right to copies of entries	10-2

條次	頁次	Section	Page
70.	處長在聆訊之後作出決定	70.	Decisions of Registrar to be taken after hearing
71.	處長於在他席前進行的法律程序中的權力	71.	Registrar's powers in proceedings before the Registrar
72.	給予初步意見的權力等	72.	Power to give preliminary advice etc.
73.	指明官方公報的權力等	73.	Power to specify official journal, etc.
74.	規定使用表格的權力	74.	Power to require use of forms
75.	處長在公事上作為方面的豁免權	75.	Immunity of Registrar as regards official acts
76.	在處長席前進行的法律程序所採用的語文	76.	Language of proceedings before Registrar
77.	在可選擇向法院或向處長提出申請時依循的程序	77.	Procedure in case of option to apply to court or Registrar
78.	證據規則的適用情況	78.	Application of rules of evidence
79.	註冊紀錄冊是表面證據	79.	Register is prima facie evidence
80.	註冊是有效性的表面證據等	80.	Registration is prima facie evidence of validity, etc.
81.	曾受爭議的註冊的有效性證明書	81.	Certificate of validity of contested registration
82.	在民事法律程序中證明商標的使用的舉證責任	82.	Burden in civil proceedings of proving use of trade mark
83.	處長在涉及註冊紀錄冊的法律程序中出庭	83.	Registrar's appearance in proceedings involving the register
84.	針對處長的決定或命令的上訴	84.	Appeals from decisions or orders of Registrar
85.	法院的一般權力	85.	General powers of court
86.	在法院進行的法律程序的訟費	86.	Costs of proceedings before court

條次	頁次	Section	Page
87.	在處長席前進行的法律程序的訟費	87.	Costs of proceedings before Registrar 10-24
88.	承認代理人	88.	Recognition of agents 10-26
89.	辦公時間和辦公日	89.	Hours of business and business days 10-26
90.	政府出售沒收物品的權利	90.	Government's right to sell forfeited articles 10-28
第 XA 部		Part XA	
《馬德里議定書》下的商標的國際註冊		International Registration of Trade Marks under Madrid Protocol	
第 1 分部 —— 一般條文		Division 1—General	
90A.	第 XA 部的釋義	90A.	Interpretation of Part XA 10A-2
90B.	就實施《馬德里議定書》而訂立的規則	90B.	Rules for implementing Madrid Protocol 10A-2
第 2 分部 —— 商標的國際註冊		Division 2—International Registration of Trade Marks	
90C.	就國際申請而訂立的規則	90C.	Rules for international application 10A-4
90D.	就國際指定 (香港) 及受保護國際商標 (香港) 而訂立的規則	90D.	Rules for international designation (HK) and protected international trade mark (HK) 10A-4
第 3 分部 —— 雜項		Division 3—Miscellaneous	
90E.	就其他事宜而訂立的規則	90E.	Rules for other matters 10A-8
第 XI 部		PART XI	
附屬法例		SUBSIDIARY LEGISLATION	
91.	就一般目的而訂立的規則	91.	Rules for general purposes 11-2
92.	規例	92.	Regulations 11-8
第 XII 部		PART XII	
罪行		OFFENCES	
93.	註冊紀錄冊的捏改	93.	Falsification of the register 12-2

條次	頁次	Section	Page	
94.	虛假地表述商標已註冊	12-1	94. Falsely representing trade mark as registered	12-2
95.	“商標註冊處”的名稱的不當使用	12-3	95. Misuse of title “Trade Marks Registry”	12-4
96.	法團所犯的罪行及與法團有關的法律程序	12-3	96. Offences committed by and proceedings relating to corporations	12-4
第 XIII A 部		Part XIII A		
執行		Enforcement		
第 1 分部 —— 釋義		Division 1—Interpretation		
96A.	第 XIII A 部的釋義	12A-1	96A. Interpretation of Part XIII A	12A-2
第 2 分部 —— 調查		Division 2—Investigation		
96B.	執法人員的委任	12A-3	96B. Appointment of enforcement officers	12A-4
96C.	調查的權力等	12A-3	96C. Power to investigate etc.	12A-4
96D.	進入和搜查的手令等	12A-5	96D. Warrant to enter and search etc.	12A-6
第 3 分部 —— 逮捕、罪行及沒收		Division 3—Arrest, Offences and Forfeiture		
96E.	逮捕的權力等	12A-7	96E. Power to arrest etc.	12A-8
96F.	關於調查的罪行等	12A-9	96F. Offences relating to investigation etc.	12A-10
96G.	物件的處置的一般條文	12A-11	96G. General provision on disposal of things	12A-12
96H.	易毀消物件的條文	12A-11	96H. Provision on perishable things	12A-12
96I.	就某些擬作出申請須發出通知	12A-15	96I. Notification requirement for certain intended applications	12A-16
第 4 分部 —— 雜項		Division 4—Miscellaneous		
96J.	國際合作	12A-15	96J. International co-operation	12A-16
96K.	轉授	12A-17	96K. Delegation	12A-18
96L.	豁免承擔民事法律責任	12A-17	96L. Immunity from civil liability	12A-18

條次		頁次	Section		Page
	第 XIII 部			PART XIII	
	過渡性條文、相應及有關修訂以及廢除			TRANSITIONAL PROVISIONS, CONSEQUENTIAL AND RELATED AMENDMENTS AND REPEALS	
97.	過渡性事宜等	13-1	97.	Transitional matters, etc.	13-2
98.	(已失時效而略去)	13-3	98.	(Omitted as spent)	13-4
99.	廢除	13-3	99.	Repeals	13-4
100.	關乎《2020 年商標 (修訂) 條例》的過渡及保留條文	13-3	100.	Transitional and savings provisions for Trade Marks (Amendment) Ordinance 2020	13-4
附表 1	巴黎公約國及世貿成員	S1-1	Schedule 1	Paris Convention Countries and WTO Members	S1-2
附表 2	馳名商標的決定方法	S2-1	SCHEDULE 2	DETERMINATION OF WELL-KNOWN TRADE MARKS	S2-2
附表 3	集體商標	S3-1	SCHEDULE 3	COLLECTIVE MARKS	S3-2
附表 4	證明商標	S4-1	SCHEDULE 4	CERTIFICATION MARKS	S4-2
附表 5	過渡性事宜	S5-1	SCHEDULE 5	TRANSITIONAL MATTERS	S5-2
附表 6	(已失時效而略去)	S6-1	Schedule 6	(Omitted as spent)	S6-2
附表 7	關乎《2020 年商標 (修訂) 條例》的過渡及保留條文	S7-1	Schedule 7	Transitional and Savings Provisions for Trade Marks (Amendment) Ordinance 2020	S7-2

本條例旨在就商標註冊訂定條文，施行《商標國際註冊馬德里協定有關議定書》，並就相關事宜訂定條文。

(由 2020 年第 3 號第 3 條修訂)

An Ordinance to make provision for the registration of trade marks, to give effect to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, and to provide for connected matters.

(Amended 3 of 2020 s. 3)

[2003 年 4 月 4 日] 2003 年第 31 號法律公告

[4 April 2003] L.N. 31 of 2003

第 I 部

導言

1. 簡稱

- (1) 本條例可引稱為《商標條例》。
- (2) (已失時效而略去)

2. 釋義

- (1) 在本條例中，除文意另有所指外——
 - “反侵犯法律程序”(infringement proceedings) 就任何註冊商標而言，包括根據第 23 條(交付令)及第 25 條(處置令)進行的法律程序；
 - “《巴黎公約》”(Paris Convention) 指於 1883 年 3 月 20 日在巴黎簽訂，並經不時修改或修訂的《保護工業產權公約》；
 - “巴黎公約國”(Paris Convention country) 指——
 - (a) 當其時在附表 1 指明為已加入《巴黎公約》的任何國家；
 - (b) 受 (a) 段所提述的任何國家所管轄或以任何該等國家為宗主國的地區或地方，或由任何該等國家管治的地區或地方，並由該等國家代為加入《巴黎公約》者；

PART I

PRELIMINARY

1. Short title

- (1) This Ordinance may be cited as the Trade Marks Ordinance.
- (2) (Omitted as spent)

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
 - “certification mark”(證明商標) has the meaning assigned by section 62(1) (certification marks);
 - “certified”(核證), in relation to a copy or extract, means certified by the Registrar and sealed with the seal of the Registrar;
 - “collective mark”(集體商標) has the meaning assigned by section 61(1) (collective marks);
- corporation** (法團) means—
 - (a) a company as defined by section 2(1) of the Companies Ordinance (Cap. 622); or
 - (b) any other body corporate incorporated or established in or outside Hong Kong; (Replaced 3 of 2020 s. 4)

“世貿成員”(WTO member)指當其時在附表 1 指明為已加入《世貿協議》的任何國家、地區或地方；

“《世貿協議》”(World Trade Organization Agreement)指 1994 年在馬拉喀什訂立，並經不時修改或修訂的名為《世界貿易組織協議》的協議；

“行業”(trade)包括任何專業；

“防禦商標”(defensive trade mark)指根據第 60 條(防禦商標)註冊為防禦商標的商標；

受保護國際商標(香港)(protected international trade mark (HK))指符合以下情況的商標：該商標通過其國際註冊取得保護，並該商標按照根據第 XA 部訂立的《規則》在香港獲賦予該保護；(由 2020 年第 3 號第 4 條增補)

“官方公報”(official journal)指當其時根據第 73(1)條(指明官方公報的權力等)指明為官方紀錄公報的刊物；

“法院”(court)除在第 XIIA 部中，指原訟法庭；(由 2020 年第 3 號第 4 條修訂)

法團(corporation)指——

- (a) 《公司條例》(第 622 章)第 2(1)條所界定的公司；或
- (b) 在香港或在香港以外地方成立為法團或在香港或在香港以外地方設立的任何其他法人團體；(由 2020 年第 3 號第 4 條代替)

“訂明”(prescribed)指由《規則》訂明或規定；

“限制”(limitation)指對註冊為某商標擁有人的人因該項註冊而獲得的使用有關商標的專有權利的任何限制；

“核證”(certified)就任何副本或摘錄而言，指由處長核證並蓋上處長印章；

《馬德里議定書》(Madrid Protocol)指於 1989 年 6 月 27 日在馬德里通過、並經不時修訂的《商標國際註冊馬德里協定有關議定書》；(由 2020 年第 3 號第 4 條增補)

“court”(法院), except in Part XIIA, means the Court of First Instance; (*Amended 3 of 2020 s. 4*)

“defensive trade mark”(防禦商標) means a trade mark registered as a defensive trade mark under section 60 (defensive trade marks);

“infringement proceedings”(反侵犯法律程序), in relation to a registered trade mark, includes proceedings under section 23 (order for delivery up) and section 25 (order for disposal);

International Bureau(國際局) means the International Bureau of the World Intellectual Property Organization established under the Convention Establishing the World Intellectual Property Organization signed at Stockholm on 14 July 1967; (*Added 3 of 2020 s. 4*)

international designation (HK)(國際指定(香港)) means a request, made under Article 3^{ter} of the Madrid Protocol, for extension to Hong Kong of the protection resulting from the international registration of a trade mark; (*Added 3 of 2020 s. 4*)

International Register(國際註冊簿) means the register of trade marks maintained for the purposes of the Madrid Protocol by the International Bureau; (*Added 3 of 2020 s. 4*)

international registration(國際註冊) means the registration of a trade mark in the International Register; (*Added 3 of 2020 s. 4*)

“limitation”(限制) means any limitation of the exclusive right to the use of a trade mark given by the registration of a person as owner of the trade mark;

Madrid Protocol(《馬德里議定書》) means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989, as amended from time to time; (*Added 3 of 2020 s. 4*)

“商標註冊處處長”(Registrar of Trade Marks)指憑藉《知識產權署署長(設立)條例》(第 412 章)而擔任該職位的人；

國際局(International Bureau)指根據於 1967 年 7 月 14 日在斯德哥爾摩簽訂的《建立世界知識產權組織公約》設立的世界知識產權組織國際局；(由 2020 年第 3 號第 4 條增補)

國際指定(香港)(international designation (HK))指根據《馬德里議定書》第 3 條之三提出、將通過某商標的國際註冊所取得的保護延伸至香港的請求；(由 2020 年第 3 號第 4 條增補)

國際註冊(international registration)指某商標在國際註冊簿中的註冊；(由 2020 年第 3 號第 4 條增補)

國際註冊簿(International Register)指國際局為施行《馬德里議定書》而備存的商標註冊簿；(由 2020 年第 3 號第 4 條增補)

“處長”(Registrar)指商標註冊處處長；

《規則》(rules)指根據第 XA 部或第 91 條訂立的規則；(由 2020 年第 3 號第 4 條代替)

“註冊商標”(registered trade mark)指根據第 47 條(註冊)註冊的商標；

“註冊處”(Registry)指由處長管理的知識產權署商標註冊處；

“集體商標”(collective mark)具有第 61(1)條(集體商標)給予該詞的涵義；

“擁有人”(owner)就任何註冊商標而言，指當其時名列註冊紀錄冊作為該商標的擁有人的人，如有超過 1 名該等人士，則指每名該等人士；

“證明商標”(certification mark)具有第 62(1)條(證明商標)給予該詞的涵義。

(2) 就本條例而言，如某標誌或商標是編織入、印在、融入、附貼於或附連於任何貨品、物料或任何其他東西的，或是以任何方式在任何貨品、物料或任何其他東西上標明

“official journal”(官方公報) means the publication for the time being specified under section 73(1) (power to specify official journal, etc.) as the official journal of record;

“owner”(擁有人), in relation to a registered trade mark, means the person whose name is for the time being entered in the register as the owner of the trade mark or, if there are 2 or more such persons, each of those persons;

“Paris Convention”(《巴黎公約》) means the Convention for the Protection of Industrial Property signed at Paris on 20 March 1883, as revised or amended from time to time;

“Paris Convention country”(巴黎公約國) means—

(a) any country for the time being specified in Schedule 1 as being a country which has acceded to the Paris Convention;

(b) any territory or area subject to the authority or under the suzerainty of any country referred to in paragraph (a), or any territory or area administered by any such country, on behalf of which such country has acceded to the Paris Convention;

“prescribed”(訂明) means prescribed or provided for by the rules;

protected international trade mark (HK) (受保護國際商標(香港)) means a trade mark on which protection resulting from international registration of the mark is conferred in Hong Kong in accordance with the rules made under Part XA; (Added 3 of 2020 s. 4)

“registered trade mark”(註冊商標) means a trade mark registered under section 47 (registration);

“Registrar”(處長) means the Registrar of Trade Marks;

“Registrar of Trade Marks”(商標註冊處處長) means the person holding that office by virtue of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412);

或收納在任何貨品、物料或任何其他東西內的，則該標誌或商標即視為已應用於該等貨品、物料或東西。

- (3) 下表左欄所列的詞句的涵義，由右欄中相對該等詞句之處所列的本條例的條文界定，或按照該等條文解釋。

詞句	有關條文
一系列的商標 (series of trade marks)	第 51(3) 條
公約申請 (Convention application)	第 41(9) 條
世貿申請 (WTO application)	第 41(9) 條
可註冊交易 (registrable transaction)	第 29(2) 條
在先商標 (earlier trade mark)	第 5 條
在先權利 (earlier right)	第 12(5) 條
在先權利的擁有人 (owner of an earlier right)	第 12(5) 條
使用 (相當可能會產生混淆) (use likely to cause confusion)	第 7 條
使用 (商標或標誌) (use of trade mark or sign))	第 6 條
使用 (標誌) (use of sign))	第 18(5) 條
侵犯 (infringement)	第 16 條
侵犯性物品 (infringing articles)	第 17(4) 條
侵犯性物料 (infringing material)	第 17(3) 條
侵犯性貨品 (infringing goods)	第 17(2) 條
特許 (licence)	第 32 條
特許持有人 (licensee)	第 32 條
商標 (trade mark)	第 3 條

“Registry” (註冊處) means the Trade Marks Registry in the Intellectual Property Department administered by the Registrar;

rules (《規則》) means rules made under Part XA or section 91; (Replaced 3 of 2020 s. 4)

“trade” (行業) includes a profession;

“World Trade Organization Agreement” (《世貿協議》) means the agreement of that name done at Marrakesh in 1994, as revised or amended from time to time;

“WTO member” (世貿成員) means any country, territory or area for the time being specified in Schedule 1 as being a country, territory or area which has acceded to the World Trade Organization Agreement.

(2) For the purposes of this Ordinance, a sign or trade mark is taken to be applied to goods, material or any other thing if it is woven in, impressed on, worked into, affixed or annexed to, or in any manner marked on or incorporated with, the goods, material or thing.

(3) The expressions listed in the left-hand column below are defined in, or fall to be construed in accordance with, the provisions of this Ordinance listed in the right-hand column in relation to those expressions.

Expression	Relevant Provision
Convention application (公約申請)	section 41(9)
date of application for registration (註冊申請日期)	section 39(3)
date of registration (註冊日期)	section 48
earlier right (在先權利)	section 12(5)

專用特許 (exclusive licence)	第 32 條	earlier trade mark (在先商標)	section 5
專用特許持有人 (exclusive licensee)	第 32 條	exclusive licence (專用特許)	section 32
提交日期 (filing date)	第 39(1) 條	exclusive licensee (專用特許持有人)	section 32
註冊 (registration)	第 8(2) 條	filing date (提交日期)	section 39(1)
註冊日期 (date of registration)	第 48 條	infringement (侵犯)	section 16
註冊申請日期 (date of application for registration)	第 39(3) 條	infringing articles (侵犯性物品)	section 17(4)
註冊紀錄冊 (the register)	第 8(1) 條	infringing goods (侵犯性貨品)	section 17(2)
馳名商標 (well-known trade mark)	第 4(1) 條	infringing material (侵犯性物料)	section 17(3)
馳名商標的擁有人 (owner of a well-known trade mark)	第 4(3) 條	licence (特許)	section 32
		licensee (特許持有人)	section 32
		owner of an earlier right (在先權利的擁有人)	section 12(5)
		owner of a well-known trade mark (馳名商標的擁有人)	section 4(3)
		the register (註冊紀錄冊)	section 8(1)
		registrable transaction (可註冊交易)	section 29(2)
		registration (註冊)	section 8(2)
		series of trade marks (一系列的商標)	section 51(3)
		trade mark (商標)	section 3
		use (of sign) (使用(標誌))	section 18(5)
		use (of trade mark or sign) (使用(商標或標誌))	section 6
		use (likely to cause confusion) (使用(相當可能會產生混淆))	section 7
		well-known trade mark (馳名商標)	section 4(1)
		WTO application (世貿申請)	section 41(9)

3. “商標”的涵義

- (1) 在本條例中，“商標”(trade mark)指任何能夠將某一企業的貨品或服務與其他企業的貨品或服務作出識別並能夠藉書寫或繪圖方式表述的標誌。
- (2) 在不影響第(1)款的一般性的原則下，商標可由文字(包括個人姓名)、徵示、設計式樣、字母、字樣、數字、圖形要素、顏色、聲音、氣味、貨品的形狀或其包裝，以及該等標誌的任何組合所構成。
- (3) 即使某一標誌是用於某一企業的貿易或業務所附帶的服務，該標誌仍可構成商標，不論該服務是否為金錢或金錢的等值而提供的。
- (4) 除文意另有所指外，在本條例中凡提述商標，均須解釋為包括對證明商標、集體商標及防禦商標的提述。

4. “馳名商標”的涵義

- (1) 在本條例中凡提述有權根據《巴黎公約》獲得作為馳名商標的保護的商標，均須解釋為提述馳名於香港並且屬於符合以下說明人士所有的商標——
 - (a) 任何巴黎公約國或世貿成員的國民，或以任何巴黎公約國或世貿成員為居籍或通常居住於任何巴黎公約國或世貿成員的人；
 - (b) 擁有香港居留權的人；或
 - (c) 在任何巴黎公約國、世貿成員或香港設有真實而實際的工業或商業機構的人，

3. Meaning of “trade mark”

- (1) In this Ordinance, a “trade mark” (商標) means any sign which is capable of distinguishing the goods or services of one undertaking from those of other undertakings and which is capable of being represented graphically.
- (2) Without affecting the generality of subsection (1), a trade mark may consist of words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colours, sounds, smells, the shape of goods or their packaging and any combination of such signs.
- (3) A sign may constitute a trade mark even though it is used in relation to a service ancillary to the trade or business of an undertaking and whether or not the service is provided for money or money’s worth.
- (4) Unless the context otherwise requires, references in this Ordinance to a trade mark shall be construed as including references to a certification mark, collective mark and defensive trade mark.

4. Meaning of “well-known trade mark”

- (1) References in this Ordinance to a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark shall be construed as references to a trade mark which is well known in Hong Kong and which is the trade mark of a person who—
 - (a) is a national of, or is domiciled or ordinarily resident in, a Paris Convention country or WTO member;
 - (b) has a right of abode in Hong Kong; or

不論該人是否在香港經營業務或擁有任何在香港的業務的商譽。

- (2) 處長或法院在為施行第 (1) 款而決定某商標是否馳名於香港時，須顧及附表 2。
- (3) 在本條例中凡提述馳名商標的擁有人，均須按照第 (1) 款解釋。

5. “在先商標”的涵義

- (1) 在本條例中，“在先商標”(earlier trade mark)就另一商標而言，指——
 - (a) 在顧及就每一有關商標而聲稱具有的優先權(如有的話)下，註冊申請日期較該另一商標的註冊申請日期為早的註冊商標；或
 - (b) 於該另一商標的註冊申請日期或(如屬適當)於就該項註冊申請聲稱具有優先權的日期，已有權根據《巴黎公約》獲得作為馳名商標的保護的商標。
- (2) 在本條例中凡提述在先商標，均須解釋為包括已根據本條例申請註冊，並且如獲註冊即會根據或憑藉第 (1)(a) 款而構成在先商標的商標的提述，但上述解釋只在該商標獲如此註冊的情況下適用。
- (3) 在根據或憑藉第 (1)(a) 款而屬在先商標的商標的註冊期屆滿日期後一年內，於決定在後商標是否可予以註冊時，仍須繼續考慮該在先商標，但如處長信納在緊接該日期前的 2 年內，該在先商標在香港並未曾真誠地使用，則屬例外。

- (c) has a real and effective industrial or commercial establishment in a Paris Convention country, a WTO member or Hong Kong,

whether or not that person carries on business in Hong Kong or owns any goodwill in a business in Hong Kong.

- (2) In determining for the purposes of subsection (1) whether a trade mark is well known in Hong Kong, the Registrar or the court shall have regard to Schedule 2.
- (3) References in this Ordinance to the owner of a well-known trade mark shall be construed in accordance with subsection (1).

5. Meaning of “earlier trade mark”

- (1) In this Ordinance, “earlier trade mark” (在先商標), in relation to another trade mark, means—
 - (a) a registered trade mark which has a date of the application for registration earlier than that of the other trade mark, taking into account the priorities claimed in respect of each trade mark, if any; or
 - (b) a trade mark which, at the date of the application for registration of the other trade mark or, where appropriate, at the date of the priority claimed in respect of that application for registration, was entitled to protection under the Paris Convention as a well-known trade mark.
- (2) References in this Ordinance to an earlier trade mark shall be construed as including a trade mark in respect of which an application for registration has been made under this Ordinance and which, if registered, would constitute an earlier trade mark under or by virtue of subsection (1)(a), subject to its being so registered.

6. 對商標或標誌的使用的提述

在本條例中，凡提述使用任何商標或標誌或提述將商標或標誌作某類別的使用，均須解釋為包括不論是藉書寫或繪圖方式表述的方式或其他方式而作的使用（或該類別的使用）的提述。

7. 對相當可能會產生混淆的使用的提述

- (1) 為求更明確起見，在為施行本條例而決定任何商標的使用是否相當可能會令公眾產生混淆時，處長或法院可考慮所有在個案中情況下屬有關的因素，包括該使用是否相當可能會使人聯想到某在先商標。
- (2) 為求更明確起見，在為施行本條例而決定任何標誌的使用是否相當可能會令公眾產生混淆時，處長或法院可考慮所有在個案中情況下屬有關的因素，包括該使用是否相當可能會使人聯想到某註冊商標。

8. “註冊紀錄冊”及“註冊”的涵義

- (1) 在本條例中，“註冊紀錄冊” (the register) 指根據第 67 條（須備存註冊紀錄冊）備存的商標註冊紀錄冊。

- (3) A trade mark which is an earlier trade mark under or by virtue of subsection (1)(a) shall continue to be taken into account in determining the registrability of a later trade mark for a period of 1 year after the date on which its registration expires unless the Registrar is satisfied the trade mark has not been used in good faith in Hong Kong during the 2 years immediately preceding that date.

6. References to use of trade mark or sign

References in this Ordinance to use (or to any particular description of use) of a trade mark or sign shall be construed as including any use (or any such description of use), whether by means of a graphic representation or otherwise.

7. References to use likely to cause confusion

- (1) For greater certainty, in determining for the purposes of this Ordinance whether the use of a trade mark is likely to cause confusion on the part of the public, the Registrar or the court may take into account all factors relevant in the circumstances, including whether the use is likely to be associated with an earlier trade mark.
- (2) For greater certainty, in determining for the purposes of this Ordinance whether the use of a sign is likely to cause confusion on the part of the public, the Registrar or the court may take into account all factors relevant in the circumstances, including whether the use is likely to be associated with a registered trade mark.

8. Meaning of “the register” and “registration”

- (1) In this Ordinance, “the register” (註冊紀錄冊) means the register of trade marks kept under section 67 (register to be kept).

1-17
第 559 章

第 I 部
第 9 條

- (2) 在本條例中，除文意另有所指外，凡提述註冊（尤其是在“註冊商標”一詞中），均須解釋為提述在註冊紀錄冊中的註冊。

9. 條例對政府具約束力

本條例對政府具約束力。

PART I
Section 9

1-18
Cap. 559

- (2) Unless the context otherwise requires, references in this Ordinance to registration (in particular, in the expression “registered trade mark”) shall be construed as references to registration in the register.

9. Ordinance binds Government

This Ordinance binds the Government.

第 II 部

註冊商標

引言

10. 註冊商標屬財產權利

- (1) 註冊商標屬一項藉將有關商標根據本條例註冊而取得的財產權利。
- (2) 註冊商標的擁有人具有本條例所規定的權利，並有權享有本條例所規定的補救。
- (3) 任何人不得提起任何法律程序，藉以阻止對任何未經註冊商標的侵犯，或藉以就侵犯任何未經註冊商標追討損害賠償，但本條例並不影響關於假冒的法律。

拒絕註冊的理由

11. 拒絕註冊的絕對理由

- (1) 除第 (2) 款另有規定外，以下商標不得註冊——
 - (a) 不符合第 3(1) 條（“商標”的涵義）規定的標誌；
 - (b) 欠缺顯著特性的商標；
 - (c) 純粹由可在行業或業務中用作指明貨品或服務的種類、質素、數量、原定用途、價值、地理來源、生產貨品或提供服務的時間或貨品或服務的其他特性的標誌構成的商標；及
 - (d) 純粹由在現行的語言中或在有關行業的誠實和已確立的作法中已成為慣用的標誌構成的商標。
- (2) 如任何商標在註冊申請日期前已因其付諸使用而實際上具有顯著特性，則不得憑藉第 (1)(b)、(c) 或 (d) 款而拒絕註冊該商標。

PART II

REGISTERED TRADE MARKS

Introductory

10. Registered trade mark a property right

- (1) A registered trade mark is a property right obtained by the registration of the trade mark under this Ordinance.
- (2) The owner of a registered trade mark has the rights and is entitled to the remedies provided by this Ordinance.
- (3) No proceedings lie to prevent, or to recover damages for, the infringement of an unregistered trade mark but nothing in this Ordinance affects the law relating to passing off.

Grounds for refusal of registration

11. Absolute grounds for refusal of registration

- (1) Subject to subsection (2), the following shall not be registered—
 - (a) signs which do not satisfy the requirements of section 3(1) (meaning of “trade mark”);
 - (b) trade marks which are devoid of any distinctive character;
 - (c) trade marks which consist exclusively of signs which may serve, in trade or business, to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or rendering of services, or other characteristics of goods or services; and

- (3) 任何標誌如純粹由以下所述形狀構成，則不得就貨品而註冊為商標——
- (a) 因為該貨品本身的性質而產生的形狀；
 - (b) 為取得某技術上的成果而需有的該貨品的形狀；或
 - (c) 賦予該貨品重大價值的形狀。
- (4) 如任何商標——
- (a) 違反廣為接受的道德原則；或
 - (b) 相當可能會欺騙公眾，
- 則該商標不得註冊。
- (5) 如——
- (a) 任何商標根據或憑藉任何法律遭禁止在香港使用；或
 - (b) 任何商標的註冊申請是不真誠地提出的，
- 則該商標不得註冊或在其遭禁止使用或在其註冊申請是不真誠地提出（視屬何情況而定）的範圍內不得註冊。
- (6) 如任何商標是由下述項目所構成的或載有下述項目，則該商標不得註冊或在其由下述項目構成的或載有下述項目的範圍內不得註冊——
- (a) 國旗或其設計式樣；
 - (ab) 國歌；(由 2020 年第 2 號第 13 條增補)
 - (b) 國徽或其設計式樣；
 - (c) 區旗或其設計式樣；或
 - (d) 區徽或其設計式樣。
- (7) 任何商標如屬第 64 條（國徽等）或第 65 條（某些國際組織的徽章等）所指明的情況，則不得註冊。
- (8) 如註冊申請是為某些貨品或服務提出，而拒絕註冊的理由只就該等貨品或服務中的某部分貨品或服務而存在，則該項拒絕只適用於該部分貨品或服務。

- (d) trade marks which consist exclusively of signs which have become customary in the current language or in the honest and established practices of the trade.
- (2) A trade mark shall not be refused registration by virtue of subsection (1)(b), (c) or (d) if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.
- (3) A sign shall not be registered as a trade mark in relation to goods if it consists exclusively of—
- (a) the shape that results from the nature of the goods themselves;
 - (b) the shape of goods that is necessary to obtain a technical result; or
 - (c) the shape that gives substantial value to the goods.
- (4) A trade mark shall not be registered if it is—
- (a) contrary to accepted principles of morality; or
 - (b) likely to deceive the public.
- (5) A trade mark shall not be registered if, or to the extent that—
- (a) its use is prohibited in Hong Kong under or by virtue of any law; or
 - (b) the application for registration of the trade mark is made in bad faith.
- (6) A trade mark shall not be registered if, or to the extent that, it consists of or contains—
- (a) the national flag or its design;
 - (ab) the national anthem; (*Added 2 of 2020 s. 13*)
 - (b) the national emblem or its design;
 - (c) the regional flag or its design; or
 - (d) the regional emblem or its design.

(9) 就第 (6) 款而言——

“區旗”(regional flag)及“區徽”(regional emblem)的涵義與《區旗及區徽條例》(1997 年第 117 號)* 中該兩詞的涵義相同；

“國旗”(national flag)及“國徽”(national emblem)的涵義與《國旗及國徽條例》(1997 年第 116 號)# 中該兩詞的涵義相同；
(由 2020 年第 2 號第 13 條修訂)

國歌(national anthem)指《國歌條例》(2020 年第 2 號)+ 所指的、經該條例第 8 條擴充其涵義的國歌及其歌詞及曲譜。(由 2020 年第 2 號第 13 條增補)

編輯附註：

* 見文件 A602。

見文件 A401。

+ 見文件 A405。

12. 拒絕註冊的相對理由

- (1) 符合以下情況的商標不得註冊——
 - (a) 該商標與某在先商標相同；及
 - (b) 該商標的註冊申請是為某些貨品或服務(“前者”)提出，該在先商標則是為某些貨品或服務(“後者”)而受保護，而前者與後者相同。
- (2) 符合以下情況的商標不得註冊——

(7) A trade mark shall not be registered in the cases specified in section 64 (national emblems, etc.) and section 65 (emblems, etc., of certain international organizations).

(8) Where the grounds for the refusal of registration exist in respect of only some of the goods or services for which the application for registration is made, the refusal shall apply to those goods or services only.

(9) For the purposes of subsection (6)—

national anthem (國歌) means the national anthem and its lyrics and score within the meaning of the National Anthem Ordinance (2 of 2020)+ as extended by section 8 of that Ordinance; (*Added 2 of 2020 s. 13*)

“national flag” (國旗) and “national emblem” (國徽) have the same meaning as in the National Flag and National Emblem Ordinance (116 of 1997)*;

“regional flag” (區旗) and “regional emblem” (區徽) have the same meaning as in the Regional Flag and Regional Emblem Ordinance (117 of 1997)#.

Editorial Note:

+ See Instrument A405.

* See Instrument A401.

See Instrument A602.

12. Relative grounds for refusal of registration

- (1) A trade mark shall not be registered if—
 - (a) the trade mark is identical to an earlier trade mark; and
 - (b) the goods or services for which the application for registration is made are identical to those for which the earlier trade mark is protected.
- (2) A trade mark shall not be registered if—

- (a) 該商標與某在先商標相同；
- (b) 該商標的註冊申請是為某些貨品或服務（“前者”）提出，該在先商標則是為某些貨品或服務（“後者”）而受保護，而前者與後者相類似；及
- (c) 就該等貨品或服務而使用該商標相當可能會令公眾產生混淆。
- (3) 符合以下情況的商標不得註冊——
- (a) 該商標與某在先商標相類似；
- (b) 該商標的註冊申請是為某些貨品或服務（“前者”）提出，該在先商標則是為某些貨品或服務（“後者”）而受保護，而前者與後者相同或相類似；及
- (c) 就該等貨品或服務而使用該商標相當可能會令公眾產生混淆。
- (4) 在符合第 (6) 款的規定下，任何與某在先商標相同或相類似的商標（**在後商標**），在以下情況下或在符合以下情況的範圍內，不得註冊——
- (a) 該在先商標有權根據《巴黎公約》獲得作為馳名商標的保護；及
- (b) 在無適當因由的情況下使用該在後商標，會對該在先商標的顯著特性或聲譽構成不公平的利用或造成損害。（由 2020 年第 3 號第 6 條代替）
- (5) 在符合第 (6) 款的規定下，如任何商標在香港的使用可——
- (a) 憑藉保護在營商過程或業務運作中所使用的未經註冊商標或其他標誌的任何法律規則（尤其是憑藉關於假冒的法律）而予以阻止；或
- (b) 憑藉任何在先權利（(a) 段或第 (1) 至 (4) 款所提述的除外）（尤其是憑藉關於版權或註冊外觀設計的法律）而予以阻止，

- (a) the trade mark is identical to an earlier trade mark;
- (b) the goods or services for which the application for registration is made are similar to those for which the earlier trade mark is protected; and
- (c) the use of the trade mark in relation to those goods or services is likely to cause confusion on the part of the public.
- (3) A trade mark shall not be registered if—
- (a) the trade mark is similar to an earlier trade mark;
- (b) the goods or services for which the application for registration is made are identical or similar to those for which the earlier trade mark is protected; and
- (c) the use of the trade mark in relation to those goods or services is likely to cause confusion on the part of the public.
- (4) Subject to subsection (6), a trade mark (**later trade mark**) that is identical or similar to an earlier trade mark must not be registered if, or to the extent that—
- (a) the earlier trade mark is entitled to protection under the Paris Convention as a well-known trade mark; and
- (b) the use of the later trade mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark. (Replaced 3 of 2020 s. 6)
- (5) Subject to subsection (6), a trade mark shall not be registered if, or to the extent that, its use in Hong Kong is liable to be prevented—
- (a) by virtue of any rule of law protecting an unregistered trade mark or other sign used in the course of trade or business (in particular, by virtue of the law of passing off); or

則該商標不得註冊或在上述可予以阻止的範圍內不得註冊，而任何因此而有權阻止使用某商標的人，在本條例中就該商標而言，稱為一項“在先權利”的擁有人。

- (6) 除非在先商標或其他在先權利的擁有人在根據第 44 條（反對註冊的法律程序）進行的反對註冊的法律程序中，有基於第 (4) 及 (5) 款所述的任何理由而提出異議，否則不得基於該等理由而拒絕將有關商標註冊。（由 2020 年第 3 號第 6 條修訂）
- (7) 如註冊申請是為某些貨品或服務提出，而拒絕註冊的理由只就該等貨品或服務中的某部分貨品或服務而存在，則該項拒絕只適用於該部分貨品或服務。
- (8) 凡在先商標或其他在先權利的擁有人同意有關商標的註冊，則本條並不阻止該商標的註冊。

13. 誠實的同時使用的情況等

- (1) 凡處長或法院信納——
 - (a) 某商標和有關在先商標或其他在先權利曾有誠實的同時使用的情況；或
 - (b) 因有其他特殊情況，故此將某商標註冊是恰當的，則第 12 條（拒絕註冊的相對理由）並不阻止該商標的註冊。
- (2) 根據或憑藉第 (1) 款作出的商標註冊，須受處長或法院認為合適施加的限制及條件所規限。
- (3) 本條並不阻止處長基於第 11 條（拒絕註冊的絕對理由）所述的任何理由而拒絕將某商標註冊。

- (b) by virtue of an earlier right other than those referred to in paragraph (a) or in subsections (1) to (4) (in particular, by virtue of the law of copyright or registered designs),

and a person thus entitled to prevent the use of a trade mark is referred to in this Ordinance as the owner of an “earlier right” in relation to the trade mark.

- (6) A trade mark may be refused registration on any of the grounds mentioned in subsections (4) and (5) only if an objection on those grounds is raised in proceedings in opposition to the registration under section 44 (opposition proceedings) by the owner of the earlier trade mark or other earlier right. (*Amended 3 of 2020 s. 6*)
- (7) Where the grounds for the refusal of registration exist in respect of only some of the goods or services for which the application for registration is made, the refusal shall apply to those goods or services only.
- (8) Nothing in this section prevents the registration of a trade mark where the owner of the earlier trade mark or other earlier right consents to the registration.

13. Honest concurrent use, etc.

- (1) Nothing in section 12 (relative grounds for refusal of registration) prevents the registration of a trade mark where the Registrar or the court is satisfied—
 - (a) that there has been an honest concurrent use of the trade mark and the earlier trade mark or other earlier right; or
 - (b) that by reason of other special circumstances it is proper for the trade mark to be registered.
- (2) The registration of a trade mark under or by virtue of subsection (1) shall be subject to such limitations and conditions as the Registrar or the court thinks fit to impose.

註冊商標的效力**14. 註冊商標所賦予的權利**

- (1) 註冊商標的擁有人具有該商標的專有權利，任何人未得該擁有人同意而在香港使用該商標，即屬侵犯該專有權利。
- (2) 第 18 條（註冊商標的侵犯）指明如在未得註冊商標的擁有人同意下作出即會構成侵犯註冊商標的作為。但如有關作為屬第 19 條（不屬侵犯註冊商標的例外情況）、第 20 條（用盡註冊商標所賦予的權利）及第 21 條（在廣告宣傳中使用等）所指明的例外情況，則不會構成侵犯註冊商標的作為。
- (3) 註冊商標的擁有人的權利自該商標的註冊日期起生效。

15. 卸棄、限制及條件

- (1) 任何要求將商標註冊的申請人或任何註冊商標的擁有人均可——
 - (a) 卸棄對該商標的任何指明要素的專有使用權利；或
 - (b) 同意註冊所賦予的權利須受指明的地域性或其他性質的限制或條件所規限。
- (2) 凡商標的註冊受任何卸棄、限制或條件所規限，則本條例所賦予的對該註冊商標的權利亦據此受到限制。

- (3) Nothing in this section prevents the Registrar from refusing to register a trade mark on any of the grounds mentioned in section 11 (absolute grounds for refusal of registration).

Effects of registered trade mark**14. Rights conferred by registered trade mark**

- (1) The owner of a registered trade mark has exclusive rights in the trade mark which are infringed by use of the trade mark in Hong Kong without his consent.
- (2) The acts constituting infringement of a registered trade mark, if done without the consent of the owner, are specified in section 18 (infringement of registered trade mark) but are subject to the exceptions specified in section 19 (exceptions to infringement), section 20 (exhaustion of rights conferred by registered trade mark) and section 21 (use in advertising, etc.).
- (3) The rights of the owner of a registered trade mark have effect from the date of registration of the trade mark.

15. Disclaimers, limitations and conditions

- (1) An applicant for registration of a trade mark, or the owner of a registered trade mark, may—
 - (a) disclaim any right to the exclusive use of any specified element of the trade mark; or
 - (b) agree that the rights conferred by the registration shall be subject to a specified territorial or other limitation or condition.
- (2) Where the registration of a trade mark is subject to a disclaimer, limitation or condition, the rights in the registered trade mark conferred by this Ordinance are restricted accordingly.

2-13
第 559 章

第 II 部
第 15 條

-
- (3) 《規則》可就將任何卸棄、限制或條件的詳情在官方公報公布和記入註冊紀錄冊訂定條文。
-

PART II
Section 15

2-14
Cap. 559

-
- (3) Provision may be made by the rules as to the publication in the official journal and entry in the register of particulars of a disclaimer, limitation or condition.
-

第 III 部

註冊商標的侵犯

導言

16. 對侵犯的提述

凡在本條例中提述侵犯註冊商標，均須解釋為侵犯該註冊商標的擁有人的權利的提述。

17. 對侵犯性貨品、侵犯性物料或侵犯性物品的提述

- (1) 凡在本條例中提述侵犯性貨品、侵犯性物料或侵犯性物品，該等提述均須按照本條解釋。
- (2) 如任何貨品或其包裝附有任何與註冊商標相同或相類似的標誌，而——
 - (a) 將該標誌應用於該等貨品或其包裝上在將該標誌如此應用時已構成侵犯該註冊商標；
 - (b) 該等貨品是擬輸入香港的，且在香港將該標誌應用於該等貨品或其包裝上會構成侵犯該註冊商標；或
 - (c) 該標誌已以侵犯該註冊商標的方式就該等貨品而作其他形式的使用，
 則該等貨品就該註冊商標而言屬侵犯性貨品。
- (3) 如任何物料附有任何與註冊商標相同或相類似的標誌，而——
 - (a) 該物料是以侵犯該註冊商標的方式——
 - (i) 用於標籤貨品；
 - (ii) 用於包裝貨品；
 - (iii) 作商用紙張之用；或

PART III

INFRINGEMENT OF REGISTERED TRADE MARKS

Preliminary

16. References to infringement

References in this Ordinance to the infringement of a registered trade mark shall be construed as references to any infringement of the rights of the owner.

17. References to infringing goods, material or articles

- (1) References in this Ordinance to infringing goods, infringing material or infringing articles shall be construed in accordance with this section.
- (2) Goods are infringing goods, in relation to a registered trade mark, if the goods or their packaging bear a sign identical or similar to the registered trade mark and—
 - (a) the application of the sign to the goods or their packaging constituted an infringement of the registered trade mark at the time the sign was applied;
 - (b) the goods are proposed to be imported into Hong Kong and the application of the sign in Hong Kong to the goods or their packaging would constitute an infringement of the registered trade mark; or
 - (c) the sign has otherwise been used in relation to the goods in such a way as to infringe the registered trade mark.
- (3) Material is infringing material, in relation to a registered trade mark, if the material bears a sign identical or similar to the registered trade mark and either—
 - (a) the material is used—

- (iv) 用於貨品或服務的廣告宣傳；或
- (b) 該物料擬如此使用，且該項使用會構成侵犯該註冊商標，
則該物料就該註冊商標而言屬侵犯性物料。
- (4) 如 ——
- (a) 任何物品是特別為供人製造與註冊商標相同或相類似的標誌的複製品而設計或改裝的；及
- (b) 管有、保管或控制該物品的人知道或有理由相信，該物品曾經或將會用於生產侵犯性貨品或侵犯性物料，
則該物品就該註冊商標而言屬侵犯性物品。
- (5) 第 (2) 款不得解釋為影響憑藉任何香港法律可合法地輸入香港的貨品的入口。

侵犯註冊商標的作為**18. 註冊商標的侵犯**

- (1) 凡某商標已就某些貨品或服務而註冊，如任何人在營商過程或業務運作中，就與該等貨品或服務相同的貨品或服務而使用與該商標相同的標誌，則該人即屬侵犯該註冊商標。
- (2) 凡某商標已就某些貨品或服務而註冊，如 ——

- (i) for labelling goods;
- (ii) for packaging goods;
- (iii) as a business paper; or
- (iv) for advertising goods or services,
in such a way as to infringe the registered trade mark;
or
- (b) the material is intended to be so used and such use would constitute an infringement of the registered trade mark.
- (4) Articles are infringing articles, in relation to a registered trade mark, if—
- (a) the articles are specifically designed or adapted for making copies of a sign identical or similar to the registered trade mark; and
- (b) the articles are in the possession, custody or control of a person who knows or has reason to believe that they have been or are to be used to produce infringing goods or material.
- (5) Nothing in subsection (2) shall be construed as affecting the importation of goods which may be lawfully imported into Hong Kong by virtue of any law of Hong Kong.

Infringing acts**18. Infringement of registered trade mark**

- (1) A person infringes a registered trade mark if he uses in the course of trade or business a sign which is identical to the trade mark in relation to goods or services which are identical to those for which it is registered.
- (2) A person infringes a registered trade mark if—

- (a) 任何人在營商過程或業務運作中，就與該等貨品或服務相類似的其他貨品或服務而使用與該商標相同的標誌；及
- (b) 就該等其他貨品或服務而使用該標誌相當可能會令公眾產生混淆，
- 則該人即屬侵犯該註冊商標。
- (3) 凡某商標已就某些貨品或服務而註冊，如 ——
- (a) 任何人在營商過程或業務運作中，就與該等貨品或服務相同或相類似的其他貨品或服務而使用與該商標相類似的標誌；及
- (b) 就該等其他貨品或服務而使用該標誌相當可能會令公眾產生混淆，
- 則該人即屬侵犯該註冊商標。
- (4) 凡某商標已註冊，如 —— (由 2020 年第 3 號第 7 條修訂)
- (a) 任何人在營商過程或業務運作中，就任何貨品或服務而使用與該商標相同或相類似的標誌；(由 2020 年第 3 號第 7 條修訂)
- (b) 該商標有權根據《巴黎公約》獲得作為馳名商標的保護；及
- (c) 該標誌的使用並無適當因由，且對該商標的顯著特性或聲譽構成不公平的利用或造成損害，
- 則該人即屬侵犯該註冊商標。
- (5) 就本條而言，任何人如 ——
- (a) 將標誌應用於貨品或其包裝上；
- (b) 在標誌下要約售賣貨品或為售賣而展示貨品；
- (c) 在標誌下將貨品推出市場；
- (d) 在標誌下積存貨品以作要約售賣或為售賣而展示或推出市場的用途；
- (e) 在標誌下要約提供服務或提供服務；

- (a) he uses in the course of trade or business a sign which is identical to the trade mark in relation to goods or services which are similar to those for which it is registered; and
- (b) the use of the sign in relation to those goods or services is likely to cause confusion on the part of the public.
- (3) A person infringes a registered trade mark if—
- (a) he uses in the course of trade or business a sign which is similar to the trade mark in relation to goods or services which are identical or similar to those for which it is registered; and
- (b) the use of the sign in relation to those goods or services is likely to cause confusion on the part of the public.
- (4) A person infringes a registered trade mark if—
- (a) he uses in the course of trade or business a sign which is identical or similar to the trade mark in relation to any goods or services; (Amended 3 of 2020 s. 7)
- (b) the trade mark is entitled to protection under the Paris Convention as a well-known trade mark; and
- (c) the use of the sign, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or repute of the trade mark.
- (5) For the purposes of this section a person uses a sign if, in particular, he—
- (a) applies it to goods or their packaging;
- (b) offers or exposes goods for sale under the sign;
- (c) puts goods on the market under the sign;
- (d) stocks goods under the sign for the purpose of offering or exposing them for sale or of putting them on the market;

- (f) 在標誌下輸入或輸出貨品；或
- (g) 在商用紙張上或廣告宣傳中使用標誌，即屬使用該標誌。
- (6) 儘管有第 (5) 款的規定，任何人如將註冊商標或與某註冊商標相類似的標誌應用於或安排將該等商標或標誌應用於擬用作下述用途的物料上——
- (a) 用於標籤或包裝貨品；
- (b) 作商用紙張之用；或
- (c) 用於貨品或服務的廣告宣傳，
- 而該人在該商標或該標誌如此應用時，知道或有理由相信該項應用並沒有獲得該註冊商標的擁有人或特許持有人授權，則該人須視作為使用該等侵犯該註冊商標的物料的一方。

19. 不屬侵犯註冊商標的例外情況

- (1) 儘管有第 18 條 (註冊商標的侵犯) 的規定，本條仍適用。
- (2) 凡某商標已就某些貨品或服務而註冊，如該商標是就該等貨品或服務而使用的，則該項使用不屬侵犯另一註冊商標。(但參閱第 53(9) 條關於宣布註冊無效的效力。)
- (3) 以下使用只要是按照在工業或商業事宜中的誠實做法作出，則不屬侵犯註冊商標——
- (a) 任何人使用他自己的姓名或名稱或地址或其業務地點的名稱；
- (b) 任何人使用他的業務的前任人的姓名或名稱或他的前任人的業務地點的名稱；

- (e) offers or supplies services under the sign;
- (f) imports or exports goods under the sign; or
- (g) uses the sign on business papers or in advertising.
- (6) Notwithstanding subsection (5), a person who applies or causes to be applied a registered trade mark, or a sign similar to a registered trade mark, to material which is intended to be used—
- (a) for labelling or packaging goods;
- (b) as a business paper; or
- (c) for advertising goods or services,
- shall be treated as a party to any use of the material which infringes the registered trade mark if, at the time the trade mark or sign was applied to the material, he knew or had reason to believe that its application to the material was not authorized by the owner of the registered trade mark or by a licensee.

19. Exceptions to infringement

- (1) This section applies notwithstanding section 18 (infringement of registered trade mark).
- (2) A registered trade mark is not infringed by the use of another registered trade mark in relation to goods or services for which the latter is registered (but see section 53(9) for the effect of a declaration of invalidity of registration).
- (3) A registered trade mark is not infringed by—
- (a) the use by a person of his own name or address or the name of his place of business;
- (b) the use by a person of the name of his predecessor in business or the name of his predecessor's place of business;

- (c) 使用標誌以指明貨品或服務的種類、質素、數量、原定用途、價值、地理來源、生產貨品或提供服務的時間或貨品或服務的其他特性；或
- (d) 因有需要顯示某貨品或服務的原定用途(例如作為附件或零件之用)而使用該商標。
- (4) 凡任何人在香港於營商過程或業務運作中，就某些貨品或服務而使用任何未經註冊的商標或其他標誌，而該人或其之前的所有權持有人在下述日期(兩者中以較早者為準)之前的某日起已在香港持續如此使用該未經註冊的商標或其他標誌——
- (a) 某註冊商標在香港首次使用的日期；及
- (b) 該註冊商標在香港的註冊日期，
- 則該項使用不屬侵犯該註冊商標。

20. 用盡註冊商標所賦予的權利

- (1) 儘管有第 18 條(註冊商標的侵犯)的規定，如就某些已在世界上任何地方推出市場的貨品而使用某註冊商標，而該等貨品是由擁有人或經其同意(不論是明示或隱含的同意，亦不論是附有條件或不附條件的同意)而在該商標下推出市場的，則該項使用並不侵犯該註冊商標。
- (2) 如貨品在推出市場後其狀況已有所改變或已受損，且就該等貨品而使用有關註冊商標會對該註冊商標的顯著特性或聲譽造成損害，則第(1)款不適用。

- (c) the use of signs which serve to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or rendering of services, or other characteristics of goods or services; or
- (d) the use of the trade mark where it is necessary to indicate the intended purpose of goods or services (for example, as accessories or spare parts),

provided the use is in accordance with honest practices in industrial or commercial matters.

- (4) A registered trade mark is not infringed by the use by any person in the course of trade or business in Hong Kong of an unregistered trade mark or other sign in relation to goods or services if the unregistered trade mark or other sign has been so used in Hong Kong by that person or a predecessor in title continuously from a date preceding the earlier of—
- (a) the date of first use in Hong Kong of the trade mark which is registered; and
- (b) the date of registration in Hong Kong of that trade mark.

20. Exhaustion of rights conferred by registered trade mark

- (1) Notwithstanding section 18 (infringement of registered trade mark), a registered trade mark is not infringed by the use of the trade mark in relation to goods which have been put on the market anywhere in the world under that trade mark by the owner or with his consent (whether express or implied or conditional or unconditional).
- (2) Subsection (1) does not apply where the condition of the goods has been changed or impaired after they have been put on the market, and the use of the registered trade mark in relation to those goods is detrimental to the distinctive character or repute of the trade mark.

21. 在廣告宣傳中使用等

- (1) 第 18 條 (註冊商標的侵犯) 不得解釋為阻止任何人為識別貨品或服務屬某註冊商標的擁有人或特許持有人的貨品或服務而使用該註冊商標。但任何上述使用如非按照在工業或商業事宜中的誠實做法而作出，即須視為侵犯該註冊商標。
- (2) 法院為施行第 (1) 款而決定有關使用是否按照在工業或商業事宜中的誠實做法而作出時，可考慮法院認為有關的因素，尤其包括——
 - (a) 該使用是否對該商標構成不公平的利用；
 - (b) 該使用是否對該商標的顯著特性或聲譽造成損害；或
 - (c) 該使用是否會欺騙公眾。
- (3) 為免生疑問，本條不得解釋為適用於對第 20 條 (用盡註冊商標所賦予的權利) 的詮釋。

反侵犯法律程序**22. 就侵犯註冊商標而進行訴訟**

- (1) 註冊商標的擁有人可就該商標遭侵犯而進行訴訟。
- (2) 儘管有第 48 條 (註冊日期) 的規定，反侵犯法律程序不可在有關商標實際上已記入註冊紀錄冊的日期之前展開。
- (3) 在反侵犯法律程序中，註冊商標的擁有人可獲得所有屬損害賠償、強制令、交出所得利潤形式或其他形式的濟

21. Use in advertising, etc.

- (1) Nothing in section 18 (infringement of registered trade mark) shall be construed as preventing the use by any person of a registered trade mark for the purpose of identifying goods or services as those of the owner of the registered trade mark or a licensee, but any such use which is otherwise than in accordance with honest practices in industrial or commercial matters shall be treated as infringing the registered trade mark.
- (2) In determining for the purposes of subsection (1) whether the use is in accordance with honest practices in industrial or commercial matters, the court may consider such factors as it considers relevant including, in particular, whether—
 - (a) the use takes unfair advantage of the trade mark;
 - (b) the use is detrimental to the distinctive character or repute of the trade mark; or
 - (c) the use is such as to deceive the public.
- (3) For the avoidance of doubt, nothing in this section shall be construed as applying to the interpretation of section 20 (exhaustion of rights conferred by registered trade mark).

Infringement proceedings**22. Action for infringement**

- (1) An infringement of a registered trade mark is actionable by the owner of the trade mark.
- (2) Notwithstanding section 48 (date of registration), no infringement proceedings may be begun before the date on which the trade mark is in fact entered in the register.

助，一如就任何其他財產權利遭侵犯而可獲得的濟助一樣。

23. 交付令

- (1) 註冊商標的擁有人可向法院申請一項命令，以將任何人在營商過程或業務運作中所管有、保管或控制的任何侵犯性貨品、侵犯性物料或侵犯性物品交付該擁有人或法院所指示的其他人。
- (2) 根據第 (1) 款提出的申請，不得在第 24 條 (申請作出交付令的時限) 所提述的期間終結之後提出。
- (3) 如法院根據第 (1) 款作出命令，則除非法院裁定有理由不根據第 25 條 (處置令) 作出命令，否則亦須根據該條作出命令。
- (4) 如法院在根據第 (1) 款作出命令時沒有同時根據第 25 條作出命令，則依據根據第 (1) 款作出的命令獲交付任何侵犯性貨品、侵犯性物料或侵犯性物品的人，須保留該等貨品、物料或物品以待根據第 25 條作出的命令或法院所作的根據該條作出命令的決定。
- (5) 本條並不影響法院的任何其他權力。

24. 申請作出交付令的時限

- (1) 除在第 (2) 款所述情況外，要求根據第 23 條 (交付令) ——
 - (a) 就侵犯性貨品作出命令的申請，不得在自有關商標應用於該等貨品或其包裝上的日期起計的 6 年期間終結後提出；

- (3) In infringement proceedings all such relief by way of damages, injunctions, accounts or otherwise shall be available to the owner of a registered trade mark as is available in respect of the infringement of any other property right.

23. Order for delivery up

- (1) The owner of a registered trade mark may apply to the 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 trade or business.
- (2) No application may be made under subsection (1) after the end of the period referred to in section 24 (limitation on order for delivery up).
- (3) Where the court makes an order under subsection (1), it shall also make an order under section 25 (order for disposal) unless it determines that there are grounds for not making such an order.
- (4) A person to whom any infringing goods, material or articles are delivered up pursuant to an order made under subsection (1) shall, if an order under section 25 is not made at the time of the making of the order under subsection (1), retain them pending the making of an order under section 25 or the decision of the court not to make such an order.
- (5) Nothing in this section affects any other power of the court.

24. Limitation on order for delivery up

- (1) Except as mentioned in subsection (2), an application for an order under section 23 (order for delivery up) may not be made after the end of the period of 6 years beginning on—
 - (a) in the case of infringing goods, the date on which the trade mark was applied to the goods or their packaging;

- (b) 就侵犯性物料作出命令的申請，不得在自有關商標應用於該物料之日起計的 6 年期間終結後提出；或
- (c) 就侵犯性物品作出命令的申請，不得在自製成該等物品的日期起計的 6 年期間終結後提出。
- (2) 如有關註冊商標的擁有人在第 (1) 款所提述的期間內的全部或部分時間——
- (a) 並無行為能力；或
- (b) 因他人的欺詐或隱瞞而未能發現使他有權申請作出命令的事實，
- 則他可自不再無行為能力或經合理努力則本可發現該等事實（視屬何情況而定）的日期起計的 6 年內，隨時提出上述申請。
- (3) 在第 (2) 款中，“無行為能力”（disability）的涵義與《時效條例》（第 347 章）第 22(3) 條中該詞的涵義相同。

25. 處置令

- (1) 凡侵犯性貨品、侵犯性物料或侵犯性物品已依據根據第 23 條（交付令）作出的命令交付，則可向法院申請——
- (a) 要求作出命令，以將該等貨品、物料或物品沒收而歸予法院認為合適的人；
- (b) 要求作出命令，以將該等貨品、物料或物品銷毀；
- (c) 要求作出命令，以按照法院認為合適的方式將該等貨品、物料或物品循商業以外的途徑處置，從而避免對註冊商標的擁有人造成任何損害；
- (d) 要求作出命令，以將該等貨品、物料或物品按照法院認為合適的其他方式處理；或
- (e) 要求作出不應作出該等命令的決定。

- (b) in the case of infringing material, the date on which the trade mark was applied to the material; or
- (c) in the case of infringing articles, the date on which they were made.
- (2) If during the whole or part of the period referred to subsection (1) the owner of the registered trade mark—
- (a) is under a disability; or
- (b) 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 6 years beginning on the date on which he ceased to be under a disability or could with reasonable diligence have discovered those facts, as the case may be.
- (3) In subsection (2), “disability” (無行為能力) has the same meaning as in section 22(3) of the Limitation Ordinance (Cap. 347).

25. Order for disposal

- (1) Where infringing goods, material or articles have been delivered up pursuant to an order made under section 23 (order for delivery up), an application may be made to the court—
- (a) for an order that they be forfeited to such person as the court may think fit;
- (b) for an order that they be destroyed;
- (c) for an order that they be disposed of outside the channels of commerce in such a manner as the court may think fit so as to avoid any harm being caused to the owner of the registered trade mark;
- (d) for an order that they be otherwise dealt with as the court may think fit; or

- (2) 凡有超過一名人士具有有關貨品、物料或物品的權益，法院可根據第 (1) 款作出其認為公正的命令；法院尤其可指示將該等貨品、物料或物品按法院的指示處置，並將收益按法院的指示分給該等人士。
- (3) 法院在考慮應根據第 (1) 款作出何種命令 (如有的話) 時，須考慮 ——
- (a) 侵犯行為的嚴重性及命令作出的補救必須相稱的需要；
 - (b) 第三方的權益；及
 - (c) 在關於侵犯註冊商標的法律程序中可用的其他補救辦法，是否足以補償有關註冊商標的擁有人及任何特許持有人和是否足以保障他們的權益。
- (4) 除非註冊商標的擁有人同意法院根據第 (1) 款作出命令，批准將非法應用於貨品、物料或物品的註冊商標除去，或除法院在沒有該項同意的情況下 ——
- (a) 信納從該等貨品、物料或物品除去該註冊商標後，該等貨品、物料或物品不會流入商業用途；或
 - (b) 雖未信納或並未完全信納 (a) 段所述的事宜，但經顧及該個案的情況，法院信納有其他例外理由以支持從該等貨品、物料或物品除去該註冊商標，
- 否則法院不得根據第 (1) 款作出命令。
- (5) 為施行本條而由終審法院首席法官訂立的法院規則，可就向具有有關貨品、物料或物品的權益的人送達通知一事訂定條文，而任何該等人士 ——
- (a) 不論有否獲送達上述通知，均有權在為根據本條作出命令而進行的法律程序中出庭；及
 - (b) 不論有否在上述法律程序中出庭，均有權針對根據第 (1)(a)、(b)、(c) 或 (d) 款作出的任何命令向上訴法庭提出上訴。

- (e) for a decision that no such order should be made.
- (2) Where there is more than one person interested in the goods, material or articles, the court may make such order under subsection (1) as it thinks just, and it may, in particular, direct that the goods, material or articles be disposed of and the proceeds be divided among them as the court directs.
- (3) In considering what order, if any, should be made under subsection (1), the court shall—
- (a) take into account the need for proportionality between the seriousness of the infringement and the remedies ordered;
 - (b) take into account the interests of third parties; and
 - (c) consider whether other remedies available in proceedings in respect of the infringement of the registered trade mark would be adequate to compensate the owner of the registered trade mark and any licensee and to protect their interests.
- (4) The court shall not make an order under subsection (1) permitting the removal of a registered trade mark from any goods, material or articles to which it has been unlawfully applied unless the owner of the registered trade mark consents to the order or, in the absence of such consent, unless the court is satisfied—
- (a) that the goods, material or articles will not enter the channels of commerce once the registered trade mark has been removed from the goods, material or articles; or
 - (b) having regard to the circumstances of the case, that there exist exceptional reasons to justify the removal of the registered trade mark from the goods, material or articles without the court being satisfied, or wholly satisfied, as to the matter mentioned in paragraph (a).

- (6) 任何根據第 (1)(a)、(b)、(c) 或 (d) 款作出的命令在該等法院規則規定的發出上訴通知書的限期內不得生效，如在該限期內有上訴通知書妥為發出，則該等命令在該上訴的法律程序有最終裁定的或被放棄前，不得生效。
- (7) 如法院決定不應根據第 (1)(a)、(b)、(c) 或 (d) 款作出命令，則在有關貨品、物料或物品依據根據第 23 條 (交付令) 作出的命令交付之前管有、保管或控制該等貨品、物料或物品的人有權獲退還該等貨品、物料或物品。
- (8) 凡在本條中提述任何具有貨品、物料或物品的權益的人，均包括法院可根據本條、《註冊外觀設計條例》(第 522 章) 第 54 條或《版權條例》(第 528 章) 第 111 條或第 231 條 (該等條文就侵犯註冊外觀設計、版權及對表演具有的權利訂立相類似的條文) 作出命令而惠及的任何人的提述。

26. 就無理威脅提起反侵犯法律程序要求濟助的法律程序

- (1) 凡任何人威脅要就某項侵犯註冊商標行為而針對另一人 (“被威脅的人”) 提起訴訟，而該項侵犯所涉的使用——

- (5) Provision may be made by rules of court made by the Chief Justice for the purposes of this section as to the service of notice on persons having an interest in the goods, material or articles, and any such person is entitled—
- (a) to appear in proceedings for an order under this section, whether or not he was served with notice; and
- (b) to appeal to the Court of Appeal against any order made under subsection (1)(a), (b), (c) or (d), whether or not he appeared.
- (6) An order made under subsection (1)(a), (b), (c) or (d) shall not take effect until the end of the period within which notice of an appeal may, as provided by those rules of court, be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.
- (7) If the court decides that no order should be made under subsection (1)(a), (b), (c) or (d), the person who had possession, custody or control of the goods, material or articles before they were delivered up pursuant to the order made under section 23 (order for delivery up) is entitled to their return.
- (8) References in this section to a person having an interest in goods, material or articles include any person in whose favour an order could be made under this section or under section 54 of the Registered Designs Ordinance (Cap. 522) or section 111 or 231 of the Copyright Ordinance (Cap. 528) (which make similar provision in relation to infringement of registered designs, copyright and rights in performances).

26. Proceedings for relief from groundless threats of infringement proceedings

- (1) Where a person threatens to bring an action against another

- (a) 並非將該商標應用於貨品或其包裝上；
- (b) 亦非在該商標下提供服務，
- 則任何因該威脅而感到受屈的人（“原告人”）可為取得本條所訂的濟助而在法院提起法律程序。
- (2) 可供申請的濟助為以下任何一項或多於一項——
- (a) 表明有關威脅並無充分理據支持的宣布；
- (b) 制止繼續作出該等威脅的強制令；及
- (c) 就原告人因該等威脅而已蒙受的損失（如有的話）而判給的損害賠償。
- (3) 凡被告人威脅要就某作為提起訴訟，除非他證明該作為構成對有關註冊商標的侵犯，或該作為如作出即會構成該項侵犯，否則原告人有權獲得根據第 (2) 款所申索的濟助。
- (4) 凡被告人威脅要就某作為提起訴訟，如他證明該作為構成對有關註冊商標的侵犯，或該作為如作出即會構成該項侵犯，但原告人證明該商標的註冊在某有關方面屬無效或可被撤銷，則原告人仍有權獲得根據第 (2) 款所申索的濟助。
- (5) 就本條而言，單是就某一商標已予註冊或已提出註冊申請而發出的通知，並不構成提起侵犯某註冊商標的訴訟的威脅。
- (6) 如——
- (a) 有關商標的註冊擁有人；或
- (b) 有權就侵犯該商標而提起法律程序的特許持有人，
- 在被威脅的人首次被威脅後的 28 日內，就侵犯該商標而針對該人展開訴訟，並已盡應盡的努力繼續進行該訴訟，則原告人不得為取得本條所訂的濟助而提起法律程序，如該等法律程序已提起，則不得繼續。

- person (the “threatened person”) for infringement of a registered trade mark in respect of any use other than—
- (a) the application of the trade mark to goods or their packaging; or
- (b) the supply of services under the trade mark,
- any person aggrieved by the threat (the “plaintiff”) may bring proceedings before the court for relief under this section.
- (2) The relief which may be applied for is any one or more of the following—
- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats; and
- (c) such damages, if any, as have been sustained by the plaintiff by reason of the threats.
- (3) The plaintiff is entitled to the relief claimed under subsection (2) unless the defendant shows that the acts in respect of which the action was threatened constitute or, if done, would constitute, an infringement of the registered trade mark concerned.
- (4) If the defendant shows that the acts in respect of which the action was threatened constitute or, if done, would constitute, an infringement of a registered trade mark, the plaintiff is nevertheless entitled to the relief claimed under subsection (2) if he shows that the registration of the trade mark is invalid or liable to be revoked in a relevant respect.
- (5) The mere notification that a trade mark is registered, or that an application for registration has been made, does not constitute a threat to bring an action for infringement for the purposes of this section.
- (6) Proceedings for relief under this section may not be brought, or (if brought) may not proceed, if—

- (7) 凡大律師或律師以專業身分代當事人作出任何作為，本條並不令他們可就該作為而被任何人根據本條被起訴。
-

- (a) the registered owner of the trade mark; or
(b) a licensee having power to bring proceedings for infringement of the trade mark,
begins an action for infringement of the trade mark against the threatened person within 28 days after the threat was first made to him and pursues that action with due diligence.
- (7) Nothing in this section makes a barrister or solicitor liable to proceedings under this section for any act done by him in a professional capacity on behalf of a client.
-

第 IV 部

作為財產客體的註冊商標

27. 註冊商標的性質

- (1) 註冊商標屬非土地財產。
- (2) 註冊商標可通過轉讓、遺囑處置或法律的實施而傳轉，方式如同傳轉其他非土地財產一樣，並可獨立地如此傳轉或在與任何業務的商譽有關連的情況下如此傳轉。
- (3) 就某些貨品或服務而註冊的註冊商標的轉讓或其他傳轉可以是局部的，亦即可以只限於——
 - (a) 就該等貨品或服務中的某部分（而非全部）貨品或服務而適用；或
 - (b) 就該商標的特定方式的使用或在特定地區的使用而適用。
- (4) 註冊商標的轉讓或與註冊商標有關的允許，須以書面作出並由轉讓人或由他人代其簽署或由遺產代理人或由他人代其簽署，否則即屬無效。
- (5) 如轉讓人或遺產代理人屬法團，則第 (4) 款關於轉讓或允許須經簽署的規定可藉蓋上該法團的印章而得以符合。
- (6) 本條適用於以抵押方式作出的轉讓，一如本條就任何其他轉讓而適用。
- (7) 註冊商標可作為押記的標的，方式如同其他非土地財產作為押記的標的一樣。
- (8) 本條例不得解釋為影響作為任何業務的商譽一部分的未經註冊商標的轉讓或其他傳轉。

PART IV

REGISTERED TRADE MARKS AS OBJECTS OF PROPERTY

27. Nature of registered trade mark

- (1) A registered trade mark is personal property.
- (2) A registered trade mark is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal property; and it is so transmissible either in connection with the goodwill of a business or independently.
- (3) An assignment or other transmission of a registered trade mark may be partial, that is, limited so as to apply—
 - (a) in relation to some but not all of the goods or services for which the trade mark is registered; or
 - (b) in relation to use of the trade mark in a particular manner or in a particular locality.
- (4) An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is made in writing and is signed by or on behalf of the assignor or his personal representative.
- (5) The requirement in subsection (4) that an assignment or assent be signed may be satisfied in a case where the assignor or personal representative is a corporation by the affixing of the seal of the corporation.
- (6) This section applies to an assignment by way of security as in relation to any other assignment.
- (7) A registered trade mark may be the subject of a charge in the same way as other personal property.

28. 註冊商標的共同擁有權

- (1) 凡某一商標是以超過 1 名人士的姓名或名稱共同註冊，則除非有任何相反的協議，否則他們每人均在該註冊商標中佔相等的分割份數。
- (2) 凡超過 1 名人士憑藉第 (1) 款或其他規定屬某一註冊商標的共同擁有人，則第 (3) 至 (6) 款適用。
- (3) 除非第 (4) 款另有規定或有任何相反的協議，否則每名共同擁有人均有權為其本身的利益，在無須得到任何其他共同擁有人同意和無須向任何其他共同擁有人作出交代的情況下，由他或其代理人作出若非有本款規定即會構成侵犯有關註冊商標的任何作為。
- (4) 註冊商標的單一名共同擁有人不得在未經每一名其他共同擁有人的同意下——
 - (a) 批予使用該註冊商標的特許；或
 - (b) 將他在該註冊商標中所佔的份數轉讓或作押記。
- (5) 註冊商標的任何共同擁有人均可根據第 III 部 (註冊商標的侵犯) 提起反侵犯法律程序，但除非每一名其他共同擁有人均加入作為原告人或被列為被告人，否則單一名共同擁有人不得未經法院許可而繼續進行該項訴訟。
- (6) 除非按第 (5) 款所述被列為被告人的共同擁有人參與該等法律程序，否則他無須承擔該項訴訟中的任何訟費。
- (7) 本條並不影響應由一名註冊商標的共同擁有人單獨提出的申請而批予非正審濟助。
- (8) 本條並不影響受託人或遺產代理人的相互權利和義務，亦不影響他們作為受託人或遺產代理人的權利和義務。

- (8) Nothing in this Ordinance shall be construed as affecting the assignment or other transmission of an unregistered trade mark as part of the goodwill of a business.

28. Co-ownership of registered trade mark

- (1) Where a trade mark is registered in the name of 2 or more persons jointly, each of them is entitled, subject to any agreement to the contrary, to an equal undivided share in the registered trade mark.
- (2) Subsections (3) to (6) apply where 2 or more persons are co-owners of a registered trade mark, whether by virtue of subsection (1) or otherwise.
- (3) Subject to subsection (4) and to any agreement to the contrary, each co-owner is entitled, by himself or his agents, to do for his own benefit and without the consent of or the need to account to any other co-owner, any act which would otherwise constitute an infringement of the registered trade mark.
- (4) One co-owner may not without the consent of each other co-owner—
 - (a) grant a licence to use the registered trade mark; or
 - (b) assign or charge his share in the registered trade mark.
- (5) Infringement proceedings may be brought under Part III (infringement of registered trade marks) by any co-owner, but one co-owner may not, without the leave of the court, proceed with the action unless each other co-owner is either joined as a plaintiff or added as a defendant.
- (6) A co-owner who is added as a defendant as mentioned in subsection (5) shall not be made liable for any costs in the action unless he takes part in the proceedings.

29. 影響註冊商標的交易的註冊

- (1) 凡 ——
 - (a) 聲稱憑藉一項可註冊交易而享有某註冊商標中或其下的任何權益的人；或
 - (b) 任何其他聲稱受可註冊交易影響的人，向處長提出申請，該項交易的訂明詳情即須記入註冊紀錄冊。
- (2) 以下是可註冊交易 ——
 - (a) 轉讓註冊商標或其中任何權利；
 - (b) 批予在註冊商標下的特許；
 - (c) 以註冊商標或其中或其下的任何權利作為抵押而批予任何不論是固定或是浮動的抵押權益；
 - (d) 遺產代理人就註冊商標或其中或其下的任何權利作出允許；及
 - (e) 法院或其他獲處長承認的主管當局作出命令以轉移註冊商標或其中或其下的任何權利。
- (3) 在任何要求將可註冊交易的訂明詳情註冊的申請提出之前 ——
 - (a) 對在並不知悉該項交易的情況下取得有關註冊商標中或其下的任何有衝突的權益的人而言，該項交易屬無效；及
 - (b) 任何聲稱憑藉該項交易而成為特許持有人的的人並不享有第 35 條(特許持有人一般的權利)、第 36 條(某

- (7) Nothing in this section affects the granting of interlocutory relief on the application of one co-owner alone.
- (8) Nothing in this section affects the mutual rights and obligations of trustees or personal representatives, or their rights and obligations as such.

29. Registration of transactions affecting registered trade mark

- (1) On application being made to the Registrar by—
 - (a) a person claiming to be entitled to an interest in or under a registered trade mark by virtue of a registrable transaction; or
 - (b) any other person claiming to be affected by a registrable 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 trade mark or any right in it;
 - (b) the grant of a licence under a registered trade mark;
 - (c) the granting of any security interest, whether fixed or floating, over a registered trade mark or any right in or under it;
 - (d) the making by personal representatives of an assent in relation to a registered trade mark or any right in or under it; and
 - (e) an order of a court, or any authority recognized by the Registrar as a competent authority, transferring a registered trade mark or any right in or under it.
- (3) Until an application has been made for registration of the prescribed particulars of a registrable transaction—

些專用特許持有人的權利)或第 37 條(在某些專用特許下的再授特許持有人的權利)所賦的保障。

- (4) 凡任何人憑藉一項可註冊交易而成為某註冊商標的擁有人或特許持有人，則除非——
- (a) 要求將該項交易的訂明詳情註冊的申請，在自該項交易的日期起計的 6 個月期間內提出；或
- (b) 法院信納在該期間內提出該項申請並不切實可行，而申請已在其後在切實可行範圍內盡快提出，
- 否則該人無權就在該交易日期之後但在交易的訂明詳情獲註冊之前發生的任何侵犯該註冊商標的事宜獲得損害賠償或獲得所交出的利潤。
- (5) 《規則》可就以下事宜訂定條文——
- (a) 修訂關乎任何特許的註冊詳情，以反映該特許的條款任何改動；及
- (b) 在以下情況下刪除在註冊紀錄冊中的該等詳情——
- (i) 從該等註冊詳情看來，有關特許是就某一固定期間批予的，而該期間已屆滿；或
- (ii) 當該等詳情並無顯示上述的期間，而處長在訂明期間屆滿後，已將他擬刪除在註冊紀錄冊中的該等詳情的意向知會各方。
- (6) 《規則》亦可就應有權享有抵押權益的利益的人的申請或經其同意而修訂或刪除在註冊紀錄冊中關乎該項權益的詳情，訂定條文。

- (a) the transaction is ineffective as against a person acquiring a conflicting interest in or under the registered trade mark in ignorance of the transaction; and
- (b) a person claiming to be a licensee by virtue of the transaction does not have the protection of section 35 (rights of licensees generally), section 36 (rights of certain exclusive licensees) or section 37 (rights of sub-licensees under certain exclusive licences).
- (4) Where a person becomes the owner or a licensee of a registered trade mark by virtue of a registrable transaction, then unless—
- (a) an application for registration of the prescribed particulars of the transaction is made before the end of the period of 6 months beginning on 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,
- he is not entitled to damages or an account of profits in respect of any infringement of the registered trade mark occurring after the date of the transaction and before the prescribed particulars of the transaction are registered.
- (5) Provision may be made by the rules as to—
- (a) the 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; or

30. 信託與衡平法上的權益

- (1) 註冊紀錄冊中不得記入任何信託通知，不論該信託屬明示、默示或法律構定信託；處長亦不受任何該等通知影響。
- (2) 除本條例另有規定外，就註冊商標而享有的衡平法上的權益可強制執行，方式如同強制執行就其他非土地財產而享有的衡平法上的權益一樣。
- (3) 為求更明確起見，本條並不阻止以信託受託人的名義將某商標註冊或將某可註冊交易的詳情註冊。

31. 申請將商標註冊為一項財產客體

- (1) 第 27 至 30 條（關乎作為財產客體的註冊商標）經所需的變通後，就商標的註冊申請而適用，如同其就註冊商標而適用一樣。
- (2) 當第 28 條（註冊商標的共同擁有權）就註冊申請而適用時，該條第 (1) 款提述商標的註冊須解釋為提述申請的提出。
- (3) 當第 29 條（影響註冊商標的交易的註冊）就影響某商標的註冊申請的交易所適用時，凡該條提述在註冊紀錄冊

- (ii) where no such period is indicated and, after such period as may be prescribed, the Registrar has notified the parties of his intention to remove the particulars from the register.

- (6) Provision may also be made by the rules as to 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.

30. Trust and equities

- (1) No notice of any trust (whether express, implied or constructive) shall be entered in the register; and the Registrar shall not be affected by any such notice.
- (2) Subject to this Ordinance, equities in respect of a registered trade mark may be enforced in like manner as in respect of other personal property.
- (3) For greater certainty, nothing in this section prevents the registration of a trade mark, or the registration of particulars of a registrable transaction, in the name of a person as a trustee of a trust.

31. Application for registration of a trade mark as an object of property

- (1) Sections 27 to 30 (which relate to a registered trade mark as an object of property) apply, with any necessary modifications, in relation to an application for the registration of a trade mark as in relation to a registered trade mark.
- (2) In section 28 (co-ownership of registered trade mark), as it applies in relation to an application for registration, the reference in subsection (1) of that section to the registration of a trade mark shall be construed as a reference to the making of the application.

4-11
第 559 章

第 IV 部
第 31 條

中記入詳情和提出將詳情註冊的申請，均須解釋為提述向處長發出關於該等詳情的通知。

PART IV
Section 31

4-12
Cap. 559

- (3) In section 29 (registration of transactions affecting registered trade mark), as it applies in relation to a transaction affecting an application for the registration of a trade mark, the references to the entry of particulars in the register, and to the making of an application to register particulars, shall be construed as references to the giving of notice to the Registrar of those particulars.
-

第 V 部**註冊商標特許的授予事宜****導言****32. 釋義**

在本部中，除文意另有所指外——

“特許”(licence)包括再授特許；而“特許持有人”(licensee)亦須據此解釋；

“專用特許”(exclusive licence)指授權特許持有人在摒除所有其他人(包括授予特許的人)的情況下以該特許所授權的方式使用某註冊商標的一般性或有限特許；而“專用特許持有人”(exclusive licensee)亦須據此解釋。

特許**33. 一般性或有限特許**

- (1) 使用某註冊商標的特許可以是一般性的或有限的。
- (2) 有限特許——
 - (a) 在有關商標已就某些貨品或服務而註冊的情況下，尤可就該等貨品或服務中的某部分(而非全部)貨品或服務而適用；或
 - (b) 尤可就有關商標的特定方式的使用或在特定地區的使用而適用。
- (3) 特許須以書面作出並由授予人或由他人代其簽署，否則即屬無效。

PART V**LICENSING OF REGISTERED TRADE MARKS****Preliminary****32. Interpretation**

In this Part, unless the context otherwise requires—

“exclusive licence”(專用特許) means a licence, whether general or limited, authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to use a registered trade mark in the manner authorized by the licence; and “exclusive licensee”(專用特許持有人) shall be construed accordingly;

“licence”(特許) includes a sub-licence; and “licensee”(特許持有人) shall be construed accordingly.

Licences**33. Licences may be general or limited**

- (1) A licence to use a registered trade mark may be general or limited.
- (2) A limited licence may, in particular, apply—
 - (a) in relation to some but not all of the goods or services for which the trade mark is registered; or
 - (b) in relation to use of the trade mark in a particular manner or a particular locality.
- (3) A licence is not effective unless it is in writing and is signed by or on behalf of the grantor.

5-3
第 559 章第 V 部
第 34 條

- (4) 如授予人屬法團，則第 (3) 款的規定可藉蓋上該法團的印章而得以符合。
- (5) 除非特許另有規定，否則特許對授予人的權益的所有權繼承人具有約束力；而在本條例中凡提述在註冊商標的擁有人同意下或在沒有註冊商標的擁有人同意下而作出任何事情，亦須據此解釋。
- (6) 特許可授權特許持有人授予再授特許。

34. 專用特許可規定具有與轉讓相同的權利等

- (1) 專用特許可規定就發生於授予特許之後的事宜，專用特許持有人所具有的權利及有權享有的補救，在該特許所規定的範圍內，與該特許若是一項轉讓時他所具有的權利及有權享有的補救一樣。
- (2) 專用特許持有人相對於受特許約束的任何所有權繼承人而具有的權利，與該持有人相對於授予該特許的人而具有的權利相同。

反侵犯法律程序**35. 特許持有人一般的權利**

- (1) 本條對任何特許持有人就註冊商標遭侵犯所具有的權利具有效力，但在下述情況下或在下述範圍內不適用——
 - (a) 特許持有人憑藉第 36(2) 條 (某些專用特許持有人的權利) 有權以自己的名義提起反侵犯法律程序；或
 - (b) 再授特許持有人憑藉第 37(2) 條 (在某些專用特許下的再授特許持有人的權利) 有權要求專用特許持有人就任何影響該再授特許持有人的權益的事宜，提起反侵犯法律程序。

PART V
Section 345-4
Cap. 559

- (4) The requirement in subsection (3) may be satisfied in a case where the grantor is a corporation by the affixing of the seal of the corporation.
- (5) Unless the licence provides otherwise, it is binding on a successor in title to the grantor's interest; and references in this Ordinance to doing anything with, or without, the consent of the owner of a registered trade mark shall be construed accordingly.
- (6) A licence may authorize a licensee to grant a sub-licence.

34. Exclusive licence may provide same rights as assignment, etc.

- (1) An exclusive licence may provide that the exclusive licensee shall, to such extent as may be provided by the licence, have the same rights and be entitled to the same remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.
- (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.

Infringement proceedings**35. Rights of licensees generally**

- (1) This section has effect with respect to the rights of a licensee in relation to the infringement of a registered trade mark but does not apply where or to the extent that—
 - (a) by virtue of section 36(2) (rights of certain exclusive licensees), the licensee has a right to bring infringement proceedings in his own name; or
 - (b) by virtue of section 37(2) (rights of sub-licensees under certain exclusive licences), a sub-licensee has the right to call on the exclusive licensee to take infringement

- (2) 除非特許持有人本身的特許或他的權益所源自的任何特許另有規定，否則他有權藉向有關註冊商標的擁有人送達書面通知而要求該擁有人就任何影響該持有人的權益的事宜，提起反侵犯法律程序。
- (3) 如註冊商標的擁有人——
- (a) 拒絕如此行事；或
- (b) 並無在被要求後的 1 個月內如此行事，
- 除非特許持有人本身的特許或他的權益所源自的任何特許另有規定，否則該持有人可以自己的名義提起上述法律程序，猶如他是該擁有人一樣。
- (4) 凡反侵犯法律程序是由特許持有人憑藉本條提起的，則除非有關註冊商標的擁有人加入作為原告人或被列為被告人，否則該持有人不得未經法院許可而繼續進行該項訴訟。
- (5) 除非按第 (4) 款所述被列為被告人的註冊商標的擁有人參與該等法律程序，否則他無須承擔該項訴訟中的任何訟費。
- (6) 第 (4) 款並不影響應由特許持有人單獨提出的申請而批予非正審濟助。
- (7) 在註冊商標的擁有人所提起的反侵犯法律程序中，特許持有人所蒙受或相當可能會蒙受的任何損失須予考慮；而法院可就原告人在何範圍內代特許持有人持有來自任何金錢上的補救所得收益，作出法院認為合適的指示。

- proceedings in respect of any matter which affects the sub-licensee's interests.
- (2) A licensee is entitled, unless his licence or any licence through which his interest is derived provides otherwise, by notice in writing served on the owner of the registered trade mark, to call on the owner to take infringement proceedings in respect of any matter which affects the licensee's interests.
- (3) Unless the licence or any licence through which the licensee's interest is derived provides otherwise, if the owner of the registered trade mark—
- (a) refuses to do so; or
- (b) fails to do so within 1 month after being called on to do so,
- the licensee may bring the proceedings in his own name as if he were the owner.
- (4) Where infringement proceedings are brought by a licensee by virtue of this section, the licensee may not, without the leave of the court, proceed with the action unless the owner of the registered trade mark is either joined as a plaintiff or added as a defendant.
- (5) An owner of a registered trade mark who is added as a defendant as mentioned in subsection (4) shall not be made liable for any costs in the action unless he takes part in the proceedings.
- (6) Nothing in subsection (4) affects the granting of interlocutory relief on application by a licensee alone.
- (7) In infringement proceedings brought by the owner of a registered trade mark, any loss suffered or likely to be suffered by licensees shall be taken into account; and the court may give such directions as it thinks fit as to the extent

36. 某些專用特許持有人的權利

- (1) 如就發生於授予特許之後的事宜，專用特許持有人憑藉第 34(1) 條 (專用特許可規定具有與轉讓相同的權利等) 所具有的權利及有權享有的補救，與該特許若是一項轉讓時他所具有的權利及有權享有的補救一樣，則本條就該持有人而適用，或在該範圍內就該持有人而適用。
- (2) 除特許的條文及本條另有規定外，專用特許持有人有權以自己的名義對任何並非有關註冊商標的擁有人的人提起反侵犯法律程序。
- (3) 專用特許持有人所具有的權利及有權享有的補救與有關註冊商標的擁有人所具有的權利及有權享有的補救是同時存在的；而凡在本條例中就侵犯註冊商標而提述註冊商標的擁有人，均須據此解釋。
- (4) 在專用特許持有人憑藉本條而提起的反侵犯法律程序中，被告人可引用任何假若該法律程序是由有關註冊商標的擁有人提起時他本可引用的免責辯護。
- (5) 凡註冊商標的擁有人 and 任何專用特許持有人同時就某侵犯註冊商標行為具有訴訟權，而該擁有人或該持有人所提起的反侵犯法律程序全部或局部關乎該行為，則除非另一方加入作為原告人或被列為被告人，否則該擁有人或該持有人 (視屬何情況而定) 不得未經法院許可而繼續進行該項訴訟。
- (6) 除非按第 (5) 款所述被列為被告人的人參與該等法律程序，否則他無須承擔該項訴訟中的任何訟費。
- (7) 第 (5) 款並不影響應由註冊商標的擁有人或專用特許持有人單獨提出的申請而批予非正審濟助。
- (8) 凡有關註冊商標的擁有人及任何專用特許持有人同時或曾經同時就某侵犯註冊商標行為具有訴訟權，而所提起的反侵犯法律程序全部或局部關乎該行為，則——

to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of licensees.

36. Rights of certain exclusive licensees

- (1) This section applies in relation to an exclusive licensee if, or to the extent that, by virtue of section 34(1) (exclusive licence may provide same rights as assignment, etc.), he has the same rights and is entitled to the same remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.
- (2) The exclusive licensee is entitled, subject to the provisions of the licence and to this section, to bring infringement proceedings in his own name against any person other than the owner of the registered trade mark.
- (3) The rights of the exclusive licensee and the remedies to which he is entitled are concurrent with those of the owner of the registered trade mark; and references to the owner of a registered trade mark in this Ordinance relating to infringement shall be construed accordingly.
- (4) In infringement proceedings brought by an exclusive licensee by virtue of this section, a defendant may avail himself of any defence which would have been available to him if the proceedings had been brought by the owner of the registered trade mark.
- (5) Where proceedings for infringement of a registered trade mark brought by the owner of the registered trade mark or an exclusive licensee relate wholly or partly to an infringement in respect of which they have concurrent rights of action, the owner or the exclusive licensee, as the case may be, may not, without the leave of the court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

- (a) 法院在評估損害賠償時，須考慮——
- (i) 有關特許的條款；及
 - (ii) 該擁有人或該持有人就該行為已獲判給的或可獲得的任何金錢上的補救；
- (b) 法院如已就該行為而判給惠及另一方的損害賠償或作出惠及另一方的交出所得利潤的指示，即不得作出交出所得利潤的指示；及
- (c) 法院如作出交出所得利潤的指示，則須按其認為公正的方法將利潤分攤予他們。
- (9) 不論註冊商標的擁有人及專用特許持有人是否均為上述法律程序的一方，第(8)款亦適用；如他們並非均為上述法律程序的一方，則法院可就該法律程序的一方在何範圍內代另一方持有來自任何金錢上的補救所得收益，作出法院認為合適的指示。
- (10) 註冊商標的擁有人須於申請第 23 條(交付令)所指的命令前，通知同時具有訴訟權的任何專用特許持有人；而法院可應該持有人提出的申請，經顧及該特許的條款後，根據該條作出法院認為合適的命令。
- (11) 第(5)至(10)款在註冊商標的擁有人與專用特許持有人之間的任何相反協議的規限下具有效力。

- (6) A person who is added as a defendant as mentioned in subsection (5) shall not be made liable for any costs in the action unless he takes part in the proceedings.
- (7) Nothing in subsection (5) affects the granting of interlocutory relief on application by the owner of a registered trade mark or an exclusive licensee alone.
- (8) Where proceedings for infringement of a registered trade mark are brought which relate wholly or partly to an infringement in respect of which the owner of the registered trade mark and an exclusive licensee have or had concurrent rights of action—
- (a) the court shall in assessing damages take into account—
 - (i) the terms of the licence; and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
 - (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
 - (c) if an account of profits is directed, the court shall apportion the profits between them as the court considers just.
- (9) Subsection (8) applies whether or not the owner of the registered trade mark and the exclusive licensee are both parties to the proceedings; and if they are not both parties, the court may give such directions as it thinks fit as to the extent to which the party to the proceedings is to hold the proceeds of any pecuniary remedy on behalf of the other.
- (10) The owner of a registered trade mark shall notify any exclusive licensee who has a concurrent right of action before applying for an order under section 23 (order for delivery up);

37. 在某些專用特許下的再授特許持有人的權利

- (1) 如專用特許持有人憑藉第 36(2) 條 (某些專用特許持有人的權利) 有權以自己的名義提起反侵犯法律程序，則本條就該專用特許持有人的再授特許持有人而適用，或在該範圍內就該專用特許持有人的再授特許持有人而適用。
- (2) 除非再授特許持有人本身的再授特許或他的權益所源自的任何特許另有規定，否則他有權藉向有關專用特許持有人送達書面通知而要求該專用特許持有人就任何影響該再授特許持有人的權益的事宜，提起反侵犯法律程序。
- (3) 如專用特許持有人 ——
 - (a) 拒絕如此行事；或
 - (b) 並無在被要求後的 1 個月內如此行事，
 除非再授特許持有人本身的再授特許或他的權益所源自的任何特許另有規定，否則該再授特許持有人可以自己的名義提起上述法律程序，猶如他是該專用特許持有人一樣。
- (4) 凡反侵犯法律程序是由再授特許持有人憑藉本條提起的，則除非有關專用特許持有人及註冊商標的擁有人均加入作為原告人或被列為被告人，否則該再授特許持有人不得未經法院許可而繼續進行該項訴訟。
- (5) 除非按第 (4) 款所述被列為被告人的人參與該等法律程序，否則他無須承擔該項訴訟中的任何訟費。

and the court may on the application of the licensee make such order under that section as it thinks fit having regard to the terms of the licence.

- (11) Subsections (5) to (10) have effect subject to any agreement to the contrary between the owner of the registered trade mark and the exclusive licensee.

37. Rights of sub-licensees under certain exclusive licences

- (1) This section applies in relation to a sub-licensee of an exclusive licensee if, or to the extent that, by virtue of section 36(2) (rights of certain exclusive licensees), the exclusive licensee has a right to bring infringement proceedings in his own name.
- (2) A sub-licensee is entitled, unless his sub-licence or any licence through which his interest is derived provides otherwise, by notice in writing served on the exclusive licensee, to call on the exclusive licensee to take infringement proceedings in respect of any matter which affects the sub-licensee's interests.
- (3) Unless the sub-licence or any licence through which the sub-licensee's interest is derived provides otherwise, if the exclusive licensee—
 - (a) refuses to do so; or
 - (b) fails to do so within 1 month after being called on to do so,
 the sub-licensee may bring the proceedings in his own name as if he were the exclusive licensee.
- (4) Where infringement proceedings are brought by a sub-licensee by virtue of this section, the sub-licensee may not, without the leave of the court, proceed with the action unless both the exclusive licensee and the owner of the registered trade mark are either joined as plaintiffs or added as defendants.

5-13
第 559 章

第 V 部
第 37 條

-
- (6) 第 (4) 款並不影響應由再授特許持有人單獨提出的申請而批予非正審濟助。
-

PART V
Section 37

5-14
Cap. 559

-
- (5) A person who is added as a defendant as mentioned in subsection (4) shall not be made liable for any costs in the action unless he takes part in the proceedings.
- (6) Nothing in subsection (4) affects the granting of interlocutory relief on application by a sub-licensee alone.
-

第 VI 部

申請及註冊程序

商標註冊申請

38. 註冊申請

- (1) 商標註冊申請須以訂明方式向處長提交。
- (2) 有關申請 ——
 - (a) 如申請人屬法團，須包括 ——
 - (i) 將有關商標註冊的要求；
 - (ii) 該法團的名稱及地址；
 - (iii) 該法團根據何地方的法律組成和註冊、成立為法團或設立；
 - (iv) (該申請人如尋求將該商標就某些貨品或服務註冊) 該等貨品或服務的陳述；
 - (v) 該商標的圖示；及
 - (vi) 《規則》所規定的任何其他資料、文件或事宜；或
 - (b) 如申請人屬其他情況，須包括 ——
 - (i) 將有關商標註冊的要求；
 - (ii) 該申請人的姓名或名稱及地址；
 - (iii) (該申請人如尋求將該商標就某些貨品或服務註冊) 該等貨品或服務的陳述；
 - (iv) 該商標的圖示；及
 - (v) 《規則》所規定的任何其他資料、文件或事宜。
(由 2020 年第 3 號第 8 條代替)

PART VI

APPLICATION AND REGISTRATION PROCEDURES

Application for registration of trade mark

38. Application for registration

- (1) An application for registration of a trade mark shall be filed with the Registrar in the prescribed manner.
- (2) The application must include—
 - (a) for an applicant that is a corporation—
 - (i) a request for registration of the trade mark;
 - (ii) the name and address of the corporation;
 - (iii) the place under the law of which the corporation was formed and registered, incorporated or established;
 - (iv) a statement of the goods or services in relation to which registration of the trade mark is sought;
 - (v) a representation of the trade mark; and
 - (vi) any other information, document or matter that the rules may require; or
 - (b) for any other applicant—
 - (i) a request for registration of the trade mark;
 - (ii) the name and address of the applicant;
 - (iii) a statement of the goods or services in relation to which registration of the trade mark is sought;
 - (iv) a representation of the trade mark; and

- (3) 如申請人尋求將商標就某些貨品或服務註冊，有關申請須述明該商標有否就該等貨品或服務為申請人所使用或在其同意下被使用，如該商標並無如此使用，則有關申請須述明申請人是否有誠實意圖就該等貨品或服務而使用該商標或容許他人就該等貨品或服務而使用該商標。
- (4) 申請須採用其中一種法定語文提交，並須符合本條例及《規則》就以兩種法定語文或其中一種提供資料或將文件翻譯成兩種法定語文或其中一種的譯本所訂的規定。
- (5) 申請須附有訂明的申請費用及訂明的其他費用。

39. 提交日期

- (1) 商標註冊申請的提交日期，為以下條件均獲符合的日期——
 - (a) 所有載有第 38(2)(a)(i)、(ii)、(iv) 及 (v) 或 (b)(i)、(ii)、(iii) 及 (iv) 條規定的詳情的文件，已提交予處長；
 - (b) 根據第 38(5) 條須繳付的費用，已予繳付。(由 2020 年第 3 號第 9 條代替)
- (2) (由 2020 年第 3 號第 9 條廢除)
- (3) 在本條例中凡提述商標的註冊申請日期，均須解釋為提述註冊申請的提交日期。

40. 貨品及服務的分類

- (v) any other information, document or matter that the rules may require. (*Replaced 3 of 2020 s. 8*)
- (3) The application shall state whether the trade mark is being used, by the applicant or with his consent, in relation to the goods or services in respect of which it is sought to be registered, and if it is not being so used, whether the applicant honestly intends to use the trade mark, or to allow it to be used, in relation to those goods or services.
- (4) The application shall be filed in one of the official languages and shall also comply with the requirements of this Ordinance and the rules as to the provision of information in, or the translation of documents into, one or both of the official languages.
- (5) The application shall be accompanied by the prescribed application fee and such other fees as may be prescribed.

39. Filing date

- (1) The filing date of an application for registration of a trade mark is the date on which both of the following conditions are fulfilled—
 - (a) all the documents containing the particulars required by section 38(2)(a)(i), (ii), (iv) and (v) or (b)(i), (ii), (iii) and (iv) are filed with the Registrar;
 - (b) the fees payable under section 38(5) are paid. (*Replaced 3 of 2020 s. 9*)
- (2) (*Repealed 3 of 2020 s. 9*)
- (3) References in this Ordinance to the date of application for registration of a trade mark shall be construed as references to the filing date of the application for registration.

40. Classification of goods and services

- (1) 為進行商標的註冊，貨品及服務須按照訂明的分類制度而分類。
- (2) 就貨品或服務屬何類別而產生的問題，須由處長裁定。

41. 聲稱具有優先權

- (1) 凡任何人為就某些貨品或服務註冊某商標而已在或已就任何巴黎公約國或世貿成員妥為提交申請，則在根據本條例將同一商標就任何或所有相同貨品或服務註冊方面，並在符合任何訂明條件的情況下，在該等申請中最先一份的提交日期後的 6 個月期間內，該人或其所有權繼承人均享有優先權利。（由 2005 年第 10 號第 35 條修訂）
- (2) 如根據本條例提出的註冊申請是在第 (1) 款所提述的 6 個月期間內提出的，則——
 - (a) 就確定哪些權利為優先權利而言，有關日期是最先一份的公約申請或世貿申請（視屬何情況而定）的提交日期；及
 - (b) 該商標是否可予註冊，不受該商標在該日期至根據本條例申請註冊的日期期間在香港的任何使用所影響。
- (3) 凡為註冊某商標而提交申請，而該項申請是在或就任何巴黎公約國或世貿成員提交的，則該項提交如根據該巴黎公約國或世貿成員的法律（或根據該巴黎公約國或世貿成員屬協議一方的雙邊或多邊協議）是相等於正規國家提交，該項提交即獲承認為產生優先權利。
- (4) 在第 (3) 款中，“正規國家提交”（regular national filing）指為註冊某商標而提交申請（不論該項申請的結果如何），而該項申請是在或就任何巴黎公約國或世貿成員提交的，且該項提交有確立有關申請的提交日期。
- (5) 凡任何人為註冊某商標而已在或已就任何巴黎公約國或世貿成員提交一項先前的申請，則為註冊該商標而在或

- (1) Goods and services shall be classified for the purposes of the registration of trade marks according to a prescribed system of classification.
- (2) Any question arising as to the class within which any goods or services fall shall be determined by the Registrar.

41. Claim to priority

- (1) A person who has duly filed an application for the registration of a trade mark in, or in respect of, a Paris Convention country or WTO member, or his successor in title, shall enjoy, for the purpose of registering the same trade mark under this Ordinance in respect of any or all of the same goods or services, a right of priority for a period of 6 months after the date of filing of the first of any such applications, subject to compliance with any prescribed conditions. (*Amended 10 of 2005 s. 35*)
- (2) If the application for registration under this Ordinance is made within the 6-month period referred to in subsection (1)—
 - (a) the relevant date for the purposes of establishing which rights take precedence shall be the date of filing of the first Convention application or WTO application, as the case may be; and
 - (b) the registrability of the trade mark shall not be affected by any use of the trade mark in Hong Kong in the period between that date and the date of the application for registration under this Ordinance.
- (3) Any filing of an application for registration of a trade mark in, or in respect of, a Paris Convention country or WTO member which is equivalent to a regular national filing under the law of that Paris Convention country or WTO member, or under any bilateral or multilateral agreement to which it is a party, shall be recognized as giving rise to a right of priority.

就同一巴黎公約國或世貿成員提交的其後的申請，在以下情況下並僅在以下情況下須為決定優先次序而被視作最先一份的申請：在該項其後的申請的提交日期，上述先前的申請已在沒有公開予公眾查閱和沒有留下任何有待解決的權利的情況下被撤回、放棄或拒絕，亦未有被用作聲稱具有優先權利的根據。

- (6) 第 (5) 款所提述的先前的申請不得在其後用作聲稱具有優先權利的根據。
- (7) 《規則》可就根據任何公約申請或世貿申請（視屬何情況而定）而聲稱具有優先權利的方式訂定條文。
- (8) 因任何公約申請或世貿申請（視屬何情況而定）而產生的優先權利可連同該項申請或獨立地轉讓或以其他方式轉轉；而第 (1) 款所提述的人的“所有權繼承人” (successor in title) 亦須據此解釋。
- (9) 在本條中——
- “公約申請” (Convention application) 指為註冊某商標而在或就某巴黎公約國提出的申請；
- “世貿申請” (WTO application) 指為註冊某商標而在或就某世貿成員提出的申請。

- (4) In subsection (3), “regular national filing” (正規國家提交) means a filing of an application for registration of a trade mark in, or in respect of, a Paris Convention country or WTO member that establishes the date on which the application was filed, whatever the outcome of the application may be.
- (5) A subsequent application for registration of a trade mark that was the subject of a previous application, and that is filed in, or in respect of, the same Paris Convention country or WTO member, shall be considered as the first application for the purpose of determining priority if, and only if, on the date of filing of the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority.
- (6) The previous application referred to in subsection (5) may not thereafter serve as a basis for claiming a right of priority.
- (7) Provision may be made by the rules as to the manner of claiming a right to priority on the basis of a Convention application or WTO application, as the case may be.
- (8) A right to priority arising as a result of a Convention application or WTO application, as the case may be, may be assigned or otherwise transmitted, either with the application or independently; and the reference in subsection (1) to the person’s “successor in title” (所有權繼承人) shall be construed accordingly.
- (9) In this section—
- “Convention application” (公約申請) means an application for registration of a trade mark in, or in respect of, a Paris Convention country;

審查及公布**42. 申請的審查**

- (1) 處長須審查商標註冊申請是否符合本條例所訂的註冊規定，包括《規則》為施行本條而施加的任何規定。
- (2) 為施行第 (1) 款，處長須在他認為有需要的範圍內就在先商標進行查冊。
- (3) 處長如覺得註冊規定未獲符合，則須以書面通知——
 - (a) 告知申請人處長的意見；
 - (b) 告知申請人他可向處長作出申述以證明註冊規定已獲符合，亦可修訂該項申請以符合該等規定，但他必須在訂明的限期內如此行事；及
 - (c) 告知他第 (4) 款的條文。
- (4) 申請人如——
 - (a) 在為施行第 (3)(b) 款而訂明的限期內沒有對該通知作出回應；或
 - (b) 在該限期內既沒有令處長信納註冊規定已獲符合，亦沒有修訂該項申請以符合該等規定，
 則處長須拒絕接納該項申請。
- (5) 如處長覺得註冊規定已獲符合，則他須接納有關申請。但如處長覺得該項申請是出於錯誤而獲接納的，則他可在該項申請的詳情根據第 43 條（公布申請的詳情）公布前隨時撤回該項接納。
- (6) 處長須以書面通知申請人他根據第 (4) 或 (5) 款所作出的決定。

“WTO application” (世貿申請) means an application for registration of a trade mark in, or in respect of, a WTO member.

Examination and publication**42. Examination of application**

- (1) The Registrar shall examine whether the application satisfies the requirements for registration under this Ordinance, including any requirements imposed by the rules for the purposes of this section.
- (2) For the purpose of subsection (1), the Registrar shall carry out a search of earlier trade marks to such extent as he considers necessary.
- (3) If it appears to the Registrar that the requirements for registration are not met, the Registrar shall, by notice in writing—
 - (a) inform the applicant of the Registrar’s opinion;
 - (b) inform him that he may make representations to the Registrar to establish that the requirements for registration are met or that he may amend the application so as to meet those requirements, but that he must do so within the prescribed period; and
 - (c) inform him of the provisions of subsection (4).
- (4) The Registrar shall refuse to accept the application if the applicant—
 - (a) fails to respond to the notice before the end of the period prescribed for the purposes of subsection (3)(b); or
 - (b) fails, before the end of that period, to satisfy the Registrar that the requirements for registration are

43. 公布申請的詳情

如處長根據第 42 條(申請的審查)接納商標註冊申請，則關於該項申請的詳情須按照《規則》在官方公報中公布。

反對、撤回及修訂**44. 反對註冊的法律程序**

- (1) 任何人可在自申請的詳情根據第 43 條(公布申請的詳情)公布當日起計的訂明期間內向處長發出反對註冊的通知。
- (2) 反對通知須以訂明方式以書面作出，並須載有反對理由的陳述。

45. 申請的撤回

- (1) 商標註冊申請人可隨時撤回其申請。
- (2) 如申請的詳情已按照第 43 條(公布申請的詳情)公布，則關於該等撤回的詳情須按照《規則》在官方公報中公布。

met or to amend the application so as to meet those requirements.

- (5) If it appears to the Registrar that the requirements for registration are met, he shall accept the application, but the Registrar may withdraw the acceptance at any time before particulars of the application have been published under section 43 (publication of particulars of application) if it appears to him that the application has been accepted in error.
- (6) The Registrar shall notify the applicant in writing of any decision made by him under subsection (4) or (5).

43. Publication of particulars of application

Where the Registrar accepts an application for registration of a trade mark under section 42 (examination of application), particulars of the application shall be published in the official journal in accordance with the rules.

Opposition, withdrawal and amendment**44. Opposition proceedings**

- (1) Any person may, within the prescribed period beginning on the date of publication of particulars of an application under section 43 (publication of particulars of application), give notice to the Registrar of opposition to the registration.
- (2) A notice of opposition shall be given in writing in the prescribed manner and shall include a statement of the grounds of opposition.

45. Withdrawal of application

- (1) An applicant for registration of a trade mark may at any time withdraw his application.

46. 申請的修訂

- (1) 處長可應申請人的要求，按本條的規定修訂該申請人的商標註冊申請。
- (2) 處長可修訂某商標註冊申請，以加入某註冊商標的圖示，並一併加入處長認為適當的、該註冊商標的註冊詳情。(由 2020 年第 3 號第 10 條代替)
- (2A) 然而，只有在所有以下條件均獲符合的情況下，有關申請方可被修訂——
 - (a) 在提出有關要求時，有關註冊商標是以有關申請人的名義註冊的；
 - (b) 該註冊商標就某些貨品或服務註冊，而該項申請是就任何或所有該等貨品或服務提出；
 - (c) 該註冊商標的註冊日期，較該項申請的日期為早。(由 2020 年第 3 號第 10 條增補)
- (2B) 如有關申請根據第 (2) 款所訂而被修訂，有關註冊詳情只就經修訂申請其中屬有關註冊商標的圖示的部分而有效。(由 2020 年第 3 號第 10 條增補)
- (3) 商標註冊申請可為以下目的予以修訂——
 - (a) 限制該申請所涵蓋的貨品或服務；或
 - (b) 其他訂明的目的。
- (4) 商標註冊申請可在其他方面修訂，但只限於為改正以下項目而作出該等修訂——
 - (a) 申請人的姓名或名稱或地址；
 - (b) 字眼上或抄印上的錯誤；或
 - (c) 明顯的錯處，

- (2) If particulars of the application have been published in accordance with section 43 (publication of particulars of application), particulars of the withdrawal shall be published in the official journal in accordance with the rules.

46. Amendment of application

- (1) At the request of the applicant, the Registrar may amend an application for registration of a trade mark as provided in this section.
- (2) The Registrar may amend an application for registration of a trade mark to add a representation of a registered trade mark together with the registered particulars of that trade mark the Registrar considers appropriate. (*Replaced 3 of 2020 s. 10*)
- (2A) However, the application may be amended only if all the following conditions are met—
 - (a) at the time the request is made, the registered trade mark is registered in the applicant's name;
 - (b) the application is made in respect of any or all of the goods or services for which the registered trade mark is registered;
 - (c) the date of registration of the registered trade mark is earlier than the date of the application. (*Added 3 of 2020 s. 10*)
- (2B) If the application is amended as provided for under subsection (2), the registered particulars have effect only in relation to the part of the amended application that is a representation of the registered trade mark. (*Added 3 of 2020 s. 10*)
- (3) An application for registration of a trade mark may be amended—
 - (a) for the purpose of restricting the goods or services covered by the application; or

而且所作改正須不會對該商標的本質造成重大影響或不會大幅擴展該項申請所涵蓋的貨品或服務的範圍。

- (5) 《規則》可就以下事宜訂定條文——
- (a) 公布影響商標的圖示或有關申請所涵蓋的貨品或服務的修訂的詳情；及
 - (b) 聲稱受該等修訂影響的人提出異議。
- (6) 在本條中——
- 註冊詳情** (registered particulars) 就某註冊商標而言——
- (a) 指根據第 67(2) 條記入註冊紀錄冊的詳情或事宜；及
 - (b) 在不局限 (a) 段的原則下，包括——
 - (i) 聲稱某顏色或某立體形狀為該商標或該商標的要素的陳述；
 - (ii) 該商標全部或部分由聲音或氣味所構成的陳述；及
 - (iii) 適用於該商標的卸棄、限制或條件。(由 2020 年第 3 號第 10 條增補)

- (b) for such other purposes as may be prescribed.
- (4) An application for registration of a trade mark may be amended in other respects but only for the purpose of 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 trade mark or extend the goods or services covered by the application.
- (5) Provision shall be made by the rules for—
- (a) the publication of particulars of any amendment which affects the representation of the trade mark, or the goods or services covered by the application; and
 - (b) the making of objections by any person claiming to be affected by the amendment.
- (6) In this section—
- registered particulars** (註冊詳情), in relation to a registered trade mark—
- (a) means the particulars or matters that are entered in the register under section 67(2); and
 - (b) without limiting paragraph (a), includes—
 - (i) a statement that claims a colour or a 3-dimensional shape as the trade mark or an element of the trade mark;
 - (ii) a statement that the trade mark consists wholly or partly of a sound or smell; and
 - (iii) a disclaimer, limitation or condition that applies to the trade mark. (Added 3 of 2020 s. 10)

註冊**47. 註冊**

- (1) 凡某項申請已獲處長根據第 42(5) 條 (申請的審查) 接納，而——
 - (a) 在第 44(1) 條 (反對註冊的法律程序) 所提述的訂明期間內並無任何反對通知發出；或
 - (b) 所有反對註冊的法律程序已被撤回，或申請人在該等法律程序中獲判勝訴，則除非處長經顧及自他接納該項申請後所知悉的事宜而覺得該項申請是出於錯誤而獲接納的，否則他須藉在註冊紀錄冊中記入訂明詳情而將有關商標註冊。
- (2) 商標一經根據第 (1) 款註冊，處長須向申請人發出註冊證明書。
- (3) 關於註冊的公告，須按照《規則》在官方公報中公布。

48. 註冊日期

凡某商標獲註冊，其註冊日期須為註冊申請的提交日期；而就本條例而言，該日期須當作為該商標的註冊日期。

49. 註冊的有效期

- (1) 凡商標獲註冊，該註冊自註冊日期起計的 10 年內有效。
- (2) 註冊可按照第 50 條 (註冊的續期) 續期，每段續期的期間為 10 年。

Registration**47. Registration**

- (1) Where an application has been accepted by the Registrar under section 42(5) (examination of application) and—
 - (a) no notice of opposition is given within the prescribed period referred to in section 44(1) (opposition proceedings); or
 - (b) all opposition proceedings are withdrawn or decided in favour of the applicant,the Registrar shall register the trade mark by entering the prescribed particulars in the register, unless it appears to him having regard to matters coming to his notice since he accepted the application, that it was accepted in error.
- (2) On the registration of a trade mark under subsection (1), the Registrar shall issue a certificate of registration to the applicant.
- (3) Notice of the registration shall be published in the official journal in accordance with the rules.

48. Date of registration

A trade mark shall be registered as of the filing date of the application for registration; and that date shall be deemed for the purposes of this Ordinance to be the date of registration of the trade mark.

49. Duration of registration

- (1) A trade mark shall be registered for a period of 10 years beginning on its date of registration.
- (2) Registration may be renewed in accordance with section 50 (renewal of registration) for further periods of 10 years.

50. 註冊的續期

- (1) 註冊商標的擁有人可按訂明方式要求將該商標的註冊續期，但須繳付訂明的續期費用。
- (2) 《規則》可就處長在任何註冊商標的註冊期屆滿之前將屆滿日期和註冊續期的方式告知該註冊商標的擁有人而訂定條文。
- (3) 續期的要求及續期費用的繳付必須在註冊期屆滿之前作出；如該項要求以及該項續期費用的繳付未有在註冊期屆滿之前作出，則可在訂明的不少於 6 個月的較後期間內作出，而在該情況下，有關註冊商標的擁有人必須在該期間內繳付一筆額外的訂明費用。
- (4) 註冊的續期自先前的註冊期屆滿的日期起生效。
- (5) 如註冊沒有按照本條續期，處長須從註冊紀錄冊中刪除有關商標。
- (6) 《規則》可就根據第 (5) 款從註冊紀錄冊中刪除的商標在訂明的條件（如有的話）的規限下恢復註冊而訂定條文。
- (7) 關於商標註冊的續期或恢復的公告，須按照《規則》在官方公報中公布。

補充條文**51. 分開、合併註冊申請及將一系列的商標註冊**

- (1) 《規則》可就以下事宜訂定條文——

50. Renewal of registration

- (1) The owner of a registered trade mark may, in the prescribed manner, request the renewal of the registration of the trade mark, subject to payment of the prescribed renewal fee.
- (2) Provision may be made by the rules for the Registrar to inform the owner of a registered trade mark, before the expiry of the registration, of the date of expiry and the manner in which the registration may be renewed.
- (3) A request for renewal must be made, and the renewal fee paid, before the expiry of the registration; and failing this, the request may be made and the renewal fee paid within such further period, of not less than 6 months, as may be prescribed, in which case an additional prescribed fee must also be paid within that period.
- (4) Renewal shall take effect from the expiry of the previous registration.
- (5) If the registration is not renewed in accordance with this section, the Registrar shall remove the trade mark from the register.
- (6) Provision may be made by the rules for the restoration of the registration of a trade mark which has been removed from the register under subsection (5), subject to such conditions, if any, as may be prescribed.
- (7) Notice of the renewal or restoration of the registration of a trade mark shall be published in the official journal in accordance with the rules.

Supplementary**51. Division, merger and registration of series**

- (1) Provision may be made by the rules as to—

- (a) 將某項商標註冊申請分開為超過 1 項的獨立申請，而每一項該等申請聲稱要求根據本條例獲得的保護是與原來的申請所聲稱要求的相同的；
- (b) 將超過 1 項獨立的商標註冊申請（每一項該等申請聲稱要求根據本條例獲得的保護均相同）合併為單一項申請；
- (c) 將超過 1 項獨立的註冊（每一項該等註冊均就同一商標而根據本條例提供相同的保護）合併為單一項註冊；及
- (d) 將一系列的商標註冊。
- (2) 在不損害第 (1) 款的一般性的原則下，《規則》可就以下事宜訂定條文——
- (a) 在何種情況下准許分開註冊申請、合併獨立的申請或註冊或將一系列的商標註冊，以及准許的條件；
- (b) 分開註冊申請或合併獨立的申請或註冊的效力；及
- (c) 須為何種目的將某項商標註冊申請視作單一項申請，以及須為何種目的將某項申請視作超過 1 項獨立申請。
- (3) 在本條中，“一系列的商標” (series of trade marks) 指超過 1 個在要項上相似的商標，而該等商標只在對該等商標的本質並無重大影響的不關乎顯著特性方面有所差異。

- (a) the division of an application for the registration of a trade mark into 2 or more separate applications, each of which claims the same protection under this Ordinance as the original application;
- (b) the merging of separate applications for registration of a trade mark, each of which claims the same protection under this Ordinance, into a single application;
- (c) the merging of separate registrations, each of which provides the same protection under this Ordinance in relation to the same trade mark, into a single registration; and
- (d) the registration of a series of trade marks.
- (2) Without prejudice to the generality of subsection (1), provision may be made by the rules as to—
- (a) the circumstances in which, and conditions subject to which, the division of an application for registration, the merging of separate applications or registrations, or the registration of a series of trade marks, is permitted;
- (b) the effect of a division of an application for registration or of a merger of separate applications or registrations; and
- (c) the purposes for which an application for the registration of a trade mark is to be treated as a single application and those for which it is to be treated as a number of separate applications.
- (3) In this section, “series of trade marks” (一系列的商標) means a number of trade marks which resemble each other as to their material particulars and differ only as to matters of a non-distinctive character not substantially affecting the identity of the trade mark.

第 VII 部**影響註冊的法律程序****撤銷、無效與更改****52. 註冊的撤銷**

- (1) 撤銷商標註冊的申請可由任何人向處長或向法院提出。
- (2) 商標的註冊可基於以下任何理由而遭撤銷——
 - (a) 該商標是就某些貨品或服務註冊，但在一段至少 3 年的連續期間內，該商標的擁有人沒有在香港真正地就該等貨品或服務而使用該商標，而該商標亦沒有在該擁有人的同意下在香港真正地就該等貨品或服務而使用，且並沒有能成立的理由（例如有對該商標所保護的貨品或服務施加入口限制或其他政府規定）不予使用；
 - (b) 該商標由某標誌構成且是就某些貨品或服務註冊，而由於其擁有人的作為或不作為——
 - (i) 該商標在有關行業中已成為該等貨品或服務的通用名稱；或
 - (ii) 該商標在有關行業中已獲廣泛接受為是描述該等貨品或服務的標誌；
 - (c) 該商標就某些貨品或服務註冊，而由於該擁有人就該等貨品或服務而對該商標的使用，或他人在該擁有人的同意下就該等貨品或服務而對該商標的使用，以致該商標易於誤導公眾，尤其是在該等貨品或服務的性質、質素或地理來源方面；或
 - (d) 就商標的註冊而記入註冊紀錄冊的任何條件遭違反或不獲遵守。
- (3) 就第 (2) 款而言——

PART VII**PROCEEDINGS AFFECTING REGISTRATION****Revocation, invalidity and variation****52. Revocation of registration**

- (1) An application for the revocation of the registration of a trade mark may be made by any person, and may be made either to the Registrar or to the court.
- (2) The registration of a trade mark may be revoked on any of the following grounds, namely—
 - (a) that the trade mark has not been genuinely used in Hong Kong by the owner or with his consent, in relation to the goods or services for which it is registered, for a continuous period of at least 3 years, and there are no valid reasons for non-use (such as import restrictions on, or other governmental requirements for, goods or services protected by the trade mark);
 - (b) that the trade mark consists of a sign that, in consequence of the acts or the inactivity of the owner—
 - (i) has become the common name in the trade for goods or services for which the trade mark is registered; or
 - (ii) has become generally accepted within the trade as the sign that describes goods or services for which the trade mark is registered;
 - (c) that in consequence of the use made of it by the owner or with his consent, in relation to the goods or services for which it is registered, the trade mark is liable to

- (a) 凡某商標的其他式樣的要素雖有別於該商標的註冊式樣的要素，但該差別就該商標的註冊式樣而言是沒有改變該商標的顯著特性的，則使用該商標包括使用該其他式樣；
- (b) 在香港使用商標，包括在香港將商標應用於只供出口的貨品或該等貨品的包裝上；及
- (c) 在香港使用就服務註冊的商標，包括就在香港以外地方提供或擬在香港以外地方提供的服務使用該商標。
- (4) 除第 (5) 款另有規定外，如第 (2)(a) 款所描述的使用在該款所述的 3 年期間屆滿後但在撤銷註冊的申請提出前已經開始或恢復，則有關商標的註冊不得基於該款所述的理由而遭撤銷。
- (5) 凡第 (2)(a) 款所描述的使用是在該款所述的 3 年期間屆滿後但在該項撤銷註冊的申請提出前的 3 個月期間內開始或恢復的，即無須理會，但如在註冊商標的擁有人知悉有關的撤銷註冊申請可能會提出之前，籌備開始使用或恢復使用的工作已經展開，則屬例外。
- (6) 如商標是就某些貨品或服務註冊，而撤銷註冊的理由只就該等貨品或服務中的某部分貨品或服務而存在，則撤銷須只關乎該部分貨品或服務。
- (7) 凡任何商標的註冊在某範圍內遭撤銷，則有關擁有人的權利須當作已自以下日期起在該範圍內終止——
- (a) 撤銷註冊的申請日期；或
- (b) 如處長或法院信納撤銷的理由在某較早的日期已存在，則為該較早的日期。
- (8) 就第 (2)(a) 款而言，該款所述的 3 年期間可自商標的詳情根據第 47(1) 條 (註冊) 記入註冊紀錄冊的實際日期當日或之後的任何時間開始計算。

- mislead the public, particularly as to the nature, quality or geographical origin of those goods or services; or
- (d) that there has been a contravention of or a failure to observe any condition entered in the register in relation to its registration.
- (3) For the purposes of subsection (2)—
- (a) use of a trade mark includes use in a form which differs in elements which do not alter the distinctive character of the trade mark in the form in which it was registered;
- (b) use of a trade mark in Hong Kong includes applying the trade mark to goods or to the packaging of goods in Hong Kong solely for export purposes; and
- (c) use of a trade mark in Hong Kong includes, where the trade mark is registered in respect of services, use in relation to services provided or to be provided outside Hong Kong.
- (4) Subject to subsection (5), the registration of a trade mark shall not be revoked on the ground mentioned in subsection (2)(a) if the use described in that subsection is commenced or resumed after the expiry of the 3-year period and before the application for revocation is made.
- (5) Any commencement or resumption of the use described in subsection (2)(a) after the expiry of the 3-year period but within the period of 3 months before the making of the application for revocation shall be disregarded unless preparations for the commencement or resumption began before the owner of the registered trade mark became aware that the application might be made.
- (6) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

53. 註冊無效的宣布

- (1) 宣布商標註冊無效的申請可由任何人向處長或法院提出。
- (2) 如商標的註冊是不真誠地作出的，則處長本人可向法院申請宣布該項註冊無效。
- (3) 任何商標的註冊均可以該商標是在違反第 11 條 (拒絕註冊的絕對理由) 的情況下註冊為理由而宣布為無效。
- (4) 凡就某些貨品或服務註冊的商標是在違反第 11(1)(b)、(c) 或 (d) 條的情況下註冊的，而由於對該商標的使用，以致該商標在註冊後已就該等貨品或服務而具有顯著特性，則該項註冊不得宣布為無效。
- (5) 除第 (6) 及 (7) 款另有規定外，商標的註冊亦可基於以下理由而宣布為無效——
 - (a) 已有一個在先商標，而第 12(1)、(2) 或 (3) 條 (拒絕註冊的相對理由) 所列的條件就該在先商標適用；或
 - (b) 已有一項在先權利，而第 12(4) 或 (5) 條 (拒絕註冊的相對理由) 所列的條件已就該在先權利獲符合。
- (6) 如在先商標或其他在先權利的擁有人已同意有關商標的註冊，則不得根據第 (5) 款宣布該項註冊為無效。

- (7) Where the registration of a trade mark is revoked to any extent, the rights of the owner shall be deemed to have ceased to that extent as from—
 - (a) the date of the application for revocation; or
 - (b) if the Registrar or the court is satisfied that the grounds for revocation existed at an earlier date, that earlier date.
- (8) For the purposes of subsection (2)(a), the 3-year period may begin at any time on or after the actual date on which particulars of the trade mark were entered in the register under section 47(1) (registration).

53. Declaration of invalidity of registration

- (1) An application for a declaration of invalidity of the registration of a trade mark may be made by any person, and may be made either to the Registrar or to the court.
- (2) In the case of bad faith in the registration of a trade mark, the Registrar himself may apply to the court for a declaration of the invalidity of the registration.
- (3) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in contravention of section 11 (absolute grounds for refusal of registration).
- (4) Where the trade mark was registered in contravention of section 11(1)(b), (c) or (d), it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.
- (5) Subject to subsections (6) and (7), the registration of a trade mark may also be declared invalid on the ground—
 - (a) that there is an earlier trade mark in relation to which the conditions set out in section 12(1), (2) or (3) (relative grounds for refusal of registration) apply; or

- (7) 如某商標按第 13 條 (誠實的同時使用的情況等) 的規定基於該商標和在先商標或其他在先權利曾有誠實的同時使用的情況而獲註冊，則除非處長或法院信納該商標和在先商標或其他在先權利實際上沒有誠實的同時使用的情況，否則不得根據第 (5) 款宣布該商標的註冊為無效。
- (8) 如商標是就某些貨品或服務註冊，而註冊無效的理由只就該等貨品或服務中的某部分貨品或服務而存在，則該商標須只限於就該部分貨品或服務而宣布為無效。
- (9) 在不影響過往已完結的交易的原則下，凡任何商標的註冊根據本條在某範圍內宣布為無效，該項註冊須在該範圍內當作從來沒有作出。

54. 註冊的更改

- (1) 更改商標註冊的申請可由任何人向處長或向法院提出。
- (2) 任何商標的註冊只可以就該註冊而記入註冊紀錄冊的任何條件遭違反或不獲遵守為理由而更改。

- (b) that there is an earlier right in relation to which the condition set out in section 12(4) or (5) (relative grounds for refusal of registration) is satisfied.
- (6) The registration of a trade mark may not be declared invalid under subsection (5) if the owner of the earlier trade mark or other earlier right has consented to the registration.
- (7) Where a trade mark has been registered on the ground that there has been an honest concurrent use of the trade mark and the earlier trade mark or other earlier right, as provided for by section 13 (honest concurrent use, etc.), the registration of a trade mark may not be declared invalid under subsection (5) unless the Registrar or the court is satisfied that in fact there had been no honest concurrent use of the trade mark and the earlier trade mark or other earlier right.
- (8) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.
- (9) Without affecting transactions past and closed, where the registration of a trade mark is declared invalid under this section to any extent, the registration shall to that extent be deemed never to have been made.

54. Variation of registration

- (1) An application for the variation of the registration of a trade mark may be made by any person, and may be made either to the Registrar or to the court.
- (2) The registration of a trade mark may be varied only on the ground that there has been a contravention of or a failure to observe any condition entered in the register in relation to its registration.

改動與放棄**55. 註冊商標的改動**

- (1) 除按本條規定外，不得改動在註冊紀錄冊中的註冊商標。
- (2) 凡註冊商標載有其擁有人或任何前擁有人的姓名或名稱或地址，或是由其擁有人或任何前擁有人的姓名或名稱或地址構成的，處長可應該註冊商標的擁有人的要求，容許對該姓名或名稱或地址作出改動，但只以所作的改動不會對該註冊商標的本質造成重大影響為限。（由 2005 年第 10 號第 36 條修訂）
- (3) 《規則》可就以下事宜訂定條文——
 - (a) 任何該等改動的效力；
 - (b) 在官方公報公布任何該等改動的詳情；及
 - (c) 任何聲稱受該等改動影響的人提出異議。

56. 註冊商標的放棄

- (1) 凡商標就某些貨品或服務註冊，該商標的擁有人可就所有該等貨品或服務或其中某部分而放棄該商標的註冊。
- (2) 《規則》可就以下事宜訂定條文——
 - (a) 放棄的方式和效力；及
 - (b) 保障其他具有該商標的權利的人的權益。

更正、改正及改動註冊紀錄冊**57. 更正或改正等****Alteration and surrender****55. Alteration of registered trade mark**

- (1) Except as provided in this section, a registered trade mark shall not be altered in the register.
- (2) The Registrar may, at the request of any owner of a registered trade mark which contains or consists of the name or address of the owner or any previous owner, allow the alteration of that name or address but only to the extent that the alteration does not substantially affect the identity of the trade mark. (*Amended 10 of 2005 s. 36*)
- (3) Provision may be made by the rules—
 - (a) as to the effect of any such alteration;
 - (b) for the publication in the official journal of particulars of any such alteration; and
 - (c) for the making of objections by any person claiming to be affected by it.

56. Surrender of registered trade mark

- (1) The registration of a trade mark may be surrendered by the owner in respect of some or all of the goods or services for which the trade mark is registered.
- (2) Provision may be made by the 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 trade mark.

Rectification, correction and amendment of the register**57. Rectification or correction etc.**

(由 2020 年第 3 號第 11 條修訂)

(Amended 3 of 2020 s. 11)

- (1) 除第 (2) 款另有規定外，任何有充分利害關係的人均可申請對任何在註冊紀錄冊中的錯誤或遺漏作出更正。
- (2) 更正的申請不得就影響商標註冊的有效性的任何事宜而提出。
- (3) 更正的申請可向處長或法院提出。
- (4) 除處長或法院另有指示外，更正註冊紀錄冊的效力是有關的錯誤或遺漏須當作從未出現過。
- (5) 處長可應註冊商標的擁有人或特許持有人提出的要求，或應具有註冊商標的權益（該權益的詳情須已根據第 29 條（影響註冊商標的交易的註冊）記入註冊紀錄冊）或在註冊商標上有押記（該押記的詳情須已根據第 29 條記入註冊紀錄冊）的人提出的要求，將記錄於註冊紀錄冊的該人的姓名或名稱或地址或其他識別該人的詳情的任何改變記入。
- (6) 處長如信納在註冊紀錄冊中的錯誤或遺漏可歸因於處長，可改正該錯誤或遺漏。（由 2020 年第 3 號第 11 條代替）
- (6A) 上述改正的權力可——
 - (a) 由處長自行行使；或
 - (b) 應某名有充分利害關係的人以書面提出的申請而行使。（由 2020 年第 3 號第 11 條增補）
- (6B) 在作出改正前，處長須向處長認為就有關擬作出的改正應獲通知的人，發出擬作出該項改正的通知。（由 2020 年第 3 號第 11 條增補）
- (6C) 為免生疑問，不論有關錯誤或遺漏是否可能影響某商標註冊的有效性，上述改正的權力均可行使。（由 2020 年第 3 號第 11 條增補）
- (7) 處長可從註冊紀錄冊中刪除他覺得不再有效的事宜。

- (1) Subject to subsection (2), any person having a sufficient interest may apply for the rectification of an error or omission in the register.
- (2) An application for rectification may not be made in respect of a matter affecting the validity of the registration of a trade mark.
- (3) An application for rectification may be made either to the Registrar or to the court.
- (4) Except where the Registrar or the court directs otherwise, the effect of rectification of the register is that the error or omission in question is deemed never to have been made.
- (5) The Registrar may, on request made by the owner of a registered trade mark or a licensee, or by any person having an interest in or charge on a registered trade mark the particulars of which have been entered in the register under section 29 (registration of transactions affecting registered trade mark), enter any change in his name or address, or in any other particulars identifying such person, as recorded in the register.
- (6) The Registrar may correct an error or omission in the register if satisfied that the error or omission is attributable to the Registrar. *(Replaced 3 of 2020 s. 11)*
- (6A) The power to correct may be exercised—
 - (a) on the Registrar's own initiative; or
 - (b) on application in writing by a person having a sufficient interest. *(Added 3 of 2020 s. 11)*
- (6B) Before making a correction, the Registrar must give notice of the proposed correction to any person the Registrar considers should be notified of the proposed correction. *(Added 3 of 2020 s. 11)*

58. 修訂註冊紀錄冊的記項以配合新的分類等

- (1) 《規則》可訂定條文，賦權處長作出他認為有需要的事情，以為商標的註冊而實施任何經修訂或替代的貨品或服務分類。
- (2) 《規則》尤可訂定條文，賦權處長修訂註冊紀錄冊中的記項以配合經修訂或替代的貨品或服務分類。
- (3) 凡《規則》賦權處長修訂註冊紀錄冊中的記項，則《規則》亦須為以下事宜訂定條文——
 - (a) 向任何可能受處長擬作出的修訂影響的註冊商標的擁有人發出通知；
 - (b) 在官方公報公布處長擬作出的修訂的詳情；
 - (c) 聲稱受影響的註冊商標的擁有人在訂明的時間內提出異議；及
 - (d) 任何其他聲稱受影響的人在訂明的時間內提交反對。
- (4) 《規則》亦可訂定條文，賦權處長——
 - (a) 規定註冊商標的擁有人在訂明的時間內提交關於修訂註冊紀錄冊中的記項以配合經修訂或替代的貨品或服務分類的建議；及
 - (b) 在註冊商標的擁有人沒有如此行事的情況下，取消商標的註冊或拒絕將商標的註冊續期。
- (5) 上述的修訂權力，不得為擴大註冊所賦予的權利而行使，但如處長覺得遵守本規定會牽涉過度複雜的情況，而且任何權利的擴大既不會是重大的，亦不會對任何人的權利有不利影響，則屬例外。

- (6C) To avoid doubt, the power to correct is exercisable regardless of whether the error or omission may affect the validity of the registration of a trade mark. (*Added 3 of 2020 s. 11*)
- (7) The Registrar may remove from the register matter appearing to him to have ceased to have effect.

58. Amendment of entries to accord with new classification, etc.

- (1) Provision may be made by the rules to empower the Registrar to do such things as he considers necessary to implement any amended or substituted classification of goods or services for the purposes of the registration of trade marks.
- (2) Provision may in particular be made by the rules to empower the Registrar to amend entries in the register so as to accord with the amended or substituted classification of goods or services.
- (3) Where the rules empower the Registrar to amend entries in the register, provision shall also be made by the rules for—
 - (a) the giving of notice to any owner of a registered trade mark who may be affected by an amendment proposed to be made by the Registrar;
 - (b) the publication in the official journal of particulars of the amendments proposed to be made by the Registrar;
 - (c) the making of objections, within such time as may be prescribed, by any owner of a registered trade mark claiming to be affected; and
 - (d) the filing of oppositions, within such time as may be prescribed, by any other person claiming to be affected.
- (4) Provision may also be made by the rules to empower the Registrar—
 - (a) to require the owner of a registered trade mark, within such time as may be prescribed, to file a proposal for

默許註冊商標的使用**59. 默許的效力**

- (1) 凡任何在先商標或其他在先權利的擁有人已在一段為期 5 年的連續期間內默許在香港使用某註冊商標，而該擁有人是知道有該項使用的，則該擁有人不再有權基於該在先商標或其他在先權利——
- (a) 申請宣布在後商標的註冊無效；或
- (b) (如該在後商標曾就某些貨品或服務而使用) 反對就該等貨品或服務而使用該在後商標，
但如該在後商標的註冊申請是不真誠地作出的，則屬例外。
- (2) 凡第 (1) 款適用，則儘管在先商標或在先權利不可再被援引以反對在後商標，該在後商標的擁有人亦無權反對他人使用該在先商標或利用該項在先權利(視屬何情況而定)。

amendment of entries in the register so as to accord with any amended or substituted classification of goods or services; and

- (b) to cancel or refuse to renew the registration of the trade mark in the event of the owner failing to do so.
- (5) 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 Registrar that compliance with this requirement would involve undue complexity and that any extension would not be substantial and would not adversely affect the rights of any person.

Acquiescence in use of registered trade mark**59. Effect of acquiescence**

- (1) Where the owner of an earlier trade mark or other earlier right has acquiesced for a continuous period of 5 years in the use of a registered trade mark in Hong Kong, being aware of that use, there shall cease to be any entitlement on the basis of that earlier trade mark or other earlier right—
- (a) to apply for a declaration that the registration of the later trade mark is invalid; or
- (b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used,
- unless the application for registration of the later trade mark was made in bad faith.
- (2) Where subsection (1) applies, the owner of the later trade mark is not entitled to oppose the use of the earlier trade mark or the exploitation of the earlier right, as the case may

be, notwithstanding that the earlier trade mark or earlier right
may no longer be invoked against his later trade mark.

第 VIII 部

防禦商標、集體商標及證明商標

PART VIII

DEFENSIVE TRADE MARKS, COLLECTIVE MARKS AND CERTIFICATION MARKS

60. 防禦商標

- (1) 凡商標就某些貨品或服務註冊，而該商標就所有或任何該等貨品或服務使用頻密至變得極為馳名於香港，以致就其他貨品或服務使用該商標便相當可能會減損其就首述的貨品及服務所具有的顯著特性，則該註冊商標的擁有人如向處長提出申請，該商標可就任何或所有該等其他貨品或服務而註冊為防禦商標。
- (2) 縱使註冊商標的擁有人並沒有就某些貨品或服務或沒有打算就某些貨品或服務而使用該商標，該商標仍可就該等貨品或服務而註冊為防禦商標。
- (3) 縱使某商標已就某些貨品或服務而以申請人的名義作出並非作為防禦商標的註冊，該商標仍可就該等貨品或服務而註冊為防禦商標。
- (4) 已就某些貨品或服務而註冊為防禦商標的商標，可於其後就同一貨品或服務而以該註冊商標的擁有人的名義進行並非作為防禦商標的註冊。
- (5) 如有人根據第 (1) 款提出申請，而——
 - (a) 有關商標並非以有關申請人的名義註冊為商標；或
 - (b) 有關註冊商標現予使用或曾予使用的範圍並不符合第 (1) 款所描述的情況，則處長須拒絕該項申請。
- (6) 任何人可基於以下任何理由向處長或法院申請撤銷任何商標作為防禦商標的註冊——

60. Defensive trade marks

- (1) If a registered trade mark has been used so much in relation to all or any of the goods or services for which it is registered that it has become exceptionally well known in Hong Kong and, as a result, its use in relation to other goods or services would be likely to detract from its distinctive character in relation to the goods or services for which it has been so used, the trade mark may, on the application of the owner of the registered trade mark made to the Registrar, be registered as a defensive trade mark in respect of any or all of those other goods or services.
- (2) A trade mark may be registered as a defensive trade mark in respect of particular goods or services even if the owner of the registered trade mark does not use or intend to use the trade mark in relation to those goods or services.
- (3) A trade mark may be registered as a defensive trade mark in respect of particular goods or services even if it is already registered (otherwise than as a defensive trade mark) in the name of the applicant in respect of those goods or services.
- (4) A trade mark that is registered as a defensive trade mark in respect of particular goods or services may be subsequently registered (otherwise than as a defensive trade mark) in the name of the owner of the registered trade mark in respect of the same goods or services.
- (5) The Registrar shall refuse an application made under subsection (1) if—

- (a) 該商標並無以其他形式以註冊防禦商標的擁有人的名義註冊；或
- (b) 該註冊商標現予使用或曾予使用的範圍並不符合第(1)款所描述的情況，
- 而凡該註冊商標是就某些貨品或服務而註冊為防禦商標的，該項撤銷可就所有或任何該等貨品或服務而作出。
- (7) 第 38(3) 條 (註冊申請) 及第 52(2)(a)、(b) 及 (c) 條 (註冊的撤銷) 以及本條例中與本條相抵觸的其他條文，並不就防禦商標而適用。

61. 集體商標

- (1) 集體商標是一個將身為標誌擁有人的組織中的成員的貨品或服務與其他企業的貨品或服務作出識別的標誌。
- (2) 本條例按附表 3 所指明的方式及範圍而適用於集體商標。

62. 證明商標

- (1) 證明商標是一個顯示該商標的使用所關連的貨品或服務，

- (a) the trade mark is not registered as a trade mark in the name of the applicant; or
- (b) the extent to which the registered trade mark is being or has been used does not accord with the circumstances described in subsection (1).
- (6) Any person may apply to the Registrar or to the court for the revocation of the registration of a trade mark as a defensive trade mark on any of the following grounds—
- (a) that the trade mark is not otherwise registered in the name of the owner of the registered defensive trade mark; or
- (b) that the extent to which the registered trade mark is being or has been used does not accord with the circumstances described in subsection (1),
- and such revocation may be in respect of all or any of the goods or services in respect of which the registered trade mark is registered as a defensive trade mark.
- (7) Section 38(3) (application for registration), section 52(2)(a), (b) and (c) (revocation of registration) and such other provisions of this Ordinance as may be inconsistent with this section shall not apply in relation to defensive trade marks.

61. Collective marks

- (1) A collective mark is a sign distinguishing the goods or services of members of the association which is the owner of the sign from those of other undertakings.
- (2) This Ordinance applies to collective marks in the manner and to the extent specified in Schedule 3.

62. Certification marks

- (1) A certification mark is a sign indicating that the goods or

8-5
第 559 章

第 VIII 部
第 62 條

在來源、物料、製造貨品的模式、提供服務的模式、質素、準確程度或其他特質方面已由標誌的擁有人核證的標誌。

- (2) 本條例按附表 4 所指明的方式及範圍而適用於證明商標。
-

PART VIII
Section 62

8-6
Cap. 559

services in connection with which it is used are certified by the owner of the sign in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics.

- (2) This Ordinance applies to certification marks in the manner and to the extent specified in Schedule 4.
-

第 IX 部

《巴黎公約》及《世貿協議》：補充條文

63. 馳名商標：《巴黎公約》第 6 條之二

- (1) 在不抵觸第 59 條 (默許的效力) 的規定下，有權根據《巴黎公約》獲得作為馳名商標的保護的商標的擁有人，在有人於香港就相同或相類似的貨品或服務而使用任何與他的商標相同或相類似的商標或當中主要部分與他的商標相同或相類似的商標，而該使用相當可能會令公眾產生混淆的情況下，該擁有人有權藉強制令限制在香港就該等貨品或服務而使用該商標。
- (2) 如對某商標的真誠使用在本條生效前已開始，第 (1) 款並不影響該項使用的繼續。

64. 國徽等：《巴黎公約》第 6 條之三

- (1) 在不抵觸第 11(6) 條 (拒絕註冊的絕對理由) 的規定下，由巴黎公約國或世貿成員的旗幟所構成的或載有該等旗幟的商標，在沒有該國或該成員的主管當局的授權下，不得註冊，除非處長覺得以所建議的方式使用該旗幟是無須上述授權而獲准許的。
- (2) 在不抵觸第 11(6) 條 (拒絕註冊的絕對理由) 的規定下，如任何商標是由巴黎公約國或世貿成員的盾徽或其他國徽所構成的或載有該等盾徽或國徽，而該等盾徽或國徽是根據《巴黎公約》獲保護的 (包括憑藉《世貿協議》而有權獲如此保護的盾徽或其他國徽)，則在沒有該國或該成員的主管當局的授權下，該商標不得註冊。

PART IX

PARIS CONVENTION AND WORLD TRADE ORGANIZATION AGREEMENT: SUPPLEMENTARY PROVISIONS

63. Well-known trade marks: Article 6bis of Paris Convention

- (1) Subject to section 59 (effect of acquiescence), the owner of a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark is entitled to restrain by injunction the use in Hong Kong of a trade mark which, or the essential part of which, is identical or similar to his trade mark, in relation to identical or similar goods or services, where such use is likely to cause confusion on the part of the public.
- (2) Nothing in subsection (1) affects the continuation of any use in good faith of a trade mark which was begun before the commencement of this section.

64. National emblems, etc.: Article 6ter of Paris Convention

- (1) Subject to section 11(6) (absolute grounds for refusal of registration), a trade mark which consists of or contains the flag of a Paris Convention country or WTO member shall not be registered without the authorization of the competent authorities of that country or member, unless it appears to the Registrar that use of the flag in the manner proposed is permitted without such authorization.
- (2) Subject to section 11(6) (absolute grounds for refusal of registration), a trade mark which consists of or contains the armorial bearings or any other state emblem of a Paris Convention country or WTO member which is protected

- (3) 如任何商標是由巴黎公約國或世貿成員所採納的就某些貨品或服務顯示管制及保證的官方標誌或檢驗印章所構成的或載有該等標誌或印章，而該等標誌或印章是根據《巴黎公約》獲保護的（包括憑藉《世貿協議》而有權獲如此保護的官方標誌或檢驗印章），則在沒有該國或該成員的主管當局的授權下，該商標不得就與該等貨品或服務相同或種類相類似的貨品或服務而註冊。
- (4) 本條關於國旗和其他國徽以及官方標誌或檢驗印章的條文，同樣適用於從徽章學的觀點看來是模仿該等國旗、國徽、標誌或印章的物事。
- (5) 凡任何國家的國民獲授權運用該國的國徽、官方標誌或檢驗印章，則即使由該國的國徽、官方標誌或檢驗印章所構成的或載有該等國徽、標誌或印章的商標，與另一國家的國徽、官方標誌或檢驗印章相類似，本條並不阻止應該國民的申請而將該商標註冊。
- (6) 凡憑藉本條須就某商標的註冊取得某巴黎公約國或世貿成員的主管當局的授權，則該等主管當局有權藉強制令限制在沒有其授權下在香港使用該商標。

65. 某些國際組織的徽章等：《巴黎公約》第 6 條之三

- (1) 本條適用於有成員屬巴黎公約國或世貿成員的政府間國

under the Paris Convention (including any armorial bearings or state emblems entitled to such protection by virtue of the World Trade Organization Agreement) shall not be registered without the authorization of the competent authorities of that country or member.

- (3) A trade mark which consists of or contains an official sign or hallmark adopted by a Paris Convention country or WTO member and indicating control and warranty shall not, where the sign or hallmark is protected under the Paris Convention (including any sign or hallmark entitled to such protection by virtue of the World Trade Organization Agreement), be registered in relation to goods or services which are the same as, or are of a similar kind to, those in relation to which it indicates control and warranty, without the authorization of the competent authorities of that country or member.
- (4) The provisions of this section as 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 section prevents the registration of a trade mark on the application of a national of a country who is authorized 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 section the authorization of the competent authorities of a Paris Convention country or WTO member is or would be required for the registration of a trade mark, those authorities are entitled to restrain by injunction any use of the trade mark in Hong Kong without their authorization.

65. Emblems, etc., of certain international organizations: Article 6ter of Paris Convention

際組織的 ——

- (a) 盾徽、旗幟或其他徽章；及
 - (b) 縮寫及名稱。
- (2) 如任何商標是由上述徽章、縮寫或名稱所構成的或載有上述徽章、縮寫或名稱，而該等徽章、縮寫或名稱是根據《巴黎公約》獲保護的（包括憑藉《世貿協議》而有權獲如此保護的徽章、縮寫或名稱），則在沒有有關政府間國際組織的授權下，該商標不得註冊，除非處長覺得以所建議的方式使用該等徽章、縮寫或名稱 ——
- (a) 並不會向公眾表示該組織與該商標之間存有關連；或
 - (b) 並非相當可能會在使用者與該組織之間存有關連此一問題上誤導公眾。
- (3) 本條關於政府間國際組織的徽章的條文，同樣適用於從徽章學的觀點看來是模仿該等徽章的物事。
- (4) 凡憑藉本條須就某商標的註冊取得某政府間國際組織的授權，則該組織有權藉強制令限制在沒有其授權下在香港使用該商標。
- (5) 凡任何人對有關商標的真誠使用是在 1977 年 11 月 16 日（《巴黎公約》的有關條文於該日就香港生效）之前開始的，本條並不影響該人的權利。

- (1) This section applies to—
- (a) the armorial bearings, flags or other emblems; and
 - (b) the abbreviations and names,
- of international intergovernmental organizations of which one or more Paris Convention countries or WTO members are members.
- (2) A trade mark which consists of or contains any such emblem, abbreviation or name which is protected under the Paris Convention (including any emblem, abbreviation or name entitled to such protection by virtue of the World Trade Organization Agreement) shall not be registered without the authorization of the international intergovernmental organization concerned, unless it appears to the Registrar that the use of the emblem, abbreviation or name in the manner proposed—
- (a) is not such as to suggest to the public that a connection exists between the organization and the trade mark; or
 - (b) is not likely to mislead the public as to the existence of a connection between the user and the organization.
- (3) The provisions of this section as to emblems of an international intergovernmental organization apply equally to anything which from a heraldic point of view imitates any such emblem.
- (4) Where by virtue of this section the authorization of an international intergovernmental organization is or would be required for the registration of a trade mark, that organization is entitled to restrain by injunction any use of the trade mark in Hong Kong without its authorization.
- (5) Nothing in this section affects the rights of a person whose use in good faith of the trade mark in question began before

16 November 1977 (when the relevant provisions of the Paris Convention entered into force in relation to Hong Kong).

66. 《巴黎公約》第 6 條之三所指的通知

- (1) 就第 64 條 (國徽等) 而言, 任何國家的國徽 (國旗除外) 及官方標誌或檢驗印章, 只有在以下條件獲符合的情況下或在以下條件獲符合的範圍內, 方視為是根據《巴黎公約》獲保護的或憑藉《世貿協議》而根據《巴黎公約》獲保護的——
 - (a) 有關國家已按照《巴黎公約》第 6 條之三 (3) 通知世界知識產權組織該國家欲保護其國徽、官方標誌或檢驗印章;
 - (b) 該通知仍然有效; 及
 - (c) 並沒有人代香港按照《巴黎公約》第 6 條之三 (4) 就該通知向世界知識產權組織提出異議, 或如此提出的異議已撤回。
- (2) 就第 65 條 (某些國際組織的徽章等) 而言, 任何政府間國際組織的徽章、縮寫及名稱, 只有在以下條件獲符合的情況下或在以下條件獲符合的範圍內, 方視為是根據《巴黎公約》獲保護的或憑藉《世貿協議》而根據《巴黎公約》獲保護的——
 - (a) 有關組織已按照《巴黎公約》第 6 條之三 (3) 通知世界知識產權組織該組織欲保護該徽章、縮寫或名稱;
 - (b) 該通知仍然有效; 及
 - (c) 並沒有人代香港按照《巴黎公約》第 6 條之三 (4) 就該通知向世界知識產權組織提出異議, 或如此提出的異議已撤回。
- (3) 按照《巴黎公約》第 6 條之三 (3) 發出的通知, 只就在接到通知後的 2 個月之後提出的註冊申請而具有效力。
- (4) 處長須在註冊處備存一份載有以下資料的清單, 免費供公眾人士在註冊處的辦公時間內查閱——

66. Notification under Article 6ter of Paris Convention

- (1) For the purposes of section 64 (national emblems, etc.), state emblems of a country (other than the national flag), and official signs or hallmarks, shall be regarded as protected under the Paris Convention, or as protected under the Paris Convention by virtue of the World Trade Organization Agreement, only if, or to the extent that—
 - (a) the country in question has notified the World Intellectual Property Organization in accordance with Article 6ter(3) of the Paris Convention that it desires to protect that emblem, sign or hallmark;
 - (b) the notification remains in force; and
 - (c) no objection to the notification has been transmitted to the World Intellectual Property Organization on behalf of Hong Kong in accordance with Article 6ter(4) of the Paris Convention or any such objection has been withdrawn.
- (2) For the purposes of section 65 (emblems, etc., of certain international organizations), the emblems, abbreviations and names of an international intergovernmental organization shall be regarded as protected under the Paris Convention, or as protected under the Paris Convention by virtue of the World Trade Organization Agreement, only if, or to the extent that—
 - (a) the organization in question has notified the World Intellectual Property Organization in accordance with Article 6ter(3) of the Paris Convention that it desires to protect that emblem, abbreviation or name;
 - (b) the notification remains in force; and

- (a) 當其時是憑藉《巴黎公約》第 6 條之三 (3) 所指的
通知而根據《巴黎公約》獲保護的國徽及官方標誌或檢
驗印章；及
- (b) 當其時是憑藉《巴黎公約》第 6 條之三 (3) 所指的通
知而根據《巴黎公約》獲保護的政府間國際組織的徽
章、縮寫及名稱。
-

- (c) no objection to the notification has been transmitted to
the World Intellectual Property Organization on behalf
of Hong Kong in accordance with Article 6ter(4) of
the Paris Convention or any such objection has been
withdrawn.
- (3) Notification in accordance with Article 6ter(3) of the Paris
Convention shall have effect only in relation to applications
for registration made more than 2 months after the receipt of
the notification.
- (4) The Registrar shall keep and make available for public
inspection at the Registry by any person, during the normal
business hours of the Registry, and free of charge, a list of—
- (a) the state emblems and official signs or hallmarks; and
- (b) the emblems, abbreviations and names of international
intergovernmental organizations,
- which are for the time being protected under the Paris
Convention by virtue of a notification under Article 6ter(3) of
the Paris Convention.
-

第 X 部**行政方面及其他補充條文****商標註冊紀錄冊****67. 須備存註冊紀錄冊**

- (1) 處長須在註冊處備存一份稱為商標註冊紀錄冊的註冊紀錄冊。
- (2) 在註冊紀錄冊中須按照本條例及《規則》記入——
 - (a) 關於商標註冊申請的詳情，包括提交日期及優先權日期；
 - (b) 註冊商標的擁有人的姓名或名稱；
 - (c) 關於影響註冊商標中及其下的任何權利的交易、文書或事件的詳情，以及關於註冊申請的詳情；及
 - (d) 處長認為適宜記入的其他事宜。
- (3) 註冊紀錄冊無需以文件形式備存。

68. 查閱註冊紀錄冊的權利

- (1) 在符合《規則》的規定下，公眾人士有權在註冊處的正常辦公時間內查閱註冊紀錄冊。
- (2) 就註冊紀錄冊中任何並非以文件形式備存的部分而言，第 (1) 款所賦予的查閱權利，是查閱註冊紀錄冊中的材料的權利。

69. 取得記項副本的權利

- (1) 任何申請領取註冊紀錄冊的記項的核證副本或註冊紀錄

PART X**ADMINISTRATIVE AND OTHER
SUPPLEMENTARY PROVISIONS****The register of trade marks****67. Register to be kept**

- (1) The Registrar shall keep at the Registry a register to be known as the register of trade marks.
- (2) There shall be entered in the register in accordance with this Ordinance and the rules—
 - (a) particulars as to applications for registration of trade marks, including the filing dates and dates of priority;
 - (b) the names of owners of registered trade marks;
 - (c) particulars as to transactions, instruments or events affecting rights in or under registered trade marks and applications for registration; and
 - (d) such other matters as the Registrar may think fit.
- (3) The register need not be kept in documentary form.

68. Right to inspect the register

- (1) Subject to any rules, the public shall have a right to inspect the register during the normal business hours of the Registry.
- (2) In relation to any portion of the register kept otherwise than in documentary form, the right of inspection conferred by subsection (1) is a right to inspect the material on the register.

69. Right to copies of entries

- (1) Any person who applies for a certified copy of an entry in

冊的核證摘錄的人，有權在繳付就核證副本及摘錄而訂明的費用後取得該副本或摘錄。

- (2) 任何申請領取未經核證的副本或摘錄的人，有權在繳付就未經核證的副本或摘錄而訂明的費用後取得該副本或摘錄。
- (3) 根據本條提出的申請，須以訂明的方式提出。
- (4) 就註冊紀錄冊中任何並非以文件形式備存的部分而言，第 (1) 或 (2) 款所賦予的取得副本或摘錄的權利，是取得屬可以拿走並可看見和可閱讀的形式的副本或摘錄的權利。

處長的權力及職責

70. 處長在聆訊之後作出決定

- (1) 在不損害任何法律規則的原則下，並在不損害本條例中規定處長須聆聽在他席前進行的法律程序的任何一方陳詞或須給予該方陳詞的機會的條文的原則下，處長在根據本條例或《規則》就任何事宜作出對或可能對在他席前進行的法律程序的任何一方不利的決定前，須給予該方陳詞的機會。
- (2) 處長須就在他席前進行的法律程序的一方可陳詞的時間給予該方最少 14 日通知，但如該方同意接受較短的通知期，則屬例外。

71. 處長於在他席前進行的法律程序中的權力

- (1) 處長可為根據本條例在他席前進行的法律程序的目的——
 - (a) 傳召證人；

the register or a certified extract from the register shall be entitled to obtain such a copy or extract on payment of a fee prescribed in relation to certified copies and extracts.

- (2) Any person who applies for an uncertified copy or extract shall be entitled to such a copy or extract on payment of a fee prescribed in relation to uncertified copies and extracts.
- (3) Applications under this section shall be made in such manner as may be prescribed.
- (4) In relation to any portion of the register kept otherwise than in documentary form, the right to a copy or extract conferred by subsection (1) or (2) is a right to a copy or extract in a form in which it can be taken away and in which it is visible and legible.

Powers and duties of Registrar

70. Decisions of Registrar to be taken after hearing

- (1) Without prejudice to any rule of law or to any provision of this Ordinance requiring the Registrar to hear any party to proceedings before him, or to give any such party an opportunity to be heard, the Registrar shall, before taking any decision on any matter under this Ordinance or the rules which is or may be adverse to any party to any proceedings before him, give that party an opportunity to be heard.
- (2) The Registrar shall give a party to proceedings before him at least 14 days' notice of the time when he may be heard unless that party consents to shorter notice.

71. Registrar's powers in proceedings before the Registrar

- (1) The Registrar may, for the purposes of proceedings before him under this Ordinance—
 - (a) summon witnesses;

- (b) 收取經宣誓而作出的書面或口頭證據；及
 - (c) 規定交出文件或物品以供查閱或檢查和訂定查閱或檢查的方式。
- (2) 處長可就第(1)款所述的任何事宜作出他認為合適的命令。
- (3) 處長根據本條作出的命令在獲得法院許可後，可予強制執行，方式與法院作出的命令相同。

72. 給予初步意見的權力等

- (1) 處長可向擬申請註冊某商標的人，就以下事宜給予意見——
- (a) 在不考慮第 11(2) 條的情況下，該商標是否相當可能會基於第 11 條所述的理由而被拒絕註冊；
 - (b) 該商標是否相當可能會由於某現有商標而基於第 12(1)、(2) 或 (3) 條所述的理由被拒絕註冊。
- (2) 任何人欲取得第(1)款所述事宜的意見，須以訂明的方式向處長提交要求。
- (3) 處長須在以下情況下向有關的人給予意見——
- (a) 收到有關要求；及
 - (b) 適用的訂明費用獲繳付。
- (4) 如拒絕註冊的某項理由，只關乎有關要求所涵蓋的部分貨品或服務，有關意見無須指明該項理由所適用的貨品或服務。
- (5) 申請註冊某商標的申請人，在以下情況下有權獲發還為提交有關申請而繳付的費用——
- (a) 處長已根據第(1)款給予以下意見：該商標相當不可能會基於第 11 或 12(1)、(2) 或 (3) 條所述的理由而被拒絕註冊；

- (b) receive written or oral evidence on oath or affirmation; and
 - (c) require the production of documents or articles for inspection and provide for the manner of inspection.
- (2) The Registrar may make such orders as he thinks fit as respects any matter mentioned in subsection (1).
- (3) Any order made by the Registrar under this section shall, with leave of the court, be enforceable in like manner as an order of the court.

72. Power to give preliminary advice etc.

- (1) The Registrar may give advice on the following matters to a person who proposes to apply for the registration of a trade mark—
- (a) without taking section 11(2) into consideration, whether the trade mark is likely to be refused registration on a ground mentioned in section 11;
 - (b) whether the trade mark is likely to be refused registration on a ground mentioned in section 12(1), (2) or (3) because of an existing trade mark.
- (2) A person who wishes to obtain advice on a matter mentioned in subsection (1) must file a request with the Registrar in the prescribed manner.
- (3) The Registrar must give advice to the person—
- (a) on receipt of the request; and
 - (b) on payment of the applicable prescribed fee.
- (4) If there is a ground for refusing registration in respect of only some of the goods or services covered by the request, the advice does not have to specify the goods or services to which the ground applies.

- (b) 該申請人在獲給予該意見後的 3 個月內提出該項申請；
- (c) 處長在經進一步調查或考慮後，給予該申請人通知，述明處長基於任何指明理由而對該商標的註冊提出異議；及
- (d) 該申請人在訂明限期內，撤回該項申請。
- (6) 然而，如有以下情況，有關申請人無權獲發還費用——
- (a) 在查冊日期後，記入註冊紀錄冊的詳情有所改變；及
- (b) 該項改變引致第 (5)(c) 款所述的處長提出的異議。
- (7) 在本條中——
- 指明理由** (specified ground) ——
- (a) 就某商標相當不可能會基於第 11 條所述的理由而被拒絕註冊的意見而言，指該條所述的拒絕註冊的理由適用於該商標；或
- (b) 就某商標相當不可能會基於第 12(1)、(2) 或 (3) 條所述的理由而被拒絕註冊的意見而言，指該等條文 (視個別情況下何者適用而定) 所述的拒絕註冊的理由適用於該商標；

查冊日期 (search date) 指處長為根據本條給予意見而對註冊紀錄冊進行查冊的日期；

現有商標 (existing trade mark) 指截至查冊日期時已記入註冊紀錄冊的商標。

- (8) 在本條 (但不包括第 (7) 款中**現有商標**的定義) 中，對商標的提述不包括證明商標或集體商標。

(由 2020 年第 3 號第 12 條代替)

- (5) An applicant for the registration of a trade mark is entitled to a refund of the fees paid for filing the application if—
- (a) the Registrar has given advice under subsection (1) that the trade mark is unlikely to be refused registration on a ground mentioned in section 11 or 12(1), (2) or (3);
- (b) the applicant makes the application within 3 months after the advice is given;
- (c) the Registrar, after further investigation or consideration, gives notice to the applicant, stating the Registrar's objection to the registration of the trade mark on any specified ground; and
- (d) the applicant withdraws the application within the prescribed period.
- (6) However, the applicant is not entitled to a refund if—
- (a) a change occurs after the search date in the particulars entered in the register; and
- (b) the change results in the Registrar's objection mentioned in subsection (5)(c).
- (7) In this section—
- existing trade mark** (現有商標) means a trade mark that has already been entered in the register as at the search date;
- search date** (查冊日期) means the date of the search of the register by the Registrar for giving advice under this section;
- specified ground** (指明理由)—
- (a) in relation to advice that a trade mark is unlikely to be refused registration on a ground mentioned in section 11, means that a ground for refusing registration mentioned in that section applies to the trade mark; or
- (b) in relation to advice that a trade mark is unlikely to be refused registration on a ground mentioned in section

73. 指明官方公報的權力等

- (1) 處長可不時在憲報刊登公告，指明自該公告所指明的日期起，某刊物即為本條例所指的官方紀錄公報。
- (2) 凡處長根據第 (1) 款指明某刊物為官方紀錄公報，則本條例或《規則》規定須在官方公報中公布的每一公告、要求、文件或其他事宜，自有關公告所指明的生效日期起均須在該如此指明的刊物中公布，而凡在本條例或《規則》中提述官方公報，均須據此解釋。
- (3) 處長可出版或安排出版公報，在該公報內可公布處長認為適宜公布的與商標有關的文件或資料。
- (4) 為免生疑問，處長可指明憲報或第 (3) 款所提述的公報為官方紀錄公報。
- (5) 根據第 (1) 款指明的刊物及第 (3) 款所提述的公報，無需以文件形式備存。
- (6) 根據第 (1) 款刊登的公告不得視為《釋義及通則條例》(第 1 章) 第 34 條所指的附屬法例。

12(1), (2) or (3), means that a ground for refusing registration mentioned in those provisions (whichever is applicable in a particular case) applies to the trade mark.

- (8) In this section (except in the definition of *existing trade mark* in subsection (7)), a reference to a trade mark does not include a certification mark or a collective mark.

(Replaced 3 of 2020 s. 12)

73. Power to specify official journal, etc.

- (1) The Registrar may from time to time, by notice published in the Gazette, specify a publication to be the official journal of record for the purposes of this Ordinance, with effect as of the date specified in the notice.
- (2) Where a publication is specified under subsection (1), every notice, request, document or other matter required by this Ordinance or the rules to be published in the official journal shall, from the effective date specified in the notice, be published in the publication so specified, and any reference in this Ordinance or the rules to the official journal shall be construed accordingly.
- (3) The Registrar may publish or cause to be published a journal in which there may be published such documents and information relating to trade marks as the Registrar thinks fit.
- (4) For the avoidance of doubt, the Registrar may specify the Gazette or the journal referred to in subsection (3) to be the official journal of record.
- (5) A publication specified under subsection (1) and the journal referred to in subsection (3) need not be in a documentary form.
- (6) A notice published under subsection (1) shall not be regarded as subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

74. 規定使用表格的權力

- (1) 處長可規定就根據本條例將商標註冊或在處長席前進行的任何其他法律程序而使用處長在官方公報公布的公告所指明的表格。
- (2) 根據第 (1) 款公布的公告可載有處長就該公告所指明的表格的使用而作出的指示。
- (3) 根據第 (1) 款公布的公告不得視為《釋義及通則條例》(第 1 章) 第 34 條所指的附屬法例。

75. 處長在公事上作為方面的豁免權

處長及任何公職人員——

- (a) 均不得被視作保證在本條例下的商標註冊的有效性；
- (b) 亦不得因本條例所規定或授權進行的任何審查或在與該等審查有關連的情況下，或因任何該等審查所引致的任何報告或其他法律程序或在與該等報告或法律程序有關連的情況下，招致任何法律責任。

法律程序、上訴及有關事宜**76. 在處長席前進行的法律程序所採用的語文**

- (1) 儘管有《法定語文條例》(第 5 章) 第 5 條的規定，就商標的註冊而提交的申請書所採用的法定語文，於根據本條例在處長席前進行的所有法律程序中，須採用為該等法律程序的語文，但《規則》另有規定者除外。
- (2) 《規則》可——
 - (a) 就在根據本條例進行的法律程序中向處長提交或須向處長提交的任何文件，規定提交該文件翻譯成該

74. Power to require use of forms

- (1) The Registrar may require the use of such forms as he may, by notice published in the official journal, specify in connection with the registration of a trade mark or any other proceeding before him under this Ordinance.
- (2) A notice under subsection (1) may contain any direction of the Registrar with respect to the use of a form specified in the notice.
- (3) A notice published under subsection (1) shall not be regarded as subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

75. Immunity of Registrar as regards official acts

Neither the Registrar nor any public officer—

- (a) shall be taken to warrant the validity of the registration of a trade mark under this Ordinance; or
- (b) shall incur any liability by reason of, or in connection with, any examination required or authorized by this Ordinance, or any report or other proceeding consequent on any such examination.

Legal proceedings, appeals and related matters**76. Language of proceedings before Registrar**

- (1) Except as otherwise provided in the rules, and notwithstanding section 5 of the Official Languages Ordinance (Cap. 5), the official language in which an application for registration of a trade mark is filed shall be used as the language of the proceedings in all proceedings before the Registrar under this Ordinance.
- (2) The rules may—

法律程序的語文或翻譯成其中一種法定語文或一併翻譯成兩種法定語文的譯本；

- (b) 就於在處長席前進行的口頭的法律程序中任何人使用該法律程序的語文以外的語文，作出規定；
 - (c) 就於在處長席前進行的法律程序中作為證據之用而採用該法律程序的語文以外的另一種語文的文件，規定提交該份採用該另一種語文的文件，以及規定提交該文件翻譯成該法律程序的語文或翻譯成其中一種法定語文的譯本；
 - (d) 就向處長提供或須向處長提供並須記入註冊紀錄冊中的資料，規定一併以兩種法定語文提供；及
 - (e) 就以其中一種法定語文或一併以兩種法定語文發出文件作出規定，以及指明處長以其中一種法定語文或一併以兩種法定語文發出文件的權力。
- (3) 為施行第 (2)(a) 或 (d) 款而訂立的《規則》可——
- (a) 指明提交翻譯成有關法律程序的語文或法定語文的文件譯本的限期，或採用法定語文提供資料的限期；及
 - (b) 就應有關法律程序的任何一方的申請而延展該等期限作出規定，並可規定須就該等延期的申請繳付訂明費用。

- (a) require, in respect of any document filed or to be filed with the Registrar in proceedings under this Ordinance, the filing of a translation of the document into the language of the proceedings or into one or both official languages;
 - (b) provide for the use by any person in oral proceedings before the Registrar, of a language other than the language of the proceedings;
 - (c) in respect of documents to be used for the purpose of evidence in proceedings before the Registrar and which are in a language other than the language of the proceedings, provide for the filing of the document in that other language and the filing of a translation of the document into the language of the proceedings or into one of the official languages;
 - (d) in respect of information provided or to be provided to the Registrar and which is to be entered in the register, require the provision of that information in both official languages; and
 - (e) provide for the issue of and specify the power of the Registrar to issue documents in one or both official languages.
- (3) Rules made for the purposes of subsection (2)(a) or (d)—
- (a) may specify periods within which translations of documents into the language of the proceedings or into the official languages are to be filed or within which information in the official languages is to be provided; and
 - (b) may provide for extensions, upon application by a party to the proceedings, of such periods, and may require that applications for such extension shall be subject to the payment of a prescribed fee.

77. 在可選擇向法院或向處長提出申請時依循的程序

- (1) 凡根據本條例任何人可就關乎註冊商標或商標註冊申請的問題選擇向法院或向處長提出申請——
 - (a) 如關乎有關的註冊商標或註冊申請的法律程序仍在法院待決，則該項申請必須向法院提出；及
 - (b) 如在任何其他情況下該項申請是向處長提出的，則處長可在該法律程序的任何階段將該項申請轉介法院，亦可在聆聽該法律程序的各方的陳詞後，對有關問題作出裁定。
- (2) 第 (1) 款並不損害法院在本條以外對該款所提述的任何問題作出裁定的權力。

78. 證據規則的適用情況

除本條例另有規定外，處長於根據本條例在他席前進行的法律程序中，不受證據規則所約束，處長並可用他合理地相信是適當的方法了解在他席前進行的任何事宜。

79. 註冊紀錄冊是表面證據

- (1) 在不抵觸第 (4) 款的條文下，註冊紀錄冊是本條例或《規則》規定須註冊或授權註冊的任何事物的表面證據。
- (2) 任何證明書如看來是由處長簽署的，並證明他獲本條例或《規則》授權記入註冊紀錄冊的記項已記入或沒有記入，或證明他獲如此授權作出的任何其他事情已作出或沒有作出，則該證明書是經如此證明的事宜的表面證據。

77. Procedure in case of option to apply to court or Registrar

- (1) Where under this Ordinance a person has an option to make an application either to the court or to the Registrar on a question concerning a registered trade mark or an application for registration of a trade mark, then—
 - (a) if any proceedings concerning the registered trade mark or application for registration in question is pending before the court, the application must be made to the court; and
 - (b) if in any other case the application is made to the Registrar, he may, at any stage of the proceedings, refer the application to the court, or he may, after hearing the parties, determine the question.
- (2) Subsection (1) is without prejudice to the court's powers, apart from this section, to determine any question referred to in that subsection.

78. Application of rules of evidence

Except as otherwise provided in this Ordinance, the Registrar is not bound by the rules of evidence in any proceedings before him under this Ordinance and may inform himself of any matter that is before him in any way that he reasonably believes to be appropriate.

79. Register is prima facie evidence

- (1) Subject to subsection (4), the register shall be prima facie evidence of anything required or authorized by this Ordinance or the rules to be registered.
- (2) A certificate purporting to be signed by the Registrar and certifying that any entry in the register which he is authorized by this Ordinance or the rules to make has or has not been

- (3) 以下每一項目 ——
- (a) 根據第 69(1) 條 (取得記項副本的權利) 提供的註冊紀錄冊的記項的副本或註冊紀錄冊的摘錄；
- (b) (i) 備存於註冊處的任何文件的副本；
- (ii) 任何該等文件的摘錄的文本；或
- (iii) 任何商標註冊申請的副本，
- 如看來是核證副本或核證摘錄，則在不抵觸第 (4) 款的條文下，須獲所有法院接納為證據以及在所有法律程序中獲接納為證據而無須再作證明，亦無須交出正本。
- (4) 本條不損害《證據條例》(第 8 章) 第 22A 及 22B 條及第 IV 部的條文及憑藉該條或該部而訂立的任何條文。

80. 註冊是有效性的表面證據等

在任何與註冊商標有關的法律程序 (包括為更正註冊紀錄冊而進行的法律程序) 中，任何人註冊為商標的擁有人，即為該商標的原有註冊及其任何日後的轉讓或其他傳轉的有效性的表面證據。

81. 曾受爭議的註冊的有效性證明書

- (1) 如於在法院進行的法律程序中，某商標的註冊的有效性受到爭議，而法院裁斷該商標的註冊是有效的，則法院可發出證明此事的證明書。

made, or that any other thing which he is so authorized to do has or has not been done, shall be prima facie evidence of the matters so certified.

- (3) Each of the following, that is to say—
- (a) a copy of an entry in the register or an extract from the register which is supplied under section 69(1) (right to copies of entries);
- (b) a copy of—
- (i) any document kept in the Registry;
- (ii) an extract from any such document; or
- (iii) any application for registration of a trade mark, which purports to be a certified copy or a certified extract shall, subject to subsection (4), be admitted in evidence in all courts, and in all proceedings, without further proof and without production of any original.
- (4) This section is without prejudice to section 22A or 22B or Part IV of the Evidence Ordinance (Cap. 8) and any provision made by virtue of that section or Part.

80. Registration is prima facie evidence of validity, etc.

In any proceedings relating to a registered trade mark, including proceedings for rectification of the register, the registration of a person as owner of a trade mark shall be prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission of it.

81. Certificate of validity of contested registration

- (1) If in proceedings before the court the validity of the registration of a trade mark is contested and it is found by the court that the trade mark is validly registered, the court may give a certificate to that effect.

10-19
第 559 章第 X 部
第 82 條PART X
Section 8210-20
Cap. 559

- (2) 如法院發出上述證明書，而在日後於在法院或處長席前進行的法律程序中——
- (a) 有人基於相同理由或大致上相同的理由而對該項註冊的有效性再度提出質疑；及
 - (b) 註冊商標的擁有人取得判他勝訴的最終命令、判決或決定，
- 則除非法院或處長（視屬何情況而定）另有指示，否則該擁有人有權獲付按彌償基準而評定的訟費。
- (3) 第(2)款並不延伸而適用於任何該等法律程序的上訴的訟費。

82. 在民事法律程序中證明商標的使用的舉證責任

- (1) 如在註冊商標的擁有人屬一方的根據本條例進行的民事法律程序中，出現註冊商標曾作何種使用的問題，則該擁有人須負上證明有關使用的舉證責任。
- (2) 如在註冊商標的特許持有人屬一方的根據本條例進行的民事法律程序中，出現註冊商標曾作何種使用的問題——
 - (a) 而商標的擁有人亦屬該法律程序的一方，則他須負上證明有關使用的舉證責任；
 - (b) 而商標的擁有人並非法律程序的一方，則該特許持有人須負上證明有關使用的舉證責任。

83. 處長在涉及註冊紀錄冊的法律程序中出庭

- (1) 如在法院進行的法律程序涉及申請——
 - (a) 撤銷或更改商標的註冊；
 - (b) 宣布商標的註冊無效；或

- (2) If the court gives such a certificate and in any subsequent proceedings, either before the court or the Registrar—
- (a) the validity of the registration is again questioned on the same or substantially the same grounds; and
 - (b) the owner of the registered trade mark obtains a final order, judgment or decision in his favour,
- the owner is entitled to his costs on an indemnity basis unless the court or the Registrar, as the case may be, directs otherwise.
- (3) Subsection (2) does not extend to the costs of an appeal in any such proceedings.

82. Burden in civil proceedings of proving use of trade mark

- (1) If, in any civil proceedings under this Ordinance in which the owner of a registered trade mark is a party, a question arises as to the use to which the trade mark has been put, the burden of proving that use shall lie with the owner.
- (2) If, in any civil proceedings under this Ordinance in which a licensee of a registered trade mark is a party, a question arises as to the use to which the trade mark has been put, the burden of proving that use shall lie with—
 - (a) the owner of the trade mark, where he is a party to the proceedings; or
 - (b) the licensee, where the owner is not a party to the proceedings.

83. Registrar's appearance in proceedings involving the register

- (1) In proceedings before the court involving an application for—
 - (a) the revocation or variation of the registration of a trade mark;

10-21
第 559 章

第 X 部
第 84 條

- (c) 更正註冊紀錄冊，
則處長有權在該等法律程序中出庭和陳詞；法院如指示處長在該等法律程序中出庭，則處長須出庭。
- (2) 除非法院另有指示，否則處長可向法院呈交由其本人簽署的書面陳述以代替出庭，該書面陳述須列明以下項目的詳情——
- (a) 在處長席前進行的關於所爭論事宜的法律程序；
 - (b) 處長所作出的決定的理由；
 - (c) 處長或註冊處在同類個案中的做法（如有的話）；及
 - (d) 處長認為是合適的與該法律程序所涉的爭論點有關並為處長所知的事宜，
- 而該陳述書須當作構成該項在法院進行的法律程序的證據的一部分。

84. 針對處長的決定或命令的上訴

- (1) 針對處長根據本條例作出的決定或命令的上訴可向法院提出。
- (2) 除法院另有指示外，凡根據本條例提出的上訴是關乎一項商標註冊申請的，有關聆訊須以公開形式進行。
- (3) 在根據本條例提出的上訴中——
 - (a) 處長有權出庭並由他人代表，且有權作出支持其決定或命令的陳詞；及
 - (b) 如法院指示處長出庭，則處長須出庭。
- (4) 在本條中，“決定” (decision) 包括處長在行使本條例賦予或根據本條例賦予他的酌情決定權時所作出的任何作為。

PART X
Section 84

10-22
Cap. 559

- (b) a declaration of the invalidity of the registration of a trade mark; or
- (c) the rectification of the register,
- the Registrar is entitled to appear and be heard, and shall appear if so directed by the court.
- (2) Unless otherwise directed by the court, the Registrar may instead of appearing, submit to the court 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;
 - (c) the practice of the Registrar or the Registry in like cases, if any; and
 - (d) such matters relevant to the issues involved in the proceedings and within his knowledge as the Registrar thinks fit,
- and the statement shall be deemed to form part of the evidence in the proceedings before the court.

84. Appeals from decisions or orders of Registrar

- (1) An appeal lies to the court from any decision or order of the Registrar under this Ordinance.
- (2) Unless the court otherwise directs, any appeal under this Ordinance which concerns an application for registration of a trade mark shall be heard in public.
- (3) In any appeal under this Ordinance—
 - (a) the Registrar shall be entitled to appear and be represented and be heard in support of his decision or order; and
 - (b) the Registrar shall appear if so directed by the court.

85. 法院的一般權力

法院在行使其在本條例下的原訟司法管轄權或上訴司法管轄權以裁定任何問題時，可作出處長本可為裁定該問題而作出的任何命令，或行使處長本可為裁定該問題而行使的任何其他權力。

86. 在法院進行的法律程序的訟費

- (1) 在所有根據本條例在法院進行的法律程序中，法院可將其認為合理的訟費判給任何一方。
- (2) 如在任何該等法律程序中，法院指示某一方的訟費須由另一方支付，則法院可定出一整筆款項作為該訟費的款額，或可指示該訟費須以法院指明的訟費標準（該訟費標準須為法院規則所訂明者）予以評定。

87. 在處長席前進行的法律程序的訟費

- (1) 處長在根據本條例在他席前進行的法律程序中，可藉命令將他認為合理的訟費判給任何一方，並指示該等訟費須如何支付和由何方支付。
- (2) 根據本條判給的任何訟費可藉法院發出的執行令追討（如法院如此命令的話），猶如該等訟費是根據法院的命令須予支付一樣。
- (3) 《規則》可——
 - (a) 訂定條文賦權處長在訂明的情況下，規定在他席前進行的法律程序的任何一方，就該等法律程序提供訟費的保證；及

- (4) In this section, “decision” (決定) includes any act of the Registrar made in the exercise of a discretion vested in him by or under this Ordinance.

85. General powers of court

The court may, for the purpose of determining any question in the exercise of its original or appellate jurisdiction under this Ordinance, make any order or exercise any other power which the Registrar could have made or exercised for the purpose of determining that question.

86. Costs of proceedings before court

- (1) In all proceedings before the court under this Ordinance the court may award to any party such costs as it may consider reasonable.
- (2) If in any such proceedings the court directs that any costs of one party shall be paid by another party, the court may settle the amount of the costs by fixing a lump sum or may direct that the costs shall be taxed on a scale specified by the court, being a scale of costs prescribed by rules of court.

87. Costs of proceedings before Registrar

- (1) The Registrar may, in proceedings before him under this Ordinance, by order award to any party such costs as he may consider reasonable and direct how and by what parties they are to be paid.
- (2) Any costs awarded under this section shall, if the court so orders, be recoverable by execution issued from the court as if they were payable under an order of that court.
- (3) Provision may be made by the rules—
 - (a) to empower the Registrar, in such cases as may be prescribed, to require a party to any proceedings before

(b) 就不提供保證的後果訂定條文。

him to give security for costs in relation to those proceedings; and

(b) as to the consequences if security is not given.

雜項事宜

Miscellaneous matters

88. 承認代理人

- (1) 除《規則》另有規定外，本條例規定由任何人或向任何人作出的（或本條例授權由任何人或向任何人作出的）與商標註冊有關或與商標方面的程序有關的任何作為，均可由獲該人以口頭或書面授權的代理人作出或向該代理人作出。
- (2) 《規則》尤可授權處長拒絕承認任何在《規則》內為此而指明的人作為任何根據本條例進行的事務的代理人。
- (3) 處長須拒絕承認在香港沒有住所亦沒有業務地址的人作為代理人。

88. Recognition of agents

- (1) Except as otherwise provided by the rules, any act required or authorized by this Ordinance to be done by or to a person in connection with the registration of a trade mark, or any procedure relating to a trade mark, may be done by or to an agent authorized by that person orally or in writing.
- (2) The rules may in particular authorize the Registrar to refuse to recognize as an agent in respect of any business under this Ordinance any person specified for the purpose in the rules.
- (3) The Registrar shall refuse to recognize as an agent a person having neither residence nor a place of business in Hong Kong.

89. 辦公時間和辦公日

- (1) 處長可作出指示，指明註冊處辦理在本條例下的事務的辦公時間和辦理該等事務的辦公日。
- (2) 在任何日子的指明辦公時間後或在任何不屬辦公日的日子所辦理的事務，須當作是在下一個辦公日所辦理的；根據本條例辦理任何事情的時限如在一個不屬辦公日的日子屆滿，則該時限須延展至下一個辦公日。
- (3) 處長根據本條作出的指示可就不同類別的事務訂立不同的規定，並須以訂明方式公布。

89. Hours of business and business days

- (1) The Registrar may give directions specifying the hours of business of the Registry for the purpose of the transaction of business under this Ordinance and the days which are business days for that purpose.
- (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 Ordinance expires on a day which is not a business day, that time shall be extended to the next business day.

10-27
第 559 章

第 X 部
第 90 條

PART X
Section 90

10-28
Cap. 559

90. 政府出售沒收物品的權利

本條例並不影響政府或任何直接或間接從政府取得所有權的人處置或使用根據與海關或關稅有關的法律沒收的物品的權利。

90. Government's right to sell forfeited articles

(3) Directions given by the Registrar under this section may make different provision for different classes of business and shall be published in the prescribed manner.

Nothing in this Ordinance affects the right of the Government or any person deriving title directly or indirectly from the Government to dispose of or use articles forfeited under the law relating to customs or excise.

第 XA 部

《馬德里議定書》下的商標的國際註冊

(第 XA 部由 2020 年第 3 號第 13 條增補)

第 1 分部 —— 一般條文

90A. 第 XA 部的釋義

(1) 在本部中 ——

國際申請 (international application) 指透過註冊處向國際局提出、要求將某商標在國際註冊簿註冊的申請；

基礎申請 (basic application) 指根據第 38 條提交並且符合以下情況的申請：基於該項申請而有某項國際申請提出；

基礎註冊 (basic registration) 指根據第 47 條作出並且符合以下情況的註冊：基於該項註冊而有某項國際申請提出。

(2) 在本部中，凡提述第 (1) 款中**基礎申請**的定義所指的根據第 38 條提交的申請，包括提述根據附表 5 第 10(1) 條處理的將某標記註冊的申請。

90B. 就實施《馬德里議定書》而訂立的規則

- (1) 處長可訂立規則，以在香港施行《馬德里議定書》的條文。
- (2) 在不局限第 (1) 款的原則下，根據本部訂立的《規則》，可就本條例任何條文在該等規則指明的範圍內，及以該等規則指明的方式，適用於以下項目的情況，訂定條文 ——

Part XA

International Registration of Trade Marks under
Madrid Protocol

(Part XA added 3 of 2020 s. 13)

Division 1—General

90A. Interpretation of Part XA

(1) In this Part—

basic application (基礎申請) means an application filed under section 38 and on the basis of which an international application is made;

basic registration (基礎註冊) means a registration under section 47 and on the basis of which an international application is made;

international application (國際申請) means an application made to the International Bureau through the Registry for registration of a trade mark in the International Register.

(2) In this Part, a reference to an application filed under section 38 in the definition of **basic application** in subsection (1) includes a reference to an application for registration of a mark dealt with under section 10(1) of Schedule 5.

90B. Rules for implementing Madrid Protocol

- (1) The Registrar may make rules to give effect in Hong Kong to the provisions of the Madrid Protocol.
- (2) Without limiting subsection (1), rules made under this Part may provide for the application of any provision in this

10A-3
第 559 章第 XA 部 —— 第 2 分部
第 90C 條

- (a) 國際申請；
 - (b) 國際指定 (香港)；或
 - (c) 受保護國際商標 (香港)。
- (3) 第 90C、90D 及 90E 條，不局限處長根據第 (1) 款具有的權力。

第 2 分部 —— 商標的國際註冊

90C. 就國際申請而訂立的規則

處長可訂立規則，就以下事宜作出規定 ——

- (a) 關於國際申請的事宜 (包括提出或處理該項申請的程序)；
- (b) 在以下情況所須依循的程序 ——
 - (i) 基礎申請無效，或被分開或合併；及
 - (ii) 基礎註冊不再有效或被合併；及
- (c) 向國際局傳達資料。

90D. 就國際指定 (香港) 及受保護國際商標 (香港) 而訂立的規則

- (1) 處長可訂立規則，就關於國際指定 (香港) 及受保護國際商標 (香港) 的事宜，作出規定。
- (2) 在不局限第 (1) 款的原則下，上述規則可就以下事宜作出規定 ——
 - (a) 處理國際指定 (香港) 的程序，包括 ——
 - (i) 處長對該項指定的審查；

Part XA—Division 2
Section 90C10A-4
Cap. 559

Ordinance to the extent and in the way specified in the rules in relation to—

- (a) an international application;
 - (b) an international designation (HK); or
 - (c) a protected international trade mark (HK).
- (3) Sections 90C, 90D and 90E do not limit the Registrar's powers under subsection (1).

Division 2—International Registration of Trade Marks

90C. Rules for international application

The Registrar may make rules to provide for—

- (a) matters relating to an international application (including the procedure for making or dealing with the application);
- (b) the procedure to be followed when—
 - (i) a basic application fails, or is divided or merged; and
 - (ii) a basic registration ceases to be in force, or is merged; and
- (c) the communication of information to the International Bureau.

90D. Rules for international designation (HK) and protected international trade mark (HK)

- (1) The Registrar may make rules to provide for matters relating to an international designation (HK) and a protected international trade mark (HK).
- (2) Without limiting subsection (1), the rules may provide for the following matters—

- (ii) 在官方公報中公布該項指定的詳情；
- (iii) 進行反對向該項指定賦予保護的法律程序；及
- (iv) 修訂、分開或合併該項指定；
- (b) 向國際局傳達資料（包括關於處長審查國際指定（香港）的資料）；
- (c) 改正某項國際註冊對某國際指定（香港）或某受保護國際商標（香港）可能產生的影響；
- (d) 賦予某受保護國際商標（香港）的保護，及在何種情況下賦予保護（包括該等情況的任何改變）；
- (e) 在何種情況下該保護終止，及在終止的情況下所須依循的程序；
- (f) 備存載有關於國際指定（香港）及受保護國際商標（香港）的事宜的註冊紀錄冊；
- (g) 改正、修訂或刪除在註冊紀錄冊中的任何資料；
- (h) 將某國際指定（香港）或某受保護國際商標（香港）轉變成在香港註冊有關商標的申請；
- (i) 根據《馬德里議定書》第 4 條之二 (1)，處理與某註冊商標同時存在的某受保護國際商標（香港）；
- (j) 本條所述的事宜附帶引起的，或為施行本條所述的事宜屬必需的任何事宜。

- (a) the procedure for dealing with an international designation (HK), including—
 - (i) the examination of the designation by the Registrar;
 - (ii) the publication of the particulars of the designation in the official journal;
 - (iii) the conduct of proceedings for opposing the conferring of protection on the designation; and
 - (iv) the amendment, division or merger of the designation;
- (b) the communication of information to the International Bureau (including information relating to the Registrar's examination of an international designation (HK));
- (c) the possible effects of correcting an international registration on an international designation (HK) or a protected international trade mark (HK);
- (d) the protection conferred on a protected international trade mark (HK) and the circumstances in which protection is conferred (including any change in those circumstances);
- (e) the circumstances in which the protection ceases and the procedure to be followed in cases of cessation;
- (f) the keeping of a register that contains matters relating to international designations (HK) and protected international trade marks (HK);
- (g) the correction, amendment or removal of any information in the register;
- (h) the transformation of an international designation (HK), or a protected international trade mark (HK), into an application for registration of the trade mark in Hong Kong;

第 3 分部 —— 雜項**90E. 就其他事宜而訂立的規則**

處長可訂立規則，就以下事宜作出規定 ——

- (a) 關於就國際申請、國際指定（香港）及受保護國際商標（香港）向註冊處繳付的款項（包括費用及收費）的事宜；
- (b) 關乎須向處長提交或送達的文件或其他資料的規定；
- (c) 由處長更正程序上的不當之處；
- (d) 處長具有作出以下事情的權力 ——
 - (i) 延展該等規則訂明的任何時限；
 - (ii) 就提供訟費的保證作出命令；及
 - (iii) 評定訟費；
- (e) 查閱文件及提供文件的副本；
- (f) 通知、命令或任何其他文件或事宜的公布（不論該等規則是否規定該通知、命令、文件或事宜須在官方公報中公布）；及
- (g) 註冊處備存和處置紀錄的安排。

- (i) the treatment of a protected international trade mark (HK) that is concurrent with a registered trade mark under Article 4*bis*(1) of the Madrid Protocol;
- (j) any matter incidental to or necessary to give effect to a matter mentioned in this section.

Division 3—Miscellaneous**90E. Rules for other matters**

The Registrar may make rules to provide for—

- (a) matters relating to payments to the Registry in relation to an international application, an international designation (HK) and a protected international trade mark (HK), including fees and charges;
- (b) the requirements in respect of the documents or other information to be filed with, or served on, the Registrar;
- (c) the rectification by the Registrar of irregularities in the procedure;
- (d) the Registrar's power to—
 - (i) extend any time limit prescribed by the rules;
 - (ii) order security for costs; and
 - (iii) tax costs;
- (e) the inspection of a document and the supply of copies of a document;
- (f) the publication of a notice, order or any other document or matter (whether or not it is required by the rules to be published in the official journal); and
- (g) the record keeping and disposal arrangements of the Registry.

第 XI 部

附屬法例

91. 就一般目的而訂立的規則

(由 2020 年第 3 號第 14 條修訂)

- (1) 處長可為以下目的訂立規則——
 - (a) 施行本條例中預期或授權就任何事宜訂立規則(法院規則除外)的任何條文；
 - (b) 訂明本條例的條文授權或規定須予訂明的任何事情；及
 - (c) 概括而言，規管在本條例下的常規、實務及程序。
- (2) 在不損害第(1)款的一般性的原則下，根據本條訂立的《規則》可就以下事宜訂定條文——
 - (a) 向處長提交商標註冊申請及其他文件的方式；
 - (b) 由合夥、組織或其他不屬法人的團體提出商標註冊申請，以及將商標以該等團體的名義註冊；
 - (c) 規定和規管文件的翻譯及任何譯本的提交和認證；
 - (d) 關於本條例或《規則》規定須予在官方公報中公布的公告、要求、文件或其他事宜的公布方式；
 - (e) 指明須由何人或何類別的人在官方公報中公布該等公告、要求、文件或事宜，並指明沒有公布的後果；
 - (f) 申請及其他文件就本條例或《規則》而言視為已向處長提交的時間；
 - (g) 文件的送達；
 - (h) 規管就在處長席前進行的法律程序或其他事宜所須依循的程序，以及授權更正程序上的不當之處；

PART XI

SUBSIDIARY LEGISLATION

91. Rules for general purposes

(Amended 3 of 2020 s. 14)

- (1) The Registrar may make rules—
 - (a) for the purposes of any provision of this Ordinance which contemplates or authorizes the making of rules (other than rules of court) with respect to any matter;
 - (b) prescribing anything authorized or required by a provision of this Ordinance to be prescribed; and
 - (c) generally for regulating the practice and procedure under this Ordinance.
- (2) Without prejudice to the generality of subsection (1), rules made under this section may make provision—
 - (a) as to the manner of filing of applications for registration of a trade mark and other documents with the Registrar;
 - (b) as to the making of applications for registration of a trade mark by a partnership, association or other unincorporated body and the registration of trade marks in the name of such a body;
 - (c) requiring and regulating the translation of documents and the filing and authentication of any translation;
 - (d) as to the manner of publication of any notice, request, document or other matter required by this Ordinance or the rules to be published in the official journal;
 - (e) specifying the person or class of persons by whom any such notice, request, document or matter shall be

- (i) 規定須就任何該等法律程序或事宜或就註冊處所提供的任何服務繳付的費用；
- (j) 賦權處長評定在他席前進行的法律程序中他所判給的訟費；
- (k) 規管在任何該等法律程序中提供證據的方式，不論證據是以口頭、書面或交出文件或物品方式或其他方式提供；
- (l) 規管文件或物品的查閱或檢查；
- (m) 對於須就根據本條例進行的法律程序作出的事情，訂明作出的時限；
- (n) 就經如此訂明或處長所指明的任何時限（不論該時限是否已屆滿）的延展作出規定；
- (o) 公眾查閱註冊紀錄冊，以及（如註冊紀錄冊並非以文件形式備存）提供註冊紀錄冊的記項的核證副本或未經核證的副本，或註冊紀錄冊的摘錄的核證副本或未經核證的副本；及
- (p) 就由註冊處出版、印行和出售文件及資料作出規定。
- (3) 根據本條訂立的《規則》可就不同情況訂定不同條文。
- (4) 根據本條訂立的 ——
 - (a) 授權更正程序上的不當之處的規則；或
 - (b) 就任何時限的改動作出規定的規則，
可授權在有關時限已屆滿的情況下，延展或進一步延展任何該等時限。
- (5) 除非經財政司司長同意，否則不得根據本條訂立訂明各項費用的規則。
- (6) 根據第 (2)(i) 款訂立的任何規則可 ——
 - (a) 訂明各項費用，而該等費用是定於能使政府或其他主管當局在行使本條例下的任何或所有職能時所招致或相當可能招致的開支得以收回的水平；或

- published in the official journal and specifying the consequences of a failure to publish;
- (f) as to the time when applications and other documents shall be treated as having been filed with the Registrar for the purposes of this Ordinance or the rules;
- (g) as to the service of documents;
- (h) regulating the procedure to be followed in connection with any proceedings or other matter before the Registrar and authorizing the rectification of irregularities of procedure;
- (i) requiring fees to be paid in connection with any such proceedings or matter or in connection with the provision of any service by the Registry;
- (j) empowering the Registrar to tax costs awarded by him in any proceedings before him;
- (k) regulating the mode of giving evidence in any such proceedings, whether orally or in writing and whether by means of the production of documents or articles or otherwise;
- (l) regulating the inspection of documents or articles;
- (m) prescribing time limits for doing anything required to be done in connection with any proceedings under this Ordinance;
- (n) providing for the extension of any time limit so prescribed, or specified by the Registrar, whether or not it has already expired;
- (o) as to the public inspection of the register and the supply of certified or uncertified copies of entries in, or certified or uncertified copies of extracts from, the register in the event the register is not kept in documentary form; and

- (b) 規定各項費用須定於該水平，而該等費用的釐定，無須受在行使任何個別職能時所招致或相當可能招致的行政費用或其他費用的款額所限制。
- (7) 《規則》尤可就下述事宜訂定條文——
- (a) 就超過 1 項事宜繳付單一費用；及
- (b) 在何種情況（如有的話）下可將費用免除或發還。
- (8) 根據本條訂立的《規則》在處長根據本條例作出決定或命令或任何法院或團體（不論是在香港或其他地方）作出的關乎商標的決定或命令的情況下，可就由處長為公布關於該等決定或命令的報告而作出安排，訂定條文。

- (p) providing for the publication and sale of documents and information by the Registry.
- (3) Rules made under this section may make different provisions for different cases.
- (4) Rules made under this section—
- (a) authorizing the rectification of irregularities of procedure; or
- (b) providing for the alteration of any period of time, may authorize the extension or further extension of any period of time notwithstanding that the period has already expired.
- (5) Rules made under this section prescribing fees shall not be made except with the consent of the Financial Secretary.
- (6) Any rules made under subsection (2)(i) may—
- (a) prescribe fees fixed at; or
- (b) provide for fees to be fixed at, levels that provide for the recovery of expenditure incurred or likely to be incurred by the Government or other authority in the exercise of any or all functions under this Ordinance, and shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in the exercise of any particular function.
- (7) Provision may in particular be made by the rules as to—
- (a) the payment of a single fee in respect of 2 or more matters; and
- (b) the circumstances, if any, in which a fee may be waived or refunded.
- (8) Rules may be made under this section providing for arrangements to be made by the Registrar for the publication of reports of decisions or orders made by the Registrar

92. 規例

行政長官會同行政會議可藉規例——

- (a) 於附表 1(巴黎公約國及世貿成員) 加入——
 - (i) 任何已加入《巴黎公約》的國家的名稱；
 - (ii) 任何已加入《世貿協議》的國家、地區或地方的名稱；
- (b) 從附表 1 刪去——
 - (i) 任何已退出《巴黎公約》的國家的名稱；
 - (ii) 任何已退出《世貿協議》的國家、地區或地方的名稱；
- (c) 在其他方面修訂附表 1；
- (d) 修訂附表 2(馳名商標的決定方法)；
- (e) 修訂附表 3(集體商標)；及
- (f) 修訂附表 4(證明商標)。

under this Ordinance or decisions or orders relating to trade marks made by any court or body (whether in Hong Kong or elsewhere).

92. Regulations

The Chief Executive in Council may by regulation—

- (a) add to Schedule 1 (Paris Convention countries and WTO members) the name of—
 - (i) any country which has acceded to the Paris Convention;
 - (ii) any country, territory or area which has acceded to the World Trade Organization Agreement;
- (b) delete from Schedule 1 the name of—
 - (i) any country which has denounced the Paris Convention;
 - (ii) any country, territory or area which has denounced the World Trade Organization Agreement;
- (c) otherwise amend Schedule 1;
- (d) amend Schedule 2 (determination of well-known trade marks);
- (e) amend Schedule 3 (collective marks); and
- (f) amend Schedule 4 (certification marks).

第 XII 部

罪行

93. 註冊紀錄冊的捏改

- (1) 任何人在註冊紀錄冊中作出或安排在註冊紀錄冊中作出任何虛假記項，而他明知或有理由相信該記項是虛假的，他即屬犯罪。
- (2) 任何人——
 - (a) 製造或安排製造任何虛假地充作註冊紀錄冊的記項的副本的東西；或
 - (b) 交出或呈交或安排交出或呈交任何該等東西作為證據，而他明知或有理由相信該等東西是虛假的，他即屬犯罪。
- (3) 任何人犯本條所訂的罪行——
 - (a) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月；及
 - (b) 一經循公訴程序定罪，可處第 5 級罰款及監禁 2 年。

94. 虛假地表述商標已註冊

- (1) 凡——
 - (a) 任何人虛假地表述某標誌是註冊商標；或
 - (b) 某商標就某些貨品或服務註冊，而任何人就該等貨品或服務作出虛假的表述，而他明知或有理由相信該項表述是虛假的，他即屬犯罪，一經定罪，可處第 3 級罰款。

PART XII

OFFENCES

93. Falsification of the register

- (1) Any person who makes or causes to be made a false entry in the register, knowing or having reason to believe that it is false, commits an offence.
- (2) Any person who—
 - (a) makes or causes to be made anything falsely purporting to be a copy of an entry in the register; or
 - (b) produces or tenders or causes to be produced or tendered in evidence any such thing,knowing or having reason to believe that it is false, commits an offence.
- (3) Any person who commits an offence under this section is liable—
 - (a) on summary conviction, to a fine at level 5 and to imprisonment for 6 months; and
 - (b) on conviction on indictment, to a fine at level 5 and to imprisonment for 2 years.

94. Falsely representing trade mark as registered

- (1) Any person who—
 - (a) falsely represents that a sign is a registered trade mark; or
 - (b) makes a false representation as to the goods or services for which a trade mark is registered,

- (2) 就本條而言，如在香港就任何商標使用 ——
- (a) “註冊”或“registered”的字樣；或
 - (b) 帶有明示或隱含地提述註冊的含義的任何其他文字或符號，

則除非證明有關提述是指在香港以外地方的註冊，而該商標實際上亦已就有關的貨品或服務而經如此註冊，否則須當作為該商標已根據本條例註冊的表述。

95. “商標註冊處”的名稱的不當使用

凡任何人在其業務地址或在任何由他發出的文件中或其他方面使用“商標註冊處”或“Trade Marks Registry”的字樣，或任何帶有其業務地址即註冊處或與註冊處有正式關連意思的其他文字，即屬犯罪，一經循簡易程序定罪，可處第4級罰款。

96. 法團所犯的罪行及與法團有關的法律程序

- (1) 凡任何法團所犯的本條例所訂的任何罪行，經證明是在該法團的董事、經理、秘書或其他相類似的高級人員或本意是以任何該等身分行事的人的同意或縱容下所犯的，則該人及該法團均屬犯了該罪行，並可據此而被起訴和受懲罰。
- (2) 就法團被指稱犯了本條例所訂的罪行而提起的法律程序而言，以下條文適用 ——
 - (a) 與文件的送達有關的任何法院規則；及

knowing or having reason to believe that the representation is false, commits an offence and is liable on conviction to a fine at level 3.

- (2) For the purposes of this section, the use in Hong Kong in relation to a trade mark of—

- (a) the word “registered” or “註冊”; or
- (b) any other word or symbol importing a reference, either express or implied, to registration,

is deemed to be a representation as to registration under this Ordinance unless it is shown that the reference is to registration elsewhere than in Hong Kong and that the trade mark is in fact so registered for the goods or services in question.

95. Misuse of title “Trade Marks Registry”

Any person who uses on his place of business, or on any document issued by him, or otherwise, the words “Trade Marks Registry” or “商標註冊處” or any other words suggesting that his place of business is, or is officially connected with, the Registry, commits an offence and is liable on summary conviction to a fine at level 4.

96. Offences committed by and proceedings relating to corporations

- (1) Where an offence under this Ordinance committed by a corporation is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the corporation, or a person purporting to act in any such capacity, he as well as the corporation is guilty of the offence and liable to be proceeded against and punished accordingly.

12-5
第 559 章

第 XII 部
第 96 條

- (b) 《裁判官條例》(第 227 章)第 19A 條(法團在裁判官席前作出的答辯)及第 87 條(法團被控告犯可公訴罪行的程序)。
- (3) 在本條中，“董事”(director)——
- (a) 包括擔任董事職位(不論職稱為何)的人；及
- (b) 在法團的董事慣常依照某人的指示或吩咐而行事的情況下，包括該人。
- (4) 如某法團的董事參照某人以專業身分提供的意見而行事，則該人不得純粹因此而被視為該法團的董事。
-

PART XII
Section 96

12-6
Cap. 559

- (2) The following provisions apply for the purposes of proceedings for an offence under this Ordinance alleged to have been committed by a corporation—
- (a) any rules of court relating to the service of documents; and
- (b) section 19A (plea by a corporation before a magistrate) and section 87 (procedure on charge of indictable offence against corporation) of the Magistrates Ordinance (Cap. 227).
- (3) In this section, “director” (董事) includes—
- (a) any person who occupies the position of director, by whatever name called; and
- (b) any person in accordance with whose directions or instructions the directors of a corporation are accustomed to act.
- (4) A person shall not be treated as a director of a corporation by reason only that the directors of the corporation act on advice given by him in a professional capacity.
-

第 XIA 部**執行***(第 XIA 部由 2020 年第 3 號第 15 條增補)***第 1 分部 —— 釋義****96A. 第 XIA 部的釋義**

在本部中 ——

文件 (document) 包括以任何形式記錄的資料；**可予沒收物件** (forfeitable item) 指符合以下情況的任何物件：
就該物件有人犯了本條例所訂罪行；**收益申請** (proceeds application) 指要求法院作出第 96H(6) 條所列的命令的申請；**沒收申請** (forfeiture application) 指要求法院作出第 96G(3) 條所列的命令的申請；**法院** (court) 指香港特別行政區具司法管轄權的法院，並包括裁判官；**指明收受者** (specified recipient) 就可予沒收物件而言，指關長覺得屬該物件的擁有人、該物件的其中一個擁有人或某擁有人的獲授權代理人的人；**指明證據** (specified evidence) 指屬或包含 (或相當可能屬或包含) 本條例所訂罪行的證據的任何物件；**售賣申請** (sale application) 就可予沒收物件而言，指要求法院作出第 96H(4) 條所列的命令的申請；**執法人員** (enforcement officer) 指 ——

- (a) 由《香港海關條例》(第 342 章) 第 3 條設立的香港海關的海關人員；或
- (b) 根據第 96B(1) 條獲委任的人員；

Part XIA**Enforcement***(Part XIA added 3 of 2020 s. 15)***Division 1—Interpretation****96A. Interpretation of Part XIA**

In this Part—

Commissioner (關長) means the Commissioner of Customs and Excise and includes any Deputy or Assistant Commissioner of Customs and Excise;**court** (法院) means a court of competent jurisdiction of the Hong Kong Special Administrative Region and includes a magistrate;**document** (文件) includes information recorded in any form;**enforcement officer** (執法人員) means—

- (a) a member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap. 342); or
- (b) an officer appointed under section 96B(1);

forfeitable item (可予沒收物件) means anything in respect of which an offence under this Ordinance has been committed;**forfeiture application** (沒收申請) means an application to the court for an order set out in section 96G(3);**proceeds application** (收益申請) means an application to the court for an order set out in section 96H(6);

關長 (Commissioner) 指海關關長，並包括任何海關副關長或海關助理關長。

sale application (售賣申請), in relation to a forfeitable item, means an application to the court for an order set out in section 96H(4);

specified evidence (指明證據) means anything that is or that contains, or that is likely to be, or to contain, evidence of an offence under this Ordinance;

specified recipient (指明收受者), in relation to a forfeitable item, means a person who appears to the Commissioner to be the owner of the item, one of its owners or an owner's authorized agent.

第 2 分部 —— 調查

Division 2—Investigation

96B. 執法人員的委任

- (1) 為施行本條例，關長可以書面委任公職人員為執法人員。
- (2) 在行使本部所訂的權力時，執法人員須出示該人員的身分的證明。

96B. Appointment of enforcement officers

- (1) The Commissioner may appoint in writing a public officer as an enforcement officer for the purposes of this Ordinance.
- (2) When exercising a power under this Part, an enforcement officer must produce evidence of the officer's identity.

96C. 調查的權力等

- (1) 如執法人員合理地懷疑有人曾經或正在犯本條例所訂罪行，該人員可為進行調查的目的而作出所有或任何以下事情 ——
 - (a) 在符合第 96D 條的規定下，進入和搜查任何地方；
 - (b) 如該人員合理地懷疑任何運輸工具載有該人員覺得屬指明證據的任何物件，截停、登上和搜查該運輸工具；
 - (c) 作出該人員就該調查而合理地要求的任何查問；
 - (d) 檢查、檢驗、搜查、檢取、移走或扣留該人員覺得屬指明證據的任何物件；

96C. Power to investigate etc.

- (1) If an enforcement officer reasonably suspects an offence under this Ordinance has been or is being committed, the officer may do all or any of the following things for the purposes of conducting an investigation—
 - (a) subject to section 96D, enter and search any place;
 - (b) stop, board and search any conveyance that the officer reasonably suspects contains anything that appears to the officer to be specified evidence;
 - (c) make any inquiry that the officer reasonably requires for the investigation;

12A-5
第 559 章第 XIA 部 —— 第 2 分部
第 96D 條

- (e) 要求某指明人士，將該人員合理地相信有關該調查的任何資料、文件或任何其他物件，提供予該人員；
- (f) 要求某指明人士，向該人員提供該人員就該調查而合理地要求的一切其他協助。
- (2) 在本條中 ——
- 指明人士** (specified person) 就執法人員合理地懷疑曾經或正在進行的罪行而言，指 ——
- (a) 管有或控制 (或可能管有或可能控制) 與該罪行的調查有關的任何資料、文件或任何其他物件的人；或
- (b) 可能在其他方面能夠就該罪行的調查而協助該人員的人。

96D. 進入和搜查的手令等

- (1) 除第 (5) 款另有規定外，執法人員只可在根據第 (2) 款發出的手令的權限下進入和搜查任何地方。
- (2) 裁判官如因經宣誓作出的告發，信納有合理理由懷疑在任何地方內有任何指明證據，可發出手令，授權執法人員進入和搜查該地方。
- (3) 如某手令已根據第 (2) 款發出，執法人員在行使本條所訂的權力時須出示該手令。
- (4) 根據第 (2) 款發出的手令，授權有關執法人員 ——
- (a) 強行進入和搜查有關地方；

Part XIA—Division 2
Section 96D12A-6
Cap. 559

- (d) inspect, examine, search, seize, remove or detain anything that appears to the officer to be specified evidence;
- (e) require a specified person to provide the officer with any information, document or any other thing that the officer reasonably believes to be relevant to the investigation;
- (f) require a specified person to give the officer all other assistance that the officer reasonably requires for the investigation.
- (2) In this section—
- specified person** (指明人士), in relation to an offence that an enforcement officer reasonably suspects has been or is being committed, means—
- (a) a person who has or may have possession or control of any information, document or any other thing relevant to the investigation of the offence; or
- (b) a person who may otherwise be able to assist the officer in relation to the investigation of the offence.

96D. Warrant to enter and search etc.

- (1) Subject to subsection (5), an enforcement officer may only enter and search any place under the authority of a warrant issued under subsection (2).
- (2) A magistrate may issue a warrant authorizing an enforcement officer to enter and search any place if the magistrate is satisfied by information on oath that there is reasonable ground for suspecting that any specified evidence is in the place.
- (3) If a warrant has been issued under subsection (2), an enforcement officer must produce the warrant when exercising a power under this section.

- (b) 檢查、檢驗、搜查、檢取、移走和扣留該人員覺得屬指明證據的在該地方內的任何物件；及
- (c) 扣留在該地方內發現的任何人，直至對該地方的搜查已完畢為止。
- (5) 如以下條件均符合，關長可授權執法人員在無手令的情況下，行使第(1)款所訂的權力——
 - (a) 有合理理由懷疑在有關地方內有任何指明證據；及
 - (b) 符合以下其中一項——
 - (i) 為取得手令所必然引致的阻延，相當可能會引致證據喪失或毀滅；或
 - (ii) 有任何其他原因，會使取得手令並非合理地切實可行。

- (4) A warrant issued under subsection (2) authorizes the enforcement officer to—
 - (a) forcibly enter and search the place;
 - (b) inspect, examine, search, seize, remove and detain anything in the place that appears to the officer to be specified evidence; and
 - (c) detain any person found in the place until the place has been searched.
- (5) The Commissioner may authorize an enforcement officer to exercise the power under subsection (1) without a warrant if—
 - (a) there is reasonable ground for suspecting that any specified evidence is in the place; and
 - (b) either—
 - (i) the delay necessary to obtain a warrant is likely to result in the loss or destruction of evidence; or
 - (ii) for any other reason it would not be reasonably practicable to obtain a warrant.

第 3 分部 —— 逮捕、罪行及沒收

Division 3—Arrest, Offences and Forfeiture

96E. 逮捕的權力等

96E. Power to arrest etc.

- (1) 如執法人員合理地懷疑某人犯了本條例所訂罪行，該人員可在無手令的情況下，截停、搜查、逮捕和扣留該人。
- (2) 如任何人反抗或企圖逃避有關搜查、逮捕或扣留，則執法人員可使用合理所需的武力，以進行該搜查、逮捕或扣留。
- (3) 執法人員如逮捕某人，可——
 - (a) 在該人身上及於逮捕該人所在地點的鄰近範圍內，搜尋該人員合理地懷疑對有關罪行的調查屬有價值

- (1) If an enforcement officer reasonably suspects that a person has committed an offence under this Ordinance, the officer may stop, search, arrest and detain the person without a warrant.
- (2) If any person resists or attempts to evade the search, arrest or detention, an enforcement officer may use any force that is reasonably necessary to effect the search, arrest or detention.
- (3) An enforcement officer who arrests a person may—

的任何物件 (不論是否單憑該物件或連同任何其他物件); 及

- (b) 搜查和接管該物件。

96F. 關於調查的罪行等

- (1) 任何人如 ——
- (a) 提供任何資料或文件，充作遵守根據第 96C(1)(e) 條作出的要求，而該資料或文件在要項上屬虛假或誤導；及
- (b) 明知該資料或文件在要項上屬虛假或誤導，或罔顧該資料或文件是否在要項上屬虛假或誤導，即屬犯罪。
- (2) 任何人如 ——
- (a) 故意妨礙有關執法人員行使其在本部之下的權力或執行其在本部之下的職責；或
- (b) 沒有遵守第 96C(1)(e) 或 (f) 條的規定，即屬犯罪。
- (3) 任何人犯第 (1) 或 (2) 款所訂罪行，一經定罪，可處第 3 級罰款及監禁 6 個月。
- (4) 被控犯第 (2)(b) 款所訂罪行的人，如證明在指稱的罪行發生時，該人對不提供有關資料或文件或不提供有關協助 (視屬何情況而定)，有合理辯解，即為免責辯護。
- (5) 凡任何人被控犯本部所訂罪行，在以下情況下，援引本部所訂的免責辯護需證明的事宜，須視為已由該人證明 ——
- (a) 有足夠證據，就該事宜帶出爭論點；及
- (b) 控方沒有提出足以排除合理疑點的相反證明。

- (a) search the person and the vicinity of the arrest for anything that the officer reasonably suspects is of value (whether by itself or together with anything else) to the investigation of the offence; and
- (b) search and take possession of the thing.

96F. Offences relating to investigation etc.

- (1) A person commits an offence if the person—
- (a) in purported compliance with a requirement under section 96C(1)(e), provides any information or document that is false or misleading in a material particular; and
- (b) knows that, or is reckless as to whether, the information or document is false or misleading in a material particular.
- (2) A person commits an offence if the person—
- (a) wilfully obstructs the enforcement officer in the exercise of the officer's powers or in the performance of the officer's duties under this Part; or
- (b) fails to comply with a requirement under section 96C(1)(e) or (f).
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (4) It is a defence for a person charged with an offence under subsection (2)(b) if the person establishes that at the time of the alleged offence, the person had a reasonable excuse for failing to provide the information or document, or to give the assistance (as the case may be).
- (5) A person charged with an offence under this Part is taken to have established a matter that needs to be established for a defence under this Part if—

12A-11
第 559 章

第 XIA 部 —— 第 3 分部
第 96G 條

Part XIA—Division 3
Section 96G

12A-12
Cap. 559

96G. 物件的處置的一般條文

- (1) 關長可在關長認為適當並以書面指明的任何條件的規限下，將根據本部檢取、移走或扣留的可予沒收物件或任何其他物件，發還予指明收受者。
- (2) 另一方面，關長可就予沒收物件作出沒收申請。
- (3) 在聆訊某項沒收申請後，法院如信納第 96I(1) 條獲符合，可命令將有關可予沒收物件——
 - (a) 沒收歸政府所有；
 - (b) 銷毀；或
 - (c) 在法院於該命令內指明的任何條件的規限下——
 - (i) 發還予該物件的擁有人、該物件的其中一個擁有人或某擁有人的獲授權代理人；或
 - (ii) 以任何其他方式處理。
- (4) 不論是否有人已被控犯有關的罪行，可予沒收物件均可予以沒收、銷毀或以其他方式處置。

96H. 易毀消物件的條文

- (1) 在不局限第 96G 條的原則下，如關長認為可予沒收物件，以性質而論——
 - (a) 屬易毀消的；

- (a) there is sufficient evidence to raise an issue with respect to that matter; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

96G. General provision on disposal of things

- (1) The Commissioner may, subject to any conditions the Commissioner considers appropriate and specifies in writing, release a forfeitable item or any other thing seized, removed or detained under this Part to a specified recipient.
- (2) Alternatively, the Commissioner may make a forfeiture application in relation to a forfeitable item.
- (3) On hearing a forfeiture application and being satisfied of compliance with section 96I(1), the court may order that the forfeitable item—
 - (a) be forfeited to the Government;
 - (b) be destroyed; or
 - (c) subject to any condition that the court specifies in the order—
 - (i) be released to its owner, one of its owners or an owner's authorized agent; or
 - (ii) be dealt with in any other way.
- (4) A forfeitable item is liable to forfeiture, destruction or other disposal, whether or not any person has been charged for the offence concerned.

96H. Provision on perishable things

- (1) Without limiting section 96G, this section applies if the Commissioner is of the opinion that a forfeitable item is, by its nature—

- (b) 屬不易儲存的；或
- (c) 在任何與該物件有關的法律程序結束之前相當可能會變壞，
則本條適用。
- (2) 如有關可予沒收物件的指明收受者向關長繳付一筆作為保證而金額不少於該物件的價值（該價值由關長或執法人員評估）的款額，則關長可將該物件發還予該收受者。
- (3) 另一方面，關長 ——
- (a) 如認為有關可予沒收物件屬易毀滅的，可命令 ——
- (i) 將該物件售賣，並將售賣收益交予關長保留；
或
- (ii) 將該物件銷毀；或
- (b) 如認為有關可予沒收物件屬不易儲存的或在任何與該物件有關的法律程序結束之前相當可能會變壞 —— 可作出售賣申請。
- (4) 在聆訊某項售賣申請後，法院如信納第 96I(1) 條獲符合，可命令將有關可予沒收物件售賣，並將售賣收益交予關長保留。
- (5) 此外，關長可作出收益申請。
- (6) 在聆訊某項收益申請後，法院可 ——
- (a) 命令將根據第 (2) 款向關長繳付的款項 ——
- (i) 沒收歸政府所有；或
- (ii) 付予提供保證的人或有權就該款項或有關可予沒收物件提出申索的人；及
- (b) 命令將關長根據第 (3)(a)(i) 款保留的或藉根據第 (4) 款作出的命令保留的售賣收益 ——
- (i) 沒收歸政府所有；或
- (ii) 付予有權就該收益或該可予沒收物件提出申索的人。

- (a) perishable;
- (b) difficult to store; or
- (c) likely to deteriorate before the conclusion of any proceedings relating to it.
- (2) The Commissioner may release the forfeitable item to a specified recipient if the recipient pays the Commissioner by way of security an amount not less than the value of the item as assessed by the Commissioner or an enforcement officer.
- (3) Alternatively, the Commissioner may—
- (a) if the Commissioner considers the forfeitable item is perishable, order that it—
- (i) be sold and the sale proceeds be retained by the Commissioner; or
- (ii) be destroyed; or
- (b) if the Commissioner considers the forfeitable item is difficult to store or likely to deteriorate before the conclusion of any proceedings relating to it—make a sale application.
- (4) On hearing a sale application and being satisfied of compliance with section 96I(1), the court may order that the forfeitable item be sold and the sale proceeds be retained by the Commissioner.
- (5) Also, the Commissioner may make a proceeds application.
- (6) On hearing a proceeds application, the court may—
- (a) order the payment made to the Commissioner under subsection (2) to be—
- (i) forfeited to the Government; or
- (ii) paid to the person giving the security or the person entitled to claim the payment or the forfeitable item; and

12A-15
第 559 章第 XIA 部 —— 第 4 分部
第 96J 條Part XIA—Division 4
Section 96J12A-16
Cap. 559**96I. 就某些擬作出申請須發出通知**

- (1) 如有以下情況，關長須向某可予沒收物件的擁有人或該擁有人的獲授權代理人，發出關長擬作出某項沒收申請或售賣申請的通知——
 - (a) 關長將作出該項申請，但並非在本條例所訂罪行而進行的法律程序中作出；及
 - (b) 該物件的擁有人可被尋獲。
- (2) 如有關可予沒收物件的擁有人多於一人，則向其中一個擁有人或某擁有人的獲授權代理人發出通知，即為足夠。

第 4 分部 —— 雜項**96J. 國際合作**

關長可為促進在保護知識產權權利方面的國際合作，向任何負責在——

- (a) 巴黎公約國；
 - (b) 世貿成員；或
 - (c) 關長認為適當的任何其他國家、地區或地方，
- 執行該等權利的主管當局，披露根據本部取得的任何資料。

- (b) order the sale proceeds retained by the Commissioner under subsection (3)(a)(i) or by order under subsection (4) to be—
 - (i) forfeited to the Government; or
 - (ii) paid to the person entitled to claim the proceeds or the forfeitable item.

96I. Notification requirement for certain intended applications

- (1) The Commissioner must notify the owner of a forfeitable item or the owner's authorized agent that the Commissioner intends to make a forfeiture application or sale application if—
 - (a) the application is to be made otherwise than in any proceedings for an offence under this Ordinance; and
 - (b) the owner of the item can be found.
- (2) If there is more than one owner of the forfeitable item, it is sufficient to give notice to one of the owners or an owner's authorized agent.

Division 4—Miscellaneous**96J. International co-operation**

The Commissioner may, for the purpose of promoting international co-operation in the protection of intellectual property rights, disclose any information obtained under this Part to any authority that is responsible for the enforcement of those rights in—

- (a) a Paris Convention country;
- (b) a WTO member; or
- (c) any other country, territory or area as the Commissioner considers appropriate.

12A-17
第 559 章

第 X1IA 部 —— 第 4 分部
第 96K 條

Part X1IA—Division 4
Section 96K

12A-18
Cap. 559

96K. 轉授

關長可將其在本部之下的任何職能或權力，以書面轉授予公職人員。

96L. 豁免承擔民事法律責任

- (1) 凡關長或某執法人員 ——
 - (a) 在執行或看來是執行本部賦予關長或該人員的職能時；或
 - (b) 在行使或看來是行使本部賦予關長或該人員的權力時，真誠地作出或沒有作出某作為，關長及該人員均無須為該作為或不作為承擔民事法律責任。
- (2) 第 (1) 款不影響政府為上述作為或不作為而承擔的法律責任。

96K. Delegation

The Commissioner may, in writing, delegate to a public officer any of his or her functions or powers under this Part.

96L. Immunity from civil liability

- (1) Neither the Commissioner nor an enforcement officer is civilly liable for an act done or omitted to be done by him or her in good faith in—
 - (a) performing or purportedly performing a function conferred on him or her by this Part; or
 - (b) exercising or purportedly exercising a power conferred on him or her by this Part.
- (2) Subsection (1) does not affect any liability of the Government for the act or omission.

第 XIII 部**過渡性條文、相應及有關修訂以及廢除****97. 過渡性事宜等**

- (1) 附表 5(過渡性事宜)就過渡性事宜具有效力。
- (2) 行政長官會同行政會議可訂立載有因本條例的制訂而需訂立的保留或過渡性的條文的規例。
- (3) 在不損害第(2)款的一般性的原則下，該等規例尤可規定——
 - (a) 本條例的條文或根據本條例訂立的規則的條文就規例所指明的事宜適用；或
 - (b) 被廢除的《商標條例》(第 43 章)的條文或被廢除的《商標規則》(第 43 章，附屬法例 A)的條文就規例所指明的事宜繼續適用。
- (4) 根據本條訂立的規例如本身有規定當作已自一個較該規例在憲報刊登之日為早的日期開始實施，則該規例可當作已自該日期開始實施，但該規例不得在附表 5(過渡性事宜)開始實施的日期之前開始實施。
- (5) 在任何規例自一個較其在憲報刊登的日期為早的日期開始實施的範圍內，該等規例須解釋為——
 - (a) 不會以不利於某人的方式影響該人在該等規例在憲報刊登日期前已存在的權利；
 - (b) 亦不會就任何在該日期前作出或沒有在該日期前作出的事情而對任何人施加法律責任。
- (6) 如根據本條訂立的規例與附表 5 的條文相抵觸，則在該等條文相抵觸的範圍內，須以後者為準。

PART XIII**TRANSITIONAL PROVISIONS, CONSEQUENTIAL AND RELATED AMENDMENTS AND REPEALS****97. Transitional matters, etc.**

- (1) Schedule 5 (transitional matters) has effect as respects transitional matters.
- (2) The Chief Executive in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Ordinance.
- (3) Without prejudice to the generality of subsection (2), the regulations may in particular provide for—
 - (a) the application of provisions of this Ordinance or the rules made under this Ordinance; or
 - (b) the continued application of provisions of the repealed Trade Marks Ordinance (Cap. 43) or the repealed Trade Marks Rules (Cap. 43 sub. leg. A),
 in connection with any matter specified in the regulations.
- (4) Regulations made under this section may, if they so provide, be deemed to have come into operation on a date earlier than the date on which they are published in the Gazette but not earlier than the date on which Schedule 5 (transitional matters) comes into operation.
- (5) To the extent that any regulations come into operation on a date earlier than the date on which they are published in the Gazette, those regulations shall be construed so as not to—
 - (a) affect, in a manner prejudicial to any person, the rights of that person existing before the date on which the regulations are published in the Gazette; or

13-3
第 559 章

第 XIII 部
第 98 條

PART XIII
Section 98

13-4
Cap. 559

98. (已失時效而略去)

99. 廢除

- (1) 《商標條例》(第 43 章) 現予廢除。
- (2) 《商標規則》(第 43 章, 附屬法例 A) 現予廢除。
- (3) 《商標(緊急情況)條例》(第 263 章) 現予廢除。
- (4) 《商標(緊急情況)規則》(第 263 章, 附屬法例 A) 現予廢除。

100. 關乎《2020 年商標(修訂)條例》的過渡及保留條文

附表 7 列出的過渡及保留條文, 就《2020 年商標(修訂)條例》(2020 年第 3 號) 對本條例作出的修訂而言, 具有效力。

(由 2020 年第 3 號第 16 條增補)

(b) impose liabilities on any person in respect of anything done, or omitted to be done, before that date.

- (6) In the event of an inconsistency between any regulations made under this section and the provisions of Schedule 5, the latter shall prevail to the extent of the inconsistency.

98. (Omitted as spent)

99. Repeals

- (1) The Trade Marks Ordinance (Cap. 43) is repealed.
- (2) The Trade Marks Rules (Cap. 43 sub. leg. A) are repealed.
- (3) The Trade Marks (Emergency) Ordinance (Cap. 263) is repealed.
- (4) The Trade Marks (Emergency) Rules (Cap. 263 sub. leg. A) are repealed.

100. Transitional and savings provisions for Trade Marks (Amendment) Ordinance 2020

Schedule 7 sets out transitional and savings provisions that have effect for the purposes of the amendments made to this Ordinance by the Trade Marks (Amendment) Ordinance 2020 (3 of 2020).

(Added 3 of 2020 s. 16)

附表 1

[第 2 及 92 條]

巴黎公約國及世貿成員

已加入《巴黎公約》的國家

也門共和國
土耳其共和國
土庫曼斯坦
大不列顛及北愛爾蘭聯合王國
大韓民國
不丹王國
中非共和國
中華人民共和國
丹麥王國
厄瓜多爾共和國
巴巴多斯
巴布亞新畿內亞獨立國
巴西聯邦共和國
巴拉圭共和國
巴林王國
巴哈馬國
巴拿馬共和國
巴基斯坦伊斯蘭共和國
文萊達魯薩蘭國
日本國
比利時王國
毛里求斯共和國
毛里塔尼亞伊斯蘭共和國
牙買加
乍得共和國

Schedule 1

[ss. 2 & 92]

Paris Convention Countries and WTO Members

Countries which have acceded to the Paris Convention

The Republic of Albania
The People's Democratic Republic of Algeria
The Principality of Andorra
The Republic of Angola
Antigua and Barbuda
Republic of Argentina
The Republic of Armenia
The Commonwealth of Australia
The Republic of Austria
The Republic of Azerbaijan
The Commonwealth of The Bahamas
The Kingdom of Bahrain
The People's Republic of Bangladesh
Barbados
The Republic of Belarus
The Kingdom of Belgium
Belize
The Republic of Benin
The Kingdom of Bhutan
The Plurinational State of Bolivia
Bosnia and Herzegovina
The Republic of Botswana
The Federative Republic of Brazil
Brunei Darussalam
The Republic of Bulgaria

S1-3

附表 1

Schedule 1

S1-4

第 559 章

Cap. 559

以色列國
 加拿大
 加納共和國
 加蓬共和國
 卡塔爾國
 古巴共和國
 尼日利亞聯邦共和國
 尼日爾共和國
 尼加拉瓜共和國
 尼泊爾聯邦民主共和國
 布基納法索
 布隆迪共和國
 白俄羅斯共和國
 立陶宛共和國
 伊拉克共和國
 伊朗伊斯蘭共和國
 冰島共和國
 列支敦士登公國
 匈牙利
 印度尼西亞共和國
 印度共和國
 危地馬拉共和國
 吉布提共和國
 吉爾吉斯共和國
 圭亞那共和國
 多民族玻利維亞國
 多米尼加共和國
 多米尼克國
 多哥共和國
 安哥拉共和國
 安提瓜和巴布達
 安道爾公國
 老撾人民民主共和國
 西班牙王國

The Burkina Faso
 The Republic of Burundi
 Kingdom of Cambodia
 The Republic of Cameroon
 Canada
 The Central African Republic
 The Republic of Chad
 Republic of Chile
 The People's Republic of China
 The Republic of Colombia
 Union of the Comoros
 The Democratic Republic of Congo
 The Republic of Congo
 The Republic of Costa Rica
 The Republic of Cote d'Ivoire
 The Republic of Croatia
 The Republic of Cuba
 The Republic of Cyprus
 The Czech Republic
 The Kingdom of Denmark
 The Republic of Djibouti
 The Commonwealth of Dominica
 The Dominican Republic
 The Republic of Ecuador
 The Arab Republic of Egypt
 The Republic of El Salvador
 The Republic of Equatorial Guinea
 Republic of Estonia
 The Republic of Finland
 The French Republic
 The Gabonese Republic
 The Republic of the Gambia
 Georgia
 The Federal Republic of Germany

S1-5

附表 1

Schedule 1

S1-6

第 559 章

Cap. 559

伯利茲
 克羅地亞共和國
 利比里亞共和國
 利比亞
 希臘共和國 (希臘)
 沙特阿拉伯王國
 貝寧共和國
 赤道幾內亞共和國
 亞美尼亞共和國
 坦桑尼亞聯合共和國
 委內瑞拉玻利瓦爾共和國
 孟加拉人民共和國
 岡比亞共和國
 拉脫維亞共和國
 法蘭西共和國
 波斯尼亞和黑塞哥維那
 波蘭共和國
 肯尼亞共和國
 芬蘭共和國
 阿拉伯埃及共和國
 阿拉伯敘利亞共和國
 阿拉伯聯合酋長國
 阿根廷共和國
 阿曼蘇丹國
 阿塞拜疆共和國
 阿爾及利亞民主人民共和國
 阿爾巴尼亞共和國
 保加利亞共和國
 俄羅斯聯邦
 南非共和國
 哈薩克斯坦共和國
 柬埔寨王國
 洪都拉斯共和國
 津巴布韋共和國

The Republic of Ghana
 Grenada
 The Republic of Guatemala
 The Republic of Guinea
 The Republic of Guinea-Bissau
 The Republic of Guyana
 The Republic of Haiti
 The Hellenic Republic (Greece)
 Holy See
 The Republic of Honduras
 Hungary
 The Republic of Iceland
 The Republic of India
 The Republic of Indonesia
 The Islamic Republic of Iran
 The Republic of Iraq
 Ireland
 The State of Israel
 The Republic of Italy
 Jamaica
 Japan
 The Hashemite Kingdom of Jordan
 The Republic of Kazakhstan
 The Republic of Kenya
 The Democratic People's Republic of Korea
 Republic of Korea
 The State of Kuwait
 The Kyrgyz Republic
 The Lao People's Democratic Republic
 Republic of Latvia
 The Republic of Lebanon
 The Kingdom of Lesotho
 The Republic of Liberia
 Libya

S1-7

附表 1

Schedule 1

S1-8

第 559 章

Cap. 559

科威特國
 科特迪瓦共和國
 科摩羅聯盟
 突尼斯共和國
 約旦哈希姆王國
 美利堅合眾國
 剛果民主共和國
 剛果共和國
 哥倫比亞共和國
 哥斯達黎加共和國
 挪威王國
 格林納達
 格魯吉亞
 泰王國(泰國)
 海地共和國
 烏干達共和國
 烏克蘭
 烏拉圭東岸共和國
 烏茲別克斯坦共和國
 特立尼達和多巴哥共和國
 秘魯共和國
 納米比亞共和國
 馬耳他共和國
 馬里共和國
 馬來西亞
 馬其頓共和國
 馬拉維共和國
 馬達加斯加共和國
 捷克共和國
 莫桑比克共和國
 荷蘭王國
 博茨瓦納共和國
 喀麥隆共和國
 幾內亞比紹共和國

The Principality of Liechtenstein
 The Republic of Lithuania
 The Grand Duchy of Luxembourg
 The Republic of Macedonia
 The Republic of Madagascar
 The Republic of Malawi
 Malaysia
 The Republic of Mali
 The Republic of Malta
 The Islamic Republic of Mauritania
 The Republic of Mauritius
 The Republic of Moldova
 The Principality of Monaco
 Mongolia
 Montenegro
 The Kingdom of Morocco
 The Republic of Mozambique
 The Republic of Namibia
 The Federal Democratic Republic of Nepal
 The Kingdom of the Netherlands
 New Zealand
 The Republic of Nicaragua
 The Republic of Niger
 The Federal Republic of Nigeria
 The Kingdom of Norway
 The Sultanate of Oman
 The Islamic Republic of Pakistan
 The Republic of Panama
 The Independent State of Papua New Guinea
 Republic of Paraguay
 The Republic of Peru
 Republic of the Philippines
 The Republic of Poland
 The Portuguese Republic

S1-9

附表 1

Schedule 1

S1-10

第 559 章

Cap. 559

幾內亞共和國
 斯里蘭卡民主社會主義共和國
 斯威士蘭王國
 斯洛文尼亞共和國
 斯洛伐克共和國
 智利共和國
 朝鮮民主主義人民共和國
 湯加王國
 萊索托王國
 菲律賓共和國
 越南社會主義共和國
 黑山
 塞內加爾共和國
 塞舌爾共和國
 塞拉利昂共和國
 塞浦路斯共和國
 塞爾維亞共和國
 塔吉克斯坦共和國
 奧地利共和國
 意大利共和國
 愛沙尼亞共和國
 愛爾蘭
 新加坡共和國
 新西蘭
 瑞士聯邦
 瑞典王國
 聖文森特和格林納丁斯
 聖多美和普林西比民主共和國
 聖馬力諾共和國
 聖基茨和尼維斯聯邦
 聖盧西亞
 葡萄牙共和國
 蒙古國
 德意志聯邦共和國

The State of Qatar
 Romania
 The Russian Federation
 The Republic of Rwanda
 The Federation of Saint Kitts and Nevis
 Saint Lucia
 Saint Vincent and the Grenadines
 The Independent State of Samoa
 The Republic of San Marino
 The Democratic Republic of Sao Tome and Principe
 The Kingdom of Saudi Arabia
 The Republic of Senegal
 The Republic of Serbia
 The Republic of Seychelles
 The Republic of Sierra Leone
 The Republic of Singapore
 The Slovak Republic
 The Republic of Slovenia
 The Republic of South Africa
 The Kingdom of Spain
 The Democratic Socialist Republic of Sri Lanka
 The Republic of the Sudan
 The Republic of Suriname
 The Kingdom of Swaziland
 The Kingdom of Sweden
 Swiss Confederation
 The Syrian Arab Republic
 The Republic of Tajikistan
 The Kingdom of Thailand
 The Republic of Togo
 The Kingdom of Tonga
 The Republic of Trinidad and Tobago
 The Republic of Tunisia
 The Republic of Turkey

S1-11

附表 1

Schedule 1

S1-12

第 559 章

Cap. 559

摩洛哥王國
 摩納哥公國
 摩爾多瓦共和國
 黎巴嫩共和國
 墨西哥合眾國
 澳大利亞聯邦
 盧旺達共和國
 盧森堡大公國
 薩爾瓦多共和國
 薩摩亞獨立國
 羅馬尼亞
 羅馬教廷
 贊比亞共和國
 蘇丹共和國
 蘇里南共和國

Turkmenistan
 The Republic of Uganda
 Ukraine
 The United Arab Emirates
 The United Kingdom of Great Britain and Northern Ireland
 The United Mexican States
 The United Republic of Tanzania
 The United States of America
 Oriental Republic of Uruguay
 The Republic of Uzbekistan
 The Bolivarian Republic of Venezuela
 The Socialist Republic of Viet Nam
 The Republic of Yemen
 The Republic of Zambia
 The Republic of Zimbabwe

已加入《世貿協議》的國家、地區及地方

Countries, territories and areas which have acceded to the World Trade Organization Agreement

也門共和國
 土耳其共和國
 大不列顛及北愛爾蘭聯合王國
 大韓民國
 中非共和國
 中華人民共和國
 丹麥王國
 厄瓜多爾共和國
 巴巴多斯
 巴布亞新畿內亞獨立國
 巴西聯邦共和國
 巴拉圭共和國
 巴林王國
 巴拿馬共和國

The Islamic Republic of Afghanistan
 The Republic of Albania
 The Republic of Angola
 Antigua and Barbuda
 Republic of Argentina
 The Republic of Armenia
 The Commonwealth of Australia
 The Republic of Austria
 The Kingdom of Bahrain
 The People's Republic of Bangladesh
 Barbados
 The Kingdom of Belgium
 Belize

S1-13
第 559 章

附表 1

Schedule 1

S1-14
Cap. 559

巴基斯坦伊斯蘭共和國
文萊達魯薩蘭國
日本國
比利時王國
毛里求斯共和國
毛里塔尼亞伊斯蘭共和國
牙買加
乍得共和國
以色列國
加拿大
加納共和國
加蓬共和國
卡塔爾國
古巴共和國
台灣、澎湖、金門、馬祖單獨關稅區
尼日利亞聯邦共和國
尼日爾共和國
尼加拉瓜共和國
尼泊爾聯邦民主共和國
布基納法索
布隆迪共和國
瓦努阿圖共和國
立陶宛共和國
冰島共和國
列支敦士登公國
匈牙利
印度尼西亞共和國
印度共和國
危地馬拉共和國
吉布提共和國
吉爾吉斯共和國
圭亞那共和國
多民族玻利維亞國
多米尼加共和國

The Republic of Benin
The Plurinational State of Bolivia
The Republic of Botswana
The Federative Republic of Brazil
Brunei Darussalam
The Republic of Bulgaria
The Burkina Faso
The Republic of Burundi
The Republic of Cabo Verde
Kingdom of Cambodia
The Republic of Cameroon
Canada
The Central African Republic
The Republic of Chad
Republic of Chile
The People's Republic of China
The Republic of Colombia
The Democratic Republic of Congo
The Republic of Congo
The Republic of Costa Rica
The Republic of Cote d'Ivoire
The Republic of Croatia
The Republic of Cuba
The Republic of Cyprus
The Czech Republic
The Kingdom of Denmark
The Republic of Djibouti
The Commonwealth of Dominica
The Dominican Republic
The Republic of Ecuador
The Arab Republic of Egypt
The Republic of El Salvador
Republic of Estonia

S1-15
第 559 章

附表 1

Schedule 1

S1-16
Cap. 559

多米尼克國
 多哥共和國
 安哥拉共和國
 安提瓜和巴布達
 老撾人民民主共和國
 西班牙王國
 伯利茲
 克羅地亞共和國
 利比里亞共和國
 希臘共和國 (希臘)
 沙特阿拉伯王國
 貝寧共和國
 亞美尼亞共和國
 坦桑尼亞聯合共和國
 委內瑞拉玻利瓦爾共和國
 孟加拉人民共和國
 岡比亞共和國
 佛得角共和國
 所羅門群島
 拉脫維亞共和國
 法蘭西共和國
 波蘭共和國
 肯尼亞共和國
 芬蘭共和國
 阿拉伯埃及共和國
 阿拉伯聯合酋長國
 阿根廷共和國
 阿曼蘇丹國
 阿富汗伊斯蘭共和國
 阿爾巴尼亞共和國
 保加利亞共和國
 俄羅斯聯邦
 南非共和國
 哈薩克斯坦共和國

European Union
 The Republic of Fiji
 The Republic of Finland
 The French Republic
 The Gabonese Republic
 The Republic of the Gambia
 Georgia
 The Federal Republic of Germany
 The Republic of Ghana
 Grenada
 The Republic of Guatemala
 The Republic of Guinea
 The Republic of Guinea-Bissau
 The Republic of Guyana
 The Republic of Haiti
 The Hellenic Republic (Greece)
 The Republic of Honduras
 Hungary
 The Republic of Iceland
 The Republic of India
 The Republic of Indonesia
 Ireland
 The State of Israel
 The Republic of Italy
 Jamaica
 Japan
 The Hashemite Kingdom of Jordan
 The Republic of Kazakhstan
 The Republic of Kenya
 Republic of Korea
 The State of Kuwait
 The Kyrgyz Republic
 The Lao People's Democratic Republic
 Republic of Latvia

S1-17
第 559 章

附表 1

Schedule 1

S1-18
Cap. 559

柬埔寨王國
 洪都拉斯共和國
 津巴布韋共和國
 科威特國
 科特迪瓦共和國
 突尼斯共和國
 約旦哈希姆王國
 美利堅合眾國
 剛果民主共和國
 剛果共和國
 哥倫比亞共和國
 哥斯達黎加共和國
 挪威王國
 格林納達
 格魯吉亞
 泰王國 (泰國)
 海地共和國
 烏干達共和國
 烏克蘭
 烏拉圭東岸共和國
 特立尼達和多巴哥共和國
 秘魯共和國
 納米比亞共和國
 馬耳他共和國
 馬里共和國
 馬來西亞
 馬其頓共和國
 馬拉維共和國
 馬達加斯加共和國
 馬爾代夫共和國
 捷克共和國
 莫桑比克共和國
 荷蘭王國
 博茨瓦納共和國

The Kingdom of Lesotho
 The Republic of Liberia
 The Principality of Liechtenstein
 The Republic of Lithuania
 The Grand Duchy of Luxembourg
 The Macao Special Administrative Region
 The Republic of Macedonia
 The Republic of Madagascar
 The Republic of Malawi
 Malaysia
 The Republic of Maldives
 The Republic of Mali
 The Republic of Malta
 The Islamic Republic of Mauritania
 The Republic of Mauritius
 The Republic of Moldova
 Mongolia
 Montenegro
 The Kingdom of Morocco
 The Republic of Mozambique
 The Republic of the Union of Myanmar
 The Republic of Namibia
 The Federal Democratic Republic of Nepal
 The Kingdom of the Netherlands
 New Zealand
 The Republic of Nicaragua
 The Republic of Niger
 The Federal Republic of Nigeria
 The Kingdom of Norway
 The Sultanate of Oman
 The Islamic Republic of Pakistan
 The Republic of Panama
 The Independent State of Papua New Guinea

S1-19
第 559 章

附表 1

Schedule 1

S1-20
Cap. 559

喀麥隆共和國
 幾內亞比紹共和國
 幾內亞共和國
 斐濟共和國
 斯里蘭卡民主社會主義共和國
 斯威士蘭王國
 斯洛文尼亞共和國
 斯洛伐克共和國
 智利共和國
 湯加王國
 萊索托王國
 菲律賓共和國
 越南社會主義共和國
 黑山
 塞內加爾共和國
 塞舌爾共和國
 塞拉利昂共和國
 塞浦路斯共和國
 塔吉克斯坦共和國
 奧地利共和國
 意大利共和國
 愛沙尼亞共和國
 愛爾蘭
 新加坡共和國
 新西蘭
 瑞士聯邦
 瑞典王國
 聖文森特和格林納丁斯
 聖基茨和尼維斯聯邦
 聖盧西亞
 葡萄牙共和國
 蒙古國
 德意志聯邦共和國

Republic of Paraguay
 The Republic of Peru
 Republic of the Philippines
 The Republic of Poland
 The Portuguese Republic
 The State of Qatar
 Romania
 The Russian Federation
 The Republic of Rwanda
 The Federation of Saint Kitts and Nevis
 Saint Lucia
 Saint Vincent and the Grenadines
 The Independent State of Samoa
 The Kingdom of Saudi Arabia
 The Republic of Senegal
 Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu
 The Republic of Seychelles
 The Republic of Sierra Leone
 The Republic of Singapore
 The Slovak Republic
 The Republic of Slovenia
 The Solomon Islands
 The Republic of South Africa
 The Kingdom of Spain
 The Democratic Socialist Republic of Sri Lanka
 The Republic of Suriname
 The Kingdom of Swaziland
 The Kingdom of Sweden
 Swiss Confederation
 The Republic of Tajikistan
 The Kingdom of Thailand
 The Republic of Togo

S1-21

附表 1

Schedule 1

S1-22

第 559 章

Cap. 559

摩洛哥王國
 摩爾多瓦共和國
 歐洲聯盟
 緬甸聯邦共和國
 墨西哥合眾國
 澳大利亞聯邦
 澳門特別行政區
 盧旺達共和國
 盧森堡大公國
 薩爾瓦多共和國
 薩摩亞獨立國
 羅馬尼亞
 贊比亞共和國
 蘇里南共和國

(附表 1 由 2002 年第 181 號法律公告修訂；由 2005 年第 216 號法律公告修訂；由 2009 年第 254 號法律公告修訂；由 2013 年第 64 號法律公告修訂；編輯修訂——2014 年第 2 號編輯修訂紀錄；由 2014 年第 70 號法律公告修訂；由 2015 年第 123 號法律公告修訂；由 2017 年第 18 號法律公告修訂)

(格式變更——2014 年第 2 號編輯修訂紀錄)

The Kingdom of Tonga
 The Republic of Trinidad and Tobago
 The Republic of Tunisia
 The Republic of Turkey
 The Republic of Uganda
 Ukraine
 The United Arab Emirates
 The United Kingdom of Great Britain and Northern Ireland
 The United Mexican States
 The United Republic of Tanzania
 The United States of America
 Oriental Republic of Uruguay
 The Republic of Vanuatu
 The Bolivarian Republic of Venezuela
 The Socialist Republic of Viet Nam
 The Republic of Yemen
 The Republic of Zambia
 The Republic of Zimbabwe

(Schedule 1 amended L.N. 181 of 2002; L.N. 216 of 2005; L.N. 254 of 2009; L.N. 64 of 2013; L.N. 70 of 2014; L.N. 123 of 2015; L.N. 18 of 2017)

(Format changes—E.R. 2 of 2014)

附表 2

[第 4 及 92 條]

馳名商標的決定方法

1. 考慮因素

- (1) 處長或法院在為施行第 4 條（“馳名商標”的涵義）而決定某商標是否馳名於香港時，須顧及任何可從中推斷出該商標是馳名於香港的因素。
- (2) 處長或法院尤須考慮向處長或法院呈交而可從中推斷出該商標是否馳名於香港的資料，包括（但不限於）關於以下方面的資料——
 - (a) 有關的公眾界別對該商標的認識或承認程度；
 - (b) 使用該商標歷時多久、使用的範圍及地域範圍；
 - (c) 推廣該商標歷時多久、推廣的範圍及地域範圍，推廣包括應用該商標的貨品或服務的廣告宣傳或宣傳以及在博覽會或展覽會上介紹該等貨品或服務；
 - (d) 該商標註冊或註冊申請歷時多久及註冊的地域範圍（僅限於該段時間及地域範圍反映出該商標的使用或為人承認的程度的範圍內）；
 - (e) 成功地強制執行該商標的權利的紀錄，特別是關於該商標獲外地主管當局承認為馳名商標的程度；及
 - (f) 與該商標有關聯的價值。
- (3) 第 (2) 款提及的因素旨在提供指引，以協助處長及法院決定某商標是否馳名於香港。呈交關乎任何該等因素的資料，或在作考慮時視每一個因素為同等重要，均不是導致該決定的先決條件。反而，每一個案均會視乎其個別情況而作決定。在某些個案中，所有上述因素都可能有

SCHEDULE 2

[ss. 4 & 92]

DETERMINATION OF WELL-KNOWN TRADE MARKS

1. Factors for consideration

- (1) In determining for the purposes of section 4 (meaning of “well-known trade mark”) whether a trade mark is well known in Hong Kong, the Registrar or the court shall take into account any factors from which it may be inferred that the trade mark is well known in Hong Kong.
- (2) **In particular, the Registrar or the court shall consider any information submitted to the Registrar or the court from which it may be inferred that the trade mark is, or is not, well known in Hong Kong, including, but not limited to, information concerning the following—**
 - (a) the degree of knowledge or recognition of the trade mark in the relevant sectors of the public;
 - (b) the duration, extent and geographical area of any use of the trade mark;
 - (c) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods or services to which the trade mark applies;
 - (d) the duration and geographical area of any registrations, or any applications for registration, of the trade mark, to the extent that they reflect use or recognition of the trade mark;

S2-3
第 559 章附表 2
第 1 條

- 關，而在其他個案中，則某些因素可能有關，也有別的個案是當中所有因素均是無關的。有關決定是可以基於第 (2) 款所沒有提及的額外因素而作出，該等額外因素可以是獨立地有關，亦可以是結合第 (2) 款提及的一個或多於一個因素而有關。
- (4) 就第 (2)(a) 款而言，“有關的公眾界別” (relevant sectors of the public) 包括 (但不限於) ——
- (a) 應用該商標的貨品或服務的實際或準消費者；
- (b) 應用該商標的貨品或服務的分銷渠道所涉及的人；及
- (c) 經營應用該商標的貨品或服務的業界。
- (5) 凡某商標已被決定為在香港至少一個有關的公眾界別中馳名，則該商標須視為馳名於香港。
- (6) 就第 (2)(e) 款而言，“外地主管當局” (competent authorities in foreign jurisdictions) 指在香港以外的司法管轄區內的行政、司法或類似司法的機構，而該等機構在其各自的司法管轄區內，具有決定某一商標是否馳名商標或強制執行對馳名商標的保護的權限。

SCHEDULE 2
Section 1S2-4
Cap. 559

- (e) the record of successful enforcement of rights in the trade mark, in particular, the extent to which the trade mark has been recognized as a well-known trade mark by competent authorities in foreign jurisdictions; and
- (f) the value associated with the trade mark.
- (3) The factors mentioned in subsection (2) are intended to serve as guidelines to assist the Registrar and the court to determine whether the trade mark is well known in Hong Kong. It is not a precondition for reaching that determination that information be submitted with respect to any of those factors or that equal weight be given to each of them. Rather, the determination in each case will depend upon the particular circumstances of that case. In some cases all of the factors may be relevant. In other cases some of the factors may be relevant. In still other cases none of the factors may be relevant, and the decision may be based on additional factors that are not mentioned in subsection (2). Such additional factors may be relevant alone, or in combination with one or more of the factors mentioned in subsection (2).
- (4) For the purpose of subsection (2)(a), “relevant sectors of the public” (有關的公眾界別) includes, but is not limited to—**
- (a) actual or potential consumers of the type of goods or services to which the trade mark applies;
- (b) persons involved in channels of distribution of the type of goods or services to which the trade mark applies; and
- (c) business circles dealing with the type of goods or services to which the trade mark applies.

S2-5
第 559 章附表 2
第 2 條SCHEDULE 2
Section 2S2-6
Cap. 559**2. 無須證明的因素**

就決定某商標是否馳名於香港而言，以下因素無須證明——

- (a) 該商標已在香港使用或註冊；
 - (b) 將該商標註冊的申請已在香港提交；
 - (c) 該商標是馳名於香港以外的某個司法管轄區或已在香港以外的某個司法管轄區註冊；
 - (d) 該商標的註冊申請已在香港以外的某個司法管轄區提交；
或
 - (e) 該商標在香港為公眾人士所熟知。
-

- (5) Where a trade mark is determined to be well known in at least one relevant sector of the public in Hong Kong, it shall be considered to be well known in Hong Kong.
- (6) For the purpose of subsection (2)(e), “competent authorities in foreign jurisdictions” (外地主管當局) means administrative, judicial or quasi-judicial authorities in jurisdictions other than Hong Kong that are competent to determine whether a trade mark is a well-known trade mark, or in enforcing the protection of well-known trade marks, in their respective jurisdictions.

2. Factors not required to be established

For the purpose of determining whether a trade mark is well known in Hong Kong, it is not necessary to establish—

- (a) that the trade mark has been used, or has been registered, in Hong Kong;
 - (b) that an application for registration of the trade mark has been filed in Hong Kong;
 - (c) that the trade mark is well known, or has been registered, in a jurisdiction other than Hong Kong;
 - (d) that an application for registration of the trade mark has been filed in a jurisdiction other than Hong Kong; or
 - (e) that the trade mark is well known by the public at large in Hong Kong.
-

附表 3

[第 61 及 92 條]

集體商標**一般條文**

1. 本條例在本附表的條文的規限下適用於集體商標。

可構成集體商標的標誌

2. 就集體商標而言，在本條例第 3(1) 條（“商標”的涵義）中提述將某一企業的貨品或服務與其他企業的貨品或服務作出識別之處，須解釋為提述將身為該集體商標的擁有人的組織中的成員的貨品或服務與其他企業的貨品或服務作出識別。

地理來源的徵示

3. (1) 儘管有本條例第 11(1)(c) 條（拒絕註冊的絕對理由）的規定，由可在行業或業務中用作指明貨品或服務的地理來源的標誌所構成的集體商標可予註冊。
- (2) 然而，該等集體商標的擁有人無權禁止他人（尤其是有權使用某地方名稱的人）按照在工業或商業事宜中的誠實做法使用該標誌。

集體商標不得在特性或含義方面具誤導性**SCHEDULE 3**

[ss. 61 & 92]

COLLECTIVE MARKS**General**

1. This Ordinance applies to collective marks subject to the provisions of this Schedule.

Signs of which a collective mark may consist

2. In relation to a collective mark, the reference in section 3(1) of this Ordinance (meaning of “trade mark”) 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 owner of the collective mark from those of other undertakings.

Indication of geographical origin

3. (1) Notwithstanding section 11(1)(c) of this Ordinance (absolute grounds for refusal of registration), a collective mark which consists of a sign which may serve, in trade or business, to designate the geographical origin of goods or services may be registered.
- (2) However, the owner of such a collective mark is not entitled to prohibit the use of the sign in accordance with honest practices in industrial or commercial matters, in particular, by a person who is entitled to use a geographical name.

Mark not to be misleading as to

S3-3
第 559 章附表 3
第 4 條SCHEDULE 3
Section 4S3-4
Cap. 559

4. (1) 如某集體商標在其特性或含義方面可能會誤導公眾，尤其是如它相當可能會被視作為並非集體商標的物事，則該集體商標不得註冊。
- (2) 處長據此可在有人已就某標誌提出要求註冊為集體商標的申請的情況下，規定該標誌須包含某些顯示其為集體商標的徵示。
- (3) 儘管有本條例第 46 條 (申請的修訂) 的規定，任何申請均可為符合處長根據第 (2) 款施加的規定而修訂。

管限使用集體商標的規例

5. (1) 要求將集體商標註冊的申請人必須向處長提交管限使用該集體商標的規例。
- (2) 該等規例必須指明——
- (a) 獲授權使用有關集體商標的人士；
- (b) 成為有關組織成員的條件；及
- (c) 使用該集體商標的條件 (如有的話)，包括對不當使用的任何制裁。
- (3) 《規則》可施加該等規例所必須符合的其他規定。

處長對規例給予批准

6. (1) 管限使用某集體商標的規例須符合本附表第 5(2) 條及《規則》所施加的其他規定，否則該商標不得註冊。
- (2) 如管限使用某集體商標的規例違反廣為接受的道德原則，則該商標不得註冊。

character or significance

4. (1) A collective mark shall not be registered if the public is liable to be misled as regards its character or significance, in particular, if it is likely to be taken to be something other than a collective mark.
- (2) The Registrar may accordingly require that a sign in respect of which an application is made for registration as a collective mark include some indication that it is a collective mark.
- (3) Notwithstanding section 46 of this Ordinance (amendment of application), an application may be amended so as to comply with any requirement imposed by the Registrar under subsection (2).

Regulations governing use of collective mark

5. (1) An applicant for registration of a collective mark must file with the Registrar regulations governing the use of the collective mark.
- (2) The regulations must specify—
- (a) the persons authorized to use the collective mark;
- (b) the conditions of membership of the association; and
- (c) where they exist, the conditions of use of the collective mark, including any sanctions against misuse.
- (3) The rules may impose further requirements with which the regulations must comply.

Approval of regulations by Registrar

6. (1) A collective mark shall not be registered unless the regulations governing its use comply with section 5(2) of this Schedule and any further requirements imposed by the rules.

S3-5
第 559 章附表 3
第 7 條

- (3) 要求將集體商標註冊的申請人必須在該項註冊申請日期後，在訂明限期內提交該等規例和繳付訂明費用。
- (4) 如申請人不遵守第(3)款，有關申請須當作被撤回。
7. (1) 處長須考慮本附表第 6(1) 及 (2) 條所述的規定是否已獲符合。
- (2) 如處長覺得本附表第 6(1) 及 (2) 條所述的規定未獲符合，他須通知申請人，並須給予申請人機會在處長所指明的限期內作出申述或提交經修訂的規例。
- (3) 如申請人在所指明的限期內沒有作出回應或在該限期內——
- (a) 既沒有令處長信納本附表第 6(1) 及 (2) 條所述的規定已獲符合；
- (b) 亦沒有提交經修訂的規例以符合該等規定，則處長須拒絕有關申請。
- (4) 如處長覺得本附表第 6(1) 及 (2) 條所述的規定及其他註冊規定已獲符合，他須接納有關申請，並須按照本條例第 43 條 (公布申請的詳情) 行事。
8. 除其他可反對註冊的理由外，反對通知亦可就本附表第 6(1) 及 (2) 條所述的任何事宜而發出。

SCHEDULE 3
Section 7S3-6
Cap. 559

- (2) A collective mark shall not be registered if the regulations governing its use are contrary to accepted principles of morality.
- (3) An applicant for registration of a collective mark must file the regulations and pay the prescribed fee before the end of the prescribed period after the date of the application for registration.
- (4) If an applicant fails to comply with subsection (3), the application shall be deemed to be withdrawn.
7. (1) The Registrar shall consider whether the requirements mentioned in section 6(1) and (2) of this Schedule are met.
- (2) If it appears to the Registrar that the requirements mentioned in section 6(1) and (2) of this Schedule are not met, he shall inform the applicant and give him an opportunity to make representations or to file amended regulations within such period as the Registrar may specify.
- (3) The Registrar shall refuse the application if the applicant fails to respond before the end of the specified period or fails before the end of that period—
- (a) to satisfy the Registrar that the requirements mentioned in section 6(1) and (2) of this Schedule are met; or
- (b) to file regulations amended so as to meet those requirements.
- (4) If it appears to the Registrar that the requirements mentioned in section 6(1) and (2) of this Schedule, and the other requirements for registration, are met, he shall accept the application and shall proceed in accordance with section 43 of this Ordinance (publication of particulars of application).

S3-7
第 559 章附表 3
第 9 條SCHEDULE 3
Section 9S3-8
Cap. 559**規例須公開讓公眾查閱**

9. 管限使用註冊集體商標的規例須公開讓公眾查閱，方式一如註冊紀錄冊公開讓公眾查閱一樣。

規例的修訂

10. (1) 凡管限使用註冊集體商標的規例被修訂，在經修訂的規例提交處長並獲處長接納之前，有關修訂屬無效。
- (2) 處長在接納任何經修訂的規例前，如覺得將關於該等修訂的公告在官方公報中公布是合宜的，即可安排或規定將該公告如此公布。
- (3) 如修訂的公告已在官方公報中公布，反對通知可就本附表第 6(1) 及 (2) 條所述的任何事宜而發出。

侵犯：獲授權使用者的權利

11. 以下條文就註冊集體商標的獲授權使用者而適用，一如其就註冊商標的特許持有人而適用一樣——
- (a) 本條例第 18(6) 條 (註冊商標的侵犯)；及
- (b) 本條例第 25(3) 條 (處置令)。
12. (1) 與本條例第 35 條 (特許持有人一般的權利) 的條文對應的以下條文，就獲授權使用者在註冊集體商標遭侵犯方面的權利而具有效力。

8. In addition to any other grounds on which the registration may be opposed, notice of opposition may be given relating to any of the matters mentioned in section 6(1) and (2) of this Schedule.

Regulations to be open to inspection

9. The regulations governing the use of a registered collective mark shall be open to public inspection in the same way as the register.

Amendment of regulations

10. (1) An amendment of the regulations governing the use of a registered collective mark is not effective until the amended regulations are filed and are accepted by the Registrar.
- (2) Before accepting any amended regulations the Registrar may, in any case where it appears to him expedient to do so, cause or require notice of the amendment to be published in the official journal.
- (3) If notice of the amendment is published in the official journal, notice of opposition may be given relating to any of the matters mentioned in section 6(1) and (2) of this Schedule.

Infringement: rights of authorized users

11. The following provisions apply in relation to an authorized user of a registered collective mark as in relation to a licensee of a registered trade mark—
- (a) section 18(6) of this Ordinance (infringement of registered trade mark); and
- (b) section 25(3) of this Ordinance (order for disposal).
12. (1) The following provisions, which correspond to the provisions of section 35 of this Ordinance (rights of licensees generally),

S3-9
第 559 章附表 3
第 12 條SCHEDULE 3
Section 12S3-10
Cap. 559

- (2) 除非獲授權使用者與有關註冊集體商標的擁有人之間有任何相反協議，否則該使用者有權要求該擁有人就任何影響該使用者的權益的事宜，提起反侵犯法律程序。
- (3) 如有關擁有人——
- (a) 拒絕如此行事；或
- (b) 並無在被要求後的 1 個月內如此行事，
- 則獲授權使用者可以自己的名義提起上述法律程序，猶如他是該擁有人一樣。
- (4) 凡反侵犯法律程序是憑藉本條提起的，則除非有關擁有人加入作為原告人或被列為被告人，否則獲授權使用者不得未經法院許可而繼續進行該項訴訟。
- (5) 第 (4) 款並不影響應由獲授權使用者單獨提出的申請而批予非正審濟助。
- (6) 除非按第 (4) 款所述被列為被告人的人參與該等法律程序，否則他無須承擔該項訴訟中的任何訟費。
- (7) 在註冊集體商標的擁有人所提起的反侵犯法律程序中，獲授權使用者所蒙受或相當可能會蒙受的任何損失須予考慮；而法院可就原告人在何範圍內代該等使用者持有來自任何金錢上的補救所得收益，作出法院認為合適的指示。

- have effect as regards the rights of an authorized user in relation to infringement of a registered collective mark.
- (2) An authorized user is entitled, subject to any agreement to the contrary between him and the owner of the registered collective mark, to call on the owner to take infringement proceedings in respect of any matter which affects his interests.
- (3) If the owner—
- (a) refuses to do so; or
- (b) fails to do so within 1 month after being called upon to do so,
- the authorized user may bring the proceedings in his own name as if he were the owner.
- (4) Where infringement proceedings are brought by virtue of this section, the authorized user may not, without the leave of the court, proceed with the action unless the owner is either joined as a plaintiff or added as a defendant.
- (5) Nothing in subsection (4) affects the granting of interlocutory relief on an application by an authorized user alone.
- (6) A person who is added as a defendant as mentioned in subsection (4) shall not be made liable for any costs in the action unless he takes part in the proceedings.
- (7) In infringement proceedings brought by the owner of a registered collective mark, any loss suffered or likely to be suffered by authorized users shall be taken into account; and the court may give such directions as it thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of such users.

撤銷註冊的理由**Grounds for revocation of registration**

S3-11
第 559 章附表 3
第 13 條SCHEDULE 3
Section 13S3-12
Cap. 559

13. 除本條例第 52 條 (註冊的撤銷) 所述的撤銷註冊的理由外，任何集體商標的註冊亦可基於以下任何理由而遭撤銷——
- (a) 擁有人使用該集體商標的方式已導致該商標可能會以本附表第 4(1) 條所提述的方式誤導公眾，或擁有人容許以某方式使用該商標，而該方式已導致該商標可能會以該第 4(1) 條所提述的方式誤導公眾；
 - (b) 擁有人沒有遵守亦沒有確保他人遵守管限使用該集體商標的規例；或
 - (c) 該等規例已被修訂，以致該等規例——
 - (i) 不再符合本附表第 5(2) 條及《規則》所施加的任何其他規定；或
 - (ii) 違反廣為接受的道德原則。

註冊無效的理由

14. 除本條例第 53 條 (註冊無效的宣布) 所述的註冊無效的理由外，任何集體商標的註冊亦可基於該集體商標是在違反本附表第 4(1) 或 6(1) 或 (2) 條的情況下註冊為理由而宣布為無效。

13. Apart from the grounds of revocation mentioned in section 52 of this Ordinance (revocation of registration), the registration of a collective mark may be revoked on the ground—
- (a) that the manner in which the owner uses the collective mark or allows it to be used has caused it to become liable to mislead the public in the manner referred to in section 4(1) of this Schedule;
 - (b) that the owner has failed to observe, or to secure the observance of, the regulations governing the use of the collective mark; or
 - (c) that an amendment of the regulations has been made so that the regulations—
 - (i) no longer comply with section 5(2) of this Schedule and any further requirements imposed by the rules; or
 - (ii) are contrary to accepted principles of morality.

Grounds for invalidity of registration

14. Apart from the grounds of invalidity mentioned in section 53 of this Ordinance (declaration of invalidity of registration), the registration of a collective mark may be declared invalid on the ground that the collective mark was registered in breach of section 4(1) or 6(1) or (2) of this Schedule.

附表 4

[第 62 及 92 條及附表 5]

證明商標**一般條文**

1. 本條例在本附表的條文的規限下適用於證明商標。

可構成證明商標的標誌

2. 就證明商標而言，在本條例第 3(1) 條（“商標”的涵義）中提述將某一企業的貨品或服務與其他企業的貨品或服務作出識別之處，須解釋為提述將經證明的貨品或服務與未經證明的貨品或服務作出識別。

地理來源的徵示

3. (1) 儘管有本條例第 11(1)(c) 條（拒絕註冊的絕對理由）的規定，由可在行業或業務中用作指明貨品或服務的地理來源的標誌所構成的證明商標可予註冊。
(2) 然而，該等證明商標的擁有人無權禁止他人（尤其是有權使用某地方名稱的人）按照在工業或商業事宜中的誠實做法使用該標誌。

擁有人的行業或業務的性質**SCHEDULE 4**

[ss. 62 & 92 & Sch. 5]

CERTIFICATION MARKS**General**

1. This Ordinance applies to certification marks subject to the provisions of this Schedule.

Signs of which a certification mark may consist

2. In relation to a certification mark, the reference in section 3(1) of this Ordinance (meaning of “trade mark”) 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.

Indication of geographical origin

3. (1) Notwithstanding section 11(1)(c) of this Ordinance (absolute grounds for refusal of registration), a certification mark which consists of a sign which may serve, in trade or business, to designate the geographical origin of goods or services may be registered.
(2) However, the owner of such a certification mark is not entitled to prohibit the use of the sign in accordance with honest practices in industrial or commercial matters, in particular, by a person who is entitled to use a geographical name.

Nature of owner's trade or business

S4-3
第 559 章附表 4
第 4 條SCHEDULE 4
Section 4S4-4
Cap. 559

4. 如證明商標的擁有人經營的行業或業務涉及供應該證明商標所證明的一類貨品或服務，則該證明商標不得註冊。

證明商標不得在特性或含義方面具誤導性

5. (1) 如某證明商標在其特性或含義方面可能會誤導公眾，尤其是如它相當可能會被視作為並非證明商標的物事，則該證明商標不得註冊。
- (2) 處長據此可在有人已就某標誌提出要求註冊為證明商標的申請的情況下，規定該標誌須包含某些顯示其為證明商標的徵示。
- (3) 儘管有本條例第 46 條 (申請的修訂) 的規定，任何申請均可為符合處長根據第 (2) 款施加的規定而修訂。

管限使用證明商標的規例

6. (1) 要求將證明商標註冊的申請人必須向處長提交管限使用該證明商標的規例。
- (2) 該等規例必須顯示——
- 獲授權使用有關證明商標的人士；
 - 該證明商標所證明的特性；
 - 證明機構如何測試該等特性和如何監管該證明商標的使用；
 - 在使用該證明商標方面須繳付的費用 (如有的話)；及
 - 解決爭議的程序。
- (3) 《規則》可施加該等規例所必須符合的其他規定。

4. A certification mark shall not be registered if the owner carries on a trade or business involving the supply of goods or services of the kind certified.

Mark not to be misleading as to character or significance

5. (1) A certification mark shall not be registered if the public is liable to be misled as regards its character or significance, in particular, if it is likely to be taken to be something other than a certification mark.
- (2) The Registrar may accordingly require that a sign in respect of which an application is made for registration as a certification mark include some indication that it is a certification mark.
- (3) Notwithstanding section 46 of this Ordinance (amendment of application), an application may be amended so as to comply with any requirement imposed by the Registrar under subsection (2).

Regulations governing use of certification mark

6. (1) An applicant for registration of a certification mark must file with the Registrar regulations governing the use of the certification mark.
- (2) The regulations must indicate—
- the persons authorized to use the certification mark;
 - the characteristics to be certified by the certification mark;
 - how the certifying body is to test those characteristics and to supervise the use of the certification mark;
 - the fees, if any, to be paid in connection with the use of the certification mark; and

規例的批准等

7. (1) 除非 ——
- (a) 管限使用某證明商標的規例符合本附表第 6(2) 條及《規則》所施加的其他規定；及
 - (b) 該證明商標有待就某些貨品或服務註冊，而有關申請人具資格證明該等貨品或服務，否則該證明商標不得註冊。
- (2) 如管限使用某證明商標的規例違反廣為接受的道德原則，則該商標不得註冊。
- (3) 要求將證明商標註冊的申請人必須在該項註冊申請日期後，在訂明限期內提交該等規例和繳付訂明費用。
- (4) 如申請人不遵守第 (3) 款，有關申請須當作被撤回。
8. (1) 處長須考慮本附表第 7(1) 及 (2) 條所述的規定是否已獲符合。
- (2) 如處長覺得本附表第 7(1) 及 (2) 條所述的規定未獲符合，他須通知申請人，並須給予申請人機會在處長所指明的限期內作出申述或提交經修訂的規例。
- (3) 如申請人在所指明的限期內沒有作出回應或在該限期內 ——
- (a) 既沒有令處長信納本附表第 7(1) 及 (2) 條所述的規定已獲符合；
 - (b) 亦沒有提交經修訂的規例以符合該等規定，則處長須拒絕有關申請。

(e) the procedures for resolving disputes.

- (3) The rules may impose further requirements with which the regulations must comply.

Approval of regulations, etc.

7. (1) A certification mark shall not be registered unless—
- (a) the regulations governing its use comply with section 6(2) of this Schedule and any further requirements imposed by the rules; and
 - (b) the applicant is competent to certify the goods or services for which the certification mark is to be registered.
- (2) A certification mark shall not be registered if the regulations governing its use are contrary to accepted principles of morality.
- (3) An applicant for registration of a certification mark must file the regulations and pay the prescribed fee before the end of the prescribed period after the date of the application for registration.
- (4) If an applicant fails to comply with subsection (3), the application shall be deemed to be withdrawn.
8. (1) The Registrar shall consider whether the requirements mentioned in section 7(1) and (2) of this Schedule are met.
- (2) If it appears to the Registrar that the requirements mentioned in section 7(1) and (2) of this Schedule are not met, he shall inform the applicant and give him an opportunity to make representations or to file amended regulations within such period as the Registrar may specify.
- (3) The Registrar shall refuse the application if the applicant fails to respond before the end of the specified period or fails before the end of that period—

S4-7
第 559 章附表 4
第 9 條SCHEDULE 4
Section 9S4-8
Cap. 559

- (4) 如處長覺得本附表第 7(1) 及 (2) 條所述的規定及其他註冊規定已獲符合，他須接納有關申請，並須按照本條例第 43 條 (公布申請的詳情) 行事。
9. 除其他可反對註冊的理由外，反對通知亦可就本附表第 7(1) 及 (2) 條所述的任何事宜而發出。

- (a) to satisfy the Registrar that the requirements mentioned in section 7(1) and (2) of this Schedule are met; or
- (b) to file regulations amended so as to meet those requirements.
- (4) If it appears to the Registrar that the requirements mentioned in section 7(1) and (2) of this Schedule, and the other requirements for registration, are met, he shall accept the application and shall proceed in accordance with section 43 of this Ordinance (publication of particulars of application).

9. In addition to any other grounds on which the registration may be opposed, notice of opposition may be given relating to any of the matters mentioned in section 7(1) and (2) of this Schedule.

規例須公開讓公眾查閱

10. 管限使用註冊證明商標的規例須公開讓公眾查閱，方式一如註冊紀錄冊公開讓公眾查閱一樣。

Regulations to be open to inspection

10. The regulations governing the use of a registered certification mark shall be open to public inspection in the same way as the register.

規例的修訂

11. (1) 凡管限使用註冊證明商標的規例被修訂，在經修訂的規例提交處長並獲處長接納之前，有關修訂屬無效。
- (2) 處長在接納任何經修訂的規例前，如覺得將關於該等修訂的公告在官方公報中公布是合宜的，即可安排或規定將該公告如此公布。
- (3) 如修訂的公告已在官方公報中公布，反對通知可就本附表第 7(1) 及 (2) 條所述的事宜而發出。

Amendment of regulations

11. (1) An amendment of the regulations governing the use of a registered certification mark is not effective until the amended regulations are filed and are accepted by the Registrar.
- (2) Before accepting any amended regulations the Registrar may, in any case where it appears to him expedient to do so, cause or require notice of the amendment to be published in the official journal.
- (3) If notice of the amendment is published in the official journal, notice of opposition may be given relating to the matters mentioned in section 7(1) and (2) of this Schedule.

同意轉讓註冊證明商標

Consent to assignment of registered

S4-9
第 559 章附表 4
第 12 條SCHEDULE 4
Section 12S4-10
Cap. 559

12. 任何註冊證明商標的轉讓或其他傳轉如未經處長同意，均屬無效。

侵犯：獲授權使用者的權利

13. 以下條文就註冊證明商標的獲授權使用者而適用，一如其就註冊商標的特許持有人而適用一樣——
- (a) 本條例第 18(6) 條 (註冊商標的侵犯)；及
 - (b) 本條例第 25(3) 條 (處置令)。
14. 在註冊證明商標的擁有人所提起的反侵犯法律程序中，獲授權使用者所蒙受或相當可能會蒙受的任何損失須予考慮；而法院可就原告人在何範圍內代該等使用者持有來自任何金錢上的補救所得收益，作出法院認為合適的指示。

撤銷註冊的理由

15. 除本條例第 52 條 (註冊的撤銷) 所述的撤銷註冊的理由外，任何證明商標的註冊亦可基於以下理由而遭撤銷——
- (a) 擁有人已開始經營如本附表第 4 條所述的行業或業務；
 - (b) 擁有人使用該證明商標的方式已導致該商標可能會以本附表第 5(1) 條所提述的方式誤導公眾，或擁有人容許以某方式使用該商標，而該方式已導致該商標可能會以該第 5(1) 條所提述的方式誤導公眾；

certification mark

12. The assignment or other transmission of a registered certification mark is not effective without the consent of the Registrar.

Infringement: rights of authorized users

13. The following provisions apply in relation to an authorized user of a registered certification mark as in relation to a licensee of a registered trade mark—
- (a) section 18(6) of this Ordinance (infringement of registered trade mark); and
 - (b) section 25(3) of this Ordinance (order for disposal).
14. In infringement proceedings brought by the owner of a registered certification mark, any loss suffered or likely to be suffered by authorized users shall be taken into account; and the court may give such directions as it thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of such users.

Grounds for revocation of registration

15. Apart from the grounds of revocation mentioned in section 52 of this Ordinance (revocation of registration), the registration of a certification mark may be revoked on the ground—
- (a) that the owner has begun to carry on such a trade or business as is mentioned in section 4 of this Schedule;
 - (b) that the manner in which the owner uses the certification mark or allows it to be used has caused it to become liable to mislead the public in the manner referred to in section 5(1) of this Schedule;

S4-11
第 559 章附表 4
第 16 條SCHEDULE 4
Section 16S4-12
Cap. 559

- (c) 擁有人沒有遵守亦沒有確保他人遵守管限使用該證明商標的規例；
- (d) 該等規例已被修訂，以致該等規例——
 - (i) 不再符合本附表第 6(2) 條及《規則》所施加的任何其他規定；或
 - (ii) 違反廣為接受的道德原則；或
- (e) 擁有人不再具資格證明該證明商標註冊所涉的貨品或服務。

- (c) that the owner has failed to observe, or to secure the observance of, the regulations governing the use of the certification mark;
- (d) that an amendment of the regulations has been made so that the regulations—
 - (i) no longer comply with section 6(2) of this Schedule and any further requirements imposed by the rules; or
 - (ii) are contrary to accepted principles of morality; or
- (e) that the owner is no longer competent to certify the goods or services for which the certification mark is registered.

註冊無效的理由

16. 除本條例第 53 條(註冊無效的宣布)所述的註冊無效的理由外，任何證明商標的註冊亦可基於該證明商標是在違反本附表第 4、5(1) 或 7(1) 或 (2) 條的情況下註冊為理由而宣布為無效。
-

Grounds for invalidity of registration

16. Apart from the grounds of invalidity mentioned in section 53 of this Ordinance (declaration of invalidity of registration), the registration of a certification mark may be declared invalid on the ground that the certification mark was registered in breach of section 4, 5(1) or 7(1) or (2) of this Schedule.
-

附表 5

[第 90A 及 97 條]
(由 2020 年第 3 號第 17 條修訂)

過渡性事宜**導言**

1. (1) 在本附表中——
 - “生效日期” (commencement date) 指本附表開始實施的日期；
 - “現有註冊標記” (existing registered mark) 指在緊接生效日期前已根據被廢除條例構成註冊商標、證明商標或防禦商標的標記；
 - “被廢除條例” (the repealed Ordinance) 指在緊接被本條例廢除之前所實施的《商標條例》(第 43 章)；
 - “被廢除規則” (the repealed Rules) 指在緊接被本條例廢除之前所實施的《商標規則》(第 43 章，附屬法例 A)；
 - “新註冊紀錄冊” (new register) 指根據本條例第 67 條 (須備存註冊紀錄冊) 備存的商標註冊紀錄冊；
 - “舊有法律” (old law) 指——
 - (a) 被廢除條例及被廢除規則；及
 - (b) 在緊接生效日期前適用於現有註冊標記的任何其他成文法則或法律規則；
 - “舊有註冊紀錄冊” (old register) 指根據被廢除條例備存的商標註冊紀錄冊。
- (2) 除文意另有所指外，凡在本附表中使用某一字眼或詞句，而該字眼或詞句已在被廢除條例第 2(1) 條中界定，則該字眼或詞句的涵義與被廢除條例中該字眼或詞句的涵義相同。

SCHEDULE 5

[ss. 90A & 97]
(Amended 3 of 2020 s. 17)

TRANSITIONAL MATTERS**Preliminary**

1. (1) In this Schedule—
 - “commencement date” (生效日期) means the date on which this Schedule comes into operation;
 - “existing registered mark” (現有註冊標記) means a mark that, immediately before the commencement date, constituted a registered trade mark, certification trade mark or defensive trade mark under the repealed Ordinance;
 - “new register” (新註冊紀錄冊) means the register of trade marks kept under section 67 of this Ordinance (register to be kept);
 - “old law” (舊有法律) means—
 - (a) the repealed Ordinance and the repealed Rules; and
 - (b) any other enactment or rule of law applying to existing registered marks immediately before the commencement date;
 - “old register” (舊有註冊紀錄冊) means the register of trade marks kept under the repealed Ordinance;
 - “the repealed Ordinance” (被廢除條例) means the Trade Marks Ordinance (Cap. 43), as in operation immediately before its repeal by this Ordinance;

S5-3
第 559 章附表 5
第 1 條

- (3) 如本附表與被廢除條例第 92 條(關於《1996 年知識產權(世界貿易組織修訂)條例》的過渡性條文)相抵觸，則在該等條文相抵觸的範圍內，須以被廢除條例第 92 條為準。
- (4) 就本附表而言，任何事宜如——
- (a) 根據舊有法律在處長席前仍然待決，而處長在生效日期前並未就該事宜發出書面決定；
 - (b) 屬處長在生效日期前根據舊有法律所發出的書面決定的標的，而根據舊有法律該決定是可遭上訴的，且展開上訴的限期仍未屆滿；
 - (c) 屬根據舊有法律進行的法律程序的標的，而該法律程序在緊接生效日期前在法院仍然待決；或
 - (d) 屬法院在生效日期前所發出的命令的標的，而根據舊有法律該命令是可遭上訴的，且展開上訴的限期仍未屆滿，
- 則該事宜即須視為在生效日期仍然待決。
- (5) 為易於參照，現將在本附表提述的被廢除條例的條文以及該被廢除條例的其他有關係文列於本附表的附件中。

SCHEDULE 5
Section 1S5-4
Cap. 559

- “the repealed Rules” (被廢除規則) means the Trade Marks Rules (Cap. 43 sub. leg. A), as in operation immediately before their repeal by this Ordinance.
- (2) Unless the context otherwise requires, all words and expressions used in this Schedule and defined in section 2(1) of the repealed Ordinance have the same meaning as in the repealed Ordinance.
 - (3) In the event of an inconsistency between this Schedule and section 92 of the repealed Ordinance (transitional provisions relating to the Intellectual Property (World Trade Organization Amendments) Ordinance 1996), section 92 of the repealed Ordinance shall prevail to the extent of the inconsistency.
 - (4) For the purposes of this Schedule, a matter shall be treated as pending on the commencement date if—
 - (a) the matter was pending before the Registrar under the old law but no written decision on the matter had been issued by the Registrar before the commencement date;
 - (b) the matter was the subject of a written decision issued by the Registrar under the old law before the commencement date but the decision was subject to appeal under the old law and the period for commencing the appeal had not yet expired;
 - (c) the matter was the subject of proceedings under the old law which were pending before a court immediately before the commencement date; or
 - (d) the matter was the subject of an order made by a court before the commencement date but the order was subject to appeal under the old law and the period for commencing the appeal had not yet expired.
 - (5) For ease of reference, provisions of the repealed Ordinance referred to in this Schedule, and other relevant provisions

現有註冊標記

2. (1) 現有註冊標記須當作在生效日期轉移至新註冊紀錄冊中，而除本附表另有規定外，現有註冊標記須當作是根據本條例註冊。
- (2) 根據被廢除條例第 26 條 (系列商標) 註冊為一個系列的商標的現有註冊標記，在新註冊紀錄冊中亦須當作以同樣的形式註冊。
- (3) 《規則》可訂定條文，規定在生效日期當日或之後，採用與在新註冊紀錄冊中記入新的記項的格式相同的格式，編排在舊有註冊紀錄冊中記入關乎該等系列商標的記項。
- (4) 在任何其他情況下，顯示現有註冊標記與其他標記有聯繫的附註，自生效日期起即停止有效。
3. (1) 根據被廢除條例第 49 條 (因違反條件而刪除或更改註冊的權力) 提起的法律程序，如在生效日期仍然待決，則須根據舊有法律處理，並須對新註冊紀錄冊作出任何必需的改動，以及在新註冊紀錄冊中記入任何必需的記項。
- (2) 在舊有註冊紀錄冊中關乎現有註冊標記的卸棄、條件或限制的記項，均須當作轉移至新註冊紀錄冊中，並猶如是按照本條例記入新註冊紀錄冊中一樣而具有效力。

註冊的效力——侵犯

of the repealed Ordinance, are set out in the Annex to this Schedule.

Existing registered marks

2. (1) Existing registered marks shall be deemed to be transferred on the commencement date to the new register and, subject to this Schedule, shall be deemed to be registered under this Ordinance.
- (2) Existing registered marks registered as a series under section 26 of the repealed Ordinance (series of trade marks) shall be deemed to be similarly registered in the new register.
- (3) Provision may be made by the rules for putting any entries in the old register of any such series in the same form as is required for new entries made in the new register on or after the commencement date.
- (4) In any other case notes indicating that existing registered marks are associated with other marks shall cease to have effect on the commencement date.
3. (1) Proceedings brought under section 49 of the repealed Ordinance (power to expunge or vary registration for breach of condition) which are pending on the commencement date shall be dealt with under the old law, and any necessary alterations and entries shall be made in the new register.
- (2) Any entry in the old register of a disclaimer, condition or limitation which relates to an existing registered mark shall be deemed to be transferred to the new register and shall have effect as if entered in the new register in accordance with this Ordinance.

Effects of registration-infringement

S5-7
第 559 章附表 5
第 4 條SCHEDULE 5
Section 4S5-8
Cap. 559

4. (1) 在不抵觸第 (2) 及 (3) 款的規定下 ——
- (a) 本條例第 14 至 21 條 (該等條文關乎註冊及侵犯) 自生效日期起就現有註冊標記而適用；及
- (b) 本條例第 22 條 (就侵犯註冊商標而進行訴訟) 就在生效日期當日或之後對現有註冊標記所作的侵犯而適用。
- (2) 舊有法律適用於在生效日期前所作的侵犯。
- (3) 如在生效日期當日或之後繼續使用 ——
- (a) 某現有註冊標記；或
- (b) 當中的顯著要素與某現有註冊標記的顯著要素相同或大致上相同並且是就相同的貨品或服務而註冊的註冊商標，

而根據舊有法律，該使用並不構成對該現有註冊標記的侵犯，則該使用亦不屬侵犯該現有註冊標記或該註冊商標。

侵犯性貨品、侵犯性物料或侵犯性物品

5. 本條例第 23 條 (交付令)、第 24 條 (申請作出交付令的時限) 及第 25 條 (處置令) 適用於不論是在生效日期當日、之前或之後製造的侵犯性貨品、侵犯性物料或侵犯性物品。

特許持有人或獲授權使用者的權利及補救

6. (1) 本條例第 35 條 (特許持有人一般的權利) 適用於在生效日期前批予的特許，但只就在該日期當日或之後所作的

4. (1) Subject to subsections (2) and (3)—
- (a) sections 14 to 21 of this Ordinance (which relate to registration and infringement) apply in relation to an existing registered mark as from the commencement date; and
- (b) section 22 of this Ordinance (action for infringement) applies in relation to the infringement of an existing registered mark committed on or after the commencement date.
- (2) The old law applies to infringements committed before the commencement date.
- (3) It is not an infringement of—
- (a) an existing registered 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 mark and which is registered for the same goods or services,

to continue on or after the commencement date any use which did not constitute an infringement of the existing registered mark under the old law.

Infringing goods, material or articles

5. Section 23 (order for delivery up), section 24 (limitation on order for delivery up) and section 25 (order for disposal) of this Ordinance apply to infringing goods, material or articles whether made before, on or after the commencement date.

Rights and remedies of licensee or authorized user

6. (1) Section 35 of this Ordinance (rights of licensees generally) applies to licences granted before the commencement date,

S5-9
第 559 章附表 5
第 7 條SCHEDULE 5
Section 7S5-10
Cap. 559

侵犯而適用。

- (2) 本條例附表 4 第 14 條 (法院須對獲授權使用者所蒙受的損失予以考慮等) 只就在生效日期當日或之後所作的侵犯而適用。

but only in relation to infringements committed on or after that date.

- (2) Section 14 of Schedule 4 to this Ordinance (court to take into account loss suffered by authorized users, etc.) applies only in relation to infringements committed on or after the commencement date.

註冊標記的共同擁有權

Co-ownership of registered mark

7. (1) 凡在緊接生效日期之前有超過 1 名人士註冊為某現有註冊標記的共同擁有人，則除第 (2) 款另有規定外，本條例第 28 條 (註冊商標的共同擁有權) 自生效日期起適用於該標記。
- (2) 只要共同擁有人之間的關係仍然一如被廢除條例第 19 條 (共同擁有的貨品商標) 及第 19A 條 (共同擁有的服務商標) (視屬何情況而定) 所描述者，則須視作有摒除本條例第 28 條 (註冊商標的共同擁有權) 的實施的協議存在。

7. (1) Subject to subsection (2), section 28 of this Ordinance (co-ownership of registered trade mark) applies as from the commencement date to an existing registered mark of which 2 or more persons were immediately before the commencement date registered as joint owners.
- (2) So long as the relations between the joint owners remain such as are described in section 19 or 19A of the repealed Ordinance (jointly owned trade marks relating to goods; and to services), as the case may be, there shall be taken to be an agreement to exclude the operation of section 28 of this Ordinance (co-ownership of registered trade mark).

註冊標記的轉讓等

Assignment, etc. of registered mark

8. (1) 本條例第 27 條 (註冊商標的性質) 適用於在生效日期當日或之後發生的關乎現有註冊標記的交易及事件。
- (2) 根據被廢除條例第 43 條 (轉讓和傳轉的註冊) 作出的現有記項，均須當作在生效日期轉移至新註冊紀錄冊中，並猶如是根據本條例第 29 條 (影響註冊商標的交易的註冊) 作出一樣而具有效力。
- (3) 《規則》可訂定條文，規定在生效日期當日或之後，採用與在新註冊紀錄冊中記入新的記項的格式相同的格式，編排在舊有註冊紀錄冊中記入該等現有記項。

8. (1) Section 27 of this Ordinance (nature of registered trade mark) applies to transactions and events occurring on or after the commencement date in relation to an existing registered mark.
- (2) Existing entries under section 43 of the repealed Ordinance (registration of assignments and transmissions) shall be deemed to be transferred on the commencement date to the new register and shall have effect as if made under section 29 of this Ordinance (registration of transactions affecting registered trade mark).

S5-11
第 559 章附表 5
第 9 條SCHEDULE 5
Section 9S5-12
Cap. 559

- (4) 根據被廢除條例第 43 條 (轉讓和傳轉的註冊) 提出的註冊申請, 如在生效日期仍然待決, 則須視為根據本條例第 29 條 (影響註冊商標的交易的註冊) 提出的註冊申請, 並須據此而進行。
- (5) 處長可要求申請人修訂其註冊申請以符合本條例的規定。
- (6) 凡任何人在生效日期前已藉轉讓或傳轉而有權享有某現有註冊標記, 但他未將其所有權註冊, 則在該日期當日或之後提出的註冊申請須根據本條例第 29 條 (影響註冊商標的交易的註冊) 提出, 並須據此而進行。
- (7) 被廢除條例第 43 條 (轉讓和傳轉的註冊) 繼續適用於第 (4) 至 (6) 款所適用的情況, 而在該等情況下, 就沒有註冊的後果而言, 本條例第 29(3) 及 (4) 條 (影響註冊商標的交易的註冊) 則不適用。

- (3) Provision may be made by the rules for putting such existing entries in the same form as is required for new entries made in the new register on or after the commencement date.
- (4) An application for registration under section 43 of the repealed Ordinance (registration of assignments and transmissions) which is pending on the commencement date shall be treated as an application for registration under section 29 of this Ordinance (registration of transactions affecting registered trade mark) and shall proceed accordingly.
- (5) The Registrar may require the applicant to amend his application for registration so as to conform with the requirements of this Ordinance.
- (6) Where before the commencement date a person has become entitled by assignment or transmission to an existing registered mark but has not registered his title, any application for registration made on or after that date shall be made under section 29 of this Ordinance (registration of transactions affecting registered trade mark) and shall proceed accordingly.
- (7) Section 43 of the repealed Ordinance (registration of assignments and transmissions) continues to apply to cases to which subsections (4) to (6) apply and, in such cases, section 29(3) and (4) of this Ordinance (registration of transactions affecting registered trade mark) does not apply as regards the consequences of failing to register.

註冊標記特許的批予**Licensing of registered mark**

9. (1) 本條例第 33 條 (一般性或有限特許) 及第 34(2) 條 (專用特許可規定具有與轉讓相同的權利等) 只就在生效日期當日或之後批予的特許而適用; 而舊有法律則繼續就在該日期前批予的特許而適用。

9. (1) Section 33 (licences may be general or limited) and section 34(2) (exclusive licence may provide same rights as assignment, etc.) of this Ordinance apply only in relation to licences granted on or after the commencement date; and the old law continues to apply in relation to licences granted before that date.

S5-13
第 559 章附表 5
第 10 條SCHEDULE 5
Section 10S5-14
Cap. 559

- (2) 根據被廢除條例第 58 條 (註冊為註冊使用人。“許可使用”的涵義) 作出的現有記項，均須當作在生效日期轉移至新註冊紀錄冊中，並猶如是根據本條例第 29 條 (影響註冊商標的交易的註冊) 記入一樣而具有效力。
- (3) 《規則》可訂定條文，規定在生效日期當日或之後，採用與在新註冊紀錄冊中記入新的記項的格式相同的格式，編排在舊有註冊紀錄冊中記入該等現有記項。
- (4) 根據被廢除條例第 58 條 (註冊為註冊使用人。“許可使用”的涵義) 提出的要求註冊為註冊使用人的申請，如在生效日期仍然待決，則須視為根據本條例第 29(1) 條 (影響註冊商標的交易的註冊) 提出的要求將某項特許註冊的申請，並須據此而進行。
- (5) 處長可要求申請人修訂其申請以符合本條例的規定。
- (6) 任何根據被廢除條例第 60 條 (註冊使用人的註冊的更改或取消) 提起的法律程序，如在生效日期仍然待決，則須根據舊有法律處理，並須對新註冊紀錄冊作出任何必需的改動，以及在新註冊紀錄冊中記入任何必需的記項。

待決的註冊申請

10. (1) 除第 (6) 款另有規定外，根據被廢除條例提出的將某標記註冊的申請，如在生效日期仍然待決，則須根據舊有法律處理；而該標記如獲註冊，則就本附表而言須視為現有註冊標記。
- (2) 被廢除條例第 15 條 (反對註冊) 及舊有法律任何其他與反對註冊有關的條文繼續就第 (1) 款所述的申請而適用。

- (2) Existing entries under section 58 of the repealed Ordinance (registered users) shall be deemed to be transferred to the new register on the commencement date and shall have effect as if made under section 29 of this Ordinance (registration of transactions affecting registered trade mark).
- (3) Provision may be made by the rules for putting such existing entries in the same form as is required for new entries made in the new register on or after the commencement date.
- (4) An application made under section 58 of the repealed Ordinance (registered users) for registration as a registered user which is pending on the commencement date shall be treated as an application for registration of a licence under section 29(1) of this Ordinance (registration of transactions affecting registered trade mark) and shall proceed accordingly.
- (5) The Registrar may require the applicant to amend his application so as to conform with the requirements of this Ordinance.
- (6) Any proceedings pending on the commencement date under section 60 of the repealed Ordinance (variation or cancellation of registration as a registered user) shall be dealt with under the old law, and any necessary alterations and entries shall be made to the new register.

Pending applications for registration

10. (1) Subject to subsection (6), an application for registration of a mark under the repealed Ordinance which is pending on the commencement date shall be dealt with under the old law, and if registered, the mark shall be treated for the purposes of this Schedule as an existing registered mark.
- (2) Section 15 of the repealed Ordinance (opposition to registration) and any other provisions of the old law relating

S5-15
第 559 章附表 5
第 11 條SCHEDULE 5
Section 11S5-16
Cap. 559

- (3) 《規則》可訂定條文，規管與第(1)款所述的申請或與第(2)款所述的反對註冊有關的常規、實務及程序。
- (4) 在不損害第(3)款的一般性的原則下，《規則》可就以下事宜訂定條文——
- (a) 授權更正程序上的不當之處；
- (b) 修改作出根據《規則》須作出的任何事情的時間；及
- (c) 就該等時間（不論該時間是否已屆滿）的延展作出規定。
- (5) 處長根據本條例第 91 條（規則）訂立規則以規管有關的常規、實務與程序的權力，以及就該條第(2)款所述的事宜訂立規則的權力，可就上述申請而行使；就上述申請訂立的條文亦可與就其他申請而訂立的條文不同。
- (6) 在生效日期當日或之後處理根據被廢除條例提出的將某標記註冊的申請時，無須理會被廢除條例第 24、25(2)、26(2) 及 56 條（關於聯繫商標的條文）。

- to oppositions to registration continue to apply in relation to an application mentioned in subsection (1).
- (3) Provision may be made by the rules for regulating the practice and procedure in connection with an application mentioned in subsection (1) or an opposition to registration mentioned in subsection (2).
- (4) Without prejudice to the generality of subsection (3), the rules may make provision—
- (a) authorizing the rectification of irregularities of procedure;
- (b) modifying time limits for anything required to be done under the rules; and
- (c) providing for the extension of any time limit so prescribed whether or not it has already expired.
- (5) The power of the Registrar under section 91 of this Ordinance (rules) to make rules regulating the practice and procedure, and as to the matters mentioned in subsection (2) of that section, is exercisable in relation to such applications; and different provision may be made for such applications from that made for other applications.
- (6) Sections 24, 25(2), 26(2) and 56 of the repealed Ordinance (provisions as to associated trade marks) shall be disregarded in dealing, on or after the commencement date, with an application for registration of a mark under the repealed Ordinance.

待決申請的轉換

Conversion of pending application

11. (1) 如本附表第 10(1) 條所提述的待決註冊申請未有在生效日期前根據被廢除條例第 14 條（申請公告）公告，有關申請人可向處長發出通知，聲稱要求按照本條例裁定該標記是否可予註冊。

11. (1) In the case of pending applications for registration referred to in section 10(1) of this Schedule which have not been advertised under section 14 of the repealed Ordinance (advertisement of application) before the commencement date,

S5-17
第 559 章附表 5
第 12 條SCHEDULE 5
Section 12S5-18
Cap. 559

- (2) 第 (1) 款所述的通知必須符合訂明格式、附有訂明費用以及在生效日期後的 6 個月內發出。
- (3) 根據第 (1) 款妥為發出的通知是不可撤銷的，並具有使該項註冊申請被視作猶如是在生效日期當日提出一樣的效力。

按照舊的分類註冊的商標

12. (1) 處長可行使為施行本條例第 58 條 (修訂註冊紀錄冊的記項以配合新的分類等) 而訂立的規則所賦予的權力，以確保與根據本條例第 40 條 (貨品及服務的分類) 訂明的分類制度不相符的任何現有註冊標記得以與該制度相符。
- (2) 第 (1) 款尤其適用於按照被廢除規則附表 3 所列的分類予以分類的現有註冊標記。

聲稱具有優先權

13. 即使有關的公約申請或世貿申請是在生效日期前提出的，本條例第 41 條 (聲稱具有優先權) 仍適用於在生效日期當日或之後提出的根據本條例註冊的申請。

註冊的有效期及續期

the applicant may give notice to the Registrar claiming to have the registrability of the mark determined in accordance with this Ordinance.

- (2) The notice mentioned in subsection (1) must be in the prescribed form, be accompanied by the prescribed fee and be given no later than 6 months after the commencement date.
- (3) A notice duly given under subsection (1) is irrevocable and has the effect that the application for registration is to be treated as if made on the commencement date.

Trade marks registered according to old classification

12. (1) The Registrar may exercise the powers conferred by any rules made for the purposes of section 58 of this Ordinance (amendment of entries to accord with new classification, etc.) to secure that any existing registered marks which do not conform to the system of classification prescribed under section 40 of this Ordinance (classification of goods and services) are brought into conformity with that system.
- (2) Subsection (1) applies, in particular, to existing registered marks classified according to the classification set out in Schedule 3 to the repealed Rules.

Claim to priority

13. Section 41 of this Ordinance (claim to priority) applies to an application for registration under this Ordinance made on or after the commencement date notwithstanding that the Convention application or WTO application concerned was made before that date.

Duration and renewal of registration

S5-19
第 559 章附表 5
第 14 條SCHEDULE 5
Section 14S5-20
Cap. 559

14. (1) 本條例第 49 條 (註冊的有效期) 就依據在生效日期當日或之後提出的申請而作出的商標註冊而適用，而舊有法律則於其他情況下適用。
- (2) 凡註冊在生效日期當日或之後到期續期，則本條例第 49(2) 條及第 50 條 (該等條文關乎註冊的續期) 適用，而舊有法律則於其他情況下繼續適用。
- (3) 在上述兩種情況中，續期費用 (如有的話) 於何時繳付無關重要。

待決的要求改動註冊標記的申請

15. 根據被廢除條例第 51 條 (註冊商標的改動) 提出的申請，如在生效日期仍然待決，則須根據舊有法律處理，並須對新註冊紀錄冊作出任何必需的改動，以及在新註冊紀錄冊中記入任何必需的記項。

因不予使用而撤銷註冊

16. (1) 根據被廢除條例第 37 條 (以不予使用為理由而從註冊紀錄冊刪去商標或施加限制) 提出的申請，如在生效日期仍然待決，則須根據舊有法律處理，並須對新註冊紀錄冊作出任何必需的改動，以及在新註冊紀錄冊中記入任何必需的記項。
- (2) 根據本條例第 52 條 (註冊的撤銷) 要求撤銷現有註冊標記的申請，可在生效日期當日或之後隨時提出，但該等申請只可基於本條例第 52(2)(a) 條所述的理由而提出。

14. (1) Section 49 of this Ordinance (duration of registration) applies in relation to the registration of a trade mark in pursuance of an application made on or after the commencement date; and the old law applies in any other case.
- (2) Sections 49(2) and 50 of this Ordinance (which relate to the renewal of registration) apply where the renewal falls due on or after the commencement date; and the old law continues to apply in any other case.
- (3) In either case it is immaterial when the fee for renewal, if any, is paid.

Pending application for alteration of registered mark

15. An application under section 51 of the repealed Ordinance (alteration of registered trade mark) which is pending on the commencement date shall be dealt with under the old law, and any necessary alterations and entries shall be made to the new register.

Revocation for non-use

16. (1) An application made under section 37 of the repealed Ordinance (removal from register and imposition of limitations on ground of non-use) which is pending on the commencement date shall be dealt with under the old law, and any necessary alterations and entries shall be made to the new register.
- (2) An application for the revocation of an existing registered mark may be made under section 52 of this Ordinance (revocation of registration) at any time on or after the commencement date, but such an application may be made only on the ground mentioned in section 52(2)(a) of this Ordinance.

要求改正的申請等

17. (1) 根據被廢除條例第 48 或 50 條 (改正或更正註冊紀錄冊) 提出的申請或要求, 如在生效日期仍然待決, 則須根據舊有法律處理, 並須對新註冊紀錄冊作出任何必需的改動, 以及在新註冊紀錄冊中記入任何必需的記項。
- (2) 當本條例第 53 條 (註冊無效的宣布) 就現有註冊標記而適用時, 就根據該條進行的法律程序而言, 本條例須當作在所有關鍵時間均一直有效。
- (3) 不得基於本條例第 12(4) 條 (拒絕註冊的相對理由) 所述的理由而對任何現有註冊標記的註冊的有效性提出異議。

關於使用證明商標的規例

18. (1) 根據被廢除條例第 65 條 (註冊為證明商標的申請) 傳送處長或交給處長存放的管限使用現有註冊證明商標的規例, 須在生效日期當日及之後視作猶如是根據本條例附表 4(證明商標) 第 6 條提交一樣。
- (2) 任何修訂該等規例的要求, 如在生效日期仍然待決, 則須根據舊有法律處理。

曾受爭議的註冊的有效性證明書**Application for rectification, etc.**

17. (1) An application or request made under section 48 or 50 of the repealed Ordinance (rectification or correction of the register) which is pending on the commencement date shall be dealt with under the old law, and any necessary alterations and entries shall be made to the new register.
- (2) For the purposes of proceedings under section 53 of this Ordinance (declaration of invalidity of registration), as it applies in relation to an existing registered mark, this Ordinance shall be deemed to have been in force at all material times.
- (3) No objection to the validity of the registration of an existing registered mark may be taken on the ground mentioned in section 12(4) of this Ordinance (relative grounds for refusal of registration).

Regulations as to use of certification mark

18. (1) Any regulations governing the use of an existing registered certification trade mark which have been transmitted to or deposited with the Registrar under section 65 of the repealed Ordinance (application for registration as certification trade mark) shall be treated on and after the commencement date as if filed under section 6 of Schedule 4 (certification marks) to this Ordinance.
- (2) Any request for amendment of the regulations which was pending on the commencement date shall be dealt with under the old law.

Certificate of validity of contested registration

S5-23
第 559 章附表 5
第 19 條SCHEDULE 5
Section 19S5-24
Cap. 559

19. 根據被廢除條例第 75 條 (有效證明書) 發出的證明書，須猶如是根據本條例第 81(1) 條 (曾受爭議的註冊的有效性證明書) 發出一樣而具有效力。

附件

[附表 5 第 1(5) 條]

附表 5(過渡性事宜) 提述的被廢除的商標條例 (第 43 章) 的條文以及該被廢除條例的其他有關條文 (在緊接被本條例第 99 條廢除之前仍然實施)

2. 釋義

- (1) 在本條例中，除文意另有所指外——

.....

“服務商標” (trade mark relating to services) 指目的是顯示或以期顯示在業務運作中某特定的人與某些服務的提供有關連 (不論是否有顯示該人的身分) 而就該等服務所使用或擬使用的標記；

.....

“貨品商標” (trade mark relating to goods) 指目的是顯示或以期顯示在營商過程中某些貨品與作為某標記的所有人或註冊使用人而具有使用該標記的權利的人之間的關連 (不論是否有顯示該人的身分) 而就該等貨品所使用或擬使用的某標記；

“商標” (trade mark) 指貨品商標或服務商標 (用於“貨品商標”、“服務商標”、“防禦商標”及“證明商標”各詞句者除外)；

.....

19. A certificate given under section 75 of the repealed Ordinance (certificate of validity) shall have effect as if given under section 81(1) of this Ordinance (certificate of validity of contested registration).

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,

S5-25
第 559 章附表 5
第 2 條

“標記” (mark) 指任何可以視覺感知並能夠以圖繪表示的記號，尤其可由文字、個人姓名、字母、數字、圖形要素或顏色組合組成，並包括該等記號的任何組合；

.....

- (2) 在本條例中，凡提述——
- (a) 使用標記，即解釋為提述使用標記的印刷或其他視覺圖示；
 - (b) 就貨品而使用標記，即解釋為提述在貨品上使用標記，或就貨品的實體或其他方面而使用標記；及
 - (c) 就服務而使用標記，即解釋為提述使用標記作為關於服務的可供使用情況或關於進行服務的陳述或部分陳述，或提述在其他情況下就服務而使用標記。
- (3) 就本條例而言，只要有相當可能某些貨品會在某業務中出售或以其他方式交易而某些服務會由同一業務提供，則該等貨品及該等服務即屬彼此聯繫；又只要有相當可能某種類的貨品會在某業務中出售或以其他方式交易而某種類的服務會由同一業務提供，則該種類的貨品及該種類的服務即屬彼此聯繫。
- (4) 在本條例中，凡提述標記極為相似時，即為提述極為相似以致相當可能使人受騙或導致混淆。
- (5) 就本條例而言，凡任何人提供附帶於其營商或業務的服務，該人可視為在業務運作中與該等服務的提供有關連。

SCHEDULE 5
Section 2S5-26
Cap. 559

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.

S5-27
第 559 章附表 5
第 9 條SCHEDULE 5
Section 9S5-28
Cap. 559**9. 可在 A 部註冊的商標**

- (1) 任何可在註冊紀錄冊 A 部註冊的商標 (證明商標除外), 須包含以下至少一項基要詳情或由該等基要詳情中至少一項組成——
- 以特別或特定的方式表示的公司、個人或商號的姓名或名稱;
 - 註冊申請人或其業務的某前任人的簽署 (以非中文字作出的);
 - 一個新創字或多於一個新創字;
 - 一個或多於一個沒有直接提述貨品或服務 (視屬何情況而定) 的特性或品質的字, 而該字或該等字的通常含意並不是地理名稱或姓氏;
 - 任何其他顯著標記, 但並非屬 (a)、(b)、(c) 及 (d) 段所描述的姓名或名稱、簽署或一個字或多於一個字, 不得根據本段條文註冊, 除非有證據證明其顯著性。
- (2) 就本條而言, “顯著” (distinctive) 一詞——
- (如屬貨品商標), 指就貨品 (該商標是就其註冊或擬就其註冊的) 而言, 在營商過程中, 將與該商標的所有人有關連或可能有關連的貨品, 與沒有此種關連存在的貨品, 適合作出識別; 或
 - (如屬服務商標), 指就服務 (該商標是就其註冊或擬就其註冊的) 而言, 在業務運作中, 將某服務 (所有人與該服務的提供有關連或可能有關連), 與另一

- 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.
- 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—
- the name of a company, individual, or firm, represented in a special or particular manner;
 - the signature (in other than Chinese characters) of the applicant for registration or of some predecessor in his business;
 - an invented word or invented words;
 - 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;
 - 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—
- 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

服務 (該所有人與該另一服務並不如此有關連) 適合作出識別，

而識別是一般地作出的，或 (如商標在受限制的情況下註冊或擬註冊) 是就註冊範圍內的使用而作出的。

- (3) 審裁處在裁定某商標是否如前述般適合作出識別時，可顧及——
- (a) 該商標本身如前述般適合作出識別的度；及
 - (b) 因該商標的使用或其他情況，該商標事實上如前述般適合作出識別的度。

10. 可在 B 部註冊的商標

- (1) 任何可在註冊紀錄冊 B 部註冊的貨品商標，就貨品 (該商標是就其註冊或擬就其註冊的) 而言，必須在營商過程中，將與該商標的所有人有關連或可能有關連的貨品，與沒有此種關連存在的貨品，能夠作出識別，而識別是一般地作出的，或 (如商標在受限制的情況下註冊或擬註冊) 是就註冊範圍內的使用而作出的。
- (1A) 任何可在註冊紀錄冊 B 部註冊的服務商標，就服務 (該商標是就其註冊或擬就其註冊的) 而言，必須在業務運作中，將某服務 (該商標的所有人與該服務的提供有關連或

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.

S5-31
第 559 章附表 5
第 14 條SCHEDULE 5
Section 14S5-32
Cap. 559

可能有關連)，與另一服務（該所有人與該另一服務的提供並不如此有關連）能夠作出識別，而識別是一般地作出的，或（如商標在受限制的情況下註冊或擬註冊）是就註冊範圍內的使用而作出的。

- (2) 審裁處在裁定某商標是否如前述般能夠作出識別時，可顧及——
- (a) 該商標本身如前述般能夠作出識別的度；及
 - (b) 因該商標的使用或其他情況，該商標事實上如前述般能夠作出識別的度。
- (3) 某商標或其任何一個部分或多於一個部分即使已在 A 部以某所有人的名義註冊，該商標仍可以同一所有人的名義在 B 部註冊。

14. 申請公告

商標的註冊申請獲接納後，不論是絕對接納或是附加條件或限制而接納，處長須規定申請人將獲接納的申請按訂明方式公告。公告須列出該申請獲接納須附加的所有條件及限制：

但在以下情況，處長可規定申請人在商標註冊申請獲接納前，公告該項申請——

- (a) 申請是根據第 9(1)(e) 條提出的；或
- (b) 處長覺得因情形特殊而適宜如此辦的任何其他情況，而凡申請已如此公告，處長如認為適當，可規定該申請人在該申請獲接納後將該申請再次公告，但並非一定要如此辦。

- (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

15. 反對註冊

- (1) 任何人可在申請的公告日期起計的訂明時限內，向處長發給通知，反對註冊。
- (2) 通知須以書面按訂明方式發給，並須包括反對理由的陳述。
- (3) 處長須將一份通知的文本送交申請人，而申請人須在收到該通知後的訂明時限內，按訂明方式，將其申請所據理由的反陳述送交處長；如申請人並不如此辦，須當作已放棄其申請。
- (4) 如申請人送交該反陳述，處長須將一份該反陳述的文本給予發給反對通知的人；處長在聆訊各方（如有此需要）並考慮證據後，須決定是否准許註冊，以及註冊獲准許須附加何等條件或限制（如有的話）。
- (5) 對於處長的決定可在法院予以上訴。
- (6) 根據本條提出的上訴須按訂明方式提出，而法院在接獲該項上訴後，須（如有需要）聆訊各方及處長，並須作出命令以決定是否准許註冊，以及註冊獲准許須附加何等條件或限制（如有的話）。
- (7) 在聆訊根據本條提出的上訴時，任何一方可按訂明方式或在法院特別許可下，提出進一步的資料供法院考慮。
- (8) 在根據本條提出的上訴中，除上文規定由反對人所述明的反駁理由外，反對人或處長不得採用反駁商標註冊的進一步理由，但如得法院許可，則屬例外。凡有採用進

- (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.

S5-35
第 559 章附表 5
第 16 條SCHEDULE 5
Section 16S5-36
Cap. 559

一步的反駁理由，申請人有權在發給訂明的通知後，撤回其申請，而不用繳付反對人的訟費。

- (9) 在根據本條提出的上訴中，法院可在聆訊處長後，准許擬註冊的商標以任何對商標的本質沒有重大影響的方式作出變更，但在該情況下，經如此變更的商標須在註冊前按訂明方式予以公告。
- (10) 如發給反對通知的人，或在收到通知文本後送交反陳述的申請人，或上訴人，既非居於香港亦非在香港經營業務，則審裁處可規定該人就關乎在審裁處席前的反對或上訴（視屬何情況而定）的法律程序的訟費而提供保證；如該保證沒有妥善提供，則可視該反對或申請或上訴（視屬何情況而定）為已予放棄。

16. 受卸棄規限的註冊

- (1) 如某商標包含任何沒有由商標的所有人個別註冊為商標的部分或如——
- (a) （如屬貨品商標）該商標包含有關行業內共通的事物或不具顯著特性的事物；或

- (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

S5-37
第 559 章附表 5
第 19 條SCHEDULE 5
Section 19S5-38
Cap. 559

(b) (如屬服務商標)該商標包含在提供該種類的服務方面共通的事物或不具顯著特性的事物，

則處長或法院在決定是否將該商標記入或保留列入註冊紀錄冊時，可作出以下規定，作為該商標列入註冊紀錄冊的一項條件——

- (i) 該所有人須卸棄該商標任何部分的或任何該等事物全部或任何部分的專有使用權利，而該專有使用權利經審裁處判定是該所有人無權享有的；或
 - (ii) 該所有人須作出審裁處認為就界定他在該註冊下的權利而言屬有需要的其他卸棄。
- (2) 列入註冊紀錄冊的任何卸棄並不影響商標的所有人的任何權利，但如該權利由商標(該卸棄是就其而作出的)的註冊所產生，則屬例外。

19. 共同擁有的貨品商標

如 2 人或多於 2 人在任何貨品商標有利害關係，而他們彼此之間的關係是他們當中並無任何一人在他本人與該另一人或該等其他人士之間有權使用該商標，除非——

- (a) 該商標由他代該 2 人或所有該等人使用；或
- (b) 他就某物品而使用該商標，而該 2 人或所有該等人在營商過程中與該物品有關連，

則該等人可註冊為該商標的共同所有人，而本條例對歸屬該等人的任何商標使用權利有效，猶如該等權利是歸屬單獨一人一樣。

19A. 共同擁有的服務商標

(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

S5-39
第 559 章附表 5
第 22 條

如 2 人或多於 2 人在任何服務商標有利害關係，而他們彼此之間的關係是他們當中並無任何一人在他本人與該另一人或該等其他人之間有權使用該商標，除非——

- (a) 該商標由他代該兩人或所有該等人使用；或
- (b) 他就某些服務而使用該商標，而該兩人或所有該等人在業務運作中與該等服務的提供有關連，

則該等人可註冊為該商標的共同所有人，而本條例對歸屬該等人的任何商標使用權利有效，猶如該等權利是歸屬單獨一人一樣。

22. 同時使用

在誠實地同時使用的情況下，或在法院或處長認為適宜如此辦的其他特殊情況下，法院或處長可准許由多於一名所有人就——

- (a) 同一貨品或服務；
- (b) 同一種類的貨品或服務；或
- (c) 彼此聯繫的貨品及服務或彼此聯繫的某些種類的貨品及服務，

將彼此相同或極為相似的商標註冊，但須受法院或處長（視屬何情況而定）認為正確而施加的條件及限制（如有的話）所規限。

24. 聯繫商標

- (1) 凡任何貨品商標就任何貨品而註冊或屬註冊申請的標的，而另一商標又就——
 - (a) 同一貨品或同一種類的貨品；或
 - (b) 與該等或該種類的貨品相聯繫的服務，

SCHEDULE 5
Section 22S5-40
Cap. 559

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

S5-41
第 559 章附表 5
第 25 條SCHEDULE 5
Section 25S5-42
Cap. 559

以同一所有人的名義而註冊或屬註冊申請的標的，而該兩個商標是相同的，或極為相似以致在並非其所有人的人使用時相當可能使人受騙或導致混淆的，則處長可隨時規定將該等商標作為聯繫商標而記入註冊紀錄冊。

- (1A) 凡任何服務商標就任何服務而註冊或屬註冊申請的標的，而另一商標又就——
- (a) 同一服務或同一種類的服務；或
- (b) 與該等或該種類的服務相聯繫的貨品，
- 以同一所有人的名義而註冊或屬註冊申請的標的，而該兩個商標是相同的，或極為相似以致在並非其所有人的人使用時相當可能使人受騙或導致混淆的，則處長可隨時規定將該等商標作為聯繫商標而記入註冊紀錄冊。
- (2) 凡有註冊為聯繫商標的 2 個或多於 2 個商標的註冊所有人按訂明方式提出申請，如有以下情況，處長可就其中任何商標將聯繫解除，該情況為處長信納如該商標由另一人就任何貨品或服務（該商標是就其註冊的）而使用，是不會相當可能導致欺騙或混淆的；而處長可據此修訂註冊紀錄冊。
- (3) 對於處長根據第 (1)、(1A) 及 (2) 款規定作出的任何決定，均可在法院予以上訴。

25. 組合商標

(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

S5-43
第 559 章附表 5
第 26 條

- (1) 如某商標的所有人聲稱個別享有該商標任何部分的專有使用，可申請將該部分的全部及任何該等部分註冊為個別商標。每個該等個別商標均須符合獨立商標的所有條件，並且在符合第 (2) 款及第 38(2) 條的規定下，須具有獨立商標的所有附帶事項。
- (2) 凡任何商標及其任何一部分或多於一部分以同一所有人的名義如此註冊為個別商標，該商標及該等部分須當作為並須註冊為聯繫商標。

26. 系列商標

- (1) 凡任何人聲稱是數個商標的所有人，並尋求將該等商標就同一貨品或服務或同一種類的貨品或服務而註冊，而該等商標雖然在要項上彼此相似，但在以下方面有所不同——
 - (a) 有關該等貨品或服務的陳述，而該等商標是分別就該等貨品或服務而使用或擬使用的；或
 - (b) 數目、價格、品質或地方名稱的陳述；或
 - (c) 不具顯著特性而對商標本質又沒有重大影響的其他事物；或
 - (d) 顏色，
 則該等商標可在一項註冊中註冊為一個系列的商標。
- (2) 所有如此註冊的商標均須當作為並須註冊為聯繫商標。

37. 以不予使用為理由而從註冊紀錄冊刪去商標或施加限制SCHEDULE 5
Section 26S5-44
Cap. 559

- (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

S5-45
第 559 章附表 5
第 37 條SCHEDULE 5
Section 37S5-46
Cap. 559

- (1) 除第 55(1)、55A(1) 及 57(1) 條另有規定外，在任何感到受屈的人以下列其中一項理由向法院或（如申請人選擇並在符合第 80 條的規定下）向處長提出申請後，就任何貨品或服務而註冊的任何註冊商標，可就該等貨品或服務而從註冊紀錄冊除去——
- (a) 該商標在註冊時，註冊申請人並沒有任何真誠意向就該等貨品或服務使用該商標，或如該商標是根據第 18(1) 條註冊的，有關的法團或註冊使用人並沒有任何真誠意向就該等貨品或服務使用該商標，而事實上至申請日期前一個月的當日為止，該商標當其時的所有人並沒有就該等貨品或服務真誠地使用該商標；或
- (b) 至申請日期前一個月的日期為止，已經過一段連續 5 年或更長的期間，而在該期間內，該商標是一個註冊商標，並且在該期間內，該商標當其時的所有人並沒有就該等貨品或服務真誠地使用該商標。
- (1A) 除第 (1C) 款另有規定外，如有以下情況，審裁處可拒絕根據第 (1)(a) 或 (b) 款就任何貨品提出的申請，該情況為經證明在有關日期前或在有關期間內（視屬何情況而定），該商標當其時的所有人曾就——
- (a) 同一種類的貨品；或
- (b) 與該等貨品或該種類的貨品相聯繫的服務，真誠地使用該商標，而該等服務或貨品（視屬何情況而定）是該商標就其註冊的。
- (1B) 除第 (1C) 款另有規定外，如有以下情況，審裁處可拒絕根據第 (1)(a) 或 (b) 款就任何服務提出的申請，該情況為經證明在有關日期前或在有關期間內（視屬何情況而定），該商標當其時的所有人曾就——
- (a) 同一種類的服務；或
- (b) 與該等服務或該種類的服務相聯繫的貨品，

- (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,

S5-47
第 559 章附表 5
第 37 條SCHEDULE 5
Section 37S5-48
Cap. 559

真誠地使用該商標，而該等服務或貨品（視屬何情況而定）是該商標就其註冊的。

- (1C) 凡在申請人已根據第 22 條獲准就有關的貨品或服務將任何相同或極為相似的商標註冊或在審裁處認為該申請人可恰當地獲准如此將該商標註冊的情況下，第 (1A) 及 (1B) 款並不適用。
- (2) 凡就任何貨品（某商標是就其註冊的）而言——
- (a) 第 (1)(b) 款提述的事宜如在以下方面經予證明：就將在香港內出售或以其他方式交易（但自香港出口除外）的貨品或將出口往香港以外某特定市場的貨品，該商標不予使用；及
- (b) 某人已根據第 22 條獲准就該等貨品將相同或極為相似的商標註冊，而該註冊擴及就將在香港內出售或以其他方式交易（但自香港出口者除外）的貨品或將出口往該市場的貨品所作的使用，或審裁處認為該人可恰當地獲准如此將該商標註冊，

在該人向法院或（如申請人選擇並在符合第 80 條的規定下）向處長提出申請後，審裁處可向首述的商標的註冊施加其認為恰當的限制，以確保該項註冊不再擴及上文最後述及的使用。

- (2A) 凡就任何服務（某商標是就其註冊的）而言——
- (a) 第 (1)(b) 款提述的事宜如在以下方面經予證明：就在香港供使用或可供接受的服務或在香港以外的國家、領域或地方供使用的服務，該商標不予使用；及
- (b) 某人已根據第 22 條獲准就該等服務將相同或極為相似的商標註冊，而該註冊擴及就在香港供使用或可供接受的服務或在該國家、領域或地方供使用的服務所作的使用，或審裁處認為該人可恰當地獲准如此將該商標註冊，

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

S5-49
第 559 章附表 5
第 37 條SCHEDULE 5
Section 37S5-50
Cap. 559

在該人向法院或(如申請人選擇並在符合第 80 條的規定下)向處長提出申請後,審裁處可向首述的商標的註冊施加其認為恰當的限制,以確保該項註冊不再擴及上文最後述及的使用。

- (3) 申請人無權為第 (1)(b)、(2) 或 (2A) 款的目的而以下述的某商標的不予使用作為依據——
- (a) 該商標就特定貨品而不予使用,經證明是由於行業的特殊情況所致;或
- (b) 該商標就特定服務而不予使用,經證明是由於影響該等服務的提供的特殊情況所致,

而並非由於就該申請所關乎的貨品或服務而不使用或放棄該商標的意向所致。

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—

S5-51
第 559 章附表 5
第 43 條SCHEDULE 5
Section 43S5-52
Cap. 559**43. 轉讓和傳轉的註冊**

- (1) 凡任何人藉轉讓或傳轉而享有任何註冊商標的所有權，該人須向處長提出申請，將其所有權註冊，而處長須在收到該申請和獲得令其信納的所有權證明後，將該人就某些貨品或服務（轉讓或傳轉是對其具有效力的）註冊為該商標的所有人，並須安排將轉讓或傳轉的詳情記入註冊紀錄冊。
- (2) 對於處長根據本條作出的任何決定，均可在法院予以上訴。
- (3) 除為了根據本條提出上訴或根據第 48 條提出申請的目的外，任何文件或文書，凡屬沒有按照第 (1) 款的條文在註冊紀錄冊內就其作出記項者，不得在任何法院接納為證明商標的所有權的證據，除非法院另作指示。

48. 改正註冊紀錄冊的記項的一般權力

- (1) 在符合本條例的條文下——
 - (a) 任何人因任何記項不予載入註冊紀錄冊或從註冊紀錄冊略去，或因沒有足夠因由而在註冊紀錄冊內作

- (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

S5-53
第 559 章附表 5
第 49 條SCHEDULE 5
Section 49S5-54
Cap. 559

出任何記項，或因任何記項錯誤地保留列入註冊紀錄冊，或因任何記項在註冊紀錄冊上的任何錯誤或欠妥之處而感到受屈，可按訂明方式向法院或（如申請人選擇並在符合第 80 條的條文下）向處長提出申請，而審裁處可作出其認為適當的命令，以作出、刪除或更改該記項；

- (b) 審裁處可在根據本條進行的法律程序中，就任何與改正註冊紀錄冊有關連而需要或適宜由其決定的問題作出決定；
 - (c) 如註冊商標的註冊、轉讓或傳轉涉及詐騙，處長可自行根據本條的條文向法院提出申請；
 - (d) 法院改正註冊紀錄冊的命令須指示改正通知須按訂明方式送達處長；處長須在接到該通知後，據此改正註冊紀錄冊。
- (2) 本條賦予改正註冊紀錄冊的權力，包括將註冊從註冊紀錄冊 A 部移往 B 部的權力。

49. 因違反條件而刪除或更改註冊的權力

在任何感到受屈的人向法院或（如申請人選擇並在符合第 80 條的條文下）向處長提出申請後，或在處長向法院提出申請後，審裁處可作出其認為適當的命令，以違反或沒有遵從記入註冊紀錄冊的關於某商標的註冊的條件為理由而將商標的註冊刪除或更改。

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

S5-55
第 559 章附表 5
第 50 條SCHEDULE 5
Section 50S5-56
Cap. 559**50. 註冊紀錄冊的更正**

- (1) 處長可應註冊所有人按訂明方式提出的請求——
- (a) 更正商標的註冊所有人的姓名或名稱及地址上的錯誤；或
 - (b) 將任何註冊為商標的所有人的姓名或名稱及地址的改變記入；或
 - (c) 取消已列入註冊紀錄冊的商標記項；或
 - (d) 從貨品或服務或某些類別的貨品或服務（商標是就其註冊的）中剔除任何貨品或服務，或任何類別的貨品或服務；或
 - (e) 記入與商標有關的卸棄或備忘錄，而該卸棄或備忘錄是在任何方面均不擴大該商標現行註冊所給予的權利的。
- (2) 如商標的註冊使用人按訂明方式請求，處長可更正該註冊使用人的姓名或名稱及地址上的錯誤，或將該等姓名或名稱及地址上的改變記入。
- (3) 對於處長根據本條作出的任何決定，均可在法院予以上訴。

51. 註冊商標的改動

- (1) 商標的註冊所有人可按訂明方式向處長申請許可，以在對商標本質沒有重大影響的情況下以任何方式對商標作出加添或改動，而處長可拒絕給予許可或可附加他認為適當的條款及限制而批予許可。
- (2) 凡處長覺得適宜如此辦，處長可安排將根據本條提出的申請按訂明方式予以公告；凡處長如此辦後，如任何人

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.

S5-57
第 559 章附表 5
第 56 條

在由公告日期起計的訂明時限內按訂明方式向處長發給反對該申請的通知，處長須（如有需要的話在聆訊各方後）就此事作出決定。

- (3) 對於處長根據本條作出的任何決定，均可在法院予以上訴。
- (4) 凡前述的許可獲批予後，經改動的商標須按訂明方式予以公告，除非該商標已以其改動後的形式在第 (2) 款所指的公告中予以公告。

56. 防禦商標註冊為聯繫商標

如任何商標既註冊為防禦商標，又以同一所有人的名義註冊為其他的商標，則即使該等各別的註冊是就不同貨品或服務而作出的，兩者仍須當作為並須註冊為聯繫商標。

58. 註冊為註冊使用人。 “許可使用”的涵義

- (1) (a) 在符合本條及第 59 至 63 條的條文下，任何並非某商標的所有人的人，可在不論是否有條件或管限的情況下，就一切或任何貨品或服務（該商標是就其註冊的，但並非作為防禦商標而註冊），註冊為該商標的註冊使用人。
- (b) 如某商標的註冊使用人 ——

SCHEDULE 5
Section 56S5-58
Cap. 559

- (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.

- (i) 就在營商過程中與他有關連的貨品使用該商標；或
- (ii) 就某服務（其提供與他在業務運作中有關連）使用該商標，
- 且該商標當其時維持就該等貨品或服務註冊，又他已註冊為註冊使用人，而該商標的使用是符合他的註冊所受規限的條件或管限的，則該使用在本條例中提述為該商標的“許可使用”。
- (2) (a) 就第 37 條以及就任何其他目的（就該目的而言，本段提述的使用根據本條例或在普通法下是具關鍵性的使用）而言，商標的許可使用須當作是由該商標的所有人作出的使用，而不是由並非該所有人的人作出的使用。
- (b) 凡任何人於本條例生效日期起計的一年內提出申請，並獲註冊為某貨品商標的註冊使用人，則本款對該人過往對該商標的使用（不論是在本條例生效日期之前或之後的使用）須具效力，猶如該過往的使用是許可使用一樣，但該使用須就某貨品（他是就該貨品註冊的）使用，又如他的註冊受條件或管限所規限，則該使用須在重大程度上符合該等條件或管限。
- (3) 如有建議指某人應註冊為某商標的註冊使用人，則所有人及建議的註冊使用人必須按訂明方式，向處長提出書面申請，並必須向處長提交由所有人作出的法定聲明，或由獲授權代表該商標的所有人行事並獲處長批准的人作出的法定聲明，聲明內——
- (a) 載述所有人與建議的註冊使用人現存關係或建議關係的詳情，包括表示以下事宜的詳情：該關係將賦予所有人對許可使用的管控程度，以及建議的註冊使用人須為唯一註冊使用人，或就可申請註冊為註冊使用人的人須有任何其他管限，是否屬該關係的條款之一；

- (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

S5-61
第 559 章附表 5
第 58 條SCHEDULE 5
Section 58S5-62
Cap. 559

- (b) 述明何等貨品或服務是就其而建議註冊的；
- (c) 述明就貨品或服務的特質、許可使用的方式或地點或任何其他事宜所建議的條件或管限；及
- (d) 述明許可使用是否有期限或沒有期限的，及如有期限，則述明期限的長短，
- 並提交根據規則或由處長所規定的進一的文件、資料或證據。
- (4) 當第 (3) 款的規定已獲符合，處長如在考慮根據該款提交給他的資料後，信納在一切情況下，建議的註冊使用人在受處長認為恰當的任何條件或管限的規限下，就建議的貨品或服務或其中任何一項使用該商標時，不會違反公眾利益，則處長可就他如此信納的貨品或服務，在受到上述的規限下，將建議的註冊使用人註冊為註冊使用人。
- (5) 處長如覺得批予根據第 (1) 至 (3) 款的條文提出的申請，會傾向於助長商標的販賣，則可拒絕該項申請。
- (6) 如申請人有所要求，處長須採取步驟，以確保為根據第 (1) 至 (3) 款的條文提出的申請而提交的資料（記入註冊紀錄冊的事宜除外），不會向——
- (a) （如屬就貨品作出的註冊申請）營商的競爭者披露；或
- (b) （如屬就服務作出的註冊申請）業務的競爭者披露。

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

S5-63
第 559 章附表 5
第 59 條SCHEDULE 5
Section 59S5-64
Cap. 559**59. 侵犯權利法律程序**

- (1) 除在有關各方之間存在的任何協議另有規定外，任何商標的註冊使用人有權要求該商標的所有人進行法律程序，以阻止對該商標的侵犯；如該所有人在接獲如此的要求後 2 個月內，拒絕或因疏忽而沒有如此辦，則該註冊使用人可以其個人名義，提起侵犯權利法律程序，猶如他是該所有人一樣，並使該所有人成為被告人。
- (2) 如此被加入成為被告人的任何所有人，除非他呈交應訴書並參與法律程序，否則無須負上支付任何訟費的法律責任。

60. 註冊使用人的註冊的更改或取消

- (1) 在不損害第 48 條的條文的原則下，某人註冊為某商標的註冊使用人的註冊——
 - (a) 在該註冊所關乎的商標的註冊所有人按訂明方式提出書面申請後，可由處長就某些貨品或服務（該註

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—

S5-65
第 559 章附表 5
第 62 條SCHEDULE 5
Section 62S5-66
Cap. 559

- 冊是對其具有效力的)，或就某些條件或管限（該註冊是在其規限下具有效力的），而予以更改；
- (b) 在該商標的註冊所有人或該註冊使用人或該商標的任何其他註冊使用人按訂明方式提出書面申請後，可由處長予以取消；或
- (c) 在任何人根據以下任何理由而按訂明方式提出書面申請後，可由處長予以取消，即——
- (i) 該註冊使用人已對該商標作出並非許可使用的使用，或已作出的使用方式導致或相當可能導致欺騙或混淆；
- (ii) 該所有人或註冊使用人作失實陳述或沒有披露對該註冊的申請具關鍵性的事實，或自該註冊的註冊日期以後，有關情況已有具關鍵性的改變；或
- (iii) 該註冊在顧及申請人憑藉某合約（其履行與申請人是有利害關係的）而獲歸屬的權利後，本是不應作出的。
- (2) 如任何商標已不再就任何貨品或服務註冊，處長可隨時取消某人就該等貨品或服務而註冊為該商標的註冊使用人的註冊。

- (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. 處長的決定可在法院予以上訴**62. Registrar's decision subject to appeal to Court**

S5-67
第 559 章附表 5
第 63 條SCHEDULE 5
Section 63S5-68
Cap. 559

對於處長根據第 58 及 60 條作出的任何決定，均可在法院予以上訴。

63. 使用權利不得轉讓或傳轉

第 58、59 及 60 條並不就商標的使用，賦予商標的註冊使用人任何轉讓或傳轉的權利。

64. 可註冊為證明商標的標記

(1) 如有任何人就任何貨品的來源、物料、製造方式、品質、準確性或其他特質作出證明，並有任何標記就該等貨品在營商過程中將經如此證明的貨品與未經如此證明的貨品適合作出識別，則該標記可就該等貨品在註冊紀錄冊 A 部以該人作為該商標的所有人的名義而註冊為證明商標：

但如該人營商的貨品屬經證明的品類的貨品，則該標記不得以該人的名義如此註冊。

(1A) 如有任何人就任何服務的品質、準確性或其他特質作出證明，並有任何標記就該等服務在業務運作中將經如此證明的服務與未經如此證明的服務適合作出識別，則該標記可就該等服務在註冊紀錄冊 A 部以該人作為該商標的所有人的名義而註冊為證明商標：

但如該人在業務運作中與某些服務的提供有關連，而該等服務屬經證明的品類的服務，則該標記不得以該人的名義如此註冊。

- (2) 審裁處在裁定某標記是否如前述般適合作出識別時，可顧及——
- (a) 該標記就有關貨品或服務本身如前述般適合作出識別的程度；及
 - (b) 因該標記的使用或其他情況，該標記就有關貨品或服務事實上如前述般適合作出識別的程度。

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—

S5-69
第 559 章附表 5
第 65 條SCHEDULE 5
Section 65S5-70
Cap. 559

- (3) 凡任何標記由在營商中可用於標明任何貨品或服務的地理來源的記號或顯示組成，此一事實不得阻止將該標記就該等貨品或服務而在註冊紀錄冊 A 部註冊為證明商標。
- (4) 本條例的條文並不使第 (3) 款所描述的記號或顯示所組成的證明商標的所有人有權干擾或約束任何人按照在工業或商業事宜中的誠實做法使用任何記號或顯示（尤其是由有權使用地理名稱的人所使用）。

- (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. 註冊為證明商標的申請

- (1) 根據第 64 條將任何標記註冊的申請，須由擬註冊為該標記的所有人的人按訂明方式以書面向處長提出。
- (2) 第 13(2) 條及第 13(4) 至 (7) 條的條文，對根據本條提出的申請具有效力，一如對根據第 13(1) 條提出的申請具有效力。
- (3) 審裁處根據上述條文處理根據本條提出的申請時，須顧及與處理根據第 13 條提出的申請時所顧及的考慮因素相同的考慮因素（只限於相關者），猶如該申請是根據第 13 條提出的一樣，並顧及與根據本條提出的申請相關的任何其他考慮因素，包括要求確保證明商標須含有某些顯示以顯示其為證明商標是否適宜一事。

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

S5-71
第 559 章附表 5
第 65 條SCHEDULE 5
Section 65S5-72
Cap. 559

- (4) 根據本條申請將任何標記註冊的申請人，須將規管該標記的使用的規例草稿傳送處長；規例草稿須包括關於所有人在何種情況下會就貨品或服務作出證明和授權他人使用該商標的條文，並可包含處長所規定或准許載入其中的任何其他條文（包括賦予在所有人拒絕按照規例就貨品或服務作出證明或拒絕按照規例授權他人使用商標時，有權向處長提出上訴的條文）。該等規例如獲認可，須交給處長存放，並須可供查閱，可供查閱的方式與註冊紀錄冊的相同。
- (5) 處長於考慮申請時須顧及以下事宜——
- (a) 申請人是否有資格就貨品或服務（標記是會就其註冊的）作出證明；
- (b) 規例草稿是否令人滿意；及
- (c) 在一切情況下，所申請的註冊會否符合公眾利益；並可——
- (i) 拒絕接納申請；或
- (ii) 無需變更和無條件接納申請並認可規例，或附加處長於顧及前述事宜後認為需要的任何條件或限制或（對申請或規例作出的）修訂或變更而接納申請並認可規例；
- 但除非是無需變更和無條件的接納及認可，否則處長不得在沒有給予申請人陳詞機會的情況下就申請作出決定；
- 但如申請人提出請求，處長可在申請獲接納前，在顧及任何前述事宜下考慮申請，因此，在處長就任何事宜作出決定後，如申請或規例草稿有所修訂或變更，他可隨意根據本但書再次考慮該事宜。
- (6) 對於處長根據本條作出的任何決定，均可在法院予以上訴。

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;

S5-73
第 559 章附表 5
第 75 條SCHEDULE 5
Section 75S5-74
Cap. 559**75. 有效證明書**

如任何註冊商標的註冊的有效性在任何法律程序中成為問題，而就此作出的決定有利於商標的所有人，則法院可作出表明此意的證明；如法院如此證明，而在其後的法律程序中，該註冊的有效性成為問題，則該商標的所有人在取得有利於他的最終的命令或判決後，須獲得律師與當事人之間的十足訟費、費用及開支，除非在該其後的法律程序中，法院證明他不應獲得該等訟費、費用及開支。

76. 營商慣例等須予考慮

- (1) 在任何關於貨品商標或營商名稱的訴訟或法律程序中，審裁處須接納關於有關的營商慣例、由其他人合法使用的任何相關的貨品商標或營商名稱或式樣的證據。
- (2) 在任何關於服務商標或業務名稱的訴訟中，審裁處須接納關於提供有關服務的業務慣例、由其他人合法使用的任何相關的服務商標或業務名稱或式樣的證據。

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

S5-75
第 559 章附表 5
第 92 條SCHEDULE 5
Section 92S5-76
Cap. 559**92. 關於《1996 年知識產權 (世界貿易組織修訂) 條例》的過渡性條文**

(1) 在本條中——

“現行註冊商標” (existing registered trade mark) 指在新法律的生效日期前根據本條例註冊的商標、證明商標或防禦商標；

“新法律” (new law) 指《1996 年知識產權 (世界貿易組織修訂) 條例》(1996 年第 11 號) 第 18 至 25 條；

“舊法律” (old law) 指緊接新法律生效日期前適用於現行註冊商標的本條例及任何其他成文法則或法律規則。

(2) 根據在新法律生效日期前本條例所界定的商標 (包括證明商標及防禦商標) 的註冊申請，如在新法律的生效日期前已提出但並未作最終決定，則須視為於該生效日期是待決的申請。

(3) 經新法律修訂的第 27(1)、27A(1)、67(1) 及 67A(1) 條須由新法律生效日期起適用於現行註冊商標，但僅在該等條文與在新法律生效日期當日或之後就現行註冊商標所作出的侵犯有關的情況下適用；舊法律須繼續適用於在新法律生效日期之前所作出的侵犯。

(4) 儘管第 (3) 款已有規定，如在新法律生效日期當日或之後繼續任何使用，而根據舊法律，該使用並不對現行註冊商標構成侵犯，則該使用並不侵犯——

(a) 任何現行註冊商標；或

(b) 任何註冊商標，而其顯著要素與某現行註冊商標的顯著要素是相同或在重大程度上是相同的，且是就同一貨品或服務註冊的。

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.

S5-77
第 559 章附表 5
第 92 條SCHEDULE 5
Section 92S5-78
Cap. 559

- (5) 在符合第 (6) 款的規定下，在新法律生效日期當日待決的商標註冊申請須根據舊法律處理，但如商標已註冊，則就第 (1) 至 (4) 款而言須視為現行註冊商標。
- (6) 在新法律生效日期當日待決的商標註冊申請如尚未在該生效日期前根據第 14 條予以公告，申請人可向處長發給通知，選擇按照經新法律修訂的本條例決定標記是否可予註冊。
- (7) 根據第 (6) 款發給的通知必須以訂明表格發給，並必須附有適當費用，以及必須在新法律生效日期之後的 6 個月內發給處長。
- (8) 根據第 (6) 款發給的通知是不可撤銷的，其效力是將有關申請視為猶如已在新法律生效日期後提出一樣。
- (9) 根據第 48 條提出而在新法律生效日期當日待決的申請須按照舊法律處理。

- (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.

S6-1
第 559 章

附表 6

Schedule 6

S6-2
Cap. 559

附表 6
(已失時效而略去)

Schedule 6
(Omitted as spent)

附表 7

[第 100 條]

關於《2020 年商標 (修訂) 條例》的過渡及保留條文

(附表 7 由 2020 年第 3 號第 18 條增補)

1. 釋義

在本附表中——

* **生效日期** (commencement date) 指《修訂條例》於憲報刊登的日期；

《**修訂前的條例**》(pre-amended Ordinance) 指在緊接生效日期前有效的本條例；

《**修訂前的規則**》(pre-amended Rules) 指在緊接生效日期前有效的《商標規則》(第 559 章，附屬法例 A)；

《**修訂條例**》(Amendment Ordinance) 指《2020 年商標 (修訂) 條例》(2020 年第 3 號)。

編輯附註：

* 生效日期：2020 年 6 月 19 日。

2. 根據《修訂前的條例》第 38 條提交的註冊申請

(1) 在生效日期前根據《修訂前的條例》第 38(1) 條提交的商標註冊申請 (**舊有申請**)，如在該日期仍待決，則《修訂前的條例》及《修訂前的規則》繼續就該項申請而適用。

(2) 然而，如在生效日期或之後有根據第 46 條修訂某項舊有申請的要求提交，本條例的條文就該要求而適用。

Schedule 7

[s. 100]

Transitional and Savings Provisions for Trade Marks
(Amendment) Ordinance 2020

(Schedule 7 added 3 of 2020 s. 18)

1. Interpretation

In this Schedule—

Amendment Ordinance (《修訂條例》) means the Trade Marks (Amendment) Ordinance 2020 (3 of 2020);

* **commencement date** (生效日期) means the date on which the Amendment Ordinance is published in the Gazette;

pre-amended Ordinance (《修訂前的條例》) means this Ordinance as in force immediately before the commencement date;

pre-amended Rules (《修訂前的規則》) means the Trade Marks Rules (Cap. 559 sub. leg. A) as in force immediately before the commencement date.

Editorial Note:

* Commencement date: 19 June 2020.

2. Applications for registration filed under section 38 of pre-amended Ordinance

(1) If an application for registration of a trade mark has been filed before the commencement date under section 38(1) of the pre-amended Ordinance (**old application**), but is still pending on that date, the pre-amended Ordinance and the pre-amended Rules continue to apply in relation to that application.

S7-3
第 559 章

附表 7

Schedule 7
Section 2

S7-4
Cap. 559

-
- (2) However, if, on or after the commencement date, a request to amend an old application under section 46 is filed, the provisions of this Ordinance apply in relation to the request.