

BECHUANALAND PROTECTORATE.

No. 4 OF 1940.

(Promulgated 2nd February, 1940.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER
Entitled the Bechuanaland Protectorate Registration
of United Kingdom Trade Marks Proclamation, 1940.

Whereas it is expedient to make provision for the registration in the Bechuanaland Protectorate (hereinafter referred to as "the Territory") of trade marks registered in the United Kingdom:

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

1. In this Proclamation, unless inconsistent ^{Interpreta-} with the context:—_{tion.}

"Register" means the Register of Trade Marks kept under the provisions of this Proclamation;

"Registrar" means the officer appointed by the Resident Commissioner by Notice in the *Gazette*, to be the Registrar of Trade Marks for the purposes of this Proclamation;

"Court" means the High Court of the Territory;

"Prescribed" means prescribed by rules under section *twelve*.

2. Any person being the registered proprietor of a trade mark in the United Kingdom by virtue of an entry in the Register of Trade Marks kept under the Trade Marks Act, 1938, or any Act amending or substituted for that Act, or any person deriving title from such registered proprietor by assignment or other mode of transfer, may apply at any time during the existence of the registration in the United Kingdom to have such trade mark registered in the Territory in respect of some or all of the goods comprised in the United Kingdom registration. ^{Application for registration.}

3. An application for registration of a trade mark under this Proclamation shall be made to the Registrar and shall be accompanied by two certified representations of the trade mark and a certificate of the Comptroller-General of the United Kingdom Patent Office (under his title of Registrar of Trade Marks) giving full particulars of the registration of the trade mark in the United Kingdom. ^{Documents to accompany application.}

Certificate
of registra-
tion.

4. Upon such application being lodged, together with the documents mentioned in section *three* of this Proclamation, the Registrar shall enter the prescribed particulars in the Register, and shall issue a Certificate of Registration to the applicant, who shall then be the registered proprietor in the Territory of the trade mark in respect of the goods entered in the Register.

Privileges
and rights
of
registered
proprietor

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

Period for
which
privileges
and rights
granted.

6. The privileges and rights conferred by section *five* of this Proclamation shall date from the date of registration in the United Kingdom and shall continue in force, subject to the provisions of section *fourteen* of this Proclamation, for so long as the registration in the United Kingdom remains in force in respect of the goods for which the trade mark is registered in the Territory:

Provided that no action for infringement of the trade mark shall be entertained in respect of the use of the trade mark prior to the date of issue of the Certificate of Registration in the Territory.

Right of
action for
"passing
off"
preserved

7. Nothing in this Proclamation shall be deemed to affect any right of action against any person for passing off goods as those of another person or any remedy in respect thereof.

Powers of
court on
application
or can-
cellation.

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

Registra-
tion of
assignment
of
privileges
and rights

9. Subject to the provisions of this Proclamation, where a person becomes entitled by assignment or other mode of transfer to the privileges and rights conferred on a registered proprietor by this Proclamation, the Registrar

shall, on application being made in the prescribed manner, and on proof of title to his satisfaction, cause such person to be entered in the Register as subsequent registered proprietor of the trade mark.

10. Any person entered in the United Kingdom Register of Trade Marks under section *twenty-eight* of the Trade Marks Act, 1938, as a registered user in respect of any goods of a trade mark in respect of which a Certificate of Registration under this Proclamation is in force may apply to be registered in the Territory as a registered user of the mark in respect of some or all of such goods, subject to any conditions or restrictions entered in the United Kingdom Register.

Registration of registered users.

11. Upon such application being lodged, together with a certificate of the United Kingdom Registrar of Trade Marks giving full particulars of the entry in the United Kingdom Register under the said section *twenty-eight*, the Register shall cause the applicant to be entered in the Register of the Territory as a registered user of the trade mark, and on such entry the registered user shall be entitled in the Territory, subject to the aforesaid conditions and restrictions, to such privileges and rights in respect of the goods for which is entered as *mutatis mutandis* would be conferred on him by the law for the time being in force in the United Kingdom.

Application for registration as registered user and effect of registration.

12. The Registrar may make such rules and do such things as he may think expedient, subject to the provisions of this Proclamation, for regulating procedure under this Proclamation, and prescribing the fees to be paid in respect of proceedings under this Proclamation, and generally for prescribing anything which by this Proclamation is to be prescribed.

Power to make rules.

13. (1) The Registrar shall keep a Register of Trade Marks in respect of which Certificates of Registration have been issued, wherein shall be entered the dates of applications for registration, the names and addresses of applicants, the particulars of the trade marks, notifications of assignments and transfers, and such other particulars as may be prescribed:

Keeping of register, and inspection thereof.

Provided that there shall not be entered in the Register any notice of a trust expressed or implied or constructive.

(2) The Register shall at all convenient times be open to the inspection of the public on payment of the prescribed fee.

(3) Any person may, on payment of the prescribed fee, obtain a certified copy or extract from the Register.

(4) The Register shall be *prima facie* evidence of any matters by this Proclamation directed or authorised to be inserted therein.

Renewal
or, alter-
natively,
cancellat-
ion of
registration

14. If the registration in the United Kingdom of a trade mark registered under this Proclamation is renewed, the registered proprietor may, within such time after the date of renewal in the United Kingdom as may be prescribed, notify the Registrar, who shall then, on sufficient evidence thereof and on payment of the prescribed fee, renew the registration in the Register in the prescribed manner. If the registration in the Register is not so renewed it shall be cancelled by the Registrar.

Cancellat-
ion and
correction
of entries
in
register.

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

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

Short title
and com-
mencement.

16. This Proclamation may be cited as the Bechuanaland Protectorate Registration of United Kingdom Trade Marks Proclamation, 1940, and shall have force and take effect from the date of its publication in the *Gazette*.

GOD SAVE THE KING.

Given under my Hand and Seal at Capetown this twenty-fourth day of January One thousand Nine hundred and Forty.

E. J. HARDING,
High Commissioner.

By Command of His Excellency
the High Commissioner.

H LESTER SMITH,
for Administrative Secretary.