

Bill No. 106 of 2009

THE TRADE MARKS (AMENDMENT) BILL, 2009

A
BILL

to amend the Trade Marks Act, 1999.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Trade Marks (Amendment) Act, 2009.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

47 of 1999.

2. In section 11 of the Trade Marks Act, 1999 (hereinafter referred to as the principal Act), in the *Explanation*, for clause (a), the following clause shall be substituted, namely:—

Amendment
of section 11.

“(a) a registered trade mark or an application under section 18 bearing an earlier date of filing or an international registration referred to in section 36E or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks.”.

Amendment of section 21. 3. In section 21 of the principal Act, for sub-section (I), the following sub-section shall be substituted, namely:—

“(I) Any person may, within four months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee as may be prescribed, to the Registrar, of opposition to the registration.”.

Amendment of section 23. 4. In section 23 of the principal Act, in sub-section (I), after the words “register the said trade mark”, the words “within eighteen months of the filing of the application” shall be inserted.

Insertion of new Chapter IVA. 5. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

‘CHAPTER IVA

SPECIAL PROVISIONS RELATING TO PROTECTION OF TRADE MARKS THROUGH INTERNATIONAL REGISTRATION UNDER THE MADRID PROTOCOL

Application of Act in case of international registration under Madrid Protocol.
Definitions.

36A. The provisions of this Chapter shall apply to international applications and international registrations under the Madrid Protocol.

36B. In this Chapter, unless the context otherwise requires,—

(a) “application”, in relation to a Contracting State or a Contracting Organisation, means an application made by a person who is a citizen of, or is domiciled in, or has a real and effective industrial or commercial establishment in, that Contracting State or a State which is a member of that Contracting Organisation, as the case may be.

Explanation.—For the purposes of this clause, “real and effective industrial or commercial establishment” means and includes any establishment where some *bona fide* industrial or commercial activity takes place and need not necessarily be the principal place of business;

(b) “basic application” means an application for the registration of a trade mark filed under section 18 and which is used as a basis for applying for an international registration;

(c) “basic registration” means the registration of a trade mark under section 23 and which is used as a basis for applying for an international registration;

(d) “Common Regulations” means the Regulations concerning the implementation of the Madrid Protocol;

(e) “Contracting Organisation” means a Contracting Party that is an inter-governmental organisation;

(f) “Contracting Party” means a Contracting State or Contracting Organisation party to the Madrid Protocol;

(g) “Contracting State” means a country party to the Madrid Protocol;

(h) “international application” means an application for international registration or for extension of the protection resulting from an international registration to any Contracting Party made under the Madrid Protocol;

(i) “International Bureau” means the International Bureau of the World Intellectual Property Organisation;

(j) “international registration” means the registration of a trade mark in the register of the International Bureau effected under the Madrid Protocol;

(k) “Madrid Agreement” means the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on the 14th day of April, 1891, as subsequently revised and amended;

(l) “Madrid Protocol” means the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on the 27th day of June, 1989, as amended from time to time.

36C. Notwithstanding anything contained in sub-section (3) of section 5, an international application shall be dealt with by the head office of the Trade Marks Registry or such branch office of the Registry, as the Central Government may, by notification in the Official Gazette, specify.

Trade Marks Registry to deal with international applications.

36D. (1) Where an application for the registration of a trade mark has been made under section 18 or a trade mark has been registered under section 23, the applicant or the registered proprietor may make an international application on the form prescribed by the Common Regulations for international registration of that trade mark.

International application originating from India.

(2) A person holding an international registration may make an international application on the form prescribed by the Common Regulations for extension of the protection resulting from such registration to any other Contracting Party.

(3) An international application under sub-section (1) or sub-section (2) shall designate the Contracting Parties where the protection resulting from the international registration is required.

(4) The Registrar shall certify in the prescribed manner that the particulars appearing in the international application correspond to the particulars appearing, at the time of the certification, in the application under section 18 or the registration under section 23, and shall indicate the date and number of that application or the date and number of that registration as well as the date and number of the application from which that registration resulted, as the case may be, and shall within the prescribed period, forward the international application to the International Bureau for registration, also indicating the date of the international application.

(5) Where at any time before the expiry of a period of five years of an international registration, whether such registration has been transferred to another person or not, the application under section 18 or the registration under section 23, as the case may be, has been withdrawn or cancelled or has expired or has been finally refused in respect of all or some of the goods or services listed in the international registration, the protection resulting from such international registration shall cease to have effect:

Provided that where an appeal is made against the decision of registration and an action requesting for withdrawal of application or an opposition to the application has been initiated before the expiry of the period of five years of an international registration, any final decision resulting into withdrawal, cancellation, expiration or refusal shall be deemed to have taken place before the expiry of five years of the international registration.

(6) The Registrar shall, during the period of five years beginning with the date of international registration, transmit to the International Bureau every information referred to in sub-section (5).

(7) The Registrar shall notify the International Bureau the cancellation to be effected to an international registration keeping in view the current status of the basic application or the basic registration, as the case may be.

International registrations where India has been designated.

36E. (1) The Registrar shall, after receipt of an advice from the International Bureau about any international registration where India has been designated, keep a record of the particulars of that international registration in the prescribed manner.

(2) Where, after recording the particulars of any international registration referred to in sub-section (1), the Registrar is satisfied that in the circumstances of the case the protection of trade mark in India should not be granted or such protection should be granted subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the international registration has been accepted, he may, after hearing the applicant if he so desires, refuse grant of protection and inform the International Bureau in the prescribed manner within eighteen months from the date on which the advice referred to in sub-section (1) was received.

(3) Where the Registrar finds nothing in the particulars of an international registration to refuse grant of protection under sub-section (2), he shall within the prescribed period cause such international registration to be advertised in the prescribed manner.

(4) The provisions of sections 9 to 21 (both inclusive), 63 and 74 shall apply *mutatis mutandis* in relation to an international registration as if such international registration was an application for registration of a trade mark under section 18.

(5) When the protection of an international registration has not been opposed and the time for notice of opposition has expired, the Registrar shall within a period of eighteen months of the receipt of advice under sub-section (1) notify the International Bureau its acceptance of extension of protection of the trade mark under such international registration and, in case the Registrar fails to notify the International Bureau, it shall be deemed that the protection has been extended to the trade mark.

(6) Where a registered proprietor of a trade mark makes an international registration of that trade mark and designates India, the international registration from the date of the registration shall be deemed to replace the registration held in India without prejudice to any right acquired under such previously held registration and the Registrar shall, upon request by the applicant, make necessary entry in the Register referred to in sub-section (1) of section 6.

(7) A holder of international registration of a trade mark who designates India and who has not been extended protection in India shall have the same remedy which is available to any person making an application for the registration of a trade mark under section 18 and which has not resulted in registration under section 23.

(8) Where at any time before the expiry of a period of five years of an international registration, whether such registration has been transferred to another person or not, the related basic application or, as the case may be, the basic registration in a Contracting Party other than India has been withdrawn or cancelled or has expired or has been finally refused in respect of all or some of the goods or services listed in the international registration, the protection resulting from such international registration in India shall cease to have effect.

Effects of international registration.

36F. (1) From the date of the international registration of a trade mark where India has been designated or the date of the recording in the register of the International Bureau about the extension of the protection resulting from an international registration of a trade mark to India, the protection of the trade mark in India shall be the same as if the trade mark had been registered in India.

(2) The indication of classes of goods and services given by the applicant shall not bind the Registrar with regard to the determination of the scope of the protection of the trade mark.

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| <p>36G. (1) The international registration of a trade mark at the International Bureau shall be for a period of ten years and may be renewed for a period of ten years from the expiry of the preceding period.</p> | <p>Duration and renewal of international registration.</p> |
| <p>(2) Subject to payment of a surcharge prescribed by the rules, a grace period of six months shall be allowed for renewal of the international registration.’.</p> | |
| <p>6. For section 45 of the principal Act, the following section shall be substituted, namely:—</p> | <p>Substitution of new section for section 45.</p> |
| <p>“45. (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall, on receipt of the application, 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 such assignment or transmission to be entered on the register.</p> | <p>Registration of assignments and transmissions.</p> |
| <p>(2) The Registrar may require the applicant to furnish evidence or further evidence in proof of title only where there is a reasonable doubt about the veracity of any statement or any document furnished.</p> | |
| <p>(3) Where the validity of an assignment or transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the parties have been determined by a competent court and in all other cases the Registrar shall dispose of the application within the prescribed period.</p> | |
| <p>(4) Until an application under sub-section (1) has been filed, the assignment or transmission shall be ineffective against a person acquiring a conflicting interest in or under the registered trade mark without the knowledge of assignment or transmission.”.</p> | |
| <p>7. Chapter X of the principal Act shall be omitted.</p> | <p>Omission of Chapter X.</p> |
| <p>8. In section 150 of the principal Act, in sub-section (1), for the word “applications”, the words “applications, international applications” shall be substituted.</p> | <p>Amendment of section 150.</p> |
| <p>9. In section 157 of the principal Act, in sub-section (2), —</p> | <p>Amendment of section 157.</p> |
| <p>(a) for clause (vii), the following clause shall be substituted, namely:—</p> | |
| <p>“(vii) the manner of giving a notice of opposition and the fee payable for such notice under sub-section (1) and sending counter-statement under sub-section (2) and submission of evidence and the time therefor under sub-section (4) of section 21;”;</p> | |
| <p>(b) after clause (ix), the following clauses shall be inserted, namely:—</p> | |
| <p>“(ixa) the time within which the international application is to be forwarded to the International Bureau and the manner of certifying the particulars by the Registrar under sub-section (4) of section 36D;</p> | |
| <p>(ixb) the manner of keeping a record of particulars of an international registration under sub-section (1) of section 36E;</p> | |
| <p>(ixc) the manner of informing the International Bureau under sub-section (2) of section 36E;</p> | |
| <p>(ixd) the manner of advertising the international registration and the time within which the international registration shall be advertised under sub-section (3) of section 36E;”;</p> | |

(c) after clause (xiii), the following clause shall be inserted, namely:—

“(xiiia) the period within which the Registrar shall dispose of an application under sub-section (3) of section 45;”;

(d) clauses (xxvi), (xxvii) and (xxviii) shall be omitted.

Power of
Central
Government
to remove
difficulties.

10. (1) Notwithstanding anything contained in section 156 of the principal Act, if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary for removing such difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

At present, a person desirous of obtaining registration of his trade mark in other countries has to make separate applications in different languages and pay different fees in the respective countries. There is no provision under the Trade Marks Act, 1999 (hereinafter referred to as the Trade Marks Act) to facilitate Indian nationals as well as foreign nationals to secure simultaneous protection of trade marks in other countries.

2. The Madrid Protocol, administered by the International Bureau of the World Intellectual Property Organisation, a specialised agency of the United Nations, was adopted in 1989. The Madrid Protocol is a simple, facilitative and cost-effective system for international registration of trade marks. It enables the nationals of the Member countries of the Protocol to obtain protection of trade marks within the prescribed period of 18 months by filing a single application with one fee and in one language in their country of origin, which in turn is transmitted to the other designated countries through the International Bureau.

3. Accession to the Madrid Protocol entails amendments to the Trade Marks Act. For this purpose, it is proposed to suitably amend the Trade Marks Act and to incorporate therein a new Chapter IVA containing special provisions relating to protection of international registration of trade marks under the Madrid Protocol. It is sought to empower the Registrar of Trade Marks to deal with international applications originating from India as well as those received from the International Bureau and maintain record of international registrations. Definitions of new terms are being given. It is further proposed to provide for the effect of international registration, duration and its renewal.

4. It is also proposed to remove the discretion of the Registrar to extend the time for filing notice of opposition of published applications and provide for a uniform time limit of four months in all cases. Further, with a view to simplify the law relating to transfer of ownership of trade marks by assignment or transmission and to bring the law generally in tune with international practice and modern business needs, section 45 is proposed to be modified. It is also proposed to omit Chapter X of the Trade Marks Act dealing with special provisions for textile goods, as it has now become redundant.

5. The Bill seeks to achieve the above objects.

ANAND SHARMA.

NEW DELHI;

The 31st July, 2009.

FINANCIAL MEMORANDUM

By the Trade Marks (Amendment) Bill, 2009, provisions are made for providing protection to international registration of trade marks and to facilitate applicants from India to secure protection of their trade marks in various countries as may be designated by them in accordance with the Madrid system. The Trade Marks Registry acting as an office of origin in respect of applications originating from India will be responsible for certification of international applications received by it that the particulars mentioned correspond to the application pending or registered with it and transmit them immediately to World Intellectual Property Organisation for registration and thereafter forwarding it to the designated countries where protection is sought. Additional work will devolve on the Trade Marks Registry in the matter of dealing with international registrations where India is designated as Contracting Party for protection of trade marks. The proposed amendment imposes strict time limits on the Registrar to dispose of applications for registration of trade marks generally and in the matter of protection of international trade marks under the Madrid Protocol. Since the work will be performed exclusively by the Head Office or a branch office of the Registry specially designated and notified by the Central Government in this behalf to administer the provisions of the amending Act, the infrastructure at the Registry both in terms of manpower and equipment, will be augmented.

2. With a view to build on the existing capabilities and further strengthening the Intellectual Property (IP) administration to make it globally accredited for providing effective and efficient services to IP community, a plan proposal for modernisation of IP offices has been prepared and approved by the competent authority. The proposal addresses the concerns of reliability, effectiveness and user-friendliness of the procedures and has the capability to deal with increasing workload. It also focuses on the need of taking up on priority basis capacity building, public awareness and sensitization of the IP users to achieve global standards. It is expected that the additional manpower and infrastructural facilities proposed under the Plan Scheme during the 11th Plan period will take care of the needs of the organisation in the administration of the provisions of the amendment Bill. Requisite funds have also been allocated and provided in the Budget. As such, no separate financial commitment is sought on account of this Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Trade Marks (Amendment) Bill, 2009 proposes to amend section 157 of the Trade Marks Act, 1999. The said section empowers the Central Government to make rules to carry out the provisions of the Trade Marks Act and also enumerates certain matters specifically in sub-section (2) thereof. The said sub-section has been proposed to be amended also to enumerate therein the following matters:—

(a) the manner of giving a notice of opposition and the fee payable for such notice under sub-section (1) of section 21;

(b) the time within which the international application is to be forwarded to the International Bureau and the manner of certifying the particulars by the Registrar under sub-section (4) of section 36D;

(c) the manner of keeping a record of particulars of international registration under sub-section (1) of section 36E;

(d) the manner of informing the International Bureau under sub-section (2) of section 36E;

(e) the manner of advertising the international registration under sub-section (3) of section 36E; and

(f) the period within which the Registrar shall dispose of an application under sub-section (3) of section 45.

2. The aforesaid matters relate to procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character. The rules made shall be laid before each house of Parliament.

ANNEXURE

EXTRACTS FROM THE TRADE MARKS ACT, 1999

(47 OF 1999)

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Relative grounds for refusal of registration.

11. (1) Save as provided in section 12, a trade mark shall not be registered if, because of—

(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or

(b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

(2) A trade mark which—

(a) is identical with or similar to an earlier trade mark; and

(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor,

shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

(3) A trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented—

(a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or

(b) by virtue of law of copyright.

(4) Nothing in this section shall prevent the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration, and in such case the Registrar may register the mark under special circumstances under section 12.

Explanation.—For the purposes of this section, earlier trade mark means—

(a) a registered trade mark or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks;

(b) a trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.

(5) A trade mark shall not be refused registration on the grounds specified in sub-section (2) and (3), unless objection on any one or more of those grounds is raised in opposition proceedings by the proprietor of the earlier trade mark.

(6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including—

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;

(ii) the duration, extent and geographical area of any use of that trade mark;

(iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies.

(iv) The duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of the rights in that trade mark, in particular, the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.

(7) The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account—

(i) the number of actual or potential consumers of the goods or services;

(ii) the number of persons involved in the channels of distribution of the goods or services;

(iii) the business circles dealing with the goods or services,

to which that trade mark applies.

(8) Where a trade mark has been determined to be well-known in at least one relevant section of the public in India by any court or Registrar, the Registrar shall consider that trade mark as a well-known trade mark for registration under this Act.

(9) The Registrar shall not require as a condition, for determining whether a trade mark is a well-known trade mark, any of the following, namely:—

(i) that the trade mark has been used in India;

(ii) that the trade mark has been registered;

(iii) that the application for registration of the trade mark has been filed in India;

(iv) that the trade mark—

(a) is well-known in; or

(b) has been registered in; or

(c) in respect of which an application for registration has been filed in, any jurisdiction other than India; or

(v) that the trade mark is well-known to the public at large in India.

(10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall—

(i) protect a well-known trade mark against the identical or similar trade marks;

(ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.

(11) Where a trade mark has been registered in good faith disclosing the material informations to the Registrar or where right to a trade mark has been acquired through use in good faith before the commencement of this Act, then, nothing in this Act shall prejudice the validity of the registration of that trade mark or right to use that trade mark on the ground that such trade mark is identical or similar to a well-known trade mark.

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Opposition to registration. **21.** (1) Any person may, within three months from the date of the advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month in the aggregate, as the Registrar, on application made to him in the prescribed manner and on payment of the prescribed fee, allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.

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Registration. **23.** (1) subject to the provisions of section 19, when an application for registration of a trade mark has been accepted and either—

(a) the application has not been opposed and the time for notice of opposition has expired; or

(b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the Central Government otherwise directs, register the said trade mark and the trade mark when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of section 154, be deemed to be the date of registration.

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Registration of assignments and transmissions. **45.** (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall, on receipt of the 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:

Provided that where the validity of an assignment or transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the parties have been determined by a competent court.

(2) Except for the purpose of an application before the Registrar under sub-section (1) or an appeal from an order thereon, or an application under section 57 or an appeal from an order thereon, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1), shall not be admitted in evidence by the Registrar or the Appellate Board or any court in proof of title to the trade mark by assignment or transmission unless the Registrar or the Appellate Board or the court, as the case may be, otherwise directs.

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CHAPTER X

SPECIAL PROVISIONS FOR TEXTILE GOODS

Textile goods. **79.** The Central Government may prescribe classes of goods (in this chapter referred to as textile goods) to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

Restriction on registration of textile goods. **80.** (1) In respect of textile goods being piece goods—

(a) no mark consisting of a line heading alone shall be registrable as a trade mark;

(b) a line heading shall not be deemed to be capable of distinguishing;

(c) the registration of trade mark shall not give any exclusive right to the use of a line heading.

(2) In respect of any textile goods, the registration of letters or numerals, or any combination thereof, shall be subject to such conditions and restrictions as may be prescribed.

63 of 1948. **81.** (1) Piece goods, such as are ordinarily sold by length or by the piece, which have been manufactured, bleached, dyed, printed or finished in premises which are a factory, as defined in the Factories Act, 1948, shall not be removed for sale from the last of such premises in which they underwent any of the said processes without having conspicuously stamped in international form of Indian numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, or in standard metres or in standard metres and a fraction of such a metre, according to the real length of the piece, and except when the goods are sold from the factory for export from India, without being conspicuously marked on each piece with the name of the manufacturer or of the occupier of the premises in which the piece was finally processed or of the wholesale purchaser in India of the piece. Stamping of piece goods, cotton yarn and thread.

(2) Cotton yarn such as is ordinarily sold in bundles, and cotton thread, namely, sewing, darning, crochet or handicraft thread; which have been manufactured, bleached, dyed or finished in any premises not exempted by the rules made under section 82 shall not be removed for sale from those premises unless, in accordance with the said rules in the case of yarn—

(a) the bundles are conspicuously marked with an indication of the weight of yarn in English or the metric system in each bundles; and

(b) the count of the yarn contained in the bundles and in the case of thread each unit is conspicuously marked with the length or weight of thread in the unit and in such other manner as may be required by the said rules; and

(c) except where the goods are sold from the premises for export from India, unless each bundle or unit is conspicuously marked with the name of the manufacturer or of the wholesale purchaser in India of the goods:

Provided that the rules made under section 82 shall exempt all premises where the work is done by members of one family with or without the assistance of not more than ten other employees, and all premises controlled by a co-operative society where not more than twenty workers are employed in the premises.

82. (1) For the purposes of this Act, the Central Government may make rules— Determination of character of textile goods by sampling.

(a) to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight, for the number of samples to be selected and tested and for the selection of the samples;

(b) to provide, for the manner in which for the purposes of section 81 cotton yarn and cotton thread shall be marked with the particulars required by that section, and for the exemption of certain premises used for the manufacture, bleaching, dyeing or finishing of cotton yarn on cotton thread from the provisions of that section; and

(c) declaring what classes of goods are included in the expression “piece goods such as are ordinarily sold by length or by the piece” for the purpose of section 81, of this Act or clause (n) of sub-section (2) of section 11 of the Customs Act, 1962.

52 of 1962.

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (1), the court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1), or of an order under sub-section (2), desires that any further samples of the goods be selected and tested, such further samples shall, on his written application and on the payment in advance by him to the court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules made by the Central Government in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in the manner prescribed under sub-section (1), or in sub-section (2), as the case may be.

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

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Fee and surcharge.

150. (1) There shall be paid in respect of applications and registration and other matters under this Act such fees and surcharge as may be prescribed by the Central Government.

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157. (1) * * * * *

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

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(vii) the manner of making an application and the fee payable for such application giving notice under sub-section (1) and sending counter-statements under sub-section (2) and submission of evidence and the time therefor under sub-section (4) of section 21;

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(xxvi) the classes of goods under section 79;

(xxvii) the conditions and restrictions under sub-section (2) of section 80;

(xxviii) determination of character of textile goods by sampling under section 82;

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to amend the Trade Marks Act, 1999.

(Shri Anand Sharma, Minister of Commerce and Industry)