

"TRADE MARK, REGISTERED."



VERY one has at some time or other seen the words at the head of this paper, and ought to know exactly what they mean. There is nothing mysterious or secret about them. They simply signify that the sole and exclusive use of such-and-such a trade mark has been acquired by such-and-such a firm, by registering it at the office appointed for the purpose. A mark having been thus assigned to a particular person, nobody else (except in certain special cases where rights to the same or a similar mark existed in others before the date of the passing of the Trade Marks Registration Act, on the 13th August, 1875) has any right whatever to employ it in connection with the same kind of goods. Should the mark be infringed by being actually or colourably imitated, the party or parties so using it may be prosecuted "with the utmost rigour of the law," whether their motives be innocent or otherwise.

As regards the practical advantage of trade marks, we are hardly called upon to discuss the question. It cannot have escaped the observation of readers that—in obedience, we may be sure, to a great commercial instinct, and not from any mere fantastic humour—many goods are known by the names of the firms manufacturing them, others by the titles which have been bestowed upon them, and still others by their Registered Trade Marks.

These last words, we have said, need no interpreter, but the various steps that are necessary to the securing of a trade mark are not by any means generally known, and we therefore propose to explain them as clearly and accurately as possible.

To begin at the beginning: applications may be made on printed forms or altogether in writing, and are to be delivered or posted to the Registrar at the Trade Marks Registry Office. The requisite papers for the preparation of an application consist of (1) the Statutory Declaration, (2) the Statement on Application, and (3) two representations of each trade mark. These forms may be had of most law stationers—the set costs 6d. at some places, 1s. at others—but *not* of the Registrar, who will however supply, "free, gratis, and for nothing," a copy of Instructions for the guidance of applicants.

The Statutory Declaration must be made before a Justice of the Peace or a Commissioner for Oaths, and both it and the Statement on Application should contain the full name, address, and calling of the applicant, and should bear the ordinary signature of the person by whom they are made. The trading name under which the business is carried on must also be given in every case. When the trade mark is the property of a firm, the Declaration and Statement should be made by one member of the firm and signed by him alone. Similarly, when it is the property of a

company, the papers in question should be signed either by the managing director or by the secretary, and by him alone. The purport of the Statutory Declaration will be clearly understood if we print that document in its entirety:—

FORM C.

FORM OF DECLARATION TO ACCOMPANY STATEMENT ON APPLICATION FOR REGISTRATION OF ONE OR MORE TRADE MARKS.

I, *William Smith, of 999, Brown Street, Jonestown, Hatter,* do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows:—

- (1) The Statement signed by me, and dated the [blank] day of [blank], 187 , and marked with the letter "A," and shown to me at the time of making this Declaration, is true:
- (2) The description of the Trade Mark in such Statement is a true description of the Trade Mark for the registration of which I apply:
- (3) I am lawfully entitled to the use of the Trade Mark of which the said description is a true description.

And I make this solemn Declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the Session of Parliament held in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled An Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other provisions for the abolition of unnecessary Oaths."

DECLARED before me at [blank] place), in the County of [blank shire], this [blank] day of [blank], 187 .
Jasper Robinson, J.P. } Signature of Declarer, i.e., Applicant.

NOTE.—The above Form will require to be altered so as to suit an application for the registration of more than one Trade Mark.

The Statement on Application (which should be certified as an Exhibit to the Declaration by the authority before whom the latter document is declared) must give an accurate description of the mark, indicating any words, devices, or other things forming a conspicuous part of it. It should also specify, separately for each class, the description of goods in respect of which it is desired to register the trade mark. But here is the form of Statement itself:—

FORM A.

FORM OF STATEMENT ON APPLICATION FOR REGISTRATION OF ONE TRADE MARK.

I [here insert name, address, and calling of the applicant], apply to be registered as proprietor of a Trade Mark, being [here insert in writing description of Trade Mark], and which is represented in the paper annexed hereto.

I desire that the said Trade Mark may be registered in respect of the description of goods following, contained in class [blank], that is to say [here insert description of the goods and the class or classes under which the applicant desires to have them registered].

I have used the said Trade Mark in respect of the said goods for [blank] years before the 13th of August, 1875. (This paragraph may be omitted if the Trade Mark was not used before the 13th of August, 1875.)

Dated the [blank] day of [blank], 187 .
 [Signature of Applicant.]

This is the Statement marked "A" referred to in the Declaration of [applicant's name, address, and calling], made before me this [blank] day of [blank], 187 .
 [Signature of J.P.]

With regard to the mark, there are several points of interest to note. For example, coloured or ornamental groundwork cannot be claimed as part of it unless it be included within the mark by some border or lines, which should be referred to in the description. Again, when part of a mark consists of words or figures which vary with the different goods to which it applies, these variable parts should not be set out in the description, but should be mentioned as “printed matter” or otherwise, in which case they may appear in the representations of one variety or they may be omitted altogether, the applicant stating that the blank spaces are to be filled in with printed matter according to the quality of the goods. Further, terms or symbols common to a trade, such as, in the wine and spirit trade, vine-leaves, grape-clusters, stars, or diamonds, do not form trade marks or parts of trade marks within the meaning of the more recent Act of 1875, and must not appear in representations of new marks. In those instances where such symbols or terms have been used prior to the passing of that Act, they must be disclaimed in the Statement on Application as being “terms” or “symbols,” as the case may be, “common to the trade concerned in the goods.” It is also noteworthy that the Act does not contemplate the registering of a series of trade marks which differ from each other only in respect of indications of quality or quantity ordinarily used in a trade. Protection for the whole of such a series may be obtained by the registration of *one* of the series, the description being so worded as to include a reference to the common elements in combination with which it is employed by the applicant. In the cotton trade, however, so extensive was the use of open or common marks, prior to the passing of the new Act, that special provision has been necessary to deal with the cases in question.

Accompanying every Application must be sent two representations of the mark, each on a separate half-sheet of foolscap, and they must be exactly similar. Such terms as “Registered,” “Copyright,” “Entered at Stationers’ Hall,” “To counterfeit this is forgery,” will not be registered, and must on no account appear on the representations. In addition to these phrases, the following devices will not be registered in connection with any *new* mark—that is to say, any mark adopted since the date of the passing of the Act of 1875—representations of the Queen, of any member of the Royal Family, of foreign sovereigns, of royal and national arms, crests, mottoes, the crown, national flags, arms of counties, cities, and boroughs, prize or exhibition medals; while the words “Trade mark,” “Patent,” “Warranted,” “Guaranteed,” and words implying a guarantee of the goods to which the mark refers, as “best,” “pure,” “genuine,” “excellent,” will not be recognised. The reason for this regulation is obvious. The “counterfeit presentment” of Her Majesty may fairly be considered the common property of any of her loyal subjects, and it would be gross injustice to allow one manufacturer or tradesman out of the thousands quite as devoted as he to our “sovereign lady” to secure the exclusive use of

a representation of the Queen’s head for business or any other purpose. Consequently the authorities very properly decline to register it as a new trade mark.

It is not a difficult matter to formulate a definition of a trade mark, but we can have no hesitation in adopting the *ipsissima verba* of the Trade Marks Registration Act, 1875. The 10th section of that Act defines a trade mark to consist of “a name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or a written signature or copy of a written signature of an individual or firm; or a distinctive device, mark, heading, label, or ticket. . . . And there may be added to any one or more of the said particulars any letters, words, or figures, or combination of letters, words, or figures”—subject, of course, to the exceptions to which we have already directed attention.

Before taking the requisite steps to register a trade mark, it would be advisable for the applicant to search the records at the Registry Office, to ascertain whether the proposed mark has or has not been previously used, or whether it may not dangerously correspond with one already registered. The fee for this “right of search” is one shilling per quarter of an hour—which is usually ample time for most inspections—and the investigation may be conducted either by the applicant personally or by the authorities at the office, to whom a copy of the mark and the fee must be remitted. As to fees, it would be as well to apply for details* to the Registrar, though it will be useful to observe that they will not be received in cash, but must take the form of a Post Office Order or, if they exceed £5, a cheque.

When the Registrar has satisfied himself that the application has in all respects been correctly made and certified to, the applicant will be required to furnish a wood block or electrotype of the trade mark, which must, of course, be an exact representation of it. This wood block will be used in connection with the advertisement of the mark in the *Trade Marks Journal*, which will not be charged for, provided the block does not exceed two inches in depth, additional space beyond the quantity allowed being charged for according to a fixed scale. This advertisement having been unchallenged, after the lapse of a certain time, the last stage of the registration will have been reached, and the applicant will be an applicant no longer, but be fully entitled to the prerogative which he has at length legally secured to himself. In the event of a claim being made for a mark which has already been registered, the owner of the registered mark, on seeing it advertised in the *Journal*, should send to the Registrar a Notice of Opposition (in which the opponent’s case must be duly set forth), accompanied by the prescribed fee of £2—a separate notice being required in respect of each mark opposed. On receipt of this notice, the Registrar will suspend the Registration, and transmit a copy of the notice to the applicant, who must deliver within three weeks a counter-statement of the grounds on which he relies

* The total fees for Registration amount to about £2 2s.

for his application. The opponent having furnished security as to such costs as may result from his action, and no objection having been taken to his security, he will be required to take the necessary steps to bring the matter before the Chancery Division of the High Court of Justice, which will decide after the usual procedure upon the *questio vexata*.

It is, however, gratifying to observe that the principle of arbitration is to a certain extent legally countenanced in the dispute; for the Registrar, on receiving notice from the parties in an opposition that

they wish to have a finding from him on certain matters of fact before taking the opinion of the Court on certain questions of law, and on payment of £1 each by the parties, is empowered to examine the facts alleged in the presence of both parties or their agents, and to state a case on which to obtain the opinion of the Court. For further details, or before taking any definite steps in registration, we recommend a personal visit of inquiry to the Trade Marks Registry Office, in Quality Court, Chancery Lane, London.

HUGH RAKER.



CHIT-CHAT ON DRESS.

BY OUR PARIS CORRESPONDENT.

FEEL inclined to open my February letter by giving you the particulars of a trousseau prepared for an English bride. The wedding-dress was of white Bengaline and satin, Bengaline being a rich, soft, corded silk—an improvement on Sicilienne, and in appearance recalling poplin.

A plaiting of satin bordered the skirt, which about the front was simply and gracefully draped with Bengaline,

but down the back had a robing of satin, horizontally gathered at intervals of two inches, and in sets of three, while down either side was a cascade of almost priceless old point. The bodice was a distinct jacket, with satin and lace introduced into the basque, high to the throat, the sleeves reaching to the wrist, a long spray of orange-blossom across the lace in front. The wreath—for wreaths are universally worn by brides now—was high over the face, made of nothing but



OUT-DOOR COSTUMES.