

Trade and Merchandise Marks Act, 1958 - Rules framed under section 110

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Act 43 of 1958

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Trade and Merchandise Marks Act, 1958 - Rules framed under section 110 Rules framed under Section 110 of the Trade and Merchandise Marks Act, 1958 (No. 43 of 1958) In exercise of the powers conferred by Section 110 of the Trade and Merchandise Marks Act, 1958 (No. 43 of 1958) the Punjab High Court has made the following rules :-

1. Definitions.

- In these Rules :-(a)'The Act' means the Trade and Merchandise Marks Act, 1958.(b)'The Registrar' means the Registrar of Trade Marks referred to in Section 4 of the Act and includes any officer appointed under Sub-section (2) of Section 4 of the Act to discharge any of the functions of the Registrar.(c)"The Deputy Registrar" means the Deputy Registrar (Judicial) of the Punjab High Court and includes any person performing the functions of Deputy Registrar (Judicial) for the time being.(d)"Judge" means a Judge of the Punjab High Court.(e)"Court" means Punjab High Court.

2. Title of application.

- All applications and appeals under this Act shall be instituted in the matter of the Act and in the matter of the Trade and Merchandise Marks to which they relate.

3. Mode of application.

- All applications and appeals under the Act shall be made by petition supported by an affidavit and shall be presented to the Deputy Registrar (Judicial).

4. Disposal of petition.

- The Deputy Registrar shall lay the petition before the Judge who may either admit the petition and direct notice thereof to be given to the opposite party or may reject it summarily or make such other order as the circumstances of the case may require.

5. Service on Registrar.

- Notice of all the applications or appeals admitted by the Court shall be sent to the Registrar who shall have a right to appear and be heard and shall appear if so directed by the Court.

6. Stay of pending suit or proceedings.

(a) If any application or appeal is made to the High Court, under the Act and any suit or other proceedings concerning the Trade and Merchandise Marks in question is pending before the High Court or any District Court, the High Court may stay such suit or proceeding until the disposal of the said application or appeal. Record of the case in Appeal. - (b) In all contested appeals from the decisions of the Registrar the petitioner and the respondent shall furnish to each other, within 2 weeks from the date of the filing of the affidavit in reply, a list of documents forming part of the record of the case before the Registrar on which they rely for the purpose of the hearing of the appeal. The petitioner shall then prepare a duly indexed compilation of the documents relied upon by either side and furnish a copy of the same to the Court and to the opposite party within thirty days of the receipt of the list of documents from the opposite party.

7. Reference under Section 107(2).

- Where the Registrar makes a Reference to the Court under Section 107(2) of the Act, he shall give notice of the same to the parties concerned. He shall also supply to the Deputy Registrar the postal addresses of all persons interested in the Reference. After the Reference is received, the Deputy Registrar shall fix a date for the hearing of the same and put it on the list of the Judge on such date for disposal. Fifteen days' notice of the day so fixed shall be given by the Deputy Registrar to the Registrar and to the parties concerned by sending the notice by registered post.

8. Procedure for withdrawal of application under section 109(7).

- Where under section 109(7) of the Act an applicant becomes entitled and intends to withdraw his application he shall give notice of the intention in writing to the Registrar and to the other parties, if any, to the appeal within one month after the leave referred to in that section has been obtained. He shall also give notice to the Deputy Registrar (Judicial) who shall thereupon forthwith place the appeal on the list for disposal.

9. Counter claim for notification of Registrar in a suit for infringement.

- A defendant in a suit for infringement filed in the High Court may in regard to any registered trade mark issue counter-claim for the rectification of the register and shall within the time limited for the delivery of the counter-claim serve the Registrar with the same, and the Registrar shall be entitled to take such part in the suit as he may think fit without delivering a defence or other pleading.

10. Copy of Judgment and order to be sent to the Registrar.

- A certified copy of every judgment and order made on any application, appeal or reference under the Act shall be sent by the Deputy Registrar to the Registrar.

11. Notice how to be given.

- Unless otherwise provided by these rules, when notice is required to be given to any party by the Act or by these rules, it shall be served on such party in the manner provided for the service of summons in a suit.

12. Affidavits as evidence.

- Affidavits shall be treated as evidence of the facts affirmed in them.

13. Application of the Code of Civil Procedure and Rules and Forms of the Court.

- In cases not provided for in the foregoing Rules, the provisions of the Code of Civil Procedure, 1908 and, the Rules and Forms of the Court, shall apply mutatis mutandis to the proceedings under the Act: Provided that it shall not be necessary for the Court to frame issues and the evidence may be taken in the form of affidavits where the Judge so directs.

14. Table of Fees applicable.

- Process Fees shall be charged according to the Table of Fees for the High Court given in Chapter 5-B, High Court Rules and Orders, Volume IV.

15. Disposal of cases.

- Applications relating to infringement of trade marks and passing of actions under the Act and all references, appeals, etc., shall be brought to hearing as early as may be practicable. (High Court Notification dated the 12th January, 1963, published in the Punjab Government Gazette, Legislative Supplement, Part III, dated the 25th January, 1963, and Delhi Gazette, dated 7th February, 1963, Part II, Section I).