

CHAPTER XLV

RULE UNDER THE TRADE AND MERCHANDISE MARKS ACT, 1958 (ACT No. 43 OF 1958)

824. Definitions – In the rules contained in this Chamber:-

- (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 when discharging the functions of the Registrar in pursuance of sub-section (2) of section of 4 of the Act.

825. Title of applications and appeals – All applications and appeals under the Act shall be intituled in the matter of the Act and in the matter of the Trade Mark.

826. Mode of application – All applications and appeals from orders of the Registrar under the Act shall be made my petition and shall be presented to the Judge in Chambers.

827. Disposal by Judge in Chambers – The Judge in Chambers may either accept the petition and direct notice therof to be given to the opposite party or may reject it summarily or may make such order as the circumstances of the case may require.

828. Service on Registrar – All applications to the Court whether by way of appeals or otherwise shall be served on the Registrar who shall have a right to appear and be heard and shall appear if so directed by the Court or the Judge in Chambers.

829. Record of the case in Appeal – In all contested appeals from the decisions of the Registrar the petitioner and the respondent shall furnish to each other within two 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 appeal. The petitioner shall prepare a duly indexed compilation of the documents relied upon by both sides and furnish a copy thereof to the Court and to the other side.

830. Reference under section 107(2) – Where the Registrar makes a reference to the High Court under section 107(2) of the Act, he shall forward the same to the Prothonotary and Senior Master and shall give notice of the fact to the parties concerned. He shall furnish copies of the reference to such parties. He shall also supply to the Prothonotary and Senior Master the postal addresses of all persons concerned in the reference. After the reference is received, the Prothonotary and Senior Master shall fix a date for the hearing of the same and shall put it on the board of the Judge in Chambers on such date for disposal. Seven days' notice of the day so fixed shall be given by the Prothonotary and Senior Master to the Registrar and to the parties concerned by sending the notice by registered post.

831. Appeals under sections 108(3) and 109(5) of the Act – Rules relating to appeals contained in Part II, Chapter LII shall, with any necessary modifications, apply to all appeals under section 108(3) and section 109(5) of the Act.

832. Procedure for withdrawal of application under section 109(7) – Where under section 109(7) of the Act, an applicant for registration intends to withdraw his application, he shall give notice thereof in writing to the Registrar and to 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 Prothonotary and Senior Master who shall thereupon forthwith place the appeal on the board of the Judge in Chambers for disposal.

833. Notice. How to be given – Unless otherwise provided by these rules or unless otherwise ordered, 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 writ of summons in a suit.

834. Copy of judgment and order to be sent to the Registrar – A certified copy of every judgment and order made on any application or appeal under the Act shall be sent by the Prothonotary and Senior Master to the Registrar

835. Code of Civil Procedure and High Court Original side Rules to apply – In cases not provided for in the rules contained in this chapter, the provisions of the Code of Civil Procedure, 1908, and the rules of the Court in suits and matters on the Original Side of the Court shall, with any necessary modifications, apply to all proceedings under the Act. In case of inconsistency modifications, apply to all proceedings under the Act. In case of inconsistency between the provision of the Code of Civil Procedure and the rules of the Court referred to herein, the said rules of the Court shall prevail.

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