

Dr. HO KAI addressed the Council.

Mr. HEWETT addressed the Council.

ADJOURNMENT.—The Council then adjourned until Thursday, the 27th September, 1906.

M. NATHAN,  
Governor.

Read and confirmed this 27th day of September, 1906.

A. G. M. FLETCHER,  
Clerk of Councils.

No. 820.—The following Bills were read a first time at a Meeting of the Council held on the 27th September, 1906:—

A BILL

ENTITLED

An Ordinance to consolidate and amend the Law relating to Trade Marks.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Trade Marks Ordinance, 1906.

*Definitions.*

2. In and for the purposes of this Ordinance and the Rules made thereunder (unless the context otherwise requires):—

A “mark” shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

A “trade mark” shall mean a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale:

A “registrable trade mark” shall mean a trade mark which is capable of registration under the provisions of this Ordinance:

“The Register” shall mean the register of trade marks kept under the provisions of this Ordinance:

A “registered trade mark” shall mean a trade mark which is actually upon the register:

“Prescribed” shall mean prescribed by this Ordinance or the Rules thereunder.

“Agent” shall mean an agent duly authorised to the satisfaction of the Registrar.

*Register of Trade Marks.*

3. There shall be kept at the Office of the Registrar of the Supreme Court for the purposes of this Ordinance a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the dates of their registration, the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations and such other matters, relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Registrar of the Supreme Court, who is in this Ordinance referred to as the Registrar.

4. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Incorporation of existing register.

5. The register of trade marks existing at the date of the commencement of this Ordinance shall be incorporated with and form part of the register. Subject to the provisions of section thirty-eight of this Ordinance the validity of the original entry of any trade mark upon the register so incorporated shall be determined in accordance with the Ordinance in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Ordinance.

Inspection of and extract from register.

6. The register kept under this Ordinance shall during office hours be open to the inspection of the public, subject to such regulations as may be prescribed, and certified copies, sealed with the seal of the Office of the Registrar of the Supreme Court, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

*Registrable Trade Marks.*

Trade mark must be for particular goods.

7. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable trade marks.

8. A registrable trade mark must contain or consist of at least one of the following essential particulars:—

- (1) The name of a company, individual or firm represented in a special or particular manner ;
- (2) The signature of the applicant for registration or some predecessor in his business ;
- (3) An invented word or invented words ;
- (4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname ;
- (5) Any other distinctive mark ; but a name, signature, or word or words, other than such as fall within the descriptions in the above (1), (2), (3) and (4), shall not, except by order of the Governor, be deemed a distinctive mark.

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the thirteenth day of August One thousand eight hundred and seventy-five, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration, shall be registrable as a trade mark under this Ordinance, if it is already registered in England.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the Governor may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

9. The Registrar shall refuse to accept any application upon which the following appear:—

- (a) The words "Patent", "Patented", or "By Royal Letters Patent", "Registered", "Registered Design", "Copyright", "Entered at Stationers' Hall", "To counterfeit this is forgery", or words to like effect.

- (b) Representations of Their Majesties or of any member of the Royal Family.
- (c) Pictorial representations of goods to which the marks are to be applied.
- (d) Names of persons in the possessive case in combination with the names of goods.

10.—(1) Representations of the Royal Arms or Royal crests, or arms or crests so nearly resembling them so as to lead to mistake, or of British Royal crowns, or of the British national flags, or the word "Royal" or any other words, letters or devices, calculated to lead persons to think that the applicant has Royal patronage or authorisation, may not appear on trade marks, the registration of which is applied for. Provided always that nothing contained in this rule shall preclude the Registrar from allowing the registration as an "old mark", that is as a mark which was used by the applicant or his predecessors in business before the 13th August, 1875, of any mark which was capable of being so registered before the commencement of this Ordinance, provided that such mark is registered in England.

(2) Where representations of the arms of a foreign State or place appear on a mark the Registrar may call for such justification as he may deem necessary for their use.

(3) Where a representation of the arms or emblems of any city, borough, town, place, society, body corporate, or institution appears on a mark, the applicant shall, if so required, furnish the Registrar with a consent from such official as the Registrar may consider entitled to give consent to the use of such arms or emblems.

(4) Where the names or representations of living persons appear on a trade mark, the Registrar shall, if he so require, be furnished with consents from such persons before proceeding to register the mark. In the case of persons recently dead the Registrar may call for consents from their legal representatives before proceeding with registration of a trade mark on which their names or representations appear.

11. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by the Governor or the Registrar when deciding on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

12. It shall not be lawful for the Registrar to register as a trade mark or part of a trade mark any matter which so resembles a mark or part of a mark already registered as in his opinion to be calculated to deceive, or would be contrary to law or morality, or any scandalous design.

*Registration of Trade Marks.*

13.—(1) Any person claiming to be the proprietor of a trade mark, either solely or jointly with others, may apply in writing to the Registrar for leave to enter the same in the Register.

(2) Such application shall be addressed to the Registrar in the Form 1 or in the Form 1 (a) in the Schedule hereto and shall be accompanied by three facsimiles or specimens of the trade mark sought to be registered and also by a statutory declaration in the Form 2 in the Schedule hereto or an affidavit to the same effect.

(3) The applicant shall state in his application the essential particulars of the trade mark and shall disclaim in his application any right to the exclusive use of any added matter, in order that the public generally may understand what the applicant's rights, if his mark is registered, will be. A copy of such statement and disclaimer shall be entered on the register.

(4) If application for registration of a trade mark be made by a firm or partnership it may be signed in the name or for and on behalf of the firm or partnership by any one or more members thereof.

If the application be made by a body corporate it may be signed by a Director or by the Secretary or other principal officer of such body corporate.

Any application may be signed by an Agent.

(5) Applications for the registration of the same trade mark in different classes shall be treated as separate and distinct applications, and in all cases where a trade mark has been registered prior to the coming into operation of this Ordinance for goods in more than one class the registration shall henceforth for the purpose of fees and otherwise be deemed to have been made on separate and distinct applications in respect of the goods included in each class.

(6) When a trade mark contains a word or words other than in Roman characters or in a language other than English the Registrar may ask for an exact transliteration or translation thereof, and, if he so requires, such transliteration or translation shall be indorsed on the application, such indorsement being signed by the applicant or his agent.

(7) The Registrar may at any time, whether before or after acceptance of the application, correct any error in or in connexion with the application, or may permit the applicant to amend his application upon such terms as the Registrar may think fit.

**14.—**(1) The Registrar may refuse any application or may accept it absolutely or subject to conditions, amendments, or modifications.

(2) The Registrar shall not permit registration, in respect of the same goods or description of goods, of a trade mark identical with one belonging to a different proprietor which is already on the register or having such resemblance to a trade mark already on the register, with respect to such goods or description of goods, as to be calculated in his opinion to deceive: Provided always that the Registrar may permit registration of not more than three identical or nearly identical trade marks, all of which have respectively been used as trade marks by the respective applicants or their predecessors in business prior to the 31st August, 1875, if such trade marks are registered in England.

**15.—**(1) An applicant who desires to question by way of appeal any decision given by the Registrar under the provisions of the preceding section may, within a period of three months from the date of such decision, apply in writing to the Registrar to set forth and sign a statement of the grounds on which his decision was given.

(2) The Registrar shall send a copy of such statement to the applicant, and within a period of two months after the receipt of such statement, unless the Registrar shall extend the time, the applicant shall send to the Registrar a counter-statement in writing in support of his application, and if he does not do so he shall be deemed to have abandoned his application.

(3) Upon receipt of such counter-statement the Registrar shall submit the matter to the Governor who may make such order regarding the application as he shall deem fit.

Advertisement of application.

**16.** When an application for registration of a trade mark has been accepted by the Registrar whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the applicant or his agent to advertise the application, as accepted, once a month in *The Gazette* and in one or more of the Hongkong daily papers for a period of three months. Such advertisement shall be in the Form 3 in the Schedule hereto.

17.—(1) Any person may, within a period not exceeding three months from the date of the first advertisement of an application for registration of a trade mark, give notice to the Registrar of opposition to such registration. Opposition to registration.

(2) Such notice shall be given in writing in duplicate and shall include a statement of the grounds of opposition. It shall be signed by the opponent or his agent and shall contain an address for service in Hongkong.

(3) The Registrar shall send a copy of such notice to the applicant and within a period of two months after the receipt of such notice, unless the Registrar shall extend the time, the applicant shall send to the Registrar a counter-statement, by way of statutory declaration, in duplicate, of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement the Registrar shall deliver a copy thereof to the person giving notice of opposition, and within fourteen days from such delivery, unless the Registrar shall extend the time, the opponent or his agent shall forward to the Registrar his evidence by way of statutory declaration in duplicate in reply. Such evidence shall be confined to matters strictly in reply.

(5) No further evidence shall be delivered on either side, except by leave of the Registrar, upon the written consent of the parties duly notified to him or by special leave of the Registrar given on an application made to him, of which application due notice shall be given by the party so applying to the opposite party, who shall be entitled to oppose the application.

(6) On completion of the evidence and on payment of the prescribed fee the matter shall be referred to the Attorney General who shall consider the evidence and submit his report to the Governor. If, however, any party desires to appear before the Attorney General either in person or by Solicitor or Counsel, the Attorney General shall appoint a time for the hearing and shall give the parties at least seven days' notice of such appointment.

(7) After receiving the Attorney General's report the Governor shall decide the matter and notify his decision, through the Registrar, to the parties. Such decision shall be final.

18. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or, having been opposed, the opposition has been decided in favour of the applicant, the Registrar shall register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Ordinance to be the date of registration. Date of registration.

19. In the case of the death of any applicant for a trade mark after the date of his application and before the trade mark applied for has been entered on the register, the Registrar, after the expiration of the prescribed period of advertisement, may, on being satisfied of the applicant's death, cause to be entered on the register, in place of the name of such deceased applicant, the name, address and description of the person owning the goodwill of the business, on such ownership being proved to the satisfaction of the Registrar.

20.—(1) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the Form 4 in the Schedule hereto of the registration of such trade mark under the hand of the Registrar and sealed with the seal of the Office of the Registrar of the Supreme Court. Certificate of registration.

(2) Notice of the registration of a trade mark under this Ordinance shall be published by the Registrar in *The Gazette* as soon as may be after such registration.

Non-com-  
pletion of  
registration.

21. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing by registered letter, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

*Assignment.*

Assignment  
and trans-  
mission of  
trade marks.

22. A trade mark when registered shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connexion with any goods for which it is registered together with the goodwill of the business therein in such goods.

23.—(1) When a person becomes entitled to a registered trade mark by assignment, transmission or other operation of law a request for the entry of his name in the register as proprietor of the trade mark should be addressed to the Registrar. Such request shall in the case of an individual be made and signed by the claimant and in the case of a firm or partnership by one or more members of such firm or partnership and in the case of a body corporate shall be signed by a Director or by the Secretary or other principal officer of such body corporate.

(2) Every such request shall state the name, address, and description of the person claiming to be entitled to the trade mark and the particulars of the assignment, transmission, or other operation of law, by virtue of which he requires to be entered in the register as proprietor, so as to show the manner in which, and the person or persons to whom, the trade mark has been assigned or transmitted, and so as to show further that it has been so assigned or transmitted in connexion with the goodwill of the business concerned in the particular goods or classes of goods for which the trade mark has been registered.

(3) Every such request shall be accompanied by a statutory declaration to be thereunder written, verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the trade mark as claimed by such request, and further every such request shall be accompanied by the original Deed of Assignment or by a certified copy of the same.

(4) The person claiming to be entitled to the trade mark shall furnish to the Registrar such other proof of title and of the existence and ownership of such goodwill as aforesaid as he may require for his satisfaction. And the Registrar after registering any assignment or change of interest of a trade mark shall publish notice of such registration in *The Gazette*.

Assignment  
of trade  
marks on  
dissolution  
of partner-  
ship.

24. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provision of this Ordinance as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest.

*Associated Trade Marks.*

25. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as in the opinion of the Registrar to be calculated to deceive or cause confusion if used by a person other than the applicant, the Registrar may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Associated trade marks.

26. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately, he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Ordinance be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Combined trade marks.

27. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

Series of trade marks.

- (a.) statements of the goods for which they are respectively used or proposed to be used; or
- (b.) statements of number, price, quality, or names of places; or
- (c.) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
- (d.) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

28. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that, where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the Supreme Court may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

Assignment and user of associated trade marks.

*Renewal of Registration.*

29. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Ordinance.

Duration of registration.

30. The Registrar shall, on application made in writing by the registered proprietor of a trade mark within a period of six months before the expiration of the last registration, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration".

Renewal of registration.

Procedure on expiry of period of registration. **31.** Six months before the expiration of the last registration of a trade mark, the Registrar shall send notice by registered letter to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if, at the expiration of the existing registration, such conditions have not been duly complied with, the Registrar may remove such trade mark from the register.

**32.** Where a trade mark has been removed from the register on account of non-compliance with any of the conditions of renewal, the Governor may, if satisfied that it is just so to do, restore such trade mark to the register on payment of double the amount of the prescribed fee for renewal.

Status of unrenewed trade mark. **33.** Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

*Correction and Rectification of the Register.*

Correction of register. **34.** The Registrar may, on request made in writing by the registered proprietor or by some person entitled by law to act in his name—

- (1) Correct any error in the name or address of the registered proprietor of a trade mark; or
- (2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or
- (3) Cancel the entry of a trade mark on the register; or
- (4) Strike out any goods or classes of goods from those for which a trade mark is registered; or
- (5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Registration of assignments, etc. **35.** Subject to the provisions of this Ordinance where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the prescribed manner and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark.

Alteration of registered trade mark. **36.** The registered proprietor of any trade mark may apply in writing to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit. If leave be granted, the trade mark as altered shall be forthwith advertised at least once both in *The Gazette* and in one or more of the Hongkong daily newspapers.

Rectification of register. **37.** Subject to the provisions of this Ordinance—

- (1) The Governor may, on the application in writing of any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any

entry in the register, make such order for making, expunging, or varying such entry, as he may think fit.

- (2) The Governor may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connexion with the rectification of the register.
- (3) Any act or decision of the Registrar done or given under any provision of this Ordinance shall be subject to revision by the Governor.

38. No trade mark which is upon the register at the commencement of this Ordinance and which under this Ordinance is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Ordinance in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Ordinance to which he would not have been subject under the Ordinance then in force.

Trade marks registered under previous Ordinances.

39. A registered trade mark may, on the application to the Governor-in-Council of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connexion with such goods, and that there has in fact been no *bona fide* user of the same in connexion therewith, or on the ground that there has been no *bona fide* user of such trade mark in connexion with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

Non-user of trade mark.

40. It shall be lawful for the Governor-in-Council at any time and on such grounds as he shall think sufficient to cancel the registration of any trade mark on the register.

Power to cancel registration.

*Effect of Registration.*

41. Subject to the provisions of this Ordinance :—

Powers of registered proprietor.

- (1) The person for the time being entered in the Register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same and to give effectual receipts for any consideration for such assignment.
- (2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other property.

42. Subject to any limitations and conditions entered upon the register the registration of a person as proprietor of a trade mark shall give to such person the exclusive right to the use of such trade mark upon or in connexion with the goods in respect of which it is registered, so long as such trade mark remains on the register. Provided always, that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Rights of proprietor of trade mark.

43. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark not registered in this Colony.

Unregistered trade mark.

Infringe-  
ment. 44. In an action for the infringement of a trade mark the Supreme Court shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connexion with such goods by other persons.

User of name,  
address, or  
description  
of goods. 45. No registration under this Ordinance shall interfere with any *bona fide* use by a person of his own name or place of business, or the use by any person of any *bona fide* description of the character or quality of his goods.

"Passing off"  
action. 46. Nothing in this Ordinance contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

*Evidence.*

Sealed copies  
to be evi-  
dence. 47. Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar and sealed with the seal of the Office of the Registrar of the Supreme Court, shall be admitted in evidence in all courts, and in all proceedings, without further proof or production of the originals.

Certificate  
of Registrar  
to be evi-  
dence. 48. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Ordinance, or rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

*Powers of Agents.*

Recognition  
of agents. 49. Where by this Ordinance any act has to be done by or to any person in connexion with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this Ordinance be done by or to an agent of such party duly authorised in the prescribed manner.

*Rules.*

Power of  
Governor-in-  
Council to  
make rules. 50.—(1) Subject to the provisions of this Ordinance the Governor-in-Council may from time to time make such rules, prescribe such forms and generally do such things as he thinks expedient,—

- (a) For regulating the practice under this Ordinance;
- (b) For classifying goods for the purposes of registration of trade marks;
- (c) For making or requiring duplicates of trade marks and other documents;
- (d) For securing and regulating the publishing and selling or distributing in such manner as the Governor-in-Council thinks fit, of copies of trade mark and other documents;
- (e) Generally, for regulating the business of the office in relation to trade marks and all things by this Ordinance placed under the direction or control of the Registrar.

(2) Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Ordinance.

(3) Before making any rules under this section the Governor-in-Council shall publish notice of his intention to make the rules and of the place where copies of the draft rules may be obtained in such manner as the Governor-in-Council considers most expedient, so as to enable persons affected to make representations to the Governor-in-Council before the rules are finally settled.

(4) Any rules made in pursuance of this section shall be forthwith published in *The Gazette*.

*Fees.*

Fees. 51. There shall be paid in respect of applications and registration and other matters under this Ordinance such fees as may be prescribed by the Governor-in-Council.

*Special Trade Marks.*

52. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connexion with such goods, the Governor-in-Council may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connexion with such examination and certifying. When so registered such trade marks shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor-in-Council.

Standardization, &c., trade marks.

*Offences.*

53. If any person makes or causes to be made a false entry in the register kept under this Ordinance or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Falsification of entries in register.

54.—(1) Any person who represents a trade mark as registered which is not so shall be liable for every offence on summary conviction to a fine not exceeding fifty dollars.

Penalty on falsely representing a trade mark as registered.

(2) A person shall be deemed, for the purposes of this Ordinance, to represent that a trade mark is registered, if he uses in connexion with the trade mark the word "registered", or any words expressing or implying that registration has been obtained for the trade mark.

*Repeal of Previous Enactment.*

55. The Trade Marks Ordinance 1898 (Ordinance No. 6 of 1898) is hereby repealed.

Repeal of Ordinance 6 of 1898.

**Form 1.**

THE TRADE MARKS ORDINANCE, 1906.  
Application for Registration of Trade Mark.

Section 13.

Representation to be fixed within this square.  
Three facsimiles corresponding exactly in all respects with the representation affixed to this form to be sent in on separate sheets.  
Representations of a larger size may be folded, but must then be mounted upon linen and affixed hereto.

Application is hereby made for registration of the accompanying Trade Mark in Class \_\_\_\_\_, in respect of (a) \_\_\_\_\_ in the name of (b) \_\_\_\_\_

of (address and description) \_\_\_\_\_ trading as \_\_\_\_\_ who claims to be the proprietor thereof (c).

The essential particulars of the Trade Mark are the following \_\_\_\_\_ and \_\_\_\_\_ disclaim any right to the exclusive use of the added matter. \_\_\_\_\_ do not claim the registration of this Trade Mark under the special provisions of paragraph 5 of Section 8 of the Trade Marks Ordinance, 1906, in regard to names, signatures or words.

(Signed)

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

To the Registrar,  
The Supreme Court, Hongkong.

- (a.) Only goods contained in one and the same class should be set out here. A separate application form is required for each separate class.
- (b.) Here insert legibly the fully name, address and description of the individual, firm or company. Add trading style (if any).
- (c.) Alter to "claim to be the proprietors thereof" in the case of a firm or company.

Section 13.

## Form 1(a).

## THE TRADE MARKS ORDINANCE, 1906.

Application for Registration of Trade Mark under Paragraph 5 of Section 8.

Representation to be fixed within this square.  
Three facsimiles corresponding exactly in all respects with the representation affixed to this form to be sent in on separate sheets.  
Representations of a larger size may be folded, but must then be mounted upon linen and affixed hereto.

Application is hereby made for registration of the accompanying Trade Mark in Class \_\_\_\_\_, in respect of (a) \_\_\_\_\_ in the name of (b) \_\_\_\_\_

of (address and description)

trading as \_\_\_\_\_ who claims to be the proprietor thereof (c) and desires an order of the Governor directing registration of the same.

The essential particulars of the Trade Mark are the following

and \_\_\_\_\_ disclaim any right to the exclusive use of the added matter.

(Signed)

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

To the Registrar,

The Supreme Court, Hongkong.

- (a.) Only goods contained in one and the same class should be set out here. A separate application form is required for each separate class.
- (b.) Here insert legibly the full name, address and description of the individual, firm or company. Add trading style (if any).
- (c.) Alter to "claim to be the proprietors thereof" in the case of a firm or company.

Section 13.

## Form 2.

## THE TRADE MARKS ORDINANCE, 1906.

I, *A. B.* of \_\_\_\_\_

do solemnly and sincerely declare as follows:—

1. To the best of my knowledge and belief I (1) have the right to the exclusive use of the Trade Mark hereunto annexed and referred to in my application dated the day of \_\_\_\_\_ 19 \_\_\_\_\_.

2. Such Trade Mark has been used by (me) or (by my firm of) (or as the case may be) in respect of the goods mentioned in my application since (2) \_\_\_\_\_ (or)

2. (a) \* Such Trade Mark has not, hitherto, been used by (me) or (by my firm of) (or as the case may be) in respect of the goods mentioned in my application, but it is (my) or (their) intention so to use it forthwith.

3. To the best of my knowledge and belief the said Trade Mark has (3) been registered (4) (in the name of) (5) \_\_\_\_\_ and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1835. (6).

Declared at \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ *A. B.*

Before me,

NOTE.—When the declaration is made by a person who does not understand the English language, the requirements of The Statutory Declaration Ordinance 1893 must be complied with, where the declaration is made in Hongkong, and if made elsewhere a proper clause must be added.

(1.) Insert: *I, solely*, or *I jointly with A. B.*, or *the—company* as the case may be.

(2.) Insert time when use commenced.

\* 2 or 2(a) to be used according to the circumstances.

(3.) If not, insert the word "not".

(4.) Here state country in which registered.

(5.) Add the name if registered, and for what classes of goods.

(6.) This paragraph is not required when the declaration is made neither in the United Kingdom nor in Hongkong.

Form 3.

Section 16.

Form of Advertisement.

THE TRADE MARKS ORDINANCE, 1906.

Application for Registration of Trade Mark.

Notice is hereby given that (a) has on the day of 19 applied for the registration, in Hongkong, in the Register of Trade Marks, of the following Trade Mark (b)

in the name of (c)

who claims to be the sole proprietor thereof. (or as the case may be)

The Trade Mark has been used by the Applicant, [or, if not yet used, substitute the words following:—

The Trade Mark is intended to be used by the Applicant, forthwith,] in respect of the following goods (d) in Class (e).

(f). A facsimile of the Trade Mark can be seen at the office of the Registrar of the Supreme Court (and also at (g)).

Dated the day of 19

Signature of Applicant or of his agent duly authorised (adding) on behalf of (Applicant) (as the case may be).

- (a.) Insert name, address and calling of Applicant.
(b.) Here describe mark or insert facsimile.
(c.) Insert name.
(d.) Insert description of goods.
(e.) Here insert number of class as set out in the Rules.
(f.) This must be added where facsimile is not in the advertisement.
(g.) Add other place, if any.

Form 4.

Section 20 (1).

THE TRADE MARKS ORDINANCE, 1906.

Certificate of Registration.

To

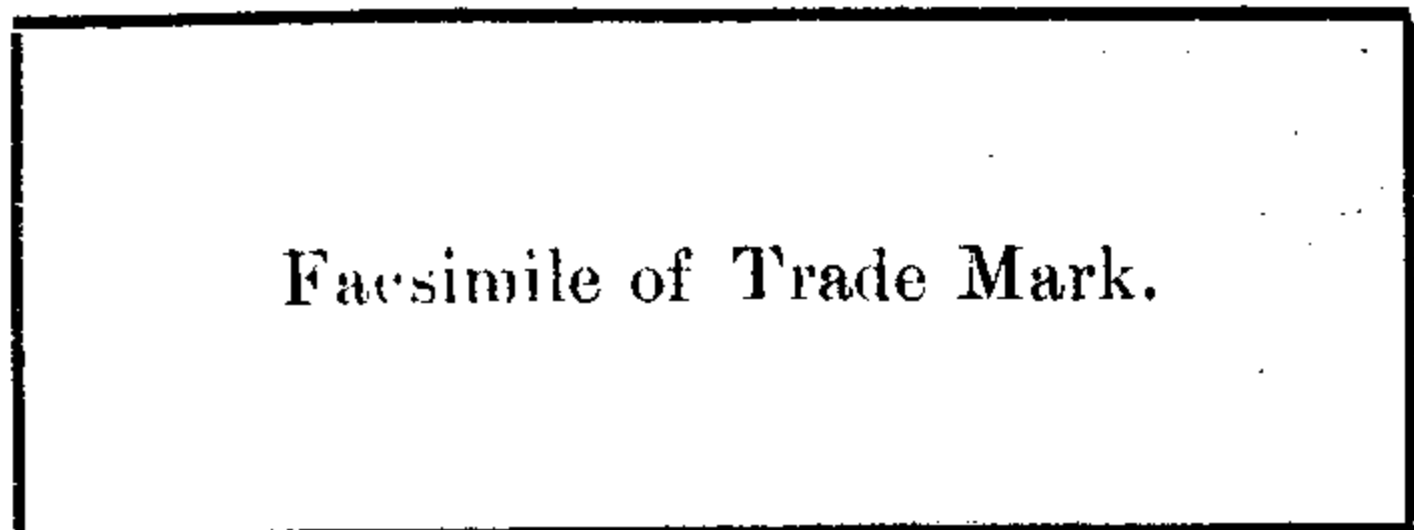
I hereby certify that the Trade Mark, a facsimile of which is annexed, was registered in your name on the day of 19, in Class, in respect of the following goods (here specify goods).

Witness my hand this day of 19



Registrar.

The Supreme Court, Hongkong.



## A BILL

ENTITLED

## • An Ordinance to amend the Law of Evidence.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Short title. **1.** This Ordinance may be cited as The Criminal Evidence Ordinance, 1906.

Competency of witnesses in criminal cases. (61 and 62 Vict. c. 36 s. 1). **2.** Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person. Provided as follows:—

- (a) A person so charged shall not be called as a witness in pursuance of this Ordinance except upon his own application:
- (b) The failure of any person charged with an offence or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution:
- (c) The wife or husband of the person charged shall not, save as in this Ordinance mentioned, be called as a witness in pursuance of this Ordinance except upon the application of the person so charged:
- (d) Nothing in this Ordinance shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage:
- (e) A person charged and being a witness in pursuance of this Ordinance may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged:
- (f) A person charged and called as a witness in pursuance of this Ordinance shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless:
  - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged: or
  - (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or
  - (iii) he has given evidence against any other person charged with the same offence:
- (g) Every person called as a witness in pursuance of this Ordinance shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

Evidence of person charged. (Ibid s. 2). **3.** Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

4. In cases where the right of reply depends upon the question whether evidence has been called for the defence the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply. Right of reply. (Ibid s. 3).

5. (1) The wife or husband of a person charged with an offence under any enactment mentioned in the Schedule to this Ordinance may be called as a witness either for the prosecution or defence and without the consent of the person charged. Calling of wife or husband in certain cases. (Ibid s. 4).

(2) Nothing in this Ordinance shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

6. This Ordinance shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Ordinance. Provision as to previous Ordinances. (Ibid s. 6).

SCHEDULE.

Enactments referred to. [s. 5 (1).]

No. of Ordinance.	Short Title.	Enactments referred to.
(1) 4 of 1897.	The Protection of Women and Girls Ordinance, 1897.	The whole Ordinance.
(2) 10 of 1905.	The Married Women (Maintenance in case of Desertion) Ordinance, 1905.	Do.
(3) 5 of 1906.	The Married Women's Property Ordinance, 1906.	Sec. 16 and sec. 21.

*Objects and Reasons.*

The object of this Ordinance is to introduce into the law of this Colony relating to evidence in Criminal Cases the amendment made in the law of England by the Imperial enactment 61 & 62 Victoria Cap. 36, by which in all Criminal proceedings an accused person and the wife or husband, as the case may be, of such person are made competent witnesses for the defence at every stage of the proceedings whether the accused is charged solely or jointly with some other person.

The wife or husband can be called only on the application of the accused, except in the case of offences against the Ordinances specified in the Schedule: in cases coming under those ordinances the husband or wife of an accused can be called either for the prosecution or for the defence without the consent of such accused.

HENRY S. BERKELEY,  
*Attorney General.*

**No. 821.**—His Excellency the Governor has given his assent, in the name and on behalf of His Majesty the KING, to the following Ordinances passed by the Legislative Council:—

Ordinance No. 9 of 1906.—An Ordinance to amend the Lunacy Ordinance, 1906.

Ordinance No. 10 of 1906.—An Ordinance to amend the New Territories Land Ordinance, 1905.

Ordinance No. 11 of 1906.—An Ordinance to transfer to the General Revenue certain sums forming part of the Praya Reclamation Fund.

Ordinance No. 12 of 1906.—An Ordinance to amend the Regulation of Chinese Ordinance, 1888.

Ordinance No. 13 of 1906.—An Ordinance to apply a sum not exceeding Five million two hundred and two thousand one hundred and thirty-five Dollars to the Public Service of the year 1907.