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TRADE MARKS ORDINANCE.

WHEREAS provision was made by Public Notice dated 30th September 1921 for the provisional registration of certain Trade Marks in Palestine, and whereas it is desirable to provide for the registration and protection of Trade marks generally and for that purpose to replace the existing Ottoman Law of Trade Marks by provisions in accordance with requirements of the International Convention relating Industrial Property.

Be it enacted by the High Commissioner after consultation with the Advisory Council as follows :—

1. In this Ordinance the term "Trade Mark" shall mean a mark 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.

2. There shall be kept for the purposes of this Ordinance, a book called the Register of Trade Marks with the names and

addresses of their proprietors, notifications of assignment, and transmissions, disclaimers, conditions, limitations and such other matters relating to the trade marks as may from time to time be prescribed. The Register shall be kept at the Law Courts, Jerusalem or at such other place as may be appointed by the High Commissioner by Notice published in the Official Gazette. The Register shall be under control and management of a Registrar appointed by the High Commissioner.

3. The Register kept under this Ordinance shall at all convenient times be open to inspection by the public subject to such regulations as may be prescribed, and certified copies of any entry in such Register shall be given to any persons requiring the same on payment of the prescribed fee.

4. A person desiring to have the exclusive use of a trade mark in order to distinguish goods of his own production, manufacture, working, selection, certification or which he deals with or offers for sale may apply for registration in accordance with the provisions of this Ordinance.

Trade Marks capable of registration must consist of characters, devices or marks or combinations thereof which have a distinctive character.

Trade Marks may be registered with limitations as to colours to be used thereon.

A Trade Mark must be registered in respect of particular goods or classes of goods.

5. The following are not capable of registration as Trade Marks :—

(1) Public armorial bearings, crests, insignia or decorations of Palestine or of the Mandatory States or Foreign States or nations unless authorised by the competent authorities;

(2) Official Hall Marks or signs indicating an official warranty; unless put forward or authorised by the competent authority owing or controlling the mark.

(3) Marks which are identical with or similar to the National Flag, the Military or Naval flags of Palestine or commendatory medals or badges, or national military or naval flags of the Mandatory States or of Foreign Countries;

(4) Marks which are or may be injurious to public order or morality or which are calculated to deceive the public; or marks which encourage unfair trade competition, or contain false indications of origin;

(5) Marks consisting of figures, letters or words which are in common use in trade to distinguish or describe goods or classes of goods or which are directly descriptive or their charac-

ter and quality; words whose ordinary signification is geographical;

(6) Marks which are identical with or similar to the sign of a Red Cross or Red Crescent on a white ground or the designation or characters of the "Red Cross" or the "Geneva Cross";

(7) Marks identical with or similar to emblems of exclusively religious significance;

(8) Marks which are or contain the portrait, name or the trade name of a person, or the name of a body corporate or of an association, unless the consent of the person or persons concerned has been obtained;

(9) A Mark identical with one belonging to a different proprietor which is already on the register in respect of such goods or description of goods, or so nearly resembling such trade mark as to be calculated to deceive; provided nevertheless that this provision shall not apply to an application made within one year from the date at which this Ordinance comes into force for the registration of any trade mark registered in Turkey prior to the 11th day of November 1918 in accordance with the provisions of the Ottoman Law then in force and which at that date was still so registered.

6. The Registrar shall equally have power to register under this Ordinance trade marks belonging to associations the existence of which is not contrary to the law of their country of origin, even if such associations do not possess an industrial or commercial establishment.

Trade Marks registered under the provisions of the Public Notice No. 136 of the 30th day of September 1919, shall from the date on which this Ordinance comes into force, be deemed to be registered only under this Ordinance and the date of registration of such marks shall for the purpose of this Ordinance be deemed to be the date of registration under the same Public Notice.

7. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) The Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose, subject always to the provisions of this Ordinance.

Any refusal by the Registrar to register a mark shall

be subject to appeal to the Court of Appeal.

8. When an application for registration of a Trade Mark has been accepted, whether absolutely or subject to conditions and limitations, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions and limitations subject to which the application has been accepted.

9. (1) Any person may, within six months from the date of an application for the registration of a trade mark, file with the Chief Clerk of the Court of Appeal a notice of opposition to such registration.

Such notice shall be given in writing in the prescribed manner and shall include a statement of the grounds of opposition.

(2) Copies of the notice of opposition shall be lodged with the Registrar and served upon the applicant for registration.

(3) The filing and service of the notice of opposition shall constitute the commencement of proceedings before the Court of Appeal for the determination of the validity of the opposition. The Court may reject or accept the opposition absolutely or may direct that registration shall only be allowed subject to such conditions, amendments, modifications, or limitations as to mode or place of user as under the circumstances it may think fit.

(4) A certified copy of the judgment shall be lodged with the Registrar by the successful party.

10. i. If the time for opposition has elapsed without any person opposing or after an opposition has been decided in favour of the applicant the Registrar shall at the instance of the applicant register the mark. The mark when registered shall be registered as on the date of the application and such date shall be given for the purposes of this Ordinance to be the date of Registration.

ii. On the registration of a Trade Mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark, under the hand of the Registrar.

11. 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 in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf

in such notice.

12. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor otherwise than under Article 4 (8) the Registrar shall refer the issue to the Court of Appeal which in determining the rights of the parties shall have regard to the date of the registration in the country of origin, and the priority of user of the mark in Palestine.

13. A Trade Mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determined with that goodwill.

14. The period of duration of trade mark rights shall be 20 years from the date of registration but may be renewed from time to time in accordance with the provisions of this Ordinance.

15. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of 20 years from the expiration of the original registration or of the last renewal of registration as the case may be.

16. (1) Application for the cancellation of the registration of a Trade Mark may be made by any person interested on the following grounds:—

- i. That the mark is not entitled to registration within the provision of Articles 4, 5, 6.
- ii. That the registration of the mark creates an unfair competition in respect of the applicant's right in Palestine: or has been fraudulently obtained with a knowledge of the applicant's rights to the ownership of the mark.
- iii. That there is no bona fide user of the trade mark in connection with the goods for which it is registered and there has not been any such user during the preceding two years.

Application for cancellation under sub-sections (i) and (ii) must be made within five years of the registration of the mark.

(2) Application for cancellation shall be made to the Court of Appeal. A certified copy of any judgment of the Court ordering cancellation shall be lodged with the Registrar by the person obtaining such judgment.

17. (1) Where a person becomes entitled by assignment, transmission or other operation of law to a registered trade

mark, he shall make application to the Registrar to register his title and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of the trade mark, and shall cause an entry to be made in the prescribed manner on the register of the assignment, transmission or other instrument affecting the title. Any decision of the Registrar under this Article shall be subject to appeal to the Court of Appeal.

(2) Except in cases of Appeals under this Article, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of the sub-section (1) aforesaid shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs.

18. The registered proprietor of any trade mark may apply in the prescribed manner 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 in such terms and subject to such limitations as to mode or place of user as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court of Appeal.

If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

19. Subject to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the right to the exclusive use of such trade mark upon or in connection with the goods in respect of which it is registered. 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 (except so far as their respective rights shall have been defined by the Registrar) 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.

20. In all legal proceedings relating to a registered trade mark the fact that a person is registered as proprietor of such trade mark shall be prima facie evidence of the validity of the original registration of such trade mark and all subsequent assignments and transmissions of the same.

21. Subject to the provisions of this Ordinance the Registrar may with the approval of the High Commissioner

from time to time make such rules, prescribe such forms, and generally do such things as he may think expedient:—

- a. for regulating the practice under this Ordinance;
- b. for classifying goods for the purpose 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 Registrar thinks fit, of copies of trade marks 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.

Rules made under this Article shall take effect from the date of their publication in the Official Gazette and shall, whilst in force, be of the same effect as if they were contained in this Ordinance.

22. There shall be paid in respect of applications and registrations and other matters under this Ordinance such fees as may be prescribed by the rules.

23. (1) Any person who represents a trade mark as registered which is not so, shall be liable for every offence to a fine not exceeding £50.

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

(3) No person shall be entitled to institute any proceedings to recover damages for the infringement of a trade mark not registered in Palestine.

(4) In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect of the get-up of the goods for which the trade mark is registered and of any trade marks or get-up legitimately used in connection with such goods by other persons.

(5) No registration under this Ordinance shall interfere with any genuine use by a person of his own name or place of business, or that of any of his predecessors in business or the use by any person of any genuine description of the character or the quality of his goods.

(6) Nothing in this ordinance shall be deemed to affect the right to bring an action against any person for unfair competition in respect of his trade or the remedies in respect thereof.

(7) Any person who with intent to deceive commits or attempts to commit or aids or abets any other person in committing any of the following acts shall be guilty of an offence against this Ordinance and shall be liable upon conviction to imprisonment for a period not exceeding one year and with a fine not exceeding £.100 or with one only of these penalties:

- a. makes use of a trade mark registered under this Ordinance or of an imitation of such trade mark upon the same class of goods as that in respect of which the mark is registered;
- b. sells, stores for the purposes of sale, or exposes for sale, goods bearing a mark the use of which is an offence under sub-section (a);
- c. uses a mark duly registered by another person under this Ordinance for the purpose of advertising in the public press or in any other manner, goods of the same classification as those for which registration has already been obtained by another person;
- d. makes, engraves, prints, or sells, any plate, die block or other representation of a duly registered mark or any other imitation thereof for the purpose of enabling any person other than the registered proprietor of such mark to make use of such mark or an imitation thereof in connection with goods of the same classification as those for which registration has already been obtained by another person;
- e. makes, packs or wraps, sells, stores for the purpose of sale, or exposes for sale, goods so got up, packed, wrapped or otherwise prepared as to lead intending purchasers to believe that they are the goods of another manufacturer or are of an origin other than their true origin.

For the purpose of this sub-section it shall be immaterial whether the goods, the packing, wrapping or get-up of which is imitated bear a duly registered trade mark or not:

- f. imports any goods bearing a mark which would constitute an infringement of a duly registered marks or imports goods so got up, wrapped, packed or prepared, as to enable the goods to be passed off as the goods of another manufacturer.

In all such cases in lieu of or in addition to penalties hereinbefore provided, the Court shall have power to grant an injunction against a continued repetition of any offence committed under this Article.

(8) The Court before which any person charged under the aforesaid section is brought may order that all goods, wrapping, packing and advertising material, and blocks dies and other apparatus and material for printing the mark or packing, wrapping, advertising or other material in respect of which the offence is committed be confiscated or destroyed.

24. If at any time the Government of Palestine shall become a party to an international arrangement for the mutual protection of trade marks, then any person who has applied for protection for a trade mark in any State which is a party to such arrangement shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants and the registration shall have the same date as the date of registration in such State:

provided that:

- (a) the application is made within 4 months from the application for protection in such State;
- (b) nothing in this Article shall entitle the proprietor of the trade mark to recover damages for infringement happening prior to the date on which the trade mark is registered in Palestine.

The registration of the trade mark shall not be invalidated by reason of the use of the trade mark in Palestine during the said period of 4 months.

25. The application for registration of a Trade Mark under Article 24 shall be made in the same manner as an ordinary application under this Ordinance.

Provided that any trade mark the registration of which has been duly applied for in the country of origin may, if such Trade Mark is not contrary to public policy, be registered under the Ordinance.

26. The provisions of Articles 24 and 25 shall apply only to the case of such State with respect to which an Order in Council by the Mandatory State declares them to be applicable.

27. (i) From the date at which this Ordinance comes into force the registration and protection of Trade Marks in Palestine shall be governed by it to the exclusion of any existing Ottoman Laws.

(ii) The Public Notice No. 136 of 30th September 1919 is duly repealed.

28. This Ordinance shall come into force on the 1st day of January 1922.

29. This Ordinance may be cited as the Trade Marks Ordinance 1921.

December 9th 1921.

HERBERT SAMUEL,
High Commissioner.

COLLECTIVE RESPONSIBILITY FOR CRIME ORDINANCE 1921.

WHEREAS it is desirable to provide for the payment of compensation for damage to and loss of property caused by persons unknown by the area within which the property was situated so that the damage and loss may be fairly distributed.

Be it hereby enacted by the High Commissioner for Palestine after Consultation with the Advisory Council, as follows:

1. For the purposes of this Ordinance

(a) "property" shall include all property movable and immovable of whatsoever kind the same may be, and whether it be the property of the State or the Army or of any community or corporation or any private person;

(b) "assessable inhabitant" shall include:

(i) Every person of not less than 18 years of age assessed for any form of taxation,

(ii) Every male inhabitant of a like age even if he be not assessed for any form of taxation.

(c) "Village" shall include one or more villages or a municipal area provided that this Ordinance shall not be applicable to damage to or destruction or loss of property included within a municipal area.

2. (i) Where it appears that damage to or destruction or loss of property has been caused by the act of or theft by persons unknown and the owner thereof desires to obtain compensation under this Ordinance notice of the damage, destruction or loss shall be given in writing by him or on his behalf to the Mukhtar of the village within the lands of which the property is situate or the

damage, destruction or loss was caused. A copy of the Notice shall be sent to the Governor of the District.

ii) If the place in which the damage, destruction or loss took place was not within the lands of any village the notice may be served upon the Mukhtar of any neighbouring village.

(iii) No claim shall be made under this article in respect of any damage, destruction or loss which occurred more than six months before the date of service of the notice of the claim.

3. Subject to the provisions of this Article the owner or his representative may, after the service of such notice, file a petition in the District Court within the jurisdiction of which the village is situate stating the nature and particulars of the damage or loss and asking for the issue of an order that the inhabitants of the village mentioned in the petition shall pay compensation therefor; provided that no petition shall be filed unless:

(1) The petitioner has within 14 days of the service of the notice applied for the consent of the Governor of the District to the filing of the petition and has thereafter duly obtained such consent as shown by endorsement thereon;

(2) The petition is filed within 7 days of the date at which it was returned by the Governor to the petitioner so endorsed. The Governor shall not grant his consent to the filing of the petition unless he is of opinion that there is reasonable cause why it should be heard.

4. The District Court shall thereupon fix a day for the hearing of the petition and a copy of the petition bearing the date fixed for the hearing shall be served upon the Mukhtar of the village concerned and shall be also posted upon the door of the mosque, church or synagogue of such village 10 clear days before the date fixed for the hearing.

5. (i) Upon the day fixed for the hearing and after being satisfied that the terms of the preceding article have been complied with, the District Court shall hear such evidence as may be adduced before it with reference to the matters set forth in the petition and shall make and direct such further enquiries as it may think fit.

(ii) In any case in which it appears to the District Court that there is reason to suppose that the compensation or part thereof should be paid by any village not men-