

THE TRADE MARKS (BORDER ENFORCEMENT MEASURES)
REGULATIONS, 2020

Explanatory Memorandum

The Trade Marks (Border Enforcement Measures) Regulations, 2020, which is subject to the negative resolution of Parliament seeks to provide for the effective regulation of border enforcement measures as it pertains to trade marks to ensure the efficient operation of the Trade Marks Act, No. 8 of 2015 (“the Act”).

Regulation 1 provides for the citation of the Regulations.

Regulation 2 provides for the interpretation of certain terms used in the Regulations.

Regulation 3 provides for notice to be given to the Comptroller of Customs and Excise (the Comptroller) under section 97(1) of the Act in respect of restricting the importation of infringing goods.

Regulation 4 provides the time and manner of the notice to be given to the Comptroller under section 97(1) of the Act.

Regulation 5 provides for further information and evidence to be submitted to the Comptroller within such time and in such form as the Comptroller may require.

Regulation 6 provides for change of particulars to be submitted to the Comptroller, in writing, within seven days of the change.

Regulation 7 provides for an Officer to refuse to seize goods to which a notice under section 97(1) of the Act relates, if the person who has given notice that infringing goods are expected to be imported fails to comply with any requirement by the Comptroller under these Regulations or any provisions of these Regulations.

Regulation 8 provides for a period not exceeding ten working days for instituting action for a registered trademark.

Regulation 9 provides for a period for extension of retention period not exceeding ten working days after the expiry of the period originally specified.

Regulation 10 provides for disposal of goods under section 102(3) of the Act in a prescribed manner, including destruction, as the Comptroller may from time to time direct, pursuant to the Customs Act, Chap 78:01.

Regulation 11 provides a prescribed period under section 109(3) of the Act, of two working days after the Comptroller has given the proprietor of the registered trade mark written notice or where the detained goods are goods that are to be exported from Trinidad and Tobago or are goods in transit within ten working days after the Comptroller has given the proprietor of the registered trade mark written notice referred to in section 109(2) of the Act.

Regulation 12 provides for the commencement of the Regulations.

The Schedule provides for the notice under section 97(1) of the Act.

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Arrangement of Regulations

Regulations

1. Citation
2. Interpretation
3. Notice under section 97(1) of the Act: infringing goods
4. Time and manner of giving notice
5. Further information and evidence
6. Change in particulars
7. Refusal to seize goods
8. Period for instituting action for registered trade mark
9. Period for extension of retention period
10. Disposal of forfeited goods under section 102 (3) of the Act
11. Prescribed period under section 109(3) of the Act: suspected counterfeit goods
12. Commencement

SCHEDULE

LEGAL NOTICE NO. 138

REPUBLIC OF TRINIDAD AND TOBAGO

THE TRADE MARKS ACT, NO. 8 OF 2015

REGULATIONS

MADE BY THE MINISTER UNDER SECTION 123 OF THE TRADE MARKS ACT, IN ACCORDANCE WITH SECTION 43 OF THE INTERPETATION ACT, CHAP. 3:01 AND SUBJECT TO NEGATIVE RESOLUTION OF PARLIAMENT

TRADE MARKS (BORDER ENFORCEMENT MEASURES)
REGULATIONS 2020

1. These Regulations may be cited as the Trade Marks (Border Enforcement Measures) Regulations, 2020. Citation

2. In these Regulations—

“Act” means the Trade Marks Act;

Interpretation

“Comptroller” means the Comptroller of Customs and Excise referred to in section 2 of the Customs Act;

Act No. 8 of 2015

Chap. 78:01

“Controller” means the Controller of the Intellectual Property Office as referred to under section 3 of the Patents Act;

Chap. 82:76

“Officer” has the meaning assigned under section 2 of the Customs Act.

3. (1) A notice to the Comptroller under section 97(1) of the Act shall be in the form set out in the Schedule. Notice under section 97(1) of the Act: infringing goods

(2) The notice shall be accompanied by—

(a) a statutory declaration that the particulars in the notice are true;

(b) a fee of \$500.00;

(c) a copy of the certificate of registration issued by the Controller under section 16(3) of the Act in relation to the registered trade mark specified in the notice;

(d) evidence that the registration of the registered trade mark was duly renewed at all times; and

(e) where the notice is given by a person as agent for the proprietor or licensee of the registered trade mark, whichever is appropriate, evidence of the authority of the person giving the notice.

(3) The proprietor or licensee of the registered trade mark may appoint another person to act as his agent for the purpose of giving the notice in writing.

Time and manner of giving notice

4. A notice to the Comptroller under section 97(1) of the Act shall be delivered to the Customs and Excise Division during such time as the Office of the Customs and Excise Division is open for business.

Further information and evidence

5. A person who has given a notice under section 97(1) of the Act to the Comptroller shall, as and when required by the Comptroller, give to the Comptroller such information and evidence within such time and in such form as the Comptroller may reasonably require.

Change in particulars

6. A person who has given a notice under section 97(1) of the Act to the Comptroller shall notify the Comptroller in writing of any change in the particulars specified in the notice or affecting the notice within seven days of the change and further notice shall be given as the Comptroller may require.

Refusal to seize goods

7. An Officer may refuse to seize goods to which a notice under section 97(1) of the Act relates if the person who has given the notice fails to comply with—

(a) any requirement by the Comptroller under these Regulations; or

(b) any provision of these Regulations.

Period for instituting action for registered trade mark

8. A notice given by the Comptroller under section 100(1) of the Act shall for the purposes of section 100(2)(a) specify a period not exceeding ten working days after the service of the notice on the objector.

Period for extension of retention period

9. Where under section 100(5) of the Act, the Comptroller extends the period specified by him pursuant to section 100(2)(a), the period of the extension shall not exceed ten working days after the expiry of the period originally specified.

Disposal of forfeited goods under section 102(3)(a) of the Act

10. For the purposes of section 102(3)(a) of the Act, the prescribed manner of disposal of forfeited goods shall be such manner of disposal, including destruction, as the Comptroller may from time to time direct pursuant to the Customs Act.

Prescribed period under section 109(3) of the Act: suspected counterfeit goods

11. (1) For the purposes of section 109(3) of the Act, the prescribed period shall be—

(a) two working days after the Comptroller has given the written notice referred to in section 109(2) of the Act to the proprietor of the registered trade mark; or

(b) where—

(i) the detained goods are goods that are to be exported from Trinidad and Tobago or are goods in transit; and

(ii) the proprietor of the registered trade mark has complied with section 109(3)(b)(iii) of the Act, within ten working days after the Comptroller has given the proprietor of the registered trade mark the written notice referred to in section 109(2) of the Act.

(2) Upon the written request of the proprietor of the registered trade mark given to the Comptroller before the end of the prescribed period, the Comptroller may extend the prescribed period if he considers it reasonable to do so for a further period not exceeding ten working days after the expiry of the applicable period under subregulation (1).

12. These Regulations come into force on such day as the Trade Commencement Marks Act is proclaimed.

SCHEDULE

[Regulation 3(1)]

NOTICE UNDER SECTION 97(1)
OF THE TRADE MARKS ACT, NO. 8 OF 2015

Please read these instructions before completing the notice

1. This notice may only be given by the proprietor, licensee of a registered trade mark or appointed person to act as his agent.
2. Unless otherwise indicated, the notice must provide sufficient particulars of all matters specified therein and in Appendices 1 and 2 to enable the Comptroller of Customs and Excise to act on it.

Please follow the instructions in the Explanatory Notes below when completing the notice

3. A statutory declaration that the contents of the notice are true is to be enclosed with the notice.
4. A fee of \$500.00 is payable on giving the notice to the Comptroller of Customs and Excise.
5. A copy of the certificate of registration for the trade mark, as well as the certificate of renewal, where applicable, is to be enclosed with the notice.
6. You are required to provide the Comptroller of Customs and Excise with security, whether by way of deposit of money, an instrument of guarantee or otherwise, that is sufficient to —
 - (a) reimburse the State for any liability or expense which it is likely to incur as a result of the seizure of the goods; and
 - (b) compensate any person suffering damage as a result of the seizure,

in accordance with section 98 of the Trade Marks Act. Please note that you will be responsible for any liability or expense which exceeds the amount of the security.

7. Please note that the notice lapses within sixty (60) days commencing on the day of the giving of the notice.

NOTICE

To the Comptroller of Customs and Excise:

1. I, _____ (1), hereby give you notice that (2) _____
 - (a) is the _____ (3) of a trade mark registered in Trinidad and Tobago, a representation of which is set out in Appendix 1; and
 - (b) object to the import into Trinidad and Tobago of the goods described in Appendix 2.

2. To the best of my knowledge and belief -
 - (a) the importer of the goods is _____ (4); and
 - (b) the particulars of the time and place where the goods are expected to be imported into Trinidad and Tobago are as follows (5):

3. The goods are infringing goods because _____ (6).
4. The goods are not goods in transit because _____ (7).
5. I hereby request that the said goods be dealt with in accordance with Part XI (Border Enforcement Measures) of the Trade Marks Act.

Date:

Signature:

Designation: (8)

Notes:

- (1) State the name and address of the person giving the notice.
- (2) State the name and address of the proprietor or licensee on whose behalf the notice is given.
- (3) State "proprietor" or "licensee", as applicable.
- (4) State the name and address of the importer.
- (5) State —

- (a) the estimated date of arrival of the goods;
 - (b) the name of the port, airport or checkpoint by which the goods are expected to be imported into Trinidad and Tobago;
 - (c) the name of the ship or the flight number of the aircraft by which the goods are expected to be imported into Trinidad and Tobago; and
 - (d) where available-
 - (i) the country of origin of the goods; and
 - (ii) any other information which may indicate the actual time when and place where the goods will be imported into Trinidad and Tobago.
- (6) State the grounds on which it is claimed that the goods are infringing goods within the meaning of section 35 of the Trade Marks Act.
- (7) State the grounds on which it is claimed that the goods are not goods in transit within the meaning of section 96 of the Trade Marks Act.
- (8) State the designation of the person giving the notice, i.e. “proprietor”, “licensee”, “agent of proprietor” or “agent of licensee”. If the notice is given on behalf of a company, insert the name of the company and the designation within the company of the person giving the notice.

APPENDIX 1

Representation of Registered Trade Mark.

APPENDIX 2

Provide sufficient information to describe and identify the goods, including, where available, particulars of –

- (a) the quantity and value of the goods;
- (b) the number of packages;
- (c) any mark used;
- (d) any relevant bill of lading or air waybill; and
- (e) any relevant consignment reference number.

Dated this 17th day of June, 2020.

F. AL-RAWI
*Attorney General and
Minister of Legal Affairs*