



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-अ.-10012024-251254
CG-DL-E-10012024-251254

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)
PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 30]

नई दिल्ली, बुधवार, जनवरी 10, 2024/पौष 20, 1945

No. 30]

NEW DELHI, WEDNESDAY, JANUARY 10, 2024/PAUSHA 20, 1945

वाणिज्य और उद्योग मंत्रालय
(उद्योग संवर्धन और आंतरिक व्यापार विभाग)

अधिसूचना

नई दिल्ली, 2 जनवरी, 2024

सा.का.नि. 35(अ).—व्यापार चिह्न नियम, 2003 में आगे और संशोधन करने के लिए, व्यापार चिह्न अधिनियम, 1999 की धारा 157 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्र सरकार निम्नलिखित मसौदा नियम बनाने का प्रस्ताव करती है, जिन्हें इससे प्रभावित होने वाले सभी व्यक्तियों की जानकारी के लिए उक्त धारा की उप-धारा (1) की अपेक्षा के अनुसार, एतद्वारा प्रकाशित किया जाता है और यह नोटिस दिया जाता है कि उक्त मसौदा नियमों पर, इस अधिसूचना को प्रकाशित करने वाले भारत के राजपत्र, जिसमें यह अधिसूचना प्रकाशित है, की प्रतियां, आम लोगों को उपलब्ध कराए जाने की तारीख से तीस दिनों की अवधि समाप्त होने के बाद, विचार किया जाएगा;

आपत्तियां या सुझाव, यदि कोई हों, सचिव, उद्योग संवर्धन और आंतरिक व्यापार विभाग, वाणिज्य और उद्योग मंत्रालय, भारत सरकार, वाणिज्य भवन, नई दिल्ली- 110001 को या ipr4-dipp@nic.in पर ई-मेल द्वारा भेज दिए जाएं;

निर्दिष्ट अवधि की समाप्ति से पहले, उक्त मसौदा नियमों के संबंध में किसी भी व्यक्ति से प्राप्त होने वाली आपत्तियों और सुझावों पर केंद्र सरकार द्वारा विचार किया जाएगा।

ध्यानपूर्वक विचार-विमर्श के पश्चात, यह निर्धारित किया गया था कि पेटेंट (द्वितीय संशोधन) नियम, 2024 की धारा 107-छ में व्यापार चिह्न (पहला संशोधन) नियम, 2024 के मसौदे की धारा 105-छ में दिए गए उसी प्रावधान को मसौदा में भी शामिल किया जाएगा।

MINISTRY OF COMMERCE AND INDUSTRY
(Department for Promotion of Industry and Internal Trade)

NOTIFICATION

New Delhi, the 2nd January, 2024

G.S.R. 35(E).—The following draft rules to further amend the Trade Marks Rules, 2017 which the Central Government proposes to make in exercise of the powers conferred by section 157 of The Trademarks Act, 1999, are hereby published as required by sub-section (1) of the said section for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft rules will be taken into consideration after the expiry of a period of thirty days from the date on which copies of the Gazette of India, in which this notification is published, are made available to the public;

Objections or suggestions, if any, may be addressed to the Secretary, Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, Vanijya Bhawan, New Delhi- 110001 or by e-mail at ipr4-dipp@nic.in;

The objections and suggestions, which may be received from any person with respect to the said draft rules before the expiry of the period so specified, will be considered by the Central Government.

After careful consideration, it was determined that Section 107-G of the Draft Patents (2nd Amendment) Rules, 2024 will also incorporate the same provisions as outlined in Section 105-G of the draft Trade Marks (1st Amendment) Rules, 2024.

DRAFT RULES

1. Short title and commencement.

- (1) These rules may be called the draft Trade Marks (1st Amendment) Rules, 2024.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.

In these rules, unless the context otherwise requires, the following shall be inserted, namely, —

- aa) "Adjudicating Officer" means an officer appointed in accordance with Section 112A of the Act;
- (aab) "appellant" means an aggrieved person who prefers an appeal before the Appellate Authority in accordance with Section 112B of the Act against the order of an Adjudicating Officer;
- (aac) "Appellate Authority " means an officer appointed in accordance with Section 112B of the Act;
- (aad) All types of communication made in the Chapter VII A will be deemed to be communicated electronically. Provided that the means of communication will be text message or email;
- (aa) "Complainant" means an aggrieved person who makes a complaint before the Adjudicating Officer;

3. In the principal rules, after rule 105, the following shall be inserted, namely, —

“CHAPTER VII A

ADJUDICATION OF CERTAIN PENALTIES UNDER JAN VISHWAS ACT

105A. Adjudication of certain penalties. — (1) Any person may file a complaint under TM-D to the Registrar regarding any contravention or default committed by any person of the provisions contained in Section 107 of the Act.

(2) The complaint shall be accompanied with a statement setting out the facts upon which the Applicant relies and evidence in support of the statement, as prescribed.

105B. Appointment of Adjudicating officer: (1). The Registrar, by an order, authorize an officer referred to in Section 112A, to be an Adjudicating officer for holding an inquiry and imposing penalty on any person who has committed the contravention or default under the provisions contained in Section 107 of the Act.

(2). Where more than one Adjudicating officer are appointed, the complaint filed by the Complainant(s) will be automatically and randomly allocated by computer resource system to the Adjudicating Officer.

(3). Every Adjudicating officer shall have the powers of a civil court, namely:

(a) enforcing the attendance of witnesses and compelling the production of documents and material objects; and

(b) Adjudicating Officer shall be deemed to be a public servant under section 21 of the Indian Penal Code, 1860.

105C. Summary Proceedings when case is not made out. — (1) Where the Adjudicating officer is satisfied that a prima facie case for the maintainability of the Complaint has not been made out under Rule 105C, the Adjudicating officer shall quash and dismiss the complaint summarily and pass speaking order within a period of thirty days.

105D. Summary Proceedings when case is made out. — Where the Adjudicating officer is satisfied that a prima facie case for the maintainability of the Complaint has been made out within a period of thirty days; commence the proceedings via:

(a) Service of Notice to alleged Violator

Adjudicating officer shall serve a copy of the notice to the alleged violator within a period of thirty days from the date of commission of alleged contravention. A copy of the complaint shall be served to the person who has allegedly committed violation defined under rule 105A(1) within a period of seven days. Where it is not practicable so to do on the ground of exceptional and extraordinary circumstances, the complaint shall be sent by registered post.

Provided that the service of Notice under this sub-rule shall be made at the expenses of the Complainant.

(b) Written Submissions by the Opposite Party

On receiving a copy of the Complaint, the person who has allegedly committed violation, shall file his statement under Form TM-OPP within a period of fifteen days from the date of issuance of notice, setting out the facts upon which he relies and evidence in support of the statement, from the date of service of the complaint by the complainant.

(c) Manner of Holding Inquiry

(1) The Adjudicating officer shall issue a notice to the person who has allegedly committed violation under the Act, requiring that person to show cause, upon the maintainability of the complaint setting forth the decision thereon. No Adjudicating officer shall hold an enquiry except upon a complaint in writing made by any officer authorized by a general or special order. The final order shall be passed by the Adjudicating officer, within a period of sixty days for reasons to be recorded in writing.

Provided that every notice issued under this sub-rule, shall clearly indicate the nature of breach or non-compliance alleged to have been committed by that person, as the case may be.

(2) While adjudging the quantum of compensation under this Act, the Adjudicating officer shall have due regard to the following factors, namely: —

- (a) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to any person as a result of the default;
- (c) the repetitive nature of the default.
- (d) Extension of time period

(1) The Adjudicating officer may, for reasons to be recorded in writing, extend the further period not exceeding fifteen days, if the said person satisfies the Adjudicating officer that it has sufficient cause for not responding to the notice within the stipulated period, only upon the payment of costs under Section 35B of Code of Civil Procedure, 1908. The Adjudicating Officer shall hear the parties and pass a speaking order thereon.

(2) If, after considering the cause, if any, shown by such person, the Adjudicating officer is of the opinion that an inquiry should be held, the Adjudicating officer shall issue a notice fixing a date for the appearance of such person. The said person may appear either in person or take the assistance of a legal practitioner for presenting his case before the Adjudicating officer.

(3) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person(s) concerned, the Adjudicating officer may, subject to reasons to be recorded in writing, pass any order as he/she thinks fit including an order for adjournment of the hearing to a future date by payment of prescribed fee by such person.

(4) The Adjudicating officer shall, after giving the person referred to in sub-rule (1) above, a reasonable opportunity for hearing in the matter and if, on such inquiry, the Adjudicating officer is satisfied that the person has committed the contravention, the Adjudicating officer may impose such penalty or award such compensation as the Adjudicating officer thinks fit within ninety days.

(5) While holding an inquiry, the Adjudicating officer shall have the following powers, namely: - (a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case; (b) to order for evidence or to produce any document, which in the opinion of the Adjudicating officer, may be useful for or relevant to the subject matter of the inquiry.

(6) If any person fails, neglects or refuses to appear as required under sub-rule (1) before the Adjudicating officer, the Adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

(7) Every order passed under sub-rule (4), shall be dated and signed by the Adjudicating officer.

(8) The Adjudicating officer shall send a copy of the order passed by it to the concerned person who is in default and to the Registrar.

(9) All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

105E. Form and Manner of preferring Appeal. — (1) Any person aggrieved by any decision or order passed by the Adjudicating officer under Section 112 A may prefer an appeal under Form TM-DA to the Appellate Authority, who shall be an officer at least one rank above the Adjudicating officer, within a period of sixty days from the date of receipt of the order.

Provided that the Appellate Authority may, if he/she is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, the Appellate Authority may condone the delay and allow it to be presented within a further period of not more than thirty days with prescribed fee.

(2). The Appeal to the Appellate authority shall be in the prescribed form; setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought. The appeal shall be allocated by computer resource system.

(3). The grounds of appeal and the form of verification shall be signed by the Appellant.

Provided that where the party is represented by an authorised representative, a copy of such authorisation in favour of the representative and the written consent thereto by such authorised representative shall also be appended to the appeal:

Provided further that the appeal shall not seek relief(s) therein, against more than one order unless the reliefs prayed for are consequential.

(4) The allocation of appeals will be in consonance with the automatic and randomly allocated software system.

(5) Every appeal shall be accompanied on the payment of Rupees five thousand to be paid through the online portal in favour of the Appellate Authority

105F. Registration of appeal. — (1) On the receipt of an appeal, office of the Appellate Authority shall endorse the date on such appeal and shall sign such endorsement.

(2) If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number:

Provided that where the appeal is found to be defective, the Appellate Authority may allow the Appellant such time, not being less than fourteen days following the date of receipt of intimation by the Appellant from the Appellate Authority about the nature of the defects, to rectify the defects and if the Appellant fails to rectify such defects within the time period allowed as above, the Appellate Authority may by order and for reasons to be recorded in writing, decline to register such appeal and communicate such refusal to the Appellant within a period of seven days thereof:

Provided further that the Appellate Authority may, for reasons to be recorded in writing, extend the period referred to in the first proviso above by a further period of fourteen days if an Appellant satisfies the Appellate Authority that the Appellant had sufficient cause for not rectifying the defects within the period of fourteen days referred to in the first proviso.

105G. Disposal of appeal by Appellate Authority. - (1) On the admission of the appeal, the Appellate Authority shall serve a copy of appeal to the opposite party along with a notice requiring such opposite party to

file his reply thereto within such period, not exceeding twenty-one days, as may be stipulated by the Appellate Authority in the said notice:

Provided that the Appellate Authority may, for reasons to be recorded in writing, extend the period referred to in sub-rule (1) above for a further period of twenty-one days, if the Appellant satisfies the Appellate Authority that he had sufficient cause for not being able to file his reply to the appeal within the above-said period of twenty-one days.

(2). A copy of every reply, application or written representation filed by the Appellant before the Appellate Authority shall be forthwith served to the opposite party through electronic modes of communication.

(3) The Appellate Authority shall notify the parties, the date of hearing of the appeal which shall not be a date earlier than thirty days following the date of such notification for hearing the appeal.

(4) On the date fixed for hearing, the Appellate Authority may, subject to the reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date subject to the payment of prescribed fees.

105H. Procedure in appeal. - (1) The Appellate Authority shall give an opportunity to the Appellant to be heard as per the principles of natural justice.

(2) The Appellate Authority may, at the time of hearing of an appeal, allow the Appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Authority is satisfied that the omission of that ground from the grounds of appeal was not wilful or reasonable.

(3) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, —

- a) confirming, modifying or annulling the decision or order appealed against; or
- b) referring the matter back to the Adjudicating officer with directions for fresh adjudication or decision, as the case may be, where an order or decision has been passed without following the principles of natural justice;

Provided that an order enhancing any penalty or fine shall not be passed unless the Appellant has been given a reasonable opportunity of showing cause against the proposed order.

(4) The order of the Appellate Authority disposing of the appeal shall be in writing by giving a reasoned order and shall state the points for determination, the decision thereon and the reasons for the decision.

(5) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of sixty days from the date on which it is filed.

(6) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted not more than one time, with prescribed fee, to a party during hearing of the appeal.

Provided further that not more than two additional adjournments shall be granted more than one time to a party during hearing of the appeal with prescribed fee.

(7) In case the Appellant or the opposite party does not appear on the date fixed for hearing, the Appellate Authority may dispose of the appeal ex-parte:

Provided that where the Appellant appears afterwards and satisfies the Appellate Authority that there was sufficient cause for his non-appearance, the Appellate Authority may make an order setting aside the ex-parte order and restore the appeal not beyond 1 year.

(8) On the disposal of the appeal, the Appellate Authority shall communicate the reasoned order passed by him to the Appellant and to the opposite party.

(a) The order of Appellate Authority shall be in writing and shall state briefly the grounds for the decision.

(b) The order referred to in sub-rule (1) shall be dated and signed by the Appellate Authority hearing the appeal.

(9). A certified copy of every order passed by the Appellate Authority shall be communicated to the Adjudicating officer, Appellant, opposite party forthwith and to the Central Government.

1. In the principal rules, in the SECOND SCHEDULE, after Form TM-G, the following form shall be inserted, namely:

“FORM TM-D THE TRADE MARKS ACT, 1999 & THE TRADE MARKS RULES, 2017 COMPLAINT FOR CONTRAVENTION OR DEFAULT OF SECTION 105(1) [See rule 105A]	
1. Particulars of Complainant:- a. Name: b. Address for service: c. Contact no.: d. Email (for service):	
2. Particulars of Complaint:- a. Date, time, and instance of commission of the alleged contravention or default: b. Statement of contravention or default setting out all relevant material particulars: c. Evidence in support of the statement:	
I/We....., the Complainant herein declare that the facts stated herein are correct to the best of my/our knowledge, information and belief.	
3. Signature of the Complainant:	Signature
4. Name of the natural person who has signed:	(.....)
	To, The Registrar of Trade Marks, The Trade marks Office, at
Note.- Strike out whichever is not applicable.”	

2. In the principal rules, in the SECOND SCHEDULE, for Form TM-OPP, the following form shall be substituted, namely:

“FORM TM-OPP
THE TRADE MARKS ACT, 1999
&
THE TRADE MARKS RULES, 2017
WRITTEN SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY IN RESPECT OF THE
COMPLAINT OF CONTRAVENTION OR DEFAULT
[See sections 105(1); rules 105A,105D]

1. State the name, address and I, We/
 nationality.

hereby give a counter statement: -
to the Complaint made in FORM TM-D

The grounds in which the counter statement is made are as follows:

.....
.....

My/ Our address for service in India is:²

.....
.....

Dated this day of20

2. Complete address including postal index number/ code and state along with Telephone and fax number(s).

Signature.³
(.....)⁴

3. To be signed by the opponent

To

The Registrar of Trade Marks,

4. Name of the natural person who has signed

The Trade Marks Office,

At.....

Note.- (a) Strike out whichever is not applicable.

(b) For fee: See First Schedule.”

3. In the principal rules, in the SECOND SCHEDULE, after Form TM-OPP, the following form shall be inserted, namely:

<p>“FORM TM-DA THE TRADE MARKS ACT, 1999 & THE TRADE MARKS RULES, 2017 APPEAL under Section 112B of the Act [See rule 105H]</p>	
<p>5. Particulars of Appellant:-</p> <p>a. Name:</p> <p>b. Address for service:</p> <p>c. Contact no.:</p> <p>d. Email (for service):</p>	
<p>6. Settlement of Appeal:- (A statement of case may be separately attached.)</p>	
<p>I/We....., the Appellant herein declare that the facts stated herein are correct to the best of my/our knowledge, information and belief.</p>	
<p>7. Signature of the Appellant:</p>	<p>Signature</p>

8. Name of the natural person who has signed:	(.....)
	To, The Registrar of Trade Marks, The Trade marks Office, at
Note.- Strike out whichever is not applicable.”	

[F. No.- P-24027/11-1/2023-O/o Dir(K)-DPIIT]

HIMANI PANDE, Jt. Secy.

Note: The principal rules were published in the Gazette of India; Extraordinary, Part II, Section 3, Sub-section (i) vide notification number G.S.R. 114 (E), dated 26th day of February 2002 and last amended vide notification number G.S.R. 879 (E) dated the 17th November, 2015.