

REPUBLIC OF NAURU
TRADEMARKS BILL 2019
EXPLANATORY MEMORANDUM

The *Trademarks Bill 2019* is a Bill for the *Trademarks Act 2019*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1- PRELIMINARY

Clause 1 provides that, once enacted, the short title of the Bill will be the *Trademarks Act 2019*.

Clause 2 sets out when the Bill's provisions will commence on certification by the Speaker.

Clause 3 provides that the Bill will bind the Republic.

Clause 4 provides for the interpretation of the provisions of the Bill.

Clause 5 provides for the objective of the Bill which is to:

- (a) provide a framework for the registration of trademarks;
- (b) provide protection for registered trademarks;
- (c) provide for the scope of rights protected by registered trademarks;
- (d) provide for the management, ownership and use of trademarks;
- (e) protect the consumers from being deceived by counterfeit goods and services marked with trademarks of the quality and origin of goods and services; and
- (f) provide for the remedies, offences and penalties for breach of trademarks.

PART 2- REGISTRAR OF TRADEMARKS

Clause 6 provides that the Secretary for Justice shall be the Registrar of Trademarks.

Subclause (3) provides that the Registrar shall keep and maintain the Register, perform other duties under this Bill and do all things that are necessary to be done for the proper administration of this Bill.

Subclause (4) provides that the Minister on the recommendation of the Registrar may appoint a Deputy Registrar.

Subclause (5) provides for the appointment of a Deputy Registrar by the Minister based on the recommendation of the Secretary.

Subclause (6) provides that the Deputy Registrar may perform such functions and exercise such powers as the Registrar may in writing from time to time direct or authorise him or her to do.

Clause 7 requires the keeping and maintain of a Register of Trademarks.

Subclause (2) provides the particulars that the Registrar shall enter in the Register. Such particulars are:

- (a) the date of application, publication and registration;
- (b) the name, description and address of the owner;
- (c) the original representation, drawing or design of the trademark;
- (d) the particular goods or services to which the trademark relate to;
- (e) renewal, rectification, amendment or cancellation;
- (f) any conditions or limitations with which the registration was made;
- (g) notification of authorisation, assignment or transmission; and
- (h) such other particulars required under this Act and as may be prescribed.

Subclause (3) provides that upon payment of the prescribed fees the Register shall be made available for inspection by the applicant during business hours and certified copies of the entries in the Register shall be provided.

Subclause (4) provides that the particulars and records kept by the Registrar shall be evidence of the record of the trademarks kept and maintained by the Registrar.

Subclause (5) provides that a copy or extract of any document in the Register certified by the Registrar under his or her hand and seal is admissible evidence of the record of the trademarks kept and maintained by the Registrar.

Subclause (6) provides that a certificate under the hand and seal of the Registrar in any legal proceedings, is prima facie evidence that a requirement of the Bill specified in the certificate had or had not been complied with at a date or within a period specified in the certificate or, had been complied with but a date later than that specified in the certificate.

Subclause (7) provides that the Registrar may either refuse to accept any document lodged or, may request that the document be amended and re-lodged or a new document be lodged where the Registrar is of the opinion that the documents contains matters that are contrary to law, by reasons of any omission or misdescription has not been duly completed, does not comply with the requirements of this Bill or it contains an error, alteration or erasure.

PART 3 –REGISTRATION OF TRADEMARKS

Clause 8 provides for who may apply to register a mark as a trademark. Such person is the owner of the mark or, a person by the owner of the mark or an assignee of the trademark under Part 8.

Clause 9 sets out the requirements of the application for registration of a mark.

Subclause (1) provides that the application:

- be in the prescribed form;
- the name, description and address of the applicant,
- state the goods or services for which the trademark is associated with,
- provide a declaration for use or intention to use the trademark, and
- provide evidence of the payment of the prescribed fee.

Subclause (2) requires the application to be made jointly where 2 or more person have a common interest in a mark.

Subclause (3) provides that a mark registered under subclause (2) may only be used by person on behalf of all of them or for goods or services with which all of them are connected.

Clause 10 provides that the Registrar shall publish the details of an application in the Gazette in the prescribed form.

Subclause (2) provides that all such conditions or limitations the Registrar deems necessary for the purposes of registration shall be specified in the publication under subclause (1).

Clause 11 provides that a person who opposes an application for registration of a mark may oppose the registration by filing a notice of opposition with the Registrar.

Subclause (2) provides that the notice of opposition is to be made in the prescribed form and shall include a precise statement or the grounds of the opposition.

Subclause (3) provides that a copy of the notice of opposition shall be provided by the Registrar to the applicant within 21 days from the date the notice of opposition is provided to the applicant.

Subclause (4) provides that the Registrar may deem the application for registration of a mark as abandoned and decline to register the mark if the applicant fails to provide a response to the notice of opposition provided to him or her under subclause (3).

Subclause (5) provides that where the applicant to responds to the notice of opposition under subclause (3), the Registrar is required to provide a copy of the response to the person opposing the registration.

Subclause (6) allows the Registrar to require further information or evidence to be provided by all parties before he or she makes a decision on the application.

Clause 12 allows the Registrar to refuse an application to register a mark as a trademark on the grounds contained in Part 6 of the Bill.

Clause 13 provides that the Registrar shall reject an application for the registration of a mark as a trademark which does not comply with Part 5, where the applicant fails to complete the registration process of the mark within 3 months of the date of lodgment of the application or for any other reason the Registrar deems fit.

Clause 14 provides that the Registrar shall register a mark that has been accepted for registration where there is no opposition to the registration or if there was opposition, the Registrar has decided to register the trademark.

Subclause (2) requires the Registrar to assign a prescribed code to every trademark that is registered.

The purpose of a retrospective date under subclause (3) is to ensure any later application is not given priority as opposed to an already existing application being processed by the Registrar

Clause 15 requires the Registrar where he or she considers that an application does not comply with the requirements of this Bill, to inform the applicant and give the applicant an opportunity to respond or to amend the application by correcting only those matters set out by the Registrar within the specified time.

Clause 16 provides for the amendment of a pending application for registration. This clause allows an applicant to make changes to the application pending with the Registrar for consideration. This is important as this allows changes to documents without the application being withdrawn and it does not lose its priority of registration.

Clause 17 requires the Registrar to notify the applicant in writing of his or her decision and publish such decision in the Gazette within 90 days of the lodgment of the application.

Clause 18 requires the Registrar on registration of a trademark to issue a certificate of registration in the prescribed form and, publish the trademark with or without any conditions or limitations in the Gazette.

PART 4 – EFFECT OF REGISTRATION

Clause 19 clarifies that the registered trademark is a property right acquired by the registration of the trademark under this Bill.

Clause 20 provides that the owner of a registered trademark in relation to all or any of the goods or services in respect of the trademark in which it is registered the rights and remedies provided under this Act and has exclusive right to:

- (a) use the trademark;
- (b) authorise or assign to the use of the registered trademark to other persons; or
- (c) obtain a remedy or relief under this Bill for any trademark infringement.

Subclause (2) provides that where more than one person owns a trademark, he or she along with the other owners have the exclusive right to use the trademark and cannot exclude others from using the trademark in respect of the goods produced or services provided by the other owners.

Clause 21 provides that the rights of an owner of a trademark is subject to any conditions or limitations where a trademark is registered subject to any conditions or limitations.

Clause 22 provides for the rights and obligations of the authorised user of a trademark. The authorised user may subject to any agreement with the registered owner use the trademark for the goods or services to which the trademark was registered subject to the conditions or limitation of the registration, bring an action of infringement of the trademark if the registered owner refuses or neglects to do so within 6 months or do anything else that the registered owner may do.

If the authorised user brings an action for infringement of the trademark the authorised user shall make the registered owner of the trademark a party to the action provided by the registered owner is not liable for costs if he or she does not take part in the proceedings.

PART 5 – TRADEMARKS THAT ARE NOT REGISTRABLE

Clause 23 provides that non distinctive trademarks are not registrable and that the Registrar shall not register:

- (a) a mark that is not capable of being registered as a trademark;
- (b) a mark that has no distinctive character;
- (c) a mark that consists only of signs or indications that may serve in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or rendering of services, or other characteristics of goods or services;
- (d) a mark that consists only of signs or indications that have become customary in the current language or in the bona fide and established practices of trade.

The Registrar shall not refuse registration of a mark under paragraphs (1)(b),(c) or (d) if at the before the date of the application for registration the trademark has acquired a distinctive character resulting either from use or any other circumstances.

Clause 24 provides that a trademark shall may be registered either limited in whole or in part to one or more specified colours. Where a trademark is registered without limitation of colour, the trademark is deemed to be registered for all colours.

Clause 25 provides that the Registrar shall not register a trademark that:

- (a) contains a protected geographical indication in respect of specified goods; and
- (b) relates to specified goods that do not originate from the place indicated in the protected geographical indication.

Clause 26 provides that the Registrar shall not register in respect of a chemical substance or preparation, a trademark that contains commonly used and accepted name of any single chemical element or single chemical compound. This restriction does not apply if a word used is to denote only a brand or make of the element or compound made by the owner or a licensee of the trademark together with an appropriate name or description open to the public.

Clause 27 provides that the Registrar may not register a trademark that contains the words ‘*copyright*’, ‘*layout*’, ‘*patent*’, ‘*patented*’, ‘*plant variety right*’, ‘*registered*’, ‘*registered design*’ or ‘*trademark*’ or any abbreviations to those word or any similar words

Clause 28 provides that if a person applies for registration of a sign as a trademark and that sign contains the name or representation of a person, the Registrar may require the consent of:

(a) that person unless the person died 10 years or more before the making of the application; or
(b) the persons legal representative if;

- (i) the person died within 10 years before the making of the application; or
- (ii) the Registrar thinks that the person’s consent cannot for any other reason be obtained.

Clause 29 provides the Registrar shall not register a trademark that contains a representation of His Excellency the President or any member of the Cabinet or an imitation of any such representation unless the applicant has obtained the consent of His Excellency or the relevant member of the Cabinet to the registration of the trademark.

Clause 30 provides for the non-registration of a mark which is an identical or similar mark to the trademark.

This clause provides that the Registrar shall not register a trademark that is identical to a trademark that belongs to another person or is similar to a trademark that belongs to a different owner and that has been registered or has priority in respect of the same goods or service that are similar to those goods and services and its use is likely to deceive or confuse or it is or an essential element of it identical or similar or a translation of a trademark that is well known in the Republic whether through advertising or otherwise, in respect of those goods or services or similar goods or services or any other goods or services if the use of the trademark would be taken to as indicating a connection in the course of trade between those other goods or services and the owner of the trademark and would be likely to prejudice the interests of the owner.

Clause 31 provides that a person who applies to register a mark that represents a flag, armorial bearing, insignia or decorations of any entity, such person is to obtain written consent prescribed under the *Naoero National Anthem Emblem and Flag Protection Act 2018* and under any other written law or the consent of the person who is entitled to give consent to the registration and use of the sign as a trademark.

PART 6 – REFUSAL TO REGISTER A TRADEMARK

Clause 32 provides that an application for registration of a trademark shall be rejected if the trademark is not able to differentiate between the applicant's goods or services for which the registration is sought from the goods or services of other person. This clause distinguishes that there cannot be more than one trademark for a particular good or service.

Subclause (3) provides that the use of the trademark by the applicant's predecessor in title is taken to be the use of the trademark by the applicant.

Clause 33 provides that an application is to be rejected if the trademark contains or consists of scandalous matter, is obscene, immoral or contrary to public order, or its use would be contrary to law.

Clause 34 provides for the rejection of an application for registration of trademark for goods or services if:

- (a) the applicant's trademark is substantially identical with or deceptively similar to;
 - (i) a trademark registered by another person for similar goods or closely related services; or
 - (ii) a trademark whose registration for similar goods or closely related services is being sought by another person; and

- (b) the priority date for the registration of the applicant's trademark for the applicant's goods is the same as or after the priority date for the registration of the other trademark for the similar goods or closely related services.

The Registrar may allow the registration of a trademark subject to any conditions or limitations where the Registrar in either case is satisfied that there has been honest concurrent use of the 2 trademarks and it is reasonable to do so.

Subclause (3) provides that the Registrar shall not reject the application on the basis of the existence of the other trademark if he or she is satisfied that the applicant or the applicant's predecessor in title have continuously used the trademark for a period starting before the priority date for the registration of the other trademark and ending on the priority date for the registration of the applicant's trademark.

PART 7 – DURATION, RENEWAL, SURRENDER, REMOVAL OF TRADEMARK

Clause 35 provides the duration of a trademark which is a period of 10 years. The owner of the trademark shall pay the prescribed annual fee for maintaining the trademark.

Clause 36 provides that the owner of the trademark may apply for renewal of registration of the trademark to the Registrar. The application for renewal shall be in the prescribed form and accompanied by evidence of payment of the prescribed fee.

The Registrar may renew the registration for a period of 10 years from the day on which the registration of the trademark would expire if it were not renewed. The Registrar is to give notice of the renewal of the registered owner trademark.

Clause 37 provides that the Registrar may correct an error or omission on any entry in the Register. The Registrar may on the application of the trademark owner correct an error or omission in the name, address or description of the owner of the trademarks, enter any change in the name, address or description of the owner of the trademark or, cancel any entry of the trademark.

Clause 38 provides for the surrender of a trademark by the owner in respect of some or all of the goods or services for which the trademark is registered. The owner must apply to the Registrar and the Registrar shall record the surrender and publish the surrender in the Gazette.

Clause 39 provides for the alteration of a trademark on the application of the owner to the Registrar. The alteration applied for is to alter the trademark in any manner that does not substantially affect the identity of the trademark or the goods or services for which it was registered. An application shall be made in the prescribed form and accompanied by the prescribed fee. The application will be published in the Gazette by the Registrar.

The Registrar may alter the registration within 14 days of the publication of the notice in the Gazette where there is no opposition received or where there is an objection, after considering the merits of the objection.

Clause 40 provides that a trademark owner may apply in the prescribed form and pay the prescribed fee to add goods or services to that which the trademark is registered. The application must be published in the Gazette by the Registrar. The Registrar may alter the registration within 14 days of the publication of the notice in the Gazette where there is no opposition received or where there is an objection, after considering the merits of the objection.

Clause 41 provides that a person may apply in the prescribed form and pay the prescribed fee to the Registrar for removal of a trademark for non-use for all or any of the goods or services to which the trademark is registered. The non-use application may be made:

- (a) the owner of the trademark at the time of registration had no bona fide intention to:
 - (i) use the trademark in the Republic;
 - (ii) authorise, assign or transmit the use of the trademark in the Republic;
- (b) the owner of the trademark at the time of registration had no intention to use or had used the trademark in the Republic for the goods or services for which registration relates;

- (c) the owner of the trademark had not used the trademark for a continuous period of 3 years in relation to the goods or services to which the registration relates.

The Registrar shall give notice of the application for removal to the registered owner of the trademark and publish a notice of the application in the Gazette. The Registrar shall consider the application and notify both the applicant and owner of his or her decision.

This clause requires a trademark to be used and not be left only on the books. This is especially where there may be other persons who would like to register an identical or similar mark with the intention of using such trademark.

Clause 42 empowers the Registrar to rectify any entry in the Register at his or her discretion or on an application by a person where there is omission of an entry, entry made without any sufficient cause, an error or defect in the entry or an entry is wrongly remaining in the Register.

PART 8 – ASSIGNMENT OF TRADEMARK

Clause 43 provides that a registered trademark may be assigned in accordance with this clause and such assignment may be partial applying only to some of the goods or services for which registration is sought or for which the trademark is registered.

Clause 44 provides that a person seeking to register an assignment shall apply to the Registrar in the prescribed form. The Registrar shall within 7 days of receiving the application record the application and the particulars of the assignment in the Register and publish the particulars of the assignment in the Gazette.

Clause 45 provides that the registered owner of the trademark or the assignee shall apply to the Registrar in the prescribed form for a record of the assignment to be entered in the Register. The Registrar shall within 7 days where the application complies with this Bill enter the particulars of the assignment in the Register and register the assignee of the relevant trademark. The registration of the assignee shall take effect from the day the application was filed.

The recording of the assignment and the registration of the assignee shall be advertised by the Registrar in the Gazette.

Clause 46 provides that where an application for assignment of trademark complies with the Bill, the Registrar shall notify the person recorded as claiming the interest or right in respect of the trademark.

PART 9 - COLLECTIVE TRADEMARKS

Clause 47 provides that a collective trademark is a sign used or intended to be used for goods or services dealt with or provided in the course of trade by members of an association, to

distinguish those goods or services from goods or services so dealt with or provided by any person who are not members of association

Clause 48 provides that a member of an association in whose name a collective trademark is registered does not have the right to prevent another member of the trademark using the collective trademark in accordance with the rules set up by the association. A collective trademark may not be assigned.

Clause 49 provides that for an infringement of collective trademark the association may take action in claiming damages, any damage or loss of profits sustained or incurred by the members of the association as a result of the infringement.

PART 10 – INFRINGEMENT OF TRADEMARKS

Clause 50 in subclause (1) provides that a person infringes a trademark if without the consent of the owner, he or she uses in the course of trade a sign that is either identical or similar to the trademark and is used in relation to goods or services identical or similar to those for which the trademark is registered which may be misleading.

Subclause (2) provides that a trademark is infringed which is well known if a person uses a trademark that is substantially identical with or deceptively similar to the trademark for goods of the same description as that of the goods for which the trademark is registered; goods that are closely related to the registered goods; services of the same description as that of the services for which the trademark is registered; or services that are closely related to the registered services.

Subclause (3) provides that subclause (1) only applies if the sign is used in such a manner as to render the use of the sign as likely to be taken as being used as a trademark.

Subclause (4) provides that a trademark is infringed where it is used without the consent of the owner in the course of trade which is identical or similar to the trademark in relation to goods or services which are not similar to those for which the trademark is registered; the trademark is well known in the Republic; the person uses a mark that is substantially identical or deceptively similar to the trademark for unrelated goods or unrelated services that are not the same description or not as closely related to the goods or services for which the trademark is registered; the trademark is well known that it is likely to be taken as showing a connection between the unrelated goods or services and the registered owner of the trademark; and the interest of the registered own is likely to be adversely affected.

Subclause (5) provides that the Court in deciding whether a trademark is well known in the Republic, shall take into account the extent to which the trademark is known within the relevant sector of the public as a result of promotion of the trademark or for any other reasons.

Clause 51 provides for infringement of contractual requirements. A registered trademark is infringed if:

- a purchaser or owner of the goods and the owner or licensee of the trademark have entered into a written contract that prohibits the purchaser or owner of the goods or services from doing acts such as application of the trademark on the goods after their condition, get up or packaging has been altered in any specific manner, the trademark has been altered, partial removal or obliteration of the trademark or, the addition to the goods of any written material is likely to damage the reputation of the trademark; and
- if the trademark is on the goods and there is something else on the goods that indicates a connection in the course of trade between the owner or licensee and the goods, the removal or obliteration whether wholly or partly of the trademark.

Clause 52 provides that if the registered owner or an authorised user of the trademark having power to do so has caused a notice prohibiting any act that is a prohibited act in relation to the goods for which the trademark is registered to be displayed:

- (a) on the registered goods;
- (b) on their package or on the container in which they were offered to the public.

Subclause (2) prohibits the following acts:

- (a) applying the trademark to registered goods or using the trademark in physical relation to them after the state, condition, get up or packaging in which they were originally offered to the public has been altered;
- (b) altering or partially removing or obliterating any representation of the trademark applied to registered goods or used in physical relation to them;
- (c) if the trademark has been applied to registered goods or used in physical relation to them together with other matter indicating the registered owner or authorised user has dealt with the goods removing or obliterating totally or in part any representation of the trademark without totally removing or obliterating the other matter;
- (d) applying another trademark to registered goods or using another trademark in physical relation to them; or
- (e) if the trademark has been applied to registered goods or used in physical relation to them using on the goods or on the packaging or container of the goods any matter that is likely to injure the reputation of the trademark.

A person infringes a trademark to which this clause applies if the person:

- (a) is the owner of registered goods;
- (b) in the course of trade or with a view to a dealing with the goods in the course of trade:
 - (i) does an act that is prohibited under the notice of prohibition; or
 - (ii) authorises that act to be done.

Subclause (4) provides that a trademark is not infringed if the owner of the goods acquired them in good faith without being aware of the notice of prohibition or became the owner of the goods through a title derived from a person who had so acquired them.

Clause 53 provides that the trademark is not infringed if the person:

- uses in good faith the person's name or the name of the person's place of business or the name of the predecessor in business of the person or the name of the predecessor's place of business;
- uses a sign in good faith to show the kind, quality, quantity, intended purpose, value, geographical origin or some other characteristics of the goods or services or the time of production of goods or provision of services;
- uses the trademark in good faith to show the intended purpose of the goods or services;
- uses the trademark for the purposes of comparative advertising; or
- exercises a right to use a trademark given to the person under this Bill.

Clause 54 provides that a person who uses a trademark for goods or services that are similar to goods or services for which the trademark is registered does not infringe the trademark if the trademark has been applied to or in relation to the goods by or with the consent of the registered owner of the trademark.

Clause 55 provides that an action for infringement of a trademark may be brought before the Supreme Court. The relief the Court may grant in an action for infringement of a trademark includes:

- (a) an injunction which may be granted subject to any condition that the Court deems fit;
- (b) an order for removal of the infringing trademark from all material and, where the infringing mark is inseparable or incapable of being removed from the material, an order that all such material be delivered up to the proprietor;
- (c) damages, including those arising from acts performed after advertisement of the acceptance of an application for registration which, if performed after registration, would amount to infringement of the rights acquired by registration; or
- (d) in lieu of damages, a reasonable royalty which would have been payable by an assignee or authorised person for the use of the trademark concerned, including any use which took place after advertisement of the acceptance of an application for registration and which, if taking place after registration, would amount to infringement of the rights acquired by registration.

Subclause (3) provides that the Supreme Court for the purposes of determining the amount of damages or reasonable royalty to be awarded under this clause, may prescribe such procedures for the conduct of such enquiry as it may deem fit.

Subclause (4) requires the owner of trademark prior to instituting proceedings under this clause to give notice in writing of his or her intention to institute proceedings to very assignee or authorised person in the Register. The assignees or authorised persons shall be entitled to intervene in such proceedings and to recover any damages he or she may have suffered resulting from the infringement.

PART 11 - OFFENCES

Clause 56 in subclause (1) provides that a person shall not knowingly falsify or remove a trademark that has been applied to any goods that are being dealt with or provided in the course of trade or has been applied in relation to any goods or services that are being or are to be dealt with or provided in the course of trade.

Any person who contravenes subclause (1) commits an offence and upon conviction is liable to a fine not exceeding \$20,000 or a term of imprisonment of not exceeding 5 years or to both.

Clause 57 provides in subclause (1) that a person shall not make a representation that a trademark is a registered trademark unless the person knows or has reasonable grounds to believe that the trademark is registered in the Republic.

The penalty for this offence upon conviction: a fine not exceeding \$20,000 or term of imprisonment not exceeding 5 years or to both.

Clause 58 makes it an offence for person making a false entry in the Register, causing a false entry to be made in the register and tendering in evidence a document that is falsely purported to be a copy or an extract of an entry in the Register or a document in the Registrar's office.

The penalty for this offence upon conviction: a fine not exceeding \$20,000 or term of imprisonment not exceeding 5 years or both.

Clause 59 makes it an offence for a person to make or submit a false statement or representation orally or in writing to the Registrar to deceive, procure or influence the doing or omission of anything in this Bill.

The penalty for this offence upon conviction: a fine not exceeding \$20,000 or term of imprisonment not exceeding 5 years or both.

Clause 60 makes it an offence for a person to forge a trademark or falsely apply to goods or in relation to services any trademark or any mark so nearly resembling a trademark.

The penalty for this offence upon conviction: a fine not exceeding \$20,000 or term of imprisonment not exceeding 5 years or both.

PART 12 - MISCELLANEOUS

Clause 61 provides that the Minister may by Gazette authorise an officer of the Department or police officer to be an authorised officer.

Clause 62 provides that the Registrar or an authorised officer shall not liable be in any civil or criminal proceedings for anything done in the exercise of a power under this Act if the act or omission was done in good faith or on reasonable grounds.

Clause 63 vests jurisdiction in the District Court to hear matters relating to any offence committed under the Act.

Clause 64 allows for a barrister and solicitor or pleader with more than 5 years' experience to assist an owner, person authorised by the owner or an assignee of a trademark to register a trademark or to carry out such other requirements under this Bill.

Clause 65 provides for passing off actions arising out of the use by the defendant of a registered trademark if he or she is not the authorised user, that is substantially identical with or deceptively similar to the trademark of the plaintiff damages may not be awarded against the defendant if the defendant satisfies the Court, that at the time when the defendant began to use the trademark he or she was unaware and had no reasonable means of finding out that the trademark of the plaintiff was in use and that when the defendant became aware of the existence and nature of the plaintiff's trademark he or she immediately ceased to use the trademark in relation to the goods or services to which it was used by the plaintiff.

Clause 66 provides for the Cabinet's regulation making power.

Clause 67 repeals the *Law Adoption (Trade Marks Regulations) Act 1964*.